

NOTICE FROM THE COMMISSION**Towards an effective implementation of Commission decisions ordering Member States to recover unlawful and incompatible State aid**

(2007/C 272/05)

1. INTRODUCTION

1. In 2005, the Commission presented its road map for State aid reform in its State Aid Action Plan ⁽¹⁾. The programme of reform will improve the effectiveness, transparency and credibility of the EU State aid regime. At the heart of the Action Plan is the principle of 'less and better targeted State aid'. The central objective is to encourage Member States to reduce their overall aid levels, whilst redirecting State aid resources at objectives having a clear Community interest. To achieve this, the Commission is committed to continue taking a strict approach towards the most distortive types of aid, in particular towards unlawful and incompatible aid.
2. In recent years, the Commission has demonstrated that it is prepared to take a strong stance against unlawful aid. Ever since the entry into force of the Council Regulation (EC) No 659/1999 ⁽²⁾ (the Procedural Regulation), it has systematically ordered Member States to recover any unlawful aid found to be incompatible with the common market, unless it considered that this would be contrary to a principle of Community law. Since 2000, it has adopted 110 such recovery decisions.
3. It is essential for the integrity of the State aid regime that these Commission decisions ordering Member States to recover unlawful State aid (hereafter 'recovery decisions') are enforced in an effective and immediate manner. The information collected by the Commission in recent years shows that there is cause for real concern in this respect. Experience shows that there is practically not a single case in which recovery was completed within the deadline set out in the recovery decision. Recent editions of the State aid Scoreboard also show that 45 % of all recovery decisions adopted in 2000-2001 had still not been implemented by June 2006.
4. In 2004, the Commission ordered a comparative study on the enforcement of EU State aid policy in different Member States ⁽³⁾ (hereinafter referred to as the 'Enforcement Study'). One of the objectives of the study was to assess the effectiveness of recovery procedures and practices in a number of Member States. The authors of the Study found that the 'excessive length of recovery proceedings is a recurring theme in all country reports'. They recognised that the implementation of recovery decisions had somewhat improved in recent years, but concluded that the recovery of unlawful and incompatible aid still faces a number of obstacles in most of the Member States surveyed.
5. In its State aid Action Plan, the Commission stresses the need for an effective enforcement of recovery decisions. It is clear that the implementation of such decisions is a shared responsibility between the Commission and the Member States and will require considerable efforts by both in order to be successful.
6. The purpose of the present communication is to explain the Commission's policy towards the implementation of recovery decisions. It shall not examine the consequences that national courts may draw from the non respect of the notification and standstill obligation of Article 88(3) EC. The Commission considers there is a need to clarify the measures it intends to take to facilitate the execution of recovery decisions and to set out actions Member States could take to ensure that they reach full compliance

⁽¹⁾ State Aid action plan: Less and better targeted State aid: a roadmap for State aid reform 2005-2009.

⁽²⁾ Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ L 83, 27.3.1999, p. 1).

⁽³⁾ Study on the enforcement of State aid law at national level, Competition studies 6, Luxembourg, Office for Official Publications of the European Communities:
http://ec.europa.eu/comm/competition/state_aid/overview/studies.html

with the rules and principles as established by the body of European law and, in particular, the case law of the Community Courts. To this end, the notice will first recall the purpose of recovery and the basic principles underlying the implementation of recovery decisions. It will then present the practical implications of these basic principles for each of the actors involved in the recovery process.

2. THE PRINCIPLES OF RECOVERY POLICY

2.1. A short history of recovery policy

7. Article 88(3) EC states that ‘the Commission shall be informed in sufficient time to enable it to submit its comments, of any plans to grant or alter aid. [...] The Member State concerned shall not put its proposed measures into effect until this procedure has resulted in a final decision.’
8. In cases where Member States do not notify the Commission of its plans to grant or alter aid prior to such aid being put into effect, the aid is unlawful in relation to Community law from the time that it is granted.
9. In its ‘Kohlegesetz’ judgment ⁽⁴⁾ of 1973, the European Court of Justice (ECJ) confirmed for the first time that the Commission had the power to order the recovery of unlawful and incompatible State aid. The Court held that the Commission was competent to decide that a Member State must alter or abolish a State aid that was incompatible with the common market. It should therefore also be entitled to require repayment of this aid. On the basis of this judgment and subsequent case law ⁽⁵⁾, the Commission informed the Member States in a Communication published in 1983 that it had decided to use all measures at its disposal to ensure that Member States’ obligations under Article 88(3) EC are fulfilled, including the requirement, that Member States recover incompatible aid granted unlawfully from the recipient ⁽⁶⁾.
10. In the second half of the 1980s and in the 1990s, the Commission started to order the recovery of unlawful and incompatible aid more systematically. In 1999, basic rules on recovery were included in the Procedural Regulation. Further implementing provisions on recovery were included in Commission Regulation (EC) No 794/2004 ⁽⁷⁾ (‘the Implementing Regulation’).
11. **Article 14(1)** of the Procedural Regulation confirms the constant case law of the Community Courts ⁽⁸⁾ and establishes an obligation on the Commission to order recovery of unlawful and incompatible aid unless this would be contrary to a general principle of law. This Article also provides that the Member State concerned shall take all necessary measures to recover unlawful aid that is found to be incompatible. **Article 14(2)** establishes that the aid is to be recovered, including interest from the date on which the unlawful aid was at the disposal of the beneficiary until the date of its effective recovery. The Implementing Regulation elaborates the methods to be used for the calculation of recovery interest. Finally, **Article 14(3)** of the Procedural Regulation states, that ‘recovery shall be effected without delay and in accordance with the procedures under the national law of the Member State concerned, provided that they allow for the immediate and effective execution of the Commission decision’.
12. In a number of recent judgments, the ECJ further clarified the scope and interpretation of Article 14(3) of the Procedural Regulation, thereby emphasising the need for an immediate and effective execution of recovery decisions ⁽⁹⁾. In addition, the Commission has also started to apply Deggendorf case law ⁽¹⁰⁾ in

⁽⁴⁾ Case 70/72, *Commission v Germany*, [1973] ECR 813, paragraph 13.

⁽⁵⁾ Case 121/73, *Markmann KG v Germany and Land of Schleswig-Holstein*, [1973] ECR 01495, Case 122/73, *Nordsee, Deutsche Hochseefischerei GmbH v Germany and Land Rheinland-Pfalz*, [1973] ECR 01511, and Case 141/73, *Fritz Lohrey v Germany and the Land Hessen*, [1973] ECR 01527.

⁽⁶⁾ OJ C 318, 24.11.1983, p. 3.

⁽⁷⁾ Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ L 140, 30.4.2004, p. 1).

⁽⁸⁾ Case C-301/87, *France v Commission*, [1990] ECR I-307.

⁽⁹⁾ Case C-415/03, *Commission v Greece*, (‘Olympic Airways’), [2005] ECR I-03875 and Case C-232/05, *Commission v France*, (‘Scott’), [2006], judgment of 5 October 2006.

⁽¹⁰⁾ Case C-188/92, *TWD Textilwerke Deggendorf GmbH v Germany*, (‘Deggendorf’) ECR [1994], I-00833.

a more systematic manner. This case law enables the Commission, if certain conditions have been satisfied, to order Member States to suspend the payment of a new compatible aid to a company until that company has reimbursed old unlawful and incompatible aid that is subject to a recovery decision.

2.2. Purpose and principles of recovery policy

2.2.1. Purpose of recovery

13. The ECJ has held on several occasions that the purpose of recovery is to re-establish the situation that existed on the market prior to the granting of the aid. This is necessary to ensure that the level-playing field in the internal market is maintained, in accordance with Article 3(g) of the EC Treaty. In this context, the ECJ underlined that the recovery of unlawful and incompatible aid is not a penalty ⁽¹¹⁾, but the logical consequence of the finding that it is unlawful ⁽¹²⁾. It can therefore not be regarded as disproportionate to the objectives of the Treaty with regards to State Aid ⁽¹³⁾.
14. According to the ECJ, the 're-establishment of the previously existing situation is obtained once the unlawful and incompatible aid is repaid by the recipient who thereby forfeits the advantage which he enjoyed over his competitors in the market, and the situation as it existed prior to the granting of the aid is restored' ⁽¹⁴⁾. In order to eliminate any financial advantages incidental to unlawful aid, interest is to be recovered on the sums unlawfully granted. Such interest must be equivalent to the financial advantage arising from the availability of the funds in question, free of charge, over a given period ⁽¹⁵⁾.
15. Furthermore, the ECJ has insisted that in order for a Commission recovery decision to be fully executed, the actions undertaken by a Member State must produce concrete effects as regards recovery ⁽¹⁶⁾ and that recovery must be immediate ⁽¹⁷⁾. For recovery to reach its objective, it is indeed essential that the repayment of the aid takes place without delay.

2.2.2. The obligation to recover unlawful and incompatible State aid and its exceptions

16. Article 14(1) of the Procedural Regulation specifies that 'where negative decisions are taken in cases of unlawful aid, the Commission shall decide that the Member State concerned shall take all necessary measures to recover the aid from the beneficiary'.
17. The Procedural Regulation imposes two limits on the Commission's power to order recovery of unlawful and incompatible aid. Article 14(1) of the Procedural Regulation provides that the Commission shall not require recovery of the aid if this would be contrary to a **general principle of law**. The general principles of law most often invoked in this context are the principles of the protection of legitimate expectation ⁽¹⁸⁾ and of legal certainty ⁽¹⁹⁾. It is important to note that the ECJ has given a very restrictive interpretation to these principles in the context of recovery. Article 15 of the Procedural Regulation states that the powers of the Commission to recover aid shall be subject to a limitation period of 10 years (the so-called '**prescription period**'). The limitation period shall begin on the day on which the unlawful aid is awarded to the beneficiary either as individual aid or as aid under an aid scheme. Any action taken by the Commission ⁽²⁰⁾ or by a Member State, acting at the request of the Commission, with regard to the unlawful aid, shall interrupt the limitation period.

⁽¹¹⁾ Case C-75/97, *Belgium v Commission*, [1999] ECR I-03671, paragraph 65.

⁽¹²⁾ Case C-183/91, *Commission v Greece*, [1993] ECR I-3131, paragraph 16.

⁽¹³⁾ Joined Cases C-278/92, C-279/92 and C-280/92, *Spain v Commission*, [1994] ECR I-04103, paragraph 75.

⁽¹⁴⁾ Case C-348/93, *Commission v Italy*, [1995] ECR I-673, paragraph 27.

⁽¹⁵⁾ Case T-459/93, *Siemens v Commission*, [1995] ECR II-1675, paragraph 97 to 101.

⁽¹⁶⁾ Case C-415/03, *Commission v Greece*, cited above footnote 9.

⁽¹⁷⁾ Case C-232/05, *Commission v France*, cited above footnote 9.

⁽¹⁸⁾ On the principle of the protection of the legitimate expectations, please see Case C-24/95, *Alcan*, [1997] ECR I-1591, paragraph 25, Case C-5/89, *BUG-Alutechnik*, [1990] ECR I-3437, paragraphs 13 and 14. For an example where the ECJ recognised the existence of legitimate expectations on the side of the beneficiary, please see Case C-223/85, *RSV*, [1987] ECR 4617.

⁽¹⁹⁾ On the principle of legal certainty, please see T-115/94, *Opel Austria GmbH v Council*, [1997] ECR II-00039 and Case C-372/97, *Italy v Commission*, [2004] ECR I-3679, paragraphs 116 to 118, Joined Cases C-74/00 P and C-75/00, P *Falck and Acciaierie di Bolzano v Commission*, [2002] ECR I-7869, paragraph 140. See also Case T-308/00, *Saltzgitter v Commission*, [2004] ECR II-01933, paragraph 166.

⁽²⁰⁾ For an interpretation of 'any Commission action', please see Case T-369/00, *Département du Loiret v Commission*, [2003] ECR II-01789.

18. Under Article 249 of the EC Treaty, decisions are binding in their entirety upon those to whom they are addressed. Therefore, the Member State to which a recovery decision is addressed is obliged to execute this decision ⁽²¹⁾. The ECJ has recognised only one exception to this obligation for a Member State to implement a recovery decision addressed to it, namely the existence of exceptional circumstances that would make it **absolutely impossible** for the Member State to execute the decision properly ⁽²²⁾.
19. According to the Community Courts, absolute impossibility can however not be merely supposed. The Member State must demonstrate that it attempted, in good faith, to recover unlawful aid and it must cooperate with the Commission in accordance with Article 10 of the EC Treaty, with a view to overcoming the difficulties encountered ⁽²³⁾.
20. A review of the jurisprudence shows that the Community Courts have interpreted the concept of 'absolute impossibility' in a very restrictive manner. The Courts have confirmed on several occasions that a Member State may not plead requirements of its national law, such as national prescription rules ⁽²⁴⁾ or the absence of a recovery title under national law ⁽²⁵⁾, in order to justify its failure to comply with a recovery decision ⁽²⁶⁾. In the same way, the ECJ held that the obligation to recover is not affected by circumstances linked to the economic situation of the beneficiary. It clarified that a company in financial difficulties does not constitute proof that recovery was impossible ⁽²⁷⁾. In such circumstances, the court pointed out that the absence of any recoverable assets is the only way for a Member State to show the absolute impossibility of recovering the aid ⁽²⁸⁾. In a number of cases, the Member State argued that they had not been able to execute the recovery decision, because of the administrative or technical difficulties involved (e.g. the very high number of beneficiaries involved). The Court consistently refused to accept that such difficulties constitute an absolute impossibility to recover ⁽²⁹⁾. Finally, the apprehension of even insurmountable internal difficulties cannot justify a failure by a Member State to fulfil its obligations under Community law ⁽³⁰⁾.

2.2.3. *The use of national procedures and the necessity of an immediate and effective execution*

21. Article 14(3) of the Procedural Regulation specifies that 'recovery shall be effected without delay and in accordance with the procedures under the national law of the Member State concerned, provided that they allow the immediate and effective execution of the Commission's decision.'
22. If Member States are free to choose, according to their national law, the means by which they implement recovery decisions, the measures chosen should give full effect to the recovery decision. It is therefore necessary that the national measures taken by Member States lead to an **effective and immediate** execution of the Commission decision.
23. In its Olympic Airways judgment ⁽³¹⁾, the ECJ underlined that the implementation measures taken by the Member State must be **effective** and produce a concrete outcome in terms of recovery. The actions undertaken by the Member State must result in the actual recovery of the sums owed by the beneficiary. In its recent Scott judgment ⁽³²⁾, the ECJ confirmed that line and emphasised that national procedures which do not fulfil the conditions laid down in Article 14(3) of the Procedural Regulation should be left unapplied. It refuted, in particular, the Member State's argument that it had taken all steps available in its national system and insisted that these steps should also lead to a concrete outcome in terms of recovery, and this within the deadline set by the Commission.

⁽²¹⁾ Case 94/87, *Commission v Germany*, [1989] ECR 175.

⁽²²⁾ Case C-404/00, *Commission v Spain*, [2003] ECR I-6695.

⁽²³⁾ Case C-280/95, *Commission v Italy*, [1998] ECR I-259.

⁽²⁴⁾ Case C-24/95, *Alcan*, [1997] ECR 1591, paragraph 34-37.

⁽²⁵⁾ Case C-303/88, *Italy v Commission*, [1991] ECR I-1433.

⁽²⁶⁾ Case C-52/84, *Commission v Belgium*, [1986] ECR 89, paragraph 9.

⁽²⁷⁾ Case C-52/84, *Commission v Belgium*, cited above footnote 26, paragraph 14.

⁽²⁸⁾ Case C-499/99, *Commission v Spain*, [2002] ECR I-06301.

⁽²⁹⁾ Case C-280/95, *Commission v Italy*, cited above footnote 23.

⁽³⁰⁾ Case C-6/97, *Italy v Commission*, [1999] ECR I-2981, paragraph 34.

⁽³¹⁾ Case C-415/03, *Commission v Greece*, cited above footnote 9.

⁽³²⁾ Case C-232/05, *Commission v France*, cited above footnote 9.

24. Article 14(3) of the Procedural Regulation requires that recovery decisions are implemented in a way that is both effective and **immediate**. In the Scott case, the ECJ stressed the importance of the time-dimension in the recovery process. The Court specified that the application of national procedures should not impede the restoration of effective competition by preventing the immediate and effective execution of the Commission's decision. National procedures, which prevent the immediate restoration of the previously existing situation and prolong the unfair competitive advantage resulting from unlawful and incompatible aid, do not fulfil the conditions laid down in Article 14(3) of the Procedural Regulation.
25. In this context it is important to recall that an action for annulment of a recovery decision brought under Article 230 of the EC Treaty does not have a suspensive effect. In the context of such an action, the beneficiary of the aid may however apply for the suspension of the execution of the recovery decision pursuant of Article 242 of the EC Treaty. Applications for suspension, must state the circumstances giving rise to urgency and must contain the pleas of fact and law establishing a prima facie case for the interim measures being applied for. The ECJ or the CFI may then, if they consider that circumstances so require, order that application of the contested Commission decision be suspended.

2.2.4. *The principle of loyal cooperation*

26. Article 10 of the Treaty obliges Member States to facilitate the achievement of the Community tasks and imposes mutual duties of cooperation on the EU institutions and Member States, with a view to attaining the objectives of the Treaty.
27. In the context of the implementation of recovery decisions, the Commission and the Member States' authorities must therefore cooperate to attain the objective of the restoration of competitive conditions in the internal market.
28. If a Member State encounters unforeseen or unforeseeable difficulties in executing the recovery decision within the required time-limit or perceives consequences overlooked by the Commission, it should submit those problems for consideration to the Commission, together with proposals for suitable amendments⁽³³⁾. In such a case, the Commission and the Member State concerned must work together in good faith to overcome the difficulties whilst fully observing the EC Treaty provisions⁽³⁴⁾. Likewise the principle of loyal cooperation requires that the Member States provide the Commission with all the information enabling it to establish that the means chosen constitutes an adapted implementation of the decision⁽³⁵⁾.
29. Informing the Commission of the technical and legal difficulties involved in implementing a recovery decision does however not relieve Member States from the duty to take all necessary steps possible to recover the aid from the undertaking in question and to propose to the Commission any suitable arrangements for implementing the decision⁽³⁶⁾.

3. IMPLEMENTING RECOVERY POLICY

30. Both the Commission and the Member States have an essential role to play in the implementation of recovery decisions and may contribute to a effective enforcement of recovery policy.

3.1. **The role of the Commission**

31. The Commission's recovery decision imposes a recovery obligation upon the Member State concerned. It requires the Member State concerned to recover a certain amount of aid from a beneficiary or a number of beneficiaries within a given time frame. Experience shows that the speed with which a recovery decision is executed is affected by the degree of precision or the completeness of that decision. The Commission will therefore continue its efforts to ensure that recovery decisions provide a clear indication of the amount(s) of aid to be recovered, the undertaking(s) liable to recovery and the deadline within which the recovery should be completed.

⁽³³⁾ Case C-404/00, *Commission v Spain*, cited above footnote 22.

⁽³⁴⁾ Case C-94/87, *Commission v Germany*, [1989] ECR 175, paragraph 9, Case C-348/93, *Commission v Italy*, cited above footnote 14, paragraph 17.

⁽³⁵⁾ For an illustration of proposals for implementation see Case C-209/00, *Commission v Germany*, [2002] ECR I-11695.

⁽³⁶⁾ Case 94/87, *Commission v Germany* cited above footnote 34, paragraph 10.

Identification of the undertakings from whom the aid must be recovered

32. The unlawful and incompatible aid must be recovered from the undertakings that actually benefited from it ⁽³⁷⁾. The Commission will continue its present practice of identifying in its recovery decisions, where possible, the identity of the undertaking(s) from whom the aid must be recovered. If, at the stage of the implementation, it appears that the aid was transferred to other entities, the Member State may have to extend recovery to encompass all effective beneficiaries to ensure that the recovery obligation is not circumvented.
33. The Community Courts have given some guidance on the conditions under which the recovery obligation must be extended to companies other than the original beneficiary of the unlawful and incompatible aid. According to the ECJ, a transfer of the undue advantage may occur when the assets of the original aid beneficiary are transferred to a third party at a price that is lower than their market value sometimes to a successor company set up in order to circumvent the recovery order. If the Commission can prove that assets have been sold at a price that is lower than their market value, especially to a successor company set up to circumvent the recovery order, the ECJ considers that the recovery order can be extended to that third party ⁽³⁸⁾. Typical cases of circumvention are cases where the transfer does not reflect any economic logic other than the invalidation of the recovery order ⁽³⁹⁾.
34. As regards transfer of shares of a company that has to reimburse an illegal and incompatible aid (share deals), the ECJ held ⁽⁴⁰⁾ that the sale of shares in such a company to a third party does not affect the obligation of the beneficiary to reimburse such aid ⁽⁴¹⁾. When it can be established that the buyer of the shares paid the prevailing market price for the shares of that company, it cannot be regarded as having benefited from an advantage that could constitute a State Aid ⁽⁴²⁾.
35. When it adopts a recovery decision regarding aid schemes, the Commission is normally not in a position to identify, in the decision itself, all the undertakings that have received unlawful and incompatible aid. This will have to be done at the start of the implementation process by the Member State concerned, who will have to look at the individual situation of each undertaking concerned ⁽⁴³⁾.

Determination of the amount to be recovered

36. The purpose of recovery is achieved 'once the aid in question, together where appropriate with default interest, has been repaid by the recipient or, in other words, by the undertakings which actually benefited from it. By repaying the aid, the recipient forfeits the advantage which it had enjoyed over its competitors on the market, and the situation prior to payment of the aid is restored' ⁽⁴⁴⁾.
37. As it has done in the past, the Commission will clearly identify the unlawful and incompatible aid measures that are subject to recovery in its recovery decisions. When it has the necessary data at its disposal, the Commission will also endeavour to quantify the precise amount of aid to be recovered. It is clear, though, that the Commission cannot and is legally not required to fix the exact amount to be recovered. It is sufficient for the Commission's decision to include information enabling the Member State to determine the amount, without too much difficulty ⁽⁴⁵⁾.

⁽³⁷⁾ Case C-303/88, *Italy v Commission*, [1991] ECR I-1433, paragraph 57; Case C-277/00, *Germany v Commission* ('SMI'), [2004] ECR I-3925, paragraph 75.

⁽³⁸⁾ Case C-277/00, *Germany v Commission*, cited above footnote 37.

⁽³⁹⁾ Case C-328/99 and C-399/00, *Italy and SMI 2 Multimedia Spa v Commission*. For another example of circumvention, see Case C-415/03, *Commission v Greece*, cited above footnote 9.

⁽⁴⁰⁾ Case C-328/99 and C-399/00, *Italy and SIM 2 Multimedia v Commission*, [2003] I-4035, paragraph 83.

⁽⁴¹⁾ In the event of a privatisation of a company that received State aid declared compatible by the Commission, the Member State can introduce a liability clause in the privatisation agreement to protect the buyer of the company against the risk that the initial Commission decision approving the aid would be overturned by the Community Courts and replaced by a Commission decision ordering the recovery of that aid from the beneficiary. Such a clause could provide for an adjustment of the price paid by the buyer for the privatised company to take due account of the new recovery liability.

⁽⁴²⁾ Case C-277/00, *Germany v Commission*, cited above footnote 37, paragraph 80.

⁽⁴³⁾ Case C-310/99, *Italy v Commission*, [2002] ECR I-2289, paragraph 91.

⁽⁴⁴⁾ Case C-277/00, *Germany v Commission*, cited above footnote 37, paragraphs 74-76.

⁽⁴⁵⁾ Case C-480/98, *Spain v Commission*, [2000] ECR I 8717, paragraph 25 and Joint Cases C-67/85, C-68/85 and C-70/85, *Kwekerij van der Kooy BV and others v Commission*, [1988] ECR 219.

38. In the case of an unlawful and incompatible aid scheme, the Commission is not able to quantify the amount of incompatible aid to be recovered from each beneficiary. This would require a detailed analysis by the Member State of the aid granted in each individual case on the basis of the scheme in question. The Commission therefore indicates in its decision that Member States will have to recover all aid, unless it has been granted to a specific project, which, at the time of granting, fulfilled all conditions of the block exemption regulations or in an aid scheme approved by the Commission.
39. According to Article 14(2) of the Procedural Regulation, the aid to be recovered pursuant to a recovery decision shall include interest at an appropriate level to be fixed by the Commission. Interest shall be payable from the time the unlawful aid was at the disposal of the beneficiary until the date of its recovery⁽⁴⁶⁾. The Implementing Regulation establishes that the interest rate shall be applied on a compound basis until the date of the recovery of the aid.

Timetable for the implementation of the decision

40. In the past, the Commission's recovery decisions specified a single time-limit of two months, within which the Member State concerned was required to communicate to the Commission, the measures it had taken to comply with a given decision. The Court acknowledged that this deadline is to be regarded as the deadline for the execution of the Commission decision itself⁽⁴⁷⁾.
41. The Court further concluded that contacts and negotiations between the Commission and the Member State, in the context of the execution of the Commission decision, could not relieve the Member State from the duty to take all necessary measures to execute the decision within the prescribed time-limit⁽⁴⁸⁾.
42. The Commission recognizes that the two months deadline for the execution of the Commission decisions is too short in the majority of cases. Therefore, it decided to prolong to four months the deadline for the execution of the recovery decisions. From now on, the Commission will specify two time limits in its decisions:
- a first time-limit of two months following the entry into force of the decision, within which the Member State must *inform* the Commission of the measures planned or taken,
 - a second time-limit of four months following the entry into force of the decision, within which the Commission decision must have been *executed*.
43. If a Member State encounters serious difficulties preventing it from respecting either one of these deadlines, it must inform the Commission of these difficulties, providing an appropriate justification. The Commission may then prolong the deadline in accordance with the principle of loyal cooperation⁽⁴⁹⁾.

3.2. The role of the Member States: implementing the recovery decisions

3.2.1. Who is responsible for the implementation of the recovery decision?

44. The Member State is responsible for the implementation of the recovery decision. Article 14(1) of the Procedural Regulation provides that the Member State concerned is to take all necessary measures to recover the aid from the beneficiary.
45. In this context, it is important to keep in mind that the ECJ has recalled on several occasions that a Commission decision addressed to a Member State is binding on all the organs of that State, including the Courts of that State⁽⁵⁰⁾. This implies that each organ of the Member State involved in the implementation of a recovery decision must take all necessary measures to secure the immediate and effective application of such a decision.

⁽⁴⁶⁾ See in that context, the exception of Case C-480/98, *Spain v Commission*, cited above footnote 45, paragraphs 36 and following.

⁽⁴⁷⁾ Case C-207/05, *Commission v Italy*, [2006] ECR I-00070, paragraph 31-36; see also Case C-378/98, *Commission v Belgium*, [2001] ECR I-5107, paragraph 28 and Case C-232/05, *Commission v France*, cited above footnote 9.

⁽⁴⁸⁾ Case C-5/86, *Commission v Belgium*, [1987] ECR 1773.

⁽⁴⁹⁾ Case C-207/05, *Commission v Italy*, [2006], judgement of 1 June 2006.

⁽⁵⁰⁾ Case 249/85, *Albako Margarinefabrik Maria von der Linde GmbH & Co. KG v Bundesanstalt für landwirtschaftliche Marktordnung*, [1987] ECR 02345.

46. Community law does not prescribe which organ of the Member State should be in charge of the practical implementation of a recovery decision. It is for the domestic legal system of each Member State to designate the bodies that will be responsible for the implementation of the recovery decision. The authors of the Enforcement Study note that 'a principle common to all countries reviewed is that recovery must be effected by the authority that granted the aid. This leads to the involvement of a variety of central, regional and local bodies, in the recovery process ⁽⁵¹⁾'. They also point out that some Member States have charged one central body with the task to control and oversee the recovery process. This body normally has ongoing contact with the Commission. The authors of the Enforcement Study conclude that the existence of such a central body appears to contribute to a more efficient implementation of recovery decisions.

3.2.2. Implementation of the recovery obligation

47. Article 14(3) of the Procedural Regulation obliges the Member State to initiate recovery proceedings without any delay. As mentioned in section 3.1 above, the recovery decision will specify a time-limit within which the Member State is to submit precise information on the measures it has taken and planned to execute the decision. In particular, the Member State will be required to provide complete information on the identity of the beneficiaries of the unlawful and incompatible aid, the amounts of aid involved and the national procedure applied to obtain recovery. In addition, the Member State will be required to provide documentation showing that it notified the beneficiary of its obligation to repay the aid.

Identification of the aid beneficiary and the amount to be recovered

48. The recovery decision will not always contain complete information on the identity of the beneficiaries, nor on the amounts of aid to be recovered. In such cases, the Member State must identify without any delay the undertakings concerned by the decision and quantify the precise amount of aid to be recovered from each of them.
49. In the case of an unlawful and incompatible aid scheme, the Member State will be required to carry out a detailed analysis of each individual aid granted on the basis of the scheme in question. To quantify the precise amount of aid to be recovered from each individual beneficiary under the scheme, it will need to determine the extent to which the aid has been granted to a specific project, which, at the time of granting, fulfilled all conditions of the block exemption regulations or in an aid scheme approved by the Commission. In such cases, the Member State may also apply the substantive De Minimis criteria applicable at the time of the granting of the unlawful and incompatible aid that is subject to the recovery decision.
50. National authorities are allowed to take into account the incidence of the tax system in order to determine the amount to be reimbursed. Where a beneficiary of unlawful and incompatible aid has paid tax on the aid received, the national authorities may, in accordance with their national tax rules, take account of the earlier payment of tax by recovering only the net amount received by the beneficiary ⁽⁵²⁾. The Commission considers that in such cases, the national authorities will need to ensure that the beneficiary will not be able to enjoy a further tax deduction by claiming that the reimbursement has reduced his taxable income, since this would mean that the net amount of the recovery was lower than the net amount initially received.

The applicable recovery procedure

51. The authors of the Enforcement Study provide ample evidence of the fact that recovery procedures vary significantly between Member States. The Study also shows that, even within one single Member State, several procedures can be applied to pursue the recovery of unlawful and incompatible aid. In most Member States, the applicable recovery procedure is normally determined by nature of the measure underlying the granting of the aid. Administrative procedures, on the whole, tend to be much more efficient than civil procedures, because administrative recovery orders are or can be made immediately enforceable ⁽⁵³⁾.

⁽⁵¹⁾ See page 521 of the Study.

⁽⁵²⁾ Case T-459/93, *Siemens v Commission*, [1995] ECR II-1675, paragraph 83. Please also see Case C-148/04, *Unicredito Spa v Agenzia delle Entrate, Ufficio Genova I*, [2005] ECR I-11137, paragraph 117-120.

⁽⁵³⁾ See pages 522 and following of the Study.

52. Community law does not prescribe which procedure the Member State should apply to execute a recovery decision. However, Member States should be aware that the choice and application of a national procedure is subject to the condition that such procedure allows for the immediate and effective execution of the Commission's decision. This implies that the authorities responsible should carefully consider the full range of recovery instruments available under national law and select the procedure most likely to secure the immediate execution of the decision⁽⁵⁴⁾. They should use fast-track procedures where possible under national law. According to the principle of equivalence and effectiveness, these procedures must not be less favourable than those governing similar domestic actions, and that they should not render practically impossible or excessively difficult the exercise of rights conferred by Community law⁽⁵⁵⁾.
53. More generally, Member States should not be able to place any obstacles in the way of carrying out a Commission recovery decision⁽⁵⁶⁾. Consequently, Member State authorities are under an obligation to set aside any provisions of national law, which might impede the immediate execution of the Commission decision⁽⁵⁷⁾.

The notification and enforcement of recovery orders

54. Once the beneficiary, the amount to be recovered and the applicable procedure have been determined, recovery orders should be sent to the beneficiaries of the unlawful and incompatible aid without delay and within the deadline prescribed by the Commission decision. The authorities responsible for carrying out the recovery must ensure that these recovery orders are enforced and that recovery is completed within the time-limit specified in the decision. Where a beneficiary does not comply with the recovery order, Member States should seek the immediate enforcement of its recovery claims under national law.

3.2.3 Litigation before national courts

55. The implementation of recovery decisions can give rise to litigation in national courts. Although there are very significant differences in the judicial traditions and systems of Member States, two main categories of recovery-related litigation can be distinguished: actions brought by the recovering authority seeking a court order to force an unwilling recipient to refund the unlawful and incompatible aid and actions brought by beneficiaries contesting the recovery order.
56. The analysis carried out in the context of the Enforcement Study provides evidence that the execution of a recovery decision can be delayed for many years when the national measures taken for the implementation of a recovery decision are challenged in court. This is even more the case when the recovery decision is itself challenged before Community courts and when national judges are asked to suspend the implementation of national measures until the Community Courts have ruled on the validity of the recovery decision.
57. The ECJ has ruled that the beneficiary of an aid who could without any doubt have challenged a Commission recovery decision under Article 230 EC before a European Court can no longer challenge the validity of the decision in proceedings before the national court on the ground that the decision was unlawful⁽⁵⁸⁾. It derives from this that the beneficiary of an aid who could have asked for interim relief before the Community Courts in accordance with Articles 242 and 243 EC and has failed to do so cannot ask for a suspension of the measures taken by the national authorities for implementing that decision on grounds linked to the validity of the decision. This question is reserved for the Community Courts⁽⁵⁹⁾.

⁽⁵⁴⁾ In this respect, the Study highlights the recent attempt by the German authorities to enforce the recovery claim in the Kvaerner Warnow Werft case where the aid was granted by a private law agreement. When the beneficiary refused to reimburse the aid, the competent authority decided not to bring action before the civil courts, but issued an administrative act ordering the immediate repayment of the aid. In addition, it declared the act immediately enforceable. The Higher Administrative Court of Berlin-Brandenburg held that the competent authority was not bound to recover the aid in the same manner in which it was granted and agreed that the 'effet utile' of the Commission's decision required that the competent authority be allowed to recover the aid by way of an administrative act. If this judgment is confirmed in further proceedings, it can be expected that, in the future, recovery of aid in Germany will, in principle be carried out pursuant to administrative rules.

⁽⁵⁵⁾ Case C-13/01, *Safalero*, [2003] ECR I-8679, paragraphs 49-50.

⁽⁵⁶⁾ Case C-48/71, *Commission v Italy*, [1972] ECR 00529.

⁽⁵⁷⁾ Case C-232/05, *Commission v France*, cited above footnote 9.

⁽⁵⁸⁾ Case C-188/92, *TWD Textilwerke Deggendorf GmbH v Germany*, cited above footnote 10.

⁽⁵⁹⁾ As reaffirmed in the Case C-232/05, *Commission v France*, cited above footnote 9.

58. On the other hand, in cases where it is not self-evident that an action for annulment brought against the contested decision by the beneficiary of the aid would have been admissible, an adequate legal protection must be offered to the aid beneficiary. In the event that the aid beneficiary challenges the implementation of the decision in proceedings before the national court on the ground that such recovery decision was unlawful, the national judge must make a request for a preliminary ruling on the validity of such decision to the ECJ in accordance with Article 234 EC ⁽⁶⁰⁾.
59. In case the beneficiary also asks for interim relief of the national measures adopted to implement the recovery decision because of an alleged illegality of the Commission's recovery decision, the national judge has to assess whether the case at hand fulfils the conditions established by the ECJ in the cases *Zuckerfabrik* ⁽⁶¹⁾ and *Atlanta* ⁽⁶²⁾. According to settled case-law, interim relief can be ordered by the national court only if:
1. that court entertains serious doubts as to the validity of the Community act and, if the validity of the contested act is not already in issue before the Court of Justice, itself refers the question to the Court of Justice;
 2. there is urgency, in that the interim relief is necessary to avoid serious and irreparable damage being caused to the party seeking the relief;
 3. the court takes due account of the Community interest; and
 4. in its assessment of all those conditions, it respects any decisions of the Court of Justice or the Court of First Instance ruling on the lawfulness of the Community act or on an application for interim measures seeking similar interim relief at Community level ⁽⁶³⁾.

3.2.4. *The specific case of insolvent beneficiaries*

60. As a preliminary observation, it is important to recall that the ECJ has consistently held that the fact that a beneficiary is insolvent or subject to bankruptcy proceedings has no effect on its obligation to repay unlawful and incompatible aid ⁽⁶⁴⁾.
61. In the majority of cases involving an insolvent aid beneficiary, it will not be possible to recover the full amount of unlawful and incompatible aid (including interests), as the beneficiary's assets will be insufficient to satisfy all creditors' claims. Consequently, it is not possible to fully re-establish the ex-ante situation in the traditional manner. Since the ultimate objective of recovery is to end the distortion of competition, the ECJ has stated that the liquidation of the beneficiary can be regarded as an acceptable option to recovery in such cases ⁽⁶⁵⁾. The Commission is therefore of the view that a decision ordering the Member State to recover unlawful and incompatible aid from an insolvent beneficiary may be considered to be properly executed either when full recovery is completed or, in case of partial recovery, when the company is liquidated and its assets are sold under market conditions.
62. When implementing recovery decisions concerning insolvent beneficiaries, Member State authorities should ensure that due account is taken throughout the insolvency proceedings of the Community interest, and more in particular of the need to end immediately the distortion of competition caused by the granting of unlawful and incompatible aid.

⁽⁶⁰⁾ Case C-346/03, *Atzeni a.o.*, [2006], page I-01875, paragraph 30-34.

⁽⁶¹⁾ Joined Cases C-143/88 and C-92/89, *Zuckerfabrik Süderdithmarschen A.G. a.o.*, [1991] ECR I-415, paragraphs 23 and following.

⁽⁶²⁾ Case C-465/93, *Atlanta Fruchthandelsgesellschaft mbH a.o.*, [1995] ECR I-3761, paragraph 51.

⁽⁶³⁾ Case C-465/93, *Atlanta Fruchthandelsgesellschaft mbH a.o.*, cited above footnote 61, paragraph 51.

⁽⁶⁴⁾ Case C-42-93, *Spain v Commission* ('Merco'), [1994] ECR I-4175.

⁽⁶⁵⁾ Case C-52/84, *Commission v Belgium*, [1986] ECR p. 89.

63. However, the Commission's experience has shown that the sole registration of claims in bankruptcy proceedings may not always be sufficient to ensure the immediate and effective implementation of the Commission's recovery decisions. The application of certain provisions of national bankruptcy laws may frustrate the effect of recovery decisions by allowing the company to operate despite the absence of full recovery, thus allowing the distortion of competition to continue. Based on its experience in dealing with cases of recovery from insolvent beneficiaries, the Commission considers that there is a need to define the obligations of Member States at the different steps of bankruptcy proceedings.
64. The Member State should immediately register its claims in the bankruptcy proceedings ⁽⁶⁶⁾ According to the ECJ case law, recovery will be done according to national bankruptcy rules ⁽⁶⁷⁾. The recovery debt will thus be refunded by virtue of the status given to it by national law.
65. In the past, there have been cases in which the insolvency administrator refused to register a recovery claim in the bankruptcy proceedings, and this because of the form of the illegal and incompatible aid granted (for example when the aid had been granted in the form of a capital injection). The Commission considers that this situation is problematic, especially if such a refusal would deprive the authorities responsible for the execution of the recovery decision of any means to ensure that due account is taken of the Community interest in the course of the insolvency proceedings. Therefore the Commission considers that the Member State should dispute the refusal by the insolvency administrator to register its claims ⁽⁶⁸⁾.
66. To ensure the immediate and effective implementation of the Commission's recovery decision, the Commission is of the view that the authorities responsible for the execution of the recovery decision should also appeal any decision by the insolvency administrator or the insolvency court to allow a continuation of the insolvent beneficiary's activity beyond the time limits set in the recovery decision. Likewise, national courts, when faced with such a request, should take the Community interest fully into account, and more in particular the need to ensure that the execution of the Commission's decision is immediate and that the distortion of competition caused by the unlawful and incompatible aid is ended as soon as possible. The Commission considers that they should therefore not allow for a continuation of an insolvent beneficiary's activity in the absence of full recovery.
67. In the case where a continuation plan is proposed to the creditors' committee implying a continuation of the activity of the beneficiary, the national authorities responsible for the execution of the recovery decision can only support this plan if it ensures that the aid is repaid in full within the time limits foreseen in the Commission's recovery decision. In particular, the Member State cannot waive part of its recovery claim, nor can it accept any other solution that would not result in the immediate ending of the activity of the beneficiary. In the absence of a full and immediate repayment of the unlawful and incompatible aid, the authorities responsible for the execution of the recovery decision should take all measures available to oppose the adoption of a continuation plan and should insist on the ending of the activity of the beneficiary within the time limit set in the recovery decision.
68. In the case of liquidation, and as long as the aid has not been fully recovered, the Member State should oppose any transfer of assets that is not carried out on market terms and/or that is organised so as to circumvent the recovery decision. To achieve a 'correct transfer of assets', the Member State has to ensure that the undue advantage created by the aid is not transferred to the acquirer of the assets. This may be the case if the assets of the original aid beneficiary are transferred to a third party at a price that is lower than their market value or to a successor company set up in order to circumvent the recovery order. In such a case, the recovery order needs to be extended to that third party ⁽⁶⁹⁾.

⁽⁶⁶⁾ C-142/87, *Commission v Belgium*, [1990] ECR I-959, paragraph 62.

⁽⁶⁷⁾ Case C-142/87, *ibid.* Case C-499/99, *Commission v Spain* ('Magefesa') [2002], ECR I-603, paragraphs 28-44.

⁽⁶⁸⁾ Please see in that context, the judgement of the Commercial Chamber of the Amberg Court of 23 July 2001 in relation to the aid granted by Germany to 'Neue Maxhütte Stahlwerke GmbH' (Commission Decision 96/178/ECSC (OJ L 53, 2.3.1996, p. 41). In that case, the German court over-ruled the refusal of the insolvency administrator to register a recovery claim resulting from an illegal and incompatible aid granted in the form of a capital injection, as this would render the execution of the recovery decision impossible.

⁽⁶⁹⁾ Case C-277/00, *Germany v Commission*, cited above footnote 37.

4. CONSEQUENCES OF THE FAILURE TO IMPLEMENT THE COMMISSION RECOVERY DECISIONS

69. A Member State is deemed to comply with the recovery decision when the aid has been fully reimbursed within the prescribed time limit or, in the case of an insolvent beneficiary, when the company is liquidated under market conditions.
70. The Commission may also accept, in duly justified cases, a provisional implementation of the decision when it is subject to litigation before the national or the Community Courts (e.g. the payment of the full amount of unlawful and incompatible aid into a blocked account⁽⁷⁰⁾). The Member State must ensure that the advantage linked to the unlawful and incompatible aid leaves the company⁽⁷¹⁾. The Member State should submit, for approval by the Commission, a justification for the adoption of such provisional measures and a full description of the provisional measure envisaged.
71. Where the Member State concerned has not complied with the recovery decision, and where it has not been able to demonstrate the existence of absolute impossibility, the Commission may initiate infringement proceedings. In addition, if certain conditions are satisfied, it may require the Member State concerned to suspend the payment of a new compatible aid to the beneficiary or beneficiaries concerned in application of the Deggendorf principle.

4.1. Infringement proceedings

— *Actions on the basis of Article 88(2) EC*

72. If the Member State concerned does not comply with the recovery decision within the prescribed time limit and if it has not been able to demonstrate absolute impossibility, the Commission, as it has already done, or any other interested State, may refer the matter directly to the ECJ pursuant to with Article 88(2) of the Treaty. The Commission may then invoke arguments concerning the behaviour of the executive, legislative or judicial organs of the Member State concerned, as the Member State should be considered in its entirety⁽⁷²⁾.

— *Actions on the basis of Article 228(2) EC*

73. In the event that that the ECJ condemns the Member State for non compliance with a Commission decision and if the Commission considers that the Member State concerned has not complied with the judgment of the ECJ, the Commission may pursue the matter in accordance with Article 228(2) of the Treaty. In such a case, after giving the Member State the opportunity to submit its observations, the Commission delivers a reasoned opinion specifying the points on which the Member State concerned was non-compliant with the judgment of the ECJ.
74. If the Member State concerned fails to take the necessary measures to comply with the ECJ's judgment within the time limit laid down in the reasoned opinion, the Commission may further refer the matter to the ECJ, pursuant to Article 228(2) of the EC Treaty. The Commission will then request the ECJ to impose a penalty payment on the Member State concerned. This *penalty payment* will be fixed in accordance with the Commission communication on the application of Article 228 of the EC Treaty⁽⁷³⁾, and be calculated on the basis of three criteria: the seriousness of the infringement, its duration, and the need to ensure that the penalty itself is a deterrent to further infringements. According to the same communication, the Commission will also ask for the payment of a *lump sum* penalising the continuation of the infringement between the first judgement of non-compliance and the judgement delivered under Article 228 of the EC Treaty. In view of the fact that the failure to implement the Commission recovery decision prolongs the distortion of competition caused by the granting of illegal and incompatible aid, the Commission will not hesitate to make use of this possibility if it appears necessary to ensure the respect of the State aid rules.

⁽⁷⁰⁾ In practical terms, the payment of the total amount of aid and the interests on a blocked account may be ruled by a specific contract, signed by the bank and the beneficiary, and by which the parties agree that the sum will be released in favour of one or the other party once the litigation has come to an end.

⁽⁷¹⁾ Contrary to the constitution of a blocked account, the use of bank guarantees may not be considered as an adequate provisional measure since the total amount of the aid is still at the recipient's disposal.

⁽⁷²⁾ Case C-224/01, *Köbler*, [2003] ECR I-10239, paragraphs 31-33; Case C-173/03, *Traghetti del Mediterraneo*, [2003] page I-05177, paragraphs 30-33.

⁽⁷³⁾ Communication from the Commission on the application of Article 228 of the EC Treaty — SEC/2005/1658 (OJ C 126, 7.6.2007, p. 15).

4.2. Applying the Deggendorf case-law

75. In its judgment on the Deggendorf case, the CFI has held that, 'when the Commission considers the compatibility of a State aid with the common market, it must take all the relevant factors into account, including, where relevant, the circumstances already considered in a prior decision and the obligations which that previous decision may have imposed on a Member State. It follows that the Commission has the power to take into consideration, first, any accumulated effect of the old [...] aid and the new [...] aid and, secondly, the fact that the [old] aid declared unlawful [...] had not been repaid' ⁽⁷⁴⁾. In application of this judgment, and to avoid a distortion of competition contrary to the common interest, the Commission may order a Member State to suspend the payment of a new compatible aid to an undertaking that has at its disposal an unlawful and incompatible aid subject to an earlier recovery decision, and this until the Member State has reassured itself that the undertaking concerned has reimbursed the old unlawful and incompatible aid.
76. The Commission has been applying the so-called Deggendorf principle in a more systematic manner for a few years now. In practice, in the course of the preliminary investigation of a new aid measure, the Commission will request a commitment from the Member State to suspend the payment of new aid to any beneficiary that still needs to reimburse an unlawful and incompatible aid subject to an earlier recovery decision. If the Member State does not give this commitment and/or in the absence of clear data on the aid measures involved ⁽⁷⁵⁾ preventing the Commission to assess the global impact of the old and the new aid on competition, the Commission will take a final conditional decision on the basis of Article 7(4) of the Procedural Regulation, requiring the Member State concerned to suspend payment of the new aid until it is satisfied that the beneficiary concerned has reimbursed the old unlawful and incompatible aid, including any recovery interests due.
77. The Deggendorf principle has meanwhile been integrated in the Community Guidelines on State aid for rescuing and restructuring firms in difficulty ⁽⁷⁶⁾ and in recent Block Exemption Regulations ⁽⁷⁷⁾. The Commission intends to integrate this principle into all forthcoming State aid rules and decisions.
78. Finally, the Commission welcomes the initiative of Italy to insert a specific 'Deggendorf' provision in its 'Legge Finanziaria 2007', which provides that beneficiaries of new State aid measures should declare that they do not have at their disposal any illegal or incompatible State aid ⁽⁷⁸⁾.

5. CONCLUSION

79. The maintenance of a system of free and undistorted competition is one of the cornerstones of the European Community. As part of the European competition policy, State aid discipline is essential to ensure that the internal market remains a level playing field in all economic sectors in Europe. In this key task, the Commission and the Member States have the joint responsibility to ensure a proper enforcement of State aid discipline and in particular of recovery decisions.
80. By issuing this communication, the Commission is willing to increase the awareness of the principles of recovery policy as defined by the Community Courts and to clarify the Commission practice as regards its recovery policy. The Commission commits itself to abide by these recalled principles and invites Member States to ask for advice when facing difficulties in implementing recovery decisions. The services of the Commission remain at the disposal of the Member States to provide further guidance and assistance if required.

⁽⁷⁴⁾ Case T-244/93 and T-486/93, *TWD Deggendorf v Commission*, [1995] ECR II-2265, paragraph 56.

⁽⁷⁵⁾ E.g. in the case of illegal and incompatible schemes where the amount and the beneficiaries are not known to the Commission.

⁽⁷⁶⁾ OJ C 244, 1.10.2004, p. 2, paragraph 23.

⁽⁷⁷⁾ Commission Regulation (EC) No 1628/2006 of 24 October 2006 on the application of Articles 87 and 88 of the Treaty to national regional investment aid (OJ L 302, 1.11.2006, p. 29).

⁽⁷⁸⁾ *Legge 27 dicembre 2006, n. 296, art. 1223.*

81. In return, the Commission expects Member States to abide to the principles of recovery policy. It is only through a joint effort of both Commission and Member States that State aid discipline will be ensured and produce its desired objective, i.e. the maintenance of undistorted competition within the internal market.
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