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## The State Aid Action Plan: A Bold Move or a Timid Step in the Right Direction?

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This paper explores the current state of discussion on the reform of EC State aid policy. It analyzes the responses to the European Commission's consultation document on State aid, presents the main areas of dissatisfaction, and the extent to which answers to the expressed dissatisfaction can be found in the State Aid Action Plan or the comments of Philip Lowe. The paper then explores the pros and cons of a decentralization of EC State aid policy.

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Philip Lowe's article "Some Reflections on the European Commission's State Aid Policy"<sup>1</sup> meets a number of the concerns that have been expressed in the public debate on the reform of EC State aid policy; and there is little doubt that the current thinking of the European Commission is a welcome move toward improving and modernizing an area of competition law that has been somewhat neglected in the past. However, Philip Lowe does not address some of the concerns raised either during the public consultation organized by the Commission or by several authors prior to the consultation. The numerous and very serious criticisms levied against the past enforcement of provisions on State aid in the EC Treaty can be classified in four categories.

First, State aid law enforcement is seen as an area of legal uncertainty and of dubious economic relevance. It is often alleged that what constitutes State aid has not been clearly defined. Indeed, it appears that the Commission and the EC courts do not share the same vision of what constitutes a State aid. The Commission seems to favor a wide interpretation (as it did in the France Telecom case where the Commission argued that statements by the French government between July and December 2002 amounted to illegal assistance for the French telecom operator),<sup>2</sup> whereas the courts seem to have a narrower view of what constitutes State aid.

It is also often observed that, in spite of or because of many guidelines, there is no easy method for distinguishing State aid that needs to be notified from other measures that do not need to be notified.

And it is often noted that what constitutes illegal State aid is generally decided without any assessment of a possible effect on trade between Member States or any assessment of possible distortion of competition. For example, in its response to the Commission's consultation on the "State Aid Action Plan" (the SAAP), the Confederation of British Industries stated:

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"Effects, rather than form, based economic analysis, such as the Commission has in recent years moved towards in its guidance on the application of Article 81, has a fundamental role to play in the assessment of State aid. There is also a need for a much more rigorous approach in defining interstate [*sic*] trade effects. A number of recent decisions (e.g., *Brighton pier*; *Dorston swimming pool*) have involved State aids which have no real effects

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1 Philip Lowe, *Some Reflections on the European Commission's State Aid Policy*, 2(2) COMPETITION POL'Y INT'L 57 (2006).

2 The Commission statement when the decision was published said "the statement created expectations and confidence on the financial markets and helped maintain France telecom's investment rating. If the statements had not been made no reasonable investor would have offered a stakeholder's advance in these circumstances and assumed alone a very large financial risk."

on trade, and where any concerns regarding trade distortions are entirely academic. Decisions of this nature encourage Member States to notify on a precautionary basis schemes which have no real European dimension. This represents a patent waste of scarce resources, which could be better deployed in tackling major rescue and restructuring packages. The Commission therefore must introduce far greater rigour in its analysis of trade effects.”<sup>3</sup>

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THE COMPLEXITY AND  
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(WHETHER BENEFICIARIES OR  
COMPETITORS) IN ASSESSING  
WHETHER A MEASURE  
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AND FOR NATIONAL JUDGES IN  
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MEASURE CONSTITUTES STATE AID.

The complexity and unpredictability of State aid rules is likely to create uncertainty for undertakings (whether beneficiaries or competitors) in assessing whether a measure constituted illegal aid, and for national judges in deciding whether or not a measure constitutes State aid.<sup>4</sup>

The legal uncertainty resulting from the complexity of defining what is a State aid and whether or not a State aid is compatible with the common market, may be reinforced by the fact that national judges do not have the same powers as the Commission in the area of State aid. A national judge has the power to declare

the illegality of an aid that has been granted and to pronounce judgment on the consequences of this illegality under national law, but a national judge cannot assess the compatibility of the aid with the common market. The Commission, on the other hand, can assess the compatibility of the aid and order recovery when the aid does not qualify for one of the exceptions set out in paragraphs 2 and 3 of Article 87 of the EC Treaty. Some observers in the business community believe that such differentiated powers can lead to divergent solutions for similar cases. For example, in its submission to the European Union on the SAAP, the American Chamber of Commerce gave the example of two Ryanair actions brought before the Commission and the French administrative courts. “In those two cases, similar State aid measures benefiting Ryanair gave rise to totally distinct solutions.” According to the American Chamber of Commerce, “these divergent outcomes undermine legal certainty.”<sup>5</sup>

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3 CONFEDERATION OF BRITISH INDUSTRY, CBI’S RESPONSE TO THE COMMISSION’S CONSULTATION 6 (2005), available at [http://ec.europa.eu/comm/competition/state\\_aid/others/action\\_plan/consult/37229.pdf](http://ec.europa.eu/comm/competition/state_aid/others/action_plan/consult/37229.pdf).

4 See, for example, LINKLATERS, SUBMISSIONS ON EUROPEAN COMMISSION’S STATE AID ACTION PLAN, LESS AND BETTER TARGETED STATE AID: A ROADMAP FOR STATE AID REFORM 2005-2009 (2005), available at [http://ec.europa.eu/comm/competition/state\\_aid/others/action\\_plan/consult/37367.pdf](http://ec.europa.eu/comm/competition/state_aid/others/action_plan/consult/37367.pdf).

5 AMERICAN CHAMBER OF COMMERCE TO THE EUROPEAN UNION, POSITION PAPER ON STATE AID ENFORCEMENT (2005), available at <http://www.amchameu.be/Pops/2005archive/stateaidenforcement05282005.pdf>.

A second major area of criticism concerns the review process at the EU level. The notification system is considered by many to be too cumbersome. Part of the problem comes from the fact that under the EC treaty, Member States are required to notify all aid for assessment by the Commission, and the Commission is the only institution that can authorize State aid under Article 87(2) and (3) EC. Combined with the legal uncertainty mentioned above, this system leads the Commission to spend too much time on non-problematic State aids, leading to delays in the handling of more important cases. Thus, as the American Chamber of Commerce puts it: “The Commission should prioritize its handling of complaints, concentrating on those relating to larger schemes which can have European-wide effects.”<sup>6</sup>

A third area of dissatisfaction concerns the large number of State aids which are not notified. The “Study on the Enforcement of State Aid Law at National Level”<sup>7</sup> indicates, for example, that “Of the 400-550 or so cases dealt with by the Commission every year about 15-20% concern cases which are not notified.” This study offers three possible explanations to explain this failure of Member States to notify State aid.

First, the study says, it could be that, as mentioned previously, Member States have difficulty in distinguishing between State aid that falls within Article 87 (1) EC and therefore has to be notified, and State aid that does not.

Second, perhaps EC procedures are too cumbersome and too time-consuming for Member States that, in certain cases, have to grant aid quickly to avoid a major political and/or economic problem.

Third, it could be that Member States provide aid to their national industries without any regard to EC rules. Whereas problems identified in the first two possible explanations could be remedied relatively easily by the Commission through technical measures (clarifying the concept of State aid and modifying the notification procedure so as to alleviate the burden of the Commission and thus allowing for a faster treatment of notified cases), the third possible explanation for the failure of Member States to notify their State aid is more challenging. If this last explanation is an accurate description of reality, the Commission must do a better job of advocacy in the area of State aid, the penalties for failure to notify or for granting illegal State aid should be reviewed, and a better system of detection of non-notified aids should be established so that Member States cannot get away with notification lapses.

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6 AMERICAN CHAMBER OF COMMERCE TO THE EUROPEAN UNION, AMCHAM EU RESPONSE TO THE COMMISSION’S CONSULTATION ON THE STATE AID ACTION PLAN CONSULTATION (2005).

7 THOMAS JESTAEDT, JACQUES DERENNE, AND TOM OTTERVANGER, STUDY ON THE ENFORCEMENT OF STATE AID LAW AT NATIONAL LEVEL, (2006), available at [http://ec.europa.eu/comm/competition/state\\_aid/others/study\\_part\\_1.pdf](http://ec.europa.eu/comm/competition/state_aid/others/study_part_1.pdf).

This leads us to the fourth area of dissatisfaction with the current system of State aid enforcement: the fact that the decentralized recovery mechanism is at best faulty. At present, Article 14, paragraph 3, in combination with Article 14, paragraph 1 of the procedural regulation, serves to ensure that the Member State concerned takes all necessary measures to recover illegal State aid, in accordance with the procedure set out by national law.

However, the fact that the Member State is the competent authority to recover the illegal aid, although it is also often the authority which previously granted this aid, can be a source of difficulties. According to the “Study on the Enforcement of State Aid Law at National Level,” while there are encouraging signs that recovery of illegal or prohibited State aid is becoming more satisfactory, at least five types of obstacles exist impeding the recovery process at the national level:

- 1 In some cases, there is a lack of clarity as to who should issue the recovery decision, who should repay, and the amount to be repaid;
- 2 In some Member States there is no clear predetermined procedure to recover aid;
- 3 Interim measures for the recovery of State aid are either unavailable or unused;
- 4 In several countries recovery proceedings will be stayed while an appeal is pending; and
- 5 Governmental authorities of Member States may experience difficulties in recovering illegal State aid at the regional or local level.

As a result, the deterrent effect of State aid enforcement remains weak. This is recognized in the SAAP, which states:

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“The effectiveness and credibility of State aid control presupposes a proper enforcement of the Commission’s decisions, especially as regards the recovery of illegal and incompatible State aid. Recent experience has shown that the implementation of recovery decisions by Member States is not satisfactory and, moreover, that conditional or positive decisions are sometimes not correctly implemented by the Member States.”<sup>8</sup>

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8 EUROPEAN COMMISSION, STATE AID ACTION PLAN, LESS AND BETTER TARGETED STATE AID: A ROADMAP FOR STATE AID REFORM 2005-2009 13 (2005), available at [http://ec.europa.eu/comm/competition/state\\_aid/others/action\\_plan/saap\\_en.pdf](http://ec.europa.eu/comm/competition/state_aid/others/action_plan/saap_en.pdf).

As Philip Lowe makes clear, the SAAP tries to meet a number of those concerns, and some of his reflections, which go beyond the SAAP, are also very clear indications of the fact that the Commission is responsive to the concerns previously mentioned.

First, it is hard to disagree with the four guiding principles in the SAAP:

- less and better targeted State aid;
- a refined economic approach;
- better procedures and administration; and
- a shared responsibility between the Commission and Member States.

At first glance, these principles seem consistent with the wishes of commentators who seek a clearer and more precise definition of what State aids are, a more economically relevant analysis of State aids, better procedures for the investigation of State aids and fewer notifications of insignificant State aids, and a better compliance of Member States with EC law in this area.

On a more detailed level, one must welcome the desire of the Commission to shift from a form-based approach to an economic analysis of the effects. This can only increase the economic relevance of State aid enforcement. Since “State aid can affect both the way in which the economic pie is made larger by a given policy (efficiency) and how the pie is then divided between citizens (equity),”<sup>9</sup> the Commission proposes to use a social welfare standard (thus recognizing that objectives other than market failures can justify the granting of State aid), and to use a clearly delineated balancing test to evaluate the compatibility of the aid with EC rules by examining three questions: Is the aid aimed at a well-defined objective of common interest? Is the aid well designed to deliver the objective? Are the distortions on trade and competition sufficiently limited so that the overall balance is positive? While this approach represents a clear progress, it is not entirely clear how the Commission will be able to implement the balancing test in cases in which the objective of the State aid is not to correct a market failure leading to inefficiencies but to achieve an equity goal.

Second, the SAAP clearly recognizes that “there are certain shortcomings in the practices and procedures of State aid policy, which can be observed in the long time frame for the treatment of cases” and that “longer time frames are clearly an unacceptable outcome, bearing in mind that a trade off might exist between the duration of the procedure and ensuring an effective control while safeguarding the rights of third parties.” The plan suggests various means to “improve its internal practice and administration, and increase efficiency, enforcement and monitoring.” In particular, delays could be shortened “within the scope of the current procedural regulations” such as instilling:

<sup>9</sup> Philip Lowe, *supra* n. 1, at 67.

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“more predictable timelines, clear intermediary steps in the procedure and ensure higher transparency by providing more information on Internet,...encouraging a higher quality of notifications and by discouraging incomplete notifications by a more systematic use of the information injunction, requesting Member States to provide complete information within a certain period,...issuing best practices guidelines after consulting Member States as well as the public on how procedures could be improved to better administrate State aid control.”<sup>10</sup>

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For the Commission, the “best practices guidelines together with the general block exemption and the increased de minimis ceiling are expected to reduce both the time it takes before the Commission reaches its decisions and the administrative burden for Member States.” All those suggestions could help meet the concern of those who, as we saw previously, argue that the process of State aid enforcement is too burdensome for the Commission, for undertakings, and for the Member States.

Third, the Commission seems intent on ensuring a better compliance with State aid rules by Member States. The SAAP acknowledges that “the effectiveness and credibility of State aid control presupposes a proper enforcement of the Commission’s decisions, especially as regards the recovery of illegal and incompatible State aid” and that “implementation of recovery decisions is not satisfactory.” In this area, the Commission proposes to follow two tracks. First, to monitor more closely the execution of recovery decisions by Member States and to pursue more actively noncompliance under Articles 88(2), 226, and 228 of the EC Treaty (an implicit acknowledgement that it has not put enough emphasis on this aspect in the past). Second, to “promote advocacy, awareness and understanding of State aid control at all levels to help the granting authorities in designing measures that are compatible with the treaty rules.”<sup>11</sup>

However, there is one major area where the SAAP and Philip Lowe’s reflections fall short of the expectations.

The SAAP includes one reference to the issue of decentralization and coordination between the Commission and Member States. This topic has been hotly debated both in academic circles and in the replies to the consultation undertaken by the Commission.

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<sup>10</sup> EUROPEAN COMMISSION, *supra* n. 8, at 12.

<sup>11</sup> *Id.* at 11.



In paragraph 51, the SAAP suggests that Member States could (and should) play a crucial role in the implementation of the rules and procedures on State aid by monitoring and screening State aids. The SAAP states that the European Community has already had a positive experience in this area in the context of enlargement where “the screening of State aid measures was conducted by operationally independent monitoring authorities in the new Member States.” Drawing on this valuable experience, the Commission will “examine whether independent authorities in Member States could play a role as regards the task of the Commission in terms of State aid enforcement (detection and provisional recovery of illegal aid, execution of recovery decisions).”<sup>12</sup> In addition, as Philip Lowe notes, an attempt will be made to “intensify the involvement of national courts, especially with regard to the treatment of illegal aid granted in violation of the notification obligation.”

Thus, it appears that the Commission does not envisage a complete (or even a wide) decentralization of decision making in the area of State aid enforcement, while cautiously considering the possibility that Member States or national independent authorities could play some role in the substantial evaluation of State aid.

Even though one may regret the lack of concrete proposals for decentralization, it must be said that the Commission’s stand seems to be partly inspired by the views expressed by Professor Phedon Nicolaides,<sup>13</sup> who has argued that partial decentralization of State aid enforcement at the national level would, under certain circumstances, be preferable to the current complete centralization of enforcement.

Phedon Nicolaides does not favor complete decentralization of the enforcement of State aid at the national level for a reason that is likely to alarm lawyers and business firms and to be considered weak, at best, by economists. He states that:

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“It is obvious that the Commission plays an important role in State aid control... This is not so much because only the Commission has the requisite knowledge or the impartiality to decide what is in the EU’s common interest. I believe that it has more to do with the fact that in the end these decisions have an element of arbitrariness. There is no way of telling beforehand where the line should be drawn between exemptable and non-exemptable State aid. Reasonable persons starting with the same assumptions could easily arrive at different conclusions. Hence, if the rules are to be applied uni-

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12 *Id.* at 12.

13 See, for example, Phedon Nicolaides, *Decentralised State Aid Control in an Enlarged European Union: Feasible, Necessary or Both?*, 26(2) *WORLD COMPETITION* 263–276 (2003).

formly across the European Union it is important to have a single authority that defines the boundaries of the rules.”<sup>14</sup>

However, Professor Nicolaides expressed strong support for the idea of entrusting independent national authorities with partial responsibilities in the enforcement of State aid, by stating that:

“A requirement for national authorities to measure the economic impact of State aid they propose to grant and to demonstrate how it corrects market imperfections would.... make it more difficult for politicians to claim that aid is in the national interests and would correspondingly make it easier for national officials to speak out against aid that demonstrably does not raise overall national welfare. Perhaps ministries of finance would even welcome rules that would facilitate their task of ensuring that public expenditure generates “value for money.”<sup>15</sup>

He summarizes a possible division of labor between the Commission and the independent national authorities along the following lines:

Figure 1

PROPOSED DIVISION OF TASKS BETWEEN THE COMMISSION AND NATIONAL STATE AID AUTHORITIES		
Policy foundation	Commission tasks	SAA tasks
Existing State aid rules	<ul style="list-style-type: none"> <li>• Elaborate State aid policy</li> <li>• Issue regulations</li> <li>• Define guidelines</li> <li>• Deal with aid falling outside guidelines</li> <li>• Monitor decisions of SAAs</li> <li>• Manage a network of SAAs</li> </ul>	<ul style="list-style-type: none"> <li>• Receive all State aid notification</li> <li>• Check their compliance with EU rules</li> <li>• Reject non-compliant schemes</li> <li>• Forward to the Commission schemes that fall outside guidelines (which require assessment of common interest)</li> <li>• Monitor compliance with block exemption and de minimis regulations</li> </ul>
Modernized State aid rules (relying more on market analysis and requiring assessment of economic impact of State aid)	As above	As above, plus <ul style="list-style-type: none"> <li>• Check market analysis and assessment of economic impact</li> </ul>

14 *Id.*

15 *Id.*

As Professor Nicolaides does in his previously mentioned article, in the SAAP, the Commission refers to the fact that, in the context of accession, candidates for EC membership had to create State aid monitoring authorities in charge of assessing all State aid granted in their countries and to keep the Commission informed of the cases they handled. Because these authorities seem to have fulfilled a useful role and worked in close cooperation with the Commission, Professor Nicolaides suggests that similar independent institutions could be established in all Member States (or at least in some of them) to analyze the compliance of State aid applications with EC rules. Although considerably more tentative in its expression, the SAAP similarly states that the experience conducted during the enlargement process “has been a valuable experience which should be taken into account when considering further cooperation between the Commission and all Member States.” In this context, the Commission will examine whether independent authorities in Member States could play a role facilitating the task of the Commission in terms of State aid enforcement—detection and provisional recovery of illegal aid, and execution of recovery decisions.

In spite of its cautiousness, this proposal by the Commission has opened a lively debate. Some commentators have expressed strong reservations about the idea that national independent authorities could play a role in the assessment of the compatibility of State aid with EC rules. Typical of this line of thought, Eric Morgan de Rivery and Nelly Le Berre-Dodet<sup>16</sup> suggest that such a proposal would raise both legal and practical difficulties. In particular, they point out that it could raise a constitutional issue regarding the Commission’s exclusive role in assessing the compatibility of State aid measures, and a practical difficulty of identifying capable entities and ensuring the right level of cooperation from the vast number of entities potentially capable of granting State aids.

Others have been resolutely opposed to the idea that independent national authorities could play a useful role in the recovery of illegal State aid. For example, in its submission on the SAAP, Linklaters, a major law firm,<sup>17</sup> states: “In paragraph 51 SAAP, the Commission proposes that independent national authorities might act as the Commission’s agents in enforcing State aid rules.” Linklaters is skeptical about this enhancement of the role of Member States. If national authorities were designated to recover aid, burdensome implementation measures would have to be adopted to ensure consistency across the European Community.

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16 Eric Morgan de Rivery and Nelly Le Berre-Dodet, *Controlling State Aids*, COMPETITION LAW INSIGHT (12 July 2005).

17 LINKLATERS, *supra* n. 4, at 5.

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“We do not believe that it is appropriate to draw a comparison with the experience of accession Member States. First, it is not clear that the experience of pre-accession aid proceedings was as positive as the Commission suggests. Second, the accession process provided a strong incentive that will be absent in the current Member States notwithstanding their duties under Article 10 EC. Third, the national authorities in question did not have to recover but rather decide on the existence of aid and compatibility.”<sup>18</sup>

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But not all commentators share those reservations and some have offered their own view of what the role of national independent agencies could be in the State aid area.

For example, Association Française d'Etude de la Concurrence,<sup>19</sup> an organization of French lawyers, suggested that such independent agencies could keep databases; be granted the right to question Member States about aids allocated, their regularity, and the exemption regulations from which they possibly benefit; and have a power to alert or inform the Commission, answer requests for information received from operators, answer other national authorities that are part of the network, assist central state, regional and local authorities, and undertake a calibration of performances.

The submission of the U.K. government on the SAAP<sup>20</sup> envisions two options that would confer a much more active role for national authorities in State aid enforcement with a view to speed up the assessment of the compatibility of State aids with EC law. The first option proposes to offer at least some Member States the possibility of securing an independent review of the distortion of competition that might result from the proposed State aid. It adds: “Such a review, if authoritative, could perhaps obviate the need for detailed investigation by the Commission itself in some cases.” The second option, which is very much in line with the proposals of Professor Nicolaidis, would be to remove the notification obligation for cases that fall outside the conditions for direct block exemption but are nevertheless within broader safe harbor limits and therefore unlikely to seriously distort competition on a European scale, if Member States obtained an

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18 *Id.* at 6.

19 ASSOCIATION FRANÇAISE D'ETUDE DE LA CONCURRENCE, COMMENTS OF AFEC ON THE STATE AID ACTION PLAN OF THE COMMISSION (2005), available at [http://ec.europa.eu/comm/competition/state\\_aid/others/action\\_plan/consult/37969.pdf](http://ec.europa.eu/comm/competition/state_aid/others/action_plan/consult/37969.pdf).

20 UNITED KINGDOM, UK RESPONSE TO COMMISSION ROADMAP FOR STATE AID REFORM, available at [http://ec.europa.eu/comm/competition/state\\_aid/others/action\\_plan/consult/37379.pdf](http://ec.europa.eu/comm/competition/state_aid/others/action_plan/consult/37379.pdf).

opinion from an independent national competition authority that the measure is unlikely to distort competition to any significant extent.

The modernization of EC competition law has led to a successful decentralization of the enforcement of Article 81 EC and the elimination of the Commission's monopoly on the interpretation of Article 81 (3) EC. It is already obvious that these have been successful moves. Cooperation between the Commission and national authorities within the European Competition Network is recognized by all as being highly satisfactory; enforcement of EC competition law is now more frequent at the national level and, as a consequence, EC law is better understood; the Commission is now better able to focus its scarce resources on cases of major significance.

Yet the decentralization of enforcement of Article 81 EC was initially resisted by some who feared that national competition authorities could not be trusted because they were neither sufficiently independent nor sufficiently technically competent to enforce Article 81 (3) EC in a consistent and objective manner, or that they were too numerous (and too heterogeneous) for cooperation between them and the Commission to be workable.

When it synthesized the results of the consultation of the SAAP in February 2006, the Commission noted that the principle obstacles mentioned by respondents who questioned the possible role of independent national authorities in the enforcement of State aid laws were: the independence of such national authorities, the risk of increased bureaucracy, the risk of uneven application of the law, a concern about the legality of a full delegation of responsibility in this area to national independent authorities, and the principle of institutional autonomy of the Member States. Most of these concerns had been raised in the discussions leading to the decentralization of the enforcement of Article 81 (3) EC, but either they turned out to be misguided or solutions were found to overcome them.

As we have seen, the supporters of a role for independent national authorities in the enforcement of State aid have never argued in favor of complete decentralization. The arguments of those who oppose giving a role to national independent authorities often seem to assume that the choice is between full decentralization or no decentralization whatsoever. Some respondents to the public consultation on the SAAP suggested that, if it wants to move forward, the Commission "should issue a specific document providing more clarity and a global picture of the powers and obligations of such authorities." Such a document could indeed clarify that no one is pushing for complete decentralization of State aid enforcement and it would make clear that different proposals with different degrees of involvement of independent national authorities are conceivable.

The very cautious position expressed in the SAAP on the issue of decentralization of enforcement of State aid provisions should be considered in light of the

fact that at the time of the drafting of the SAAP, it was not yet obvious that the decentralization of the enforcement of Article 81 (3) EC would be a success.

What is disappointing, however, is that in 2006, at a time when it is clear that the alarm of those who opposed the decentralization of the enforcement of Article 81 (3) EC was unjustified, neither the Commission nor Philip Lowe, in his article “Some Reflections on the European Commission’s State Aid Policy,” have suggested that they intend to actively pursue a discussion on decentralization of enforcement in the State aid area.

A revision as major as the one undertaken by the Commission on EC State aid policy is a golden opportunity to establish conditions that could decrease the misunderstanding in this area between Member States’ politicians and the general public, on the one hand, and the Commission, on the other hand, by promoting a public and transparent debate at the national level that would show that the Commission trusts national institutions and wants to cooperate with them. This will undoubtedly make State aid policy better understood and increase its effectiveness. It would be a particularly important result at a time when there is renewed, if misguided, interest in industrial policy measures and the promotion of “national champions” in many Member States.

IF THE SAAP IS IMPLEMENTED WITHOUT ANY FORM OF DECENTRALIZATION OF ENFORCEMENT, THE COMMISSION WILL HAVE ACHIEVED A USEFUL TECHNICAL OVERHAUL OF OUR STATE AID POLICY BUT IT WILL HAVE GIVEN UP THE CHANCE TO BENEFIT FROM A MOMENTUM IN FAVOR OF MAJOR REFORMS THAT MAY NOT REAPPEAR FOR MANY YEARS.

The results of the consultation on the SAAP show that most resistance to this proposal comes from regional authorities. Out of eight regions that commented on the SAAP, seven declared themselves against the proposal and one was in favor. In contrast, opinions were more evenly divided in other categories (six business associations in favor and six against, two law firms in favor and three against, five Member States in favor and eight against).

These results suggest that the business community is generally, even if cautiously, in favor of independent national authorities. Thus, by providing a more precise set of options for decentralization and by giving special consideration to the issue of regional State aid, the Commission could reasonably hope to make progress, even if decentralization in the State aid area remains an uphill battle.

If the SAAP is implemented without any form of decentralization of enforcement, the Commission will have achieved a useful technical overhaul of our State aid policy but it will have given up the chance to benefit from a momentum in favor of major reforms that may not reappear for many years. ▼