State Aid to the European Car Industry

- In a time of crisis

Aarhus School of Business 2009
Department of Law

Academic Advisors: Hanne Rokkjær Fløe & Pernille Wegener Jessen
Candidate: Anja Pernille Liguna
The European car industry is in difficulties due to restructuring and over-capacity problems, further enhanced by the financial and economic crisis. Some car manufactures are on the edge to go out of business and threaten with major lay-offs. With a major contribution to growth, employment and R&D, the car industry is important to the economy. The Member States have several possibilities to grant aid to their car industry, to withstand the crisis and ensure long-term competitiveness. The traditional horizontal state aid rules and the Temporary framework provide different objectives for the granting of aid. The main possibilities available to the Member states are assessed to determine the best approach to remedy the situation. The most appropriate aid objective differs with the financial situation of the car manufacturer. The ending effects of the Commission and the Member States’ efforts to help the European car industry through the crisis and enhance the global competitiveness will be given by the future.
State Aid in the European Car Industry – In a time of crisis

Contents

1 Introduction ............................................................................................................................................. 1
  1.1 Introduction to the subject ................................................................................................................ 1
  1.2 Problem statement ............................................................................................................................ 2
    1.2.1 Delimitation ............................................................................................................................... 3
  1.3 Methodology and literature review .................................................................................................... 3
  1.4 Structure of the thesis ........................................................................................................................ 4
2 The European car industry ..................................................................................................................... 5
  2.1 Facts about European car industry ..................................................................................................... 5
  2.2 Associations in the car industry ......................................................................................................... 6
    2.2.1 ACEA ........................................................................................................................................ 7
    2.2.2 CARS 21 .................................................................................................................................... 7
  2.3 Development in European car sales ................................................................................................... 8
  2.4 Perspective of the future in European car industry ............................................................................ 9
3 History ...................................................................................................................................................... 9
  3.1 The European Car industry’s State aid history .................................................................................. 9
    3.1.1 Adoption of a State aid framework to motor vehicle industry ................................................ 12
  3.2 Findings ........................................................................................................................................... 13
4 Commission’s initiatives towards the economic crisis......................................................................... 14
  4.1 The European Economic Recovery plan ......................................................................................... 14
  4.2 Framework to target the crisis in the automotive industry .............................................................. 15
    4.3 Findings ........................................................................................................................................... 17
5 The state aid rules .................................................................................................................................. 18
  5.1 The state aid rules ............................................................................................................................ 18
    5.1.1 The State aid action plan – Less and better targeted state aid ................................................ 19
  5.2 State Aid under Article 87(1)EC ..................................................................................................... 20
    5.2.1 De Minimis ............................................................................................................................... 21
  5.3 Exemptions relevant for the car industry ......................................................................................... 21
    5.3.1 Article 87(3)(b)EC ................................................................................................................... 21
    5.3.2 Article 87(3)(c)EC ................................................................................................................... 23
  5.4 The balancing test ............................................................................................................................ 24
  5.5 Findings ........................................................................................................................................... 24
6 Difficulties in the car industry ................................................................. 25
   6.1 Difficulties in the industry predating the crisis ........................................ 25
   6.2 Are the car manufactures in difficulties according to the Community guidelines? ................................................ 27
   6.3 Findings .................................................................................................. 31
7 Horizontal aid .............................................................................................. 32
   7.1 General Block Exemption Regulation ...................................................... 32
   7.2 Aid to Research, Development and Innovation ........................................ 33
       7.2.1 Aid for R&D projects ........................................................................ 34
       7.2.2 Aid to a project of common European interest .................................... 36
   7.3 Aid to Environmental protection ............................................................... 38
       7.3.1 Aid directly benefiting the car industry ............................................. 38
       7.3.2 Aid indirectly benefiting the car industry .......................................... 40
   7.4 Aid to training activities ........................................................................... 41
       7.4.1 Training aid ..................................................................................... 41
   7.5 Aid to rescue and restructuring ................................................................. 43
       7.5.1 Rescuing aid .................................................................................... 44
       7.5.2 Restructuring aid ........................................................................... 46
   7.6 Findings .................................................................................................. 48
8 Temporary state aid ...................................................................................... 50
   8.1 The Temporary framework ...................................................................... 50
       8.1.1 Temporary aid to the car industry .................................................... 51
   8.2 Fear of protectionism and illegal state aid ................................................. 55
   8.3 Findings .................................................................................................. 56
9 Conclusion ..................................................................................................... 56
10 Bibliography ................................................................................................. 60
Attachment I ................................................................................................. 65
1 Introduction

1.1 Introduction to the subject

Having a significant impact on EU’s economy and society, the automotive industry is an important industry in the EU. The industry is major contributor to EU’s growth, innovation and export, and responsible for many jobs both directly in the industry and in related industries. Therefore, it is crucial for EU to support the automotive industry through periods of recession.

The industry was struggling with over-capacity, environmental requirements and structural problems already predating the financial and economic crisis, hence the crisis just made bad things worse. Limited access to credit gives the industry difficulties obtaining loans for investments and to combat structural problems. Furthermore, the credit crunch has had a negative effect on the consumer demand.

The profitability in the car industry is generally low, due to high global competition and general low profit margins. Further enhancing the low profitability the credit crunch has put some manufactures on the edge to closure. Take-overs may save manufacturers from going out of business, but support is still needed to help the car industry through the crisis and maintain the competitiveness to keep the European car industry as the world leader of automobile production.

Car manufacturers all across EU are now asking for state aid, but the Commission are concerned over protectionism and illegal state aid, and further wants to pursue the objectives of less and better state aid. The Member States that have a car production - want to keep their aid within the borders of their country, because state aid could be a trade-off to unemployment benefits and lost tax revenue, which would otherwise occur if the car sector had to down scale. On the other hand, some Member States are risk averse in supporting ailing firms, and further fear that the aid will be more beneficial for the cooperation group than the targeted manufacturer.

---

1 Evolution of the motor vehicle markets, 2008 p.2 & 12
2 Evolution of the motor vehicle markets, 2008 p. 14
3 Evolution of the motor vehicle markets, 2008 p. 2
If the European car industry were necessitated to downscale, it would have a massive overall impact on the economy of the Member States and Community as a whole. Therefore, Member States may have a strong incentive to support their car industry and the Commission have an interest to retain the competitive level of the European car industry.

The focus of this thesis will be an evaluation of the main possibilities the Member States has at their disposal under the state aid rules to support their car industry.

1.2 Problem statement
The focus of the thesis will be on is which incentives can be taken in the area of state aid to help the European car industry through the financial and economic crisis and in general remedy the problems present industry predating the crisis to ensure future competitiveness.

The European car industry has previously been through periods of declining sales and needs of structural changes. How did the Member States then approach these problems and can the approach be used in the current situation?

It’s in the interest of the Commission that the European car industry maintains its competitiveness and the Commission has further expressed a wish for an enhanced competitiveness in the future. In this aspect, what initiatives has the Commission taken to help the car industry?

As previously mentioned the European car industry is said to be in difficulties, but what have lead to these difficulties and how severe are they in relation to the Commission’s definition of firms in difficulties in the Community guidelines?

Which objectives make a justification for granting aid to the car industry, and in this regard, has the Commission taken any special initiatives to make the granting of aid more flexible in relation to the shortage of access to credit? What are the main possibilities available to the Member States to grant aid to their car industry and which of these possibilities will be the most beneficial?
1.2.1 Delimitation
The car manufactures are the mostly debated in the automotive sector by the media, politicians and the employees. Mainly because of their big influence on the employment situation in the regions where they are based, but also as one of EUs key industries for growth and innovation. Bus and truck manufacturers face the same problems as the car manufactures, with regard to declining demand, higher environmental requirements and the effect of the financial and economic crisis. However, these manufacturers account for a lot smaller share of the vehicle production than the car manufactures\(^4\). Therefore, the focus of this thesis will be on the major European car manufactures. The car manufacturers are assumed to fall within the definition of large enterprises, which is defined in Commissions Reg. No 70/2001/EC Annex 1\(^5\), and therefore will state support to SME’s not be examined.

1.3 Methodology and literature review
The purpose is to conduct a legal analysis of the Member States possibilities to grant aid to the car industry, based on the legal framework for state aid in the European Union.

The primary sources are the article 87 of the EC Treaty and issued material from the Commission. Article 87(1)EC is not directly applicable, except when it has resulted in general legislation, such as the General Block Exemption Regulation declaring certain measures of state aid compatible with the Common market.

The focus will be based on the exemptions to article 87(1)EC, which is relevant for the Member States in order to justify aid measures to the car industry. The Commission’s practise for assessment of the justification of state aid pursuant the exemptions to article 87(1)EC is found in Community guidelines and frameworks. The guidelines are not legally binding, and categorised as soft law. However, the European courts have confirmed that the Commission is bound by the guidelines and notices that it issues\(^7\).

---

\(^4\) EU accounts for 27 % of the world’s automobile production, making it the world leader in terms of automobile production. One third of all passenger cars produced in the world are produced in the EU, and the share of world production of commercial vehicles, bus, trucks etc. account for 12 %. (Numbers from 2006-07) (Source: *Evolution of the motor vehicle markets*, 2008 pp. 2-3 & European Automobile Industry Report 07/08 p. 1 & 3)


\(^6\) The smaller Swedish car manufacturer Koenigsegg is a large enterprise, though only 50 employees, it fulfils the criteria for being a large enterprise as their annual turnover account for more than € 40 million.

\(^7\) Braun and Kühling, 2008 p. 488
Besides the guidelines and frameworks, Communications from the Commission to the Member States will also be included, as they draw the Commissions general opinions on solutions to problems on the common market. Where they have been available, previous cases concerning state aid to the car industry will be used as examples to illustrate to which purposes the car industry is eligible for state aid.

The secondary sources consists primary of MEMOs & IPs issued by europa.eu, text books and decisions from the Commission concerning evaluations of state aid to the car industry under the Temporary Framework. Furthermore, additional news sources have been used to gather information about the current situation in the industry, which reliability to a certain extent can be questioned.

1.4 Structure of the thesis

Chapter 2 starts out with some facts on the car industry and its importance to the economy and a short introduction to the fluctuations in car sales in the last two decades and the Commission’s perspective of the view to car industry’s future.

The history of state aid to the car industry will be dealt with in chapter 3. The focus will be on how the Member States have tackled difficulties in the industry and the Commissions efforts to the control of granting of aid.

Chapter 4 will move on to a short introduction to the Commissions initiatives to withstand the effects of the financial and economic crisis in the real economy in general and efforts special made to target the automotive industry.

The possible exemptions to article 87(1)EC, which the Member States may rely upon granting aid to the car industry; will be assessed in chapter 5. Occurrences’ leading to the current situation in the car industry will be identified in chapter 6, followed by an evaluation of whether the car industry in EU falls within the definition of a firm in difficulties under the Community guidelines. The next chapter will go on assessing the main possibilities available to the Member States to grant aid justified on the exemptions to article 87(1)EC. The possibility to grant aid to the rescue and restructuring is placed last in the chapter, as the Member States primary should consider this type of aid as the last possibility. Chapter 8 will treat the temporary possibilities
made available to the Member States to grant aid justified by the limited access to credit.

2 The European car industry

2.1 Facts about European car industry

The automotive industry is important for EU because of its scope, and thereby its influence on the economy. It is a major contributor to GDP, contributes positively to EUs external trade balance and accountable for large amounts of tax revenues. On the social side, the industry are responsible for many jobs and plays a central part in tackling many of EUs key economic social and environmental challenges, such as sustainable mobility and safety⁸.

EU has the largest production of motor vehicles in the world, producing over 17 million vehicles a year and almost one third of the world’s passenger cars⁹. The production counts 250 production lines, which are split between 16 Member States¹⁰. All Member States, also those without any direct production, are involved in the supply chain for manufacturing and downstream sales. The industry therefore accounts for a substantial part of the intra community trade. Normally, there are about 50 component suppliers to a car¹¹, these suppliers are in many cases closely linked with the assembly plants because the components often are specific to the particular model or manufacturer. Furthermore, there is a trend among the manufacture towards outsourcing part of the production, by devolving research & development (R&D) and management and production resources to specialised equipment suppliers¹². Therefore are many suppliers tied with the respective manufacturers, and cannot easily serve multiple firms or change the production to serve another manufacturer¹³. Thus, a downturn in the industry does not only affects the 16 member states which have a production, but effects all member states however some more than others¹⁴.

---

⁸ COM(2009) 104 final, p. 3
⁹ Cf. Footnote 4
¹⁰ COM(2009) 104 final, p. 3
¹¹ COM(2009) 104 final, p. 3
¹² Evolution of the motor vehicle markets, 2008, p. 3
¹⁴ COM(2009) 104 final, p. 3
The direct employment in the automotive industry is currently around 2.3 million, and totally the industry accounts for around 12 million jobs in Europe when jobs in the up and downstream industries are included\textsuperscript{15}. This high level of employment in the industry is the primary trigger of political and social attention\textsuperscript{16}.

The EU car industry is among others composed by Volkswagen (VW), PSA (Peugeot-Citroën), Ford of Europe, Renault, Fiat, BMW and Volvo. The competitive situation of the car industry can be categorised as an oligopoly, no manufacturer enjoys a strong market power\textsuperscript{17}.

The industry has become high cost/low margin business, with a general net operating margin as low as 3.9\%\textsuperscript{18}, however the profitability among the car manufacturers varies greatly. The general low margin have not hindered new entrants accessing the market, Asian manufacturers have been successful developing car models with attractive price and quality ratios, which have been accepted by European consumers who tend to be less brand loyal. Hence, the global competition has risen\textsuperscript{19}.

\section*{2.2 Associations in the car industry}

The automotive industry is one of the most regulated industries in Europe\textsuperscript{20}. The rising complex regulatory issues affect the competitiveness of the European car industry. The price for complying with the raising regulatory measures is high and manufactures have so far absorbed the additional costs of the regulatory measures, focussing on cost-cutting and restructuring of the production to keep the prices on cars down to comply with the demand for inexpensive cars and the rising global competition\textsuperscript{21,22}. The manufactures as well as the Commission have initiated a group which aim is to make the legislation in the sector more transparent and sustain the competitiveness in the industry.

\textsuperscript{15} European Automobile Industry Report 07/08 p.57 & \textit{Evolution of the motor vehicle markets}, 2008, p. 2
\textsuperscript{17} \textit{Evolution of the motor vehicle markets}, 2008 p. 2 & 9
\textsuperscript{18} Number from London Economics 2004, due the development in the market in recent years the number may be even lower. (Source: \textit{Evolution of the motor vehicle markets}, 2008, p. 14)
\textsuperscript{19} \textit{Evolution of the motor vehicle markets}, 2008, p. 11
\textsuperscript{20} European Automobile Industry Report 07/08, p. 7
\textsuperscript{21} Cf. section 6.1 Difficulties in the industry predating the crisis
\textsuperscript{22} Cars 21 Better regulation for increased competitiveness, 2006, p. 3-4
2.2.1 ACEA
The European Automobile Manufactures’ Association, hereafter referred to as ACEA, was established in 1991 by the major vehicle manufactures in Europe. ACEA is an interest group among others, which aim to contribute to an informed decision-making process within the EU institutions. ACEA’s priority topics are among others; the complex technical regulations which is needed to register and sell vehicles in EU, reduction of the over-regulation and conflicting objectives of the legislation, harmonisation of technical standards and fiscal measures of motor vehicle and fuel taxes, together with other beneficial measures for the European car industry.

2.2.2 CARS 21
In 2005, the Commission initiated the High Level Group Competitive automotive Regulatory system for the 21st century (CARS21), the group is set up to chart the way towards a sustainable development of a competitive European car industry. The group consists of representatives from all fields having interest in the car industry, from consumers to Member States and EU institutions.

The aim of CARS 21 is to make recommendations concerning the public policy and regulatory framework to the European car industry, based on consultation and partnership between the parties in the industry. The collaboration should in general lead to better and simpler regulation to the car industry, through less regulations and harmonisation of international regulations, enhancing global competitiveness and employment, while sustaining further progress in safety and environmental performance at a price affordable to the consumer.

---

23 Members in 2009: BMW Group, DAF Trucks, DaimlerChrysler, FIAT, Ford of Europe, General Motors Europe, MAN Nutzfahrzeuge, Porsche, PSA Peugeot Citroën, Renault, Scania, Toyota Motor Europe, Volkswagen and Volvo.
24 ACEA: Is ACEA just a "lobby" group?, 2009
25 IP/08/1598, 2008
26 The group consists of representatives from; National governments, the European Commission, the European Parliament, the automotive industry, environmentalists, trade unions, suppliers, consumers and the oil industry.
27 European Automobile Industry Report 07/08, p. 16
28 European Automobile Industry Report 07/08, p. 4
29 European Automobile Industry Report 07/08, p. 16
2.3 Development in European car sales
The recent drop in car sales has caused over-capacity and lay-offs, and a fear of even more lay-offs to come in the near future. Historically, it is not the first time the car industry experience a spectacular decrease in sales and a market filled with uncertainty.

The car industry did generally experience growth from 1945 to 1990 however, the industry were through several up- and downs in this period, from extraordinary rapid growth to serious downturns. The first two real downturns were caused by the two oil crisis’ in 1973-75 and again in 1980-84 respectively. The industry rapidly recovered after the first oil crisis, but the second was longer, and the manufactures became aware of the necessity of structural change. The years following, 1985-89, was a period of extraordinary rapid growth, the industry was able to export cars to unexplored markets in the East and the sales of cars boomed.

Then came a period of uncertainty, car manufactures and forecasters hoped that the growth in sales would return, but instead sales dropped dramatically in 1993, the lowest sales since post-war times. Industry observers believed it would take many years before the sales again would hit the level of ‘92, but surprisingly the sales slowly started to rise, continued this rise to the end of the 1990s where the level of sales significantly had exceeded that of ‘92.

In the beginning of 2000, the sales more or less stagnated, around 2003 the sales became more fluctuating, and again the fuel price had a part of the cause. With the start of the economic crisis the sales took a dramatic drop in 2008, and the forecast for the development in sales through 2009 is not promising. However, a report made by J.D. Power claims the cars sales to have the raised in the months of May-June 2009. The incentives to remedy the effects of the crisis may have been working.

---

30 McKaughlin and Maloney, 1999, p.2
31 Dancet and Rosenstock, 1995, Introduction
32 Dancet and Rosenstock, 1995, Introduction
33 Dancet and Rosenstock, 1995, Introduction
34 See further section 6.1 Difficulties in the industry predating the crisis
35 COM(2009) 104 final, p. 3
36 J.D. Power, 2009. See also attachment: Graph of West European Car Sales
2.4 Perspective of the future in European car industry

After a downturn comes an upturn, which also have been seen previously in the car industry’s history. It is projected that the demand for cars will rise to an even higher level in the future, than the level before the economic crisis. Due to the drop in car sales, caused by weaker access to credit, lower consumer confidence and declining purchasing power, the car fleet of Europe and the US are not being steady renewed. The need for car renewal is therefore likely to increase in the future. Furthermore, the increased interest for environmental friendly cars will also contribute to increasing demand and. Finally, it is expected that the emerging markets will be motorised, and create a big unexplored market. On this background, the total demand of cars is expected to triple or at least double in the next 20 years.\(^{37}\)

With this outlook to demand in the relatively near future, it may be in interest to keep as many as possible of the production plants and keep the workforce active in the industry. Reasoned in this perspective for the future of the industry, the Member States efforts to support the industry now will be beneficial in the longer term.

In the Commission’s point of view, it is a key priority for the future to ensure the competitiveness of the European car industry emerging from the crisis in a stronger position to compete globally.\(^ {38}\)

3 History

3.1 The European Car industry’s State aid history

The car industry being in focus of politicians regarding state support is not new. The industry’s strategic importance in the economy in regard to attracting investment, growth opportunities, but also in particular to jobs and other economic factors, have made the industry’s existence of significance to the Member States.

The industry’s current call for state support is not the first time the industry is asking the governments for help, in the past the industry has traditionally received a large part of

\(^{37}\) COM(2009) 104 final, p. 3-4

\(^{38}\) COM(2009) 104 final, p. 5
public funds in the EU\textsuperscript{39}. The measures to support the industry have been tightened over the years, as the following will show.

The car industry had rapidly recovered after the first oil crisis where the governments had supported their car industry through aids. The second oil crisis in the early 1980s was harder. Dealing with low sale rates and strong efficiency problems, the car industry faced major losses, which made them aware that a restructuring change was needed\textsuperscript{40}. Again, the industry asked for support to prevent large-scale closures and the governments’ injected aid to help the restructuring processes in the industry\textsuperscript{41}. Already then, the governments were concerned about the political cost of letting so large employers go out of business, and were not willing to absorb this major political cost\textsuperscript{42}.

It seems that the Member States were benevolent supporting their car industry when they needed help, and that there were not so many hindrances stopping this generosity. The Commission was, around this time, in lack of staff and only able to review notifications of new aid\textsuperscript{43}. Furthermore, the Commission was more or less powerless in the combat of aid injections, no precise criteria for the control and assessment of aid existed. It was up to the Commission to establish which aid to be accepted or not\textsuperscript{44}, and due to political pressure from the Member States, the Commission accepted measures of aid to permit or speed up restructuring processes in start of the 80s, but made requirements to the Member States of annual reporting of the restructuring processes\textsuperscript{45}.

The regime of state aid was ineffective and the institutions of the EU had to seek credibility to make the regime efficient. It was not an easy task to make the system more credible, as coordination was a problem inherent in establishing a unitary regulatory regime in the field of state aid. The strategic dilemma of state aid was challenging, it was more than a simple coordination problem, because there also existed a danger of exploitation. Judicious use of subsidies would be advantageous for the Member States, as they may capture rents or economic activities with desirable externalities attracted to it. However, it would be ineffective for the EU overall, if everyone perused it.

\textsuperscript{39} Dancet and Rosenstock, 1995, Introduction
\textsuperscript{40} Dancet and Rosenstock, 1995, Introduction
\textsuperscript{41} McKaughlin and Maloney, 1999, p. 137
\textsuperscript{42} Stephen, 2000, p.161
\textsuperscript{43} Stephen 2000, p.160
\textsuperscript{44} Stephen 2000, p.159-161
\textsuperscript{45} Dancet and Rosenstock, 1995, Section: 1.2
Furthermore, a suddenly start of denying or sanctioning state aid could be politically costly as the industry in the past had received major amounts of aid\footnote{Stephen, 2000, p.154-56}.

In the end of the 1980s, the Commission developed a consistent and comprehensive approach to restructuring aids with four major cases in the car industry, the approach also served as example in other industries\footnote{Dancet and Rosenstock, 1995, Section: 2.2}. The cases concerned Alfa Romeo, Rover, Renault and ENASA, all state owned companies, which were in financial difficulties due to huge losses in the previous years\footnote{They were suffering from overcapacity, falling market shares and some had negative cash flows.}. The governments saw it as normal behaviour to assist those companies with massive portions of aid to prepare them for privatisation and save them from liquidation\footnote{In the case of Renault and Rover, the companies were technically insolvent as a result of the monies owned by their respective governments. These sums had to disappear before privatisation could occur. The governments wanted to make them disappear through the granting of state aid.}, but the Commission was of another view and opened art. 88(2) EC procedures claiming that all financial transfers were state aid an contrary to article 87(1)EC\footnote{Dancet and Rosenstock,1995, section 2.2.}. The only part of the aid that was approved was categorised as rescue and restructuring aid and linked to specified capacity closures\footnote{McKaughlin and Maloney, 1999, p.152}. The outcome of the cases was a set of general conditions for when state aid could be exempted from art. 87(1)EC as rescue and restructuring aid. The conditions to be fulfilled were; that the aid should be linked to a restructuring plan and involve capacity closures to be approved, and that the approved restructuring aid equalled roughly the cost of the capacity closure. Furthermore, requirement of long-term ex-post monitoring and a ban of any further aid during the course of the plan\footnote{Dancet and Rosenstock, 1995, section 2.2.}. With the free market forces alone, it is argued that the late 80s would have left only four major manufactures\footnote{Statement of Roland Stephen (source: Stephen 2000, p.16)}.

To help the car industry and in the same time tighten the state aid rules, the Commission issued a policy paper\footnote{The policy paper was in 1990 translated into a new policy paper towards the industry.} and adopted a state aid framework\footnote{Community Framework on State Aid to the Motor Vehicle Industry (OJ 1989 C 123) was drafted in ’88 and adopted in ’89.} to the car industry in 1988-89. The European car industry was still competitively lagging behind its main competitors. A completion of the internal market, design of a common commercial
policy, design of an overall strategy and state aid policy, and strengthening of R&D support should help accelerating the restructuring process of the industry.\(^{56}\)

3.1.1 Adoption of a State aid framework to motor vehicle industry

By the end of the 1980s, the Commission had more or less got control of the granting of state aid by developed assessment criteria, particularly from the four major cases mentioned above. However, the structural problems in the industry was not all set, the industry was still in need of considerable investments to modernisation and expansion. With increasing intra EU trade, the Commission feared a return of subsidy races between the Member States and an increase in the distortion of competition.\(^{57}\) This resulted in 1989, with an adoption of a framework governing state aid in the motor vehicle industry.\(^{58}\)

The framework defined “good” and “bad” state aid, but did also emphasise that though the aid was acceptable, the level had to commensurate with the objective. Aid was generally categorised as follows:\(^{59}\):

- Operating aid was unacceptable
- Rescue and restructuring aid, innovation aid, modernisation aid and aid for rationalisation could be approved in exceptional circumstances, but required a radical change in the structure of the company.
- R&D aid, regional aid\(^{60}\) and aid for vocational training were generally accepted.

In other words, aid that could serve the basis for improving the competitiveness of the car industry was welcome, but aid to sustain unprofitable capacity or aid for new investment, unless it was accompanied by dramatic rationalisation, was not accepted.\(^{61}\)

The framework also set out rules for the prior notification of aid, and how these notifications had to be made to heighten the transparency of aid in the industry. In new aid notifications, the form, amount, purpose and intensity of the aid had to be identified,

\(^{56}\) Dancet and Rosenstock, 1995, section: 2.1.

\(^{57}\) Dancet and Rosenstock, 1995, section 2.3

\(^{58}\) Community Framework on State Aid to the Motor Vehicle Industry (OJ 1989 C 123) The Commission used art. 93(1)EC, now 87(1)EC for the legal basis of this framework.

\(^{59}\) Stephen 2000, p.162 & Dancet and Rosenstock, 1995, section: 2.4

\(^{60}\) Giving firms access to Greenfield sites

\(^{61}\) Stephen 2000, p.162
as well as the consequences for the market place. Furthermore, the framework set out a requirement for an annual reporting of granted state aid by each individual Member State\textsuperscript{62}. With the introduction of the framework, the member states delegated discretionary power to the Commission, and escaped from some of the strategic dilemmas of whether or not, and in which portions to grant aid\textsuperscript{63}.

In 1993, the framework proved its worth, the industry was again facing falling sales, but less aid was granted.

The sector specific framework for the motor vehicle industry was in 2002 included in the multi-sectoral framework on regional aid for large investments; this framework was later repealed and replaced by the current guidelines for regional aid 2007-2013. Some sectors does still receive separate treatment under this framework\textsuperscript{64}, but not the vehicle industry, which not any longer is governed by any special state aid rules\textsuperscript{65}.

### 3.2 Findings
The current situation in the car industry and the reason for granting aid is not directly comparable with the experiences in the past. Firstly, the major trigger for state support in the 80s was the oil crises’, today the trigger is the shortage to finance. However, the industry both now and then, is facing a significant decrease in sales and a need for restructuring.

It seems in the literature, that the Member States benevolent have supported their car industry through aids in the past, because of the industry’s significant influence on the economy of the Member States. During the time of the oil crisis’ there were no general criteria for the granting of state aid and the Commission decided the acceptance of the aid measures on a case by case basis, which allowed the Member States by political pressure to have cases of state aid accepted, though the Commission set some requirements.

\textsuperscript{62} Stephen 2000, p.162-3
\textsuperscript{63} Stephen, 2000, 163
\textsuperscript{64} Quigley 2009, p.313
\textsuperscript{65} Vesterdorf and Nielsen, 2008, p. 209
The Member States previous approach to tackle the problems in the car industry cannot be used today. Today the Commission have well-defined guidelines and frameworks determining when and how much state aid the Member States are allowed to grant.

However, state aid granted to the car industry in the past, served as an example to other industries. The categorisation of “bad and good aid”, defining the purposes for which state aid could be approved and the requirements to notifications set out in the framework to the vehicle industry still applies today, but is adopted into separate guidelines and frameworks governing all sectors.

4 Commission’s initiatives towards the economic crisis

4.1 The European Economic Recovery plan

In respond to the Economic crisis, the Commission developed the “The European Economic Recovery plan” in November 2008. The focus of the recovery plan is to boost demand, restore consumer confidence and save jobs together with direct actions to “smart investments”. Smart investments means investing in the right skills for tomorrows needs, e.g. in relation to the car industry, to invest in clean technologies to boost the low carbon markets for the future and thereby prepares Europe to take advantage when the growth returns.

The Recovery Plan proposes ten actions to achieve the aims and again having the wheels running in the European economy. Some of these actions are of relevance for the car industry, and one action is specially target the industry.

The financial crisis and the subsequent squeeze on the financial resources may tempt some car manufactures to delay or cut planned R&D, innovation and education investments. Together with reluctance initiating research and development due to uncertainty of future standards, it may leave the European car industry behind its competitors in the future. Past experience have shown that trying to save in field of research, development and innovation is the wrong way forward, as it will have

66 COM(2008) 800 final
69 Cf. Section: 6.1 Difficulties in the industry predating the crisis.
negative consequences for the growth and employment prospects in the long run. Therefore, the Commission emphasize that the Member States and the private sector should increase planned investments in R&D&I and education. The Member States should provide fiscal incentives to encourage the private sector to increase investments in R&D, e.g. by giving subsidies or grants. The Commission adopted the Temporary framework for state aid allowing the Member States to provide state support in form of loans, guarantees etc. to enable the private sector to make investments.

Additionally the Commission targets one of the actions in the Recovery Plan especially towards the automotive sector and the construction industry. The Commission proposes a “European green car initiative”, focusing on the research to achieve a breakthrough in the use of renewable and non-polluting energy sources. A partnership between the Community, the European Investment Bank, the car industry and the Member States should fund resources to promote the initiative.

To pursue the aims, the Recovery plan is designed to co-ordinate the actions of the Member States, draw on all available policy levers, ensure the coherence between the short terms actions and the long term objectives of the EU, and take full account of the global nature of the problem and shape EU’s contributions to international responses.

4.2 Framework to target the crisis in the automotive industry
In addition to the recovery plan, the Commission adopted in February 2009 a communication targeting the automotive industry, to help the industry through the economic crisis. The measures in the communication are similar those set out in the Recovery Plan, easing the access to credit, ensure investment in R&D, boosting demand and increasing consumer confidence etc.

---

70 COM(2008) 800 final, p. 15
71 COM(2008) 800 final, p. 16
72 COM(2008) 800 final, p. 16
73 The EIB will provide cost-based loans to car producers and suppliers to finance innovation, in particular to technologies improving the safety and the environmental performance of cars e.g. electronic vehicles. (source: COM(2008) 800 final, p. 16)
74 COM(2008) 800 final, p. 5
75 COM(2009) 104 final “Responding to the crisis in the European automotive industry”
The Commission believes that EU need a dynamic and competitive automotive sector and recognised that properly targeted support to the car industry is needed to help the industry through the downturn and address the structural problems ruling in the industry. The outcome should be a more competitive industry in tune with the needs of the future.

Given the pre-crisis situation in the car industry, access to credit is an essential way of financing new R&D incentives and in general deal with the structural problems in the industry. The growing requirements for pollutant emissions and safety requirements have put an even higher pressure on the need for R&D and innovation. Furthermore, has the reduced access to credit an impact on the consumer demand, as many cars are brought on credit.

Several initiatives have been taken to provide capital to the automotive industry, primarily through the EIB and the 7th Research Framework programme to support research and development of the field of “green vehicles”. The Commission and the EIB is working together to provide effective financing to the automotive sector, among them, through the European Clean Transport facility, ECTF. Initiatives have also been made to increase payments to support the implementation of measures that can retain jobs and combat unemployment, and to anticipate and mitigate the social impact of restructuring.

Additional to the measures giving access to credit, in Annex 2 to the framework, the Commission suggest several possibilities for the Member States to pursue, which does not entail state aid, to counter the short-term decline in demand and improve consumer confidence. These incentives are e.g. introduction of scrapping schemes, use of public procurement to boost demand, withholding general tax measures or extending payment deadlines for security payments etc.

---

78 See further section 6.1Difficulties in the industry predating the crisis
79 A major FIB financing programme to support investments targeting research, development and innovation in the areas of emission reduction and energy efficiency in the European transport industry. (Source: http://www.eib.org/products/loans/special/ectf/ (03.06.09))
80 COM(2009) 104 final, p. 7
81 COM(2009) 104 final, Annex 2 Inventory of state aid instruments
In the Temporary framework, the Commission recall the opportunities that are available for the Member States to grant aid under the traditional state aid rules. In Annex 2 to the framework to the automotive sector, the Commission further come with suggestions to which objectives these aid measures may be used.

The Commission reconfirms its commitment to the policy framework for the automotive industry in the CARS21 project, and will as far as possible seek to avoid creating economic burdens in form of new legislative initiatives. Furthermore, the Commission suggest that the CAR21 process should be strengthened in order to provide a platform for mutual information, dialogue and best practices.

Generally, the Communication focuses on co-ordination, transparency of efforts to combat the crisis and puts an obligation on the Commission to speed-up the process of approval of loans, schemes etc., and to work on keeping markets open and ensure fair competition internal as well as in relation to third countries. In the view of the Commission, the industry will recover from the crisis stronger than before, if supported by the right instruments at the right places.

4.3 Findings
As the financial crisis started to affect the economy of the Member States, the Commission adopted the Recovery Plan to remedy the effects. The Recovery Plan outline several actions aimed at boosting demand, encourage continued investment in R&D&I and making access to credit available. Some of these actions are generally of relevance for the car industry and one specially targets the car industry with a green car initiative. The Commission especially focus to ease the access to credit and has in this connection adopted the Temporary framework for state aid.

The Commission wants to turn the current difficulties in the car industry into a positive outcome, by strengthening the industry’s competitiveness. Therefore, a framework to target the crisis in the automotive industry was adopted, focusing on measures to support the industry through the crisis and to enhance the competitiveness of the future. Several initiatives have been taken to provide access to capital especially to support

---
83 See further section 8.1The Temporary framework
84 OJ C83, 2009, Temporary framework, p. 2
85 COM(2009) 104 final, p.6
86 COM(2009) 104 final, p.9
R&D of green vehicles. The Commission wants as far it’s possible to avoid aid being granted and reduce the granting of the most distortive types of aid, if the granting of aid is necessary then it should primary target public policy objectives. In the Temporary framework, the Commission has emphasised the possibilities available to grant aid under the traditional state aid rules. The traditional state aid measures are of wider relevance for the economy as they target special horizontal objectives. The annex 2 to the automotive sector lists possibilities available for the Member States, which does not entail state aid. Furthermore, the annex lists the possibilities available for the Member States pursuant the traditional state aid rules.

5 The state aid rules

5.1 The state aid rules
The state aid policy is one of the measures preserving the competitiveness on the European market, it controls the Member States discretion in granting aid and thereby hinders Member States getting into subsidy races to attract investments. State aid can sometimes be the most effective tool for achieving objectives of common interest, among other things correcting market failures, promoting development and environmental initiatives. With the distortive nature, state aid should only be used when it is the most appropriate instrument for meeting the well-defined objective and it transfers the right incentives, and it’s proportionate and distorts competition to the least possible extent87.

State aid is in the European Union is regulated under the articles 87-89 of the EC treaty. Article 87(1) is generally considered as the prohibition of state aid88. “Any aid granted by a Member state or through state resources in any form what so ever, which distorts or threaten to distort competition by favouring certain undertakings or the production of certain goods shall, insofar it affects trade between Member States be incompatible with the common market”. Modifications to this general rule are found in article 87(2) and 87(3) EC and the General Block exemption regulation8990. Aid falling under the

87 COM(2005) 107 final, The state aid action plan, paras 10+11
88 Art. 87(1) EC is not framed as an absolute prohibition, as the word “prohibition” is not used in the article, as e.g. in art. 28 EC, instead the expression of “incompatible” is used. However, the ECJ apply art. 87(1)EC as a prohibitory provision. (Source: Jessen, 2008, p. 402)
89 Braun and Kühling, 2008, p.484
categories of article 87(2) are compatible with the common market, whereas aid falling under art. 87(3) EC can be compatible with the common market.

5.1.1 The State aid action plan – Less and better targeted state aid

The high levels of state aid granted in the 80s were not only a phenomenon in car industry, but in industries in general. The Commissions initiatives of reducing state aid in the 90s was effective, but the Commission still considered the level of aid to be too high and still to distortive on the competition.91

The Council called in 2000 for a shift in emphasis from supporting individual companies or sectors towards tackling horizontal objectives of Community interest, such as employment and training, regional development, environmental protection, research and development. In the view of the Commission, Member States should be encouraged to consider other possible instruments of state intervention if needed, and only use state aid when it is the most appropriate instrument to effectively solve the market failure.92

In 2005 that lead to the adoption of the State Aid Action Plan “Less and better targeted state aid”93, setting out a roadmap for the state aid policy from 2005-2009. The aim of the action plan was to improve the state aid rules, by tightening the rules to reduce the overall aid levels, while facilitating a better targeting of state aid towards measures that really contribute to the Lisbon objectives of boosting economic growth and creating jobs.94 Another aim of the action plan was to make the state aid rules more user-friendly, transparent, and reduce the administrative burden of the Commission. In this aspect, the Commission adopted the General Block exemption95, identifying aid measures compatible with the common market without notification requirement. Additionally, the Commission has issued guidelines and frameworks clarifying their

---

90 Further exceptions to article 87(1)EC are to be found in art 86(2)EC for special or exclusive rights granted to undertakings by the Member States, art. 73 EC for aid granted to transport and art. 88(2)EC third paragraph, giving the Council power to decide that a specific aid measure is compatible with the common market. (Source: Braun and Kühling, 2008, p.484)
91 Quigley, 2009, pp.178-179
92 Quigley, 2009, pp.178-180
93 COM(2005)107final: The state aid action plan
94 MEMO/06/482, 2006
95 See further section 7.1 General Block Exemption Regulation
assessment criteria for when aid measures will be compatible with the common market, but where aid is subject to notification requirements96.

5.2 State Aid under Article 87(1)EC

For a measure of public support to be classified as state aid and therefore being subject to the state aid rules under the EC treaty, five conditions must be fulfilled97.

1. the aid must be granted by the state or through state resources
2. the aid must confer an advantage to the recipients,
3. the aid must affect trade between Member States and,
4. the aid must distort completion in the common market,
5. the advantage must favour certain undertakings or economic activities.

Is the measure applicable to all sectors and any firm meeting the criteria automatically entitled the subsidy, there is no state aid within the meaning of art 87(1)98. Likewise, can public authorities grant loans, guarantees, inject capital or in other ways be involved in commercial ventures, without the measure constituting state aid, if the support is provided on market conditions, under the “private investor principle” developed by the Commission99.

Planned aid measures to the car industry granted by the Member States will fall within the scope of art. 87(1)EC. Car manufactures are individual companies pursuing economic activities, which to a large extent involve trade between Member States. Granted aid favour the car manufacturers, by reducing some of the costs the manufacturer normally would have to bear and thereby create an advantage compared to the competitors and thus distort competition. Even when the competitors also receive aid, and the aid therefore not creates a specific advantage to favoured manufacturer, the aid will still be classified as state aid under article 87(1) EC100.

96 Quigley, 2009, pp.179-180
97 Nicolaides, Kekelekis and Kreis, 2008, p.10
98 Quigley, 2009, p.43
99 “Private investor principle” The public authorities may give loans, guarantees, inject capital and otherwise be involved in commercial ventures, but at the same time, they must behave in the same way as a private investor would behave in similar circumstances. (source: Nicolaides, Kekelekis and Kreis, 2008, p.23)
100 Quigley, 2009, p.51
5.2.1 De Minimis
Member States may grant aid up to € 200,000 per company over any period of three fiscal years or a state guarantee up to € 1.5 million, without the aid being deemed to amount to state aid under article 87(1)EC. In comparison with the size of the car manufactures and their costs, aid allowed under the De Minimis regulation will not be beneficial for the manufactures in regard to remedy their difficulties.

5.3 Exemptions relevant for the car industry
Planned aid measures to the car industry may be exempted and be compatible with the common market. None of the provisions under article 87(2)EC, directly qualifying for an exemption, is relevant for the automotive industry. Though, article 87(2)(b)EC concerns aid in the case of natural disasters and exceptional occurrences and it could be argued that a massive drop in sales, as experienced by the car industry, could be categorised as an exceptional occurrence. However, an exceptional occurrence in relation to this provision, relates to war, terrorist actions, epidemics etc, the provision can therefore of no relevance with regard to aid to the car industry. A drop in sales is a normal risk operators in the market must expect as part of the market forces.

This leaves the automotive industry back with the exemptions that may be compatible with the common market pursuant to Article 87(3) EC, where paragraph (b) and (c) are of relevance for the car industry.

5.3.1 Article 87(3)(b)EC
Article 87(3)(b)EC states “aid promoting the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State... may be considered compatible with the common market”.

The justification of a project of common European interest is commonly used to support research and development projects. A project of common European interest could for example be in the field of environmental protection, e.g. to reduce environmental pollution.

101 Reg. No.1998/2006/EC, De minimis, article 2
102 Nicolaides, Kekelekis and Kreis, 2008, p.45
103 Quigley, 2009, pp.134-135
The car industry may have a possibility to receive aid exempted based on this provision, if several manufactures cross-national jointly cooperated on a project on common European interest e.g. aimed at reducing emissions etc. This could be development of new engine standards, better for the environment, an area currently causing uncertainty in the industry. Making research and development for a new standard in cooperation may push forward the answer to the question of what will be the new standard. A common standard e.g. in engines would benefit the common market, as fewer resources would be spend on non-ground-breaking R&D, which then could be used in other areas e.g. on safety. Furthermore, it could have a positive influence on suppliers, as they can get more flexible in serving additional manufacturers. This possibility for granting aid to projects of common interest will be further discussed in section 7.2.2. Aid to a project of common European interest.

To qualify for aid remedying a serious disturbance in the economy, the disturbance must affect the economy of the Member State as a whole and not just a part of its territory. The Commission stated in a Communication to the banking sector in October 2008, that the use of article 87(3)(b)EC “could not be envisaged as a matter of principle in crisis situations in other individual sectors in the absence of a comparable risk that they have an immediate impact on the economy of the Member State as a whole.” In the case of the banking sector, the whole functioning of the financial markets was jeopardised. Other sectors were at that time not seen to create a serious disturbance in the economy to the extent of the banking sector. A car manufacturer going out of business would be a part of the normal market forces, and not leave the same consequences on the economy of the Member State, as a bank. However, 2 months later in December 2008 the Commission adopted the Temporary framework for state aid to support access to finance in the current financial economic crisis. The framework justified that certain categories of aid may be deemed compatible with the common market under article 87(3)(b)EC, in the light of the seriousness of the current

---

104 See further section 6.1 Difficulties in the industry predating the crisis
105 Component suppliers are in many cases closely tied with the respective manufactures, cf. section 2.1 Facts about European car industry
106 If merely only one region of the Member State is affected art. 87(3)(c) is in principle the relevant provision. (Source: Vesterdorf and Nielsen, 2008, p.32, footnote 105 and 106)
107 OJ C 270, 2008, para 11
108 OJ C 270, 2008, para 11
crisis and its impact on the overall economy\textsuperscript{110}. Even that other sectors does not have the same fundamental impact on the economy as the banking sector, they will nonetheless have an impact on the economy serious enough for the Commission to decide that exceptions can be given under article 87(3)(b)EC to get the flow of money back to the economy. It can be argued that the Commission here loosened the state aid rules a bit to comply with the crisis.

Aid must not result the beneficiaries to be placed in a stronger position than they would have been in the absence of the disturbance\textsuperscript{111}. Therefore, the temporary framework only applies to firms not in difficulties predating 1st July 2008\textsuperscript{112} if it had applied to those firms, it would have placed them in a better position than they would have been in absence of the disturbance.

\textbf{5.3.2 Article 87(3)(c)EC}

Article 87(3)(c)EC states “\textit{aid to facilitate development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest... may be considered compatible with the common market.}” The Commission has issued several guidelines and frameworks clarifying their practice of assessment determining when horizontal aid measures will be compatible with the common market under article 87(3)(c)EC.

Aid granted under the horizontal objectives must justify a market failure, or other clear objectives of common interest\textsuperscript{113}. Does the market conditions seem to apt to ensure normal development, state aid cannot be regarded as facilitating the development of the activity or area in question\textsuperscript{114}, and the aid can therefore not be justified. The Member States possibilities to grant aid to their car industries under article 87(3)(c)EC are accessed in the chapter 7 Horizontal aid.

\textsuperscript{111} Quigley, 2009, p.136
\textsuperscript{112} OJ C83, 2009, \textit{The Temporary framework}, paras 4.3.2.(i), 4.3.1.(i), 4.4.1.(b) and 4.5.1.(j)
\textsuperscript{113} Braun and Kühling, 2008, p.492
\textsuperscript{114} Quigley, 2009, p.137
5.4 The balancing test
To evaluate the distortive effect on competition, the Commission introduced in the State Aid Action Plan a “Balancing test”, weighting the positive and negative effects of the intended state aid measure. The balancing test is an economic approach making the evaluation of state aid measures more proper and transparent, and may contribute to define the reasons for the market failure. The balancing test consists of three stages; 1) the aid measure must pursue one of the policy objectives in article 87(2) or (3)EC. 2) the aid measure must be well designed to deliver the objectives of the common interest, this is addressed with an evaluation of; i) whether aid is the appropriate policy instrument to achieve the desired policy objective. ii) whether the aid has an incentive effect e.g. does the aid induce the firms to go beyond what they would have done without the aid. iii) whether the aid measure is proportional, could less aid have achieved the same? And, 3) are the distortions of competition and effect on trade limited?

Aid measures falling within areas covered by the guidelines or frameworks, are often subject to a simplified assessment. Currently, the Balancing test is implicated in three frameworks and guidelines. The full assessment of the balancing test always applies to cases falling outside these guidelines and frameworks.

5.5 Findings
Planned support to the car industry fall within the definition of state aid in article 87(1)EC. The Member States must therefore relay on an exemption to lawfully grant aid to the car industry.

Exemption can be given pursuant article 87(3)(b)EC, under which aid to projects of common European interest and aid to remedy a serious disturbance in the economy can be justified.

115 COM(2005) 107 final, State aid action plan, paragraph 21-23
116 Nicolaides, Kekelekis and Kreis, 2008, p.52
118 Nicolaides, Kekelekis and Kreis, 2008, p.53
To be eligible for aid to a common European project, the project must have a cross-national character and must be of relevance for the wider economy. This possibility will be assessed in section 7.2.2, and it may be an exemption relevant for the Member States in regard to granting aid to the car industry.

Under normal circumstances, sectors as the automotive sector is not eligible for aid under article 87(3)(b)EC to remedy a serious disturbance in the economy. But grounded in the seriousness of the economic crisis, the Commission has given the Member States a temporary permission to grant aid to all sectors under the temporary framework, justified pursuant article 87(3)(b)EC.

In the Communication to the Automotive Industry, the Commission emphasised the possibilities available to the Member States to grant aid to the car industry under the traditional state aid rules. The primary article for exemption of aid pursuing these horizontal objectives are article 87(3)(c)EC.

In general, state aid must be justified in a market failure or other clear objectives of common interest. The state aid measure must be the most appropriate instrument, create an incentive effect and be proportionate in order to be exempted from article 87(1)EC, and limit the distortions of completion to the least possible extent.

6 Difficulties in the car industry

6.1 Difficulties in the industry predating the crisis

Many may give the financial and economic crises the reason for having caused the current situation in the car industry, with decreasing demand, overcapacity and threats of plant closures. However, the industry did already predating the crisis experience difficulties, the crisis has only worsened the situation. The situation prior the crisis is important in the assessment of the justification of state aid to the car industry, both concerning the horizontal aid measures but also in particular to aid granted under the temporary framework. The degree and the time of occurrence of the difficulties are decisive for the objective to which aid can be granted.

The recent years difficulties faced by the European car industry, originates in the price increase of fuel in 2004. The increase of the fuel prices tightened the consumer’s
budgets, leaving fewer resources back to the purchase of cars. The car price being a fundamental variable of the purchase decision, lead to a in a rise in demand of less expensive cars\textsuperscript{119}. A general increase in awareness of carbon pollution and an additional promotion of the use of public transport starting in 2000 changed the consumers purchase pattern. Manufactures discovered a change in the consumer behaviour; the consumers had become more aware of the cars energy consumption and the environment, and demand for smaller, environmental friendly and inexpensive cars rise\textsuperscript{120}.

The inherent response to an increase in oil prices are for many to cut down the kilometres driven and/or alternatively use other means of transport, which have an impact on demand. However, it does not work like this, the other way around. When the oil prices again went down, people did not go back to the same consumption pattern as before the increase of the fuel price\textsuperscript{121}.

With the rising demand for inexpensive low carbon consumption cars, car manufactures are still rooted in the paradigm of four-stroke motors. Firstly, the industry is facing difficulties with the uncertainty about the new technical standards for cars in the future, especially concerning the engine\textsuperscript{122}. Which technology should they focus their innovation on? Giving the fact that the cost of developing a new technology is high and the probability that this technology will be the new standard is low, makes the manufacturers cautious about developing new technologies. However, when the new standard is found it will be advantageous for the manufacturer to have a model ready at the same time as the competitors and joint governance to promote it. Secondly, the manufactures are facing increasingly complex regulation of standards, particularity regarding emissions\textsuperscript{123}124.

The declining trend in sales was further braced by the arrival of the crisis. With a majority of cars brought on credit, the industry got hit hard by the drying up of credit. As durable goods, cars are particularly affected by periods of economic recession,

\textsuperscript{119} OFCE-DRIC, 2009, p.2
\textsuperscript{120} OFCE-DRIC, 2009, p.2-3)
\textsuperscript{121} OFCE-DRIC,2009, p.3
\textsuperscript{122} Possibilities to the new standard could be biofuel, LPG, electric motor hybrid etc.
\textsuperscript{123} OFCE-DRIC, 2009, 3
\textsuperscript{124} The described situation of the difficulties facing the industry is taken from the situation in France, but it is assumed that the situation look the same in other European car industries.
consumers prefers to wait for a turnaround of more favourable market conditions before making significant investments.\(^{125}\)

### 6.2 Are the car manufactures in difficulties according to the Community guidelines?

The determination of whether a firm is in difficulty or not, is important in relation to the kind of aid that may be granted. Is the firm in question determined as a firm in difficulty, the Member State can only grant aid to rescue and restructuring. The reason being that a firm in difficulty is in danger of going out of business, and therefore not considered appropriate for promoting public policy objectives before the firm again is sustainable.

There is no Community definition of what constitutes a firm in difficulty.\(^ {126}\) Therefore, in the Rescue and Restructuring guidelines the Commission has established when they will consider a firm as being in difficulties.\(^ {127}\) The Commission considers that aid to firms in difficulty may contribute to the development of economic activities without adversely affecting trade to an extent contrary to the Community interest but only so far the conditions set out in the guidelines are met.\(^ {128}\) This definition of a firm in difficulties is used as a reference in other guidelines and frameworks.\(^ {129}130\)

The car industry has for a long time experienced difficulties, especially since 2004.\(^ {131}\) Due to raising legal requirements, a highly competitive environment and changed consumer preferences, they have struggled with structural problems and overcapacity. The situation worsened with the financial and economic crisis, by affecting the consumer’s purchasing power negatively and making lending less favourable. So, yes the car industry is in general considered as being in difficulties, but the question is

---

\(^{125}\) OFCE-DRIC, 2009, p.1

\(^{126}\) OJ C244, 2004, *R&R Guidelines*, para 9


\(^{129}\) Difficulties in large enterprises must always be determined according to the criteria in the R&R guidelines, but SMEs are subject to a simplified determination, except in cases of rescue and restructuring aid, these criteria is found in article 1(7) in the General Block Exemption Regulation, Reg. No. 800/2008


\(^{131}\) Cf. section 6.1Difficulties in the industry predating the crisis
whether these difficulties are so serious that the manufactures will be categorised as being in difficulties under the Community guidelines?

Generally applying, firms are considered to be in difficulties, when they are unable to stem losses through own resources or with funds from owners/shareholders or creditors, which almost certainly will condemn them to go out of business in the short or medium term\textsuperscript{132}. Moreover, firms belonging to or being taken over by a corporate group, are only eligible for aid if the difficulties can be demonstrated to be intrinsic in the firm and the difficulties are too serious to be dealt with by the group\textsuperscript{133}. Irrespective of the size of the firm, the firm is considered to be in difficulty when the following criteria are met\textsuperscript{134}:

a) in the case of a limited liability company, where more than half of its registered capital has disappeared and more than one quarter of that capital has been lost over the preceding 12 months;

b) in the case of a company where at least some members have unlimited liability for the debt of the company, where more than half of its capital as shown in the company accounts has disappeared and more than one quarter of that capital has been lost over the preceding 12 months;

c) whatever the type of company concerned, where it fulfils the criteria under its domestic law for being the subject of collective insolvency proceedings.

Additional to the above mentioned criteria, a firm may still be considered being in difficulties when it shows usual signs of a being firm in difficulties, as e.g. increasing losses, diminishing turnover, declining cash flow, express capacity etc. For these criteria to apply, the signs must indicate a trend, and not just be based on exceptional occurrences\textsuperscript{135}. In acute cases, firms may already have become insolvent or may be subject to collective insolvency proceedings\textsuperscript{136}.

The information about the car manufactures exact loses are limited, and it is therefore impossible exact to say which companies, will fall under the definition of a firm in difficulty. However, those companies who had received aid to other objectives than

\textsuperscript{132} OJ C244, 2004, R&R guidelines, para 9
\textsuperscript{133} OJ C244,2004, R&R guidelines, para13
\textsuperscript{134} OJ C244, 2004, R&R guidelines, para 10
\textsuperscript{135} Quigley, 2009, p.296
\textsuperscript{136} OJ C244,2004, R&R guidelines, para 11
rescue and restructuring are not in difficulties to the extent of the definition described above. The Commission has expressed a particular attention to prevent the use of the Rescue and Restructuring guidelines\textsuperscript{137}, when aid can be granted under principles laid down in other frameworks and guidelines, because of the general distortive nature of aid to rescue and restructuring. In other words, the possibilities available for the Member States to grant aid to other objectives should be explored first, therefore when aid is granted on principles laid down in other guidelines and frameworks; it must be assumed that the firm is not in difficulty according to the Commissions definition.

Manufactures that regardless of the financial and economic crisis are capable of purchasing all or a share of other firms may be assumed not to be in difficulties to the extent of the Commissions definition. Fiat Italy has according to the medias showed an interest in the purchase of Opel and Saab, however it not being official confirmed\textsuperscript{138}. The ambition of Fiat’s Chief Executive Officer, Sergio Merchionne, is to make Fiat among the biggest car concerns in the world, and has recently (June 09) achieved the control of Chrysler\textsuperscript{139}. When having liquidity to make such investments despite the economic crisis, it can be argued that the firm is not in danger of going out of business in the short or medium term, and therefore should not to be categorised as a firm being in difficulties. However, depending on the purpose of the purchase, it has to be kept in mind that acquisition of shares in competitors can be presumed to be the cheapest acquisition of patents etc. than through self-development, and therefore an incentive for ailing firms to achieve other firms. On the other hand, the achieving firm must also make sure that they are capable of making use of these acquired knowledge resources and that the acquirement also entails additional costs to wages, restructuring etc.

Neither Volvo Sweden may be considered as a firm in difficult, at least not before July 2008\textsuperscript{140}. Volvo was granted aid under the Temporary Framework, which set as a requirement for the firm to be eligible for aid that the firm must not have been in difficulties on the 1 July 2008\textsuperscript{141}.

\textsuperscript{137} OJ C244, 2004, R&R guidelines, para 21
\textsuperscript{138} Graubæk, 2009 & Shilton, Undertainty over the future of Saab, 2009
\textsuperscript{139} Graubæk, 2009 & Shilton, Undertainty over the future of Saab, 2009
\textsuperscript{140} OJ C83, 2009, Temporary framework, section 4.3.2.(i)
\textsuperscript{141} Cf. section 8.1.Temporary aid to the car industry
Saab and Opel, both firms under the wings of GM, are in severe difficulties. Saab, have lost money even in good years\textsuperscript{142}, and experienced dramatically drop in sales starting 2008. This lead to Saab being filed for temporary bankruptcy protection on February 20th 2009\textsuperscript{143,144}, Saab is therefore very likely to be categorised as a firm in difficulty. Opel is so far not (30 July 09) declared insolvent, but planned insolvency for Opel is contemplated by the German government to create a basis for a possible new start for the firm with state assistance\textsuperscript{145}. This lead with high probability at least one of the European cars manufactures to be in difficulties according to the guidelines, with a high possibility of being followed by at least one more car manufacturer.

These firms may be declared to be in difficulties based on their situation of liquidity, but as mentioned before the manufactures may also be declared a firm in difficulties if the manufacturer shows significant signs of difficulties based on excess capacity, diminishing turnover, declining cash flow, declining asset value etc\textsuperscript{146}. In particular, excess capacity has been a recent problem in the industry\textsuperscript{147}, together with diminishing turnover caused by increased competition and falling demand, and drop in asset values\textsuperscript{148}.

The Commission may generally not have an interest in determining a firm as being in difficulties unless the situation of the firm is particular critical, because of the distortive nature of rescue and restructuring aid and because aid granted to other objectives will be more beneficial for creating growth in the economy. However, even that firms, in this case, the car manufactures, does not met the three general criteria, the manufacturers may in a situation where they are not appropriate for promoting public policy objectives, because of their financial situation. Some of these objectives require especially large enterprises to make significant own contributions, and furthermore, require that the objectives of the investments must go beyond community standards. In such situations, the Commission may determine the manufacturers as being in difficulties according to the guidelines, grounded on the additional criteria of excess capacity etc.

\textsuperscript{142} Graubæk, 2009
\textsuperscript{143} Shilton, Swedish automaker Saab seeks bankruptcy protection, 2009
\textsuperscript{144} The temporary bankruptcy protection enables Saab to carry out a restructuring programme, virtually separate Saab from GM and recreate Saab as an independent unit. (Source: see footnote above)
\textsuperscript{145} Henning, 2009
\textsuperscript{146} Cf. above
\textsuperscript{147} Cf. Section: 6.1 Difficulties in the industry predating the crisis
\textsuperscript{148} Cf. Historic www.euroinvestor.dk, ex. Opel, Saab, Fiat
The Temporary guidelines allow the Member States to grant state aid in the form of guarantees and loans. Aids granted in the form of guarantees enable the manufacturers to obtain loans to investments, but also to working capital. Thereby, the Member States have a possibility to help the car manufactures that currently not are in a situation to pursue the objectives of common European interest. Has the Commission not made an evaluation of the manufacturer before the adoption of the Temporary framework, the Commission might have an incentive not to determine the manufacturer as being in difficulties before the 1 July 2008, enabling the manufacturer to receive aid under the Temporary framework. Not being determined as a firm in difficulties may also be of in the interest of the manufacturer, for reasons of publicity.

6.3 Findings
The primary reason for the difficulties in the car industry is not the crisis, however the crisis have worsened the difficulties, pushing some of the car manufactures to the edge of bankruptcy. The underlying reasons causing the difficulties, is again grounded in an increase in the oil price, further enhanced by a change in consumer demand, uncertainly of new engine standards, and compliance with rising legal requirements. In other words, declining sales and higher productions costs have lowered the manufactures profit, combined with a need for investments in new technologies, caused by changed consumer demand and raising environmental obligations, have left the manufactures in difficulties.

The general reference to a firm as being in difficulties is not the same as the definition of a firm being in difficulties according to the community guidelines. The guidelines set out three clear criteria of the firm’s financial situation, determining when a firm is considered in difficulties. Additionally, the Commission can consider a firm to be in difficulties if usual signs of being in difficulties are present, such as exceed capacity and diminishing turnover. This may particularly be the case when the firm does not meet any of the three criteria, but still may be considered not to be appropriate to pursue objectives of common European interest.

Has the Commission not made an assessment of whether the manufacturer in question was in difficulties before the adoption of the Temporary framework, the Commission

---

149 Cf. section 8.1 The Temporary framework
may have an incentive to not determine the manufacturer to be in difficulties on the additional criteria of usual signs of difficulties. This would enable the manufacturer to receive aid under the Temporary framework, instead of under the provisions of the guidelines for rescue and restructuring.

It can be argued that there is a split between the “pure” European car manufactures and those being a part of the General Motors group. The “pure” European car manufactures seems according to the level of difficulty to be in a better position for being granted state aid than those being or have been under the wings of GM. So far, two car manufactures may be categorised as firm in difficulty under the guidelines, namely Opel and Saab, and may therefore be eligible for aid to rescue and restructuring.

7 Horizontal aid

7.1 General Block Exemption Regulation
The general Block Exemption Regulation (GBER)\textsuperscript{150} declares certain categories of aid compatible with the common market, without prior notification to the Commission\textsuperscript{151}. The GBER applies to state aid in all sectors\textsuperscript{152} and therefore also covers the car industry. However, if the car manufacturer is defined as a firm in difficulty under the community guidelines\textsuperscript{153}, the GBER does not apply\textsuperscript{154}.

The categories of aid exempted from notification, include among others aid for environmental protection, aid for research, development and innovation and aid for training\textsuperscript{155}, categories relevant for the Member States with regard to the granting of aid.

To be exempt the aid measure must fall within the individual thresholds in the regulation. Aid to R&D&I projects must not exceed €7,5 and 10 million respectively\textsuperscript{156}, dependent on the categorisation of the objective of the project. Aid to environmental

\begin{footnotesize}
\begin{itemize}
\item\textsuperscript{150}Reg No. 800/2008/EC, The General Block Exemption Regulation
\item\textsuperscript{151}General notification requirement for aid is found in article 88(3)EC, exemption from this rule in article 3 of Reg. No.800/2008/EC, GBER.
\item\textsuperscript{152}Reg No. 800/2008, GBER, Article 1.3.
\item\textsuperscript{153}See section 6.2. Are the car manufactures in difficulties according to the Community guidelines?
\item\textsuperscript{154}Reg. No. 800/2008/EC, GBER article 1.6 (c ) For definition of a firm in difficulty cf. section 6.2 Are the car manufactures in difficulties according to the Community guidelines?
\item\textsuperscript{155}Cf. Reg. No. 800/2008/EC, GBER, article 1.1
\item\textsuperscript{156}Reg. No. 800/2008/EC, GBER article. 6(c)(ii)&(iii) (The categories for which the car manufactures are eligible for aid cf. section 7.2.1 Aid for R&D projects)
\end{itemize}
\end{footnotesize}
protection not exceed € 7.5 million\textsuperscript{157}, and aid to training activities not € 2 million per project\textsuperscript{158}. To make a comparison, Opel Germany was assumed to lose around € 4.6 to € 5.3 million a day (July 09) awaiting a new owner\textsuperscript{159}, and training aid granted to Opel and Volvo, Belgium, in 2003 amounted to € 14.6 million and € 6.5 million respectively\textsuperscript{160}. The aid granted to granting to the training activities was at least three times larger than the threshold maximum, and aid granted to other investment projects, in the car industry, is assumed relatively to be higher than the thresholds as well. Most aid must therefore be assumed to subject to the notification requirement.

Should aid fall within these thresholds, large enterprises have an obligation to document that the aid measure will lead to a material increase in the size, scope, total amount spent or the speed of the completion of the project and that the project would not have been initiated in absence of the aid\textsuperscript{161}.

**7.2 Aid to Research, Development and Innovation**

Article 163EC state; “The Community shall have it as an objective of strengthen the scientific and technological bases of Community industry and encourage it to become more competitive at international level, while promoting all the research activities deemed necessary”. In general, the Commission has a favourable view regarding aid to R&D&I initiatives, as it strengthens the competitiveness of EU.

The European car industry is a major contributor to the Research, Development and Innovation (R&D&I), undertaken in Europe. The environment in the car industry is highly competitive, the industry must therefore constant development and innovate to ensure maintenance of the competitiveness\textsuperscript{162}. In the longer term, it will affect the industry’s global competitiveness, if this intense investment in research and development not is kept on a sustainable level. The uncertainly about new engine standards and the current financial lending situation may lead to a decrease in the R&D investment intensity in the industry. Supporting the industry in the field of R&D&I will

\textsuperscript{157} Reg. No. 800/2008/EC, GBER, art. 6(b)  
\textsuperscript{158} Reg. No. 800/2008/EC, GBER art. 6(g)  
\textsuperscript{159} Graubæk, 2009  
\textsuperscript{161} Reg. No. 800/2008/EC, GBER, Art. 8  
\textsuperscript{162} Evolution of the motor vehicle markets, 2008, p.12
be advantageous and to a certain extent necessary. Firstly, investments in R&D&I may ensure the car industry coming out of the economic crisis being competitive and able to meet the demand in relation to environmental friendly and fuel-efficient cars. Secondly, the investments will save jobs, as the research and development projects will need staffing\(^{163}\), and thirdly, with expectations to future grow in the demand for cars, the manufactures may with high probability increase their turnover, if they are able to meet the demand of the market\(^{164}\).

In general, to be eligible for aid under the framework for R&D&I, the manufacturer must not be in difficulties within the meaning of the Community guidelines on state aid for rescue and restructuring undertakings in difficulties\(^{165}\).

7.2.1 Aid for R&D projects
State aid to Research, Development and Innovation are compatible with the common market under art. 87(3)(c)EC, if the result of the balancing test is positive and leads to increased R&D&I activities without adversely affecting trading conditions to an extent contrary to the common interest\(^{166}\).

R&D projects, to which aid is planned, must fall within the categories of: fundamental research, industrial research or experimental research\(^{167}\). R&D projects in the car industry may fall within the category "industrial research" which is classified as "the planned research or critical investigation aimed at the acquisition of new knowledge and skills for developing new products, processes or services or for bringing about a significant improvement in existing products, processes or services. It comprises the creation of components of complex systems, which is necessary for the industrial research, notably for generic technology validation...\(^{168}\). Under this category the car industry, qualifying as a large enterprise, can receive state aid up to 50 % of the eligible costs\(^{169}\). Aid to R&D might also fall under the Experimental development. “the

\(^{163}\) This may involve necessary retraining of the employees skills.

\(^{164}\) See section 2.4Perspective of the future in European car industry

\(^{165}\)OJ C 323, 2006, R&D&I framework, para 2.1. See section 6.2Are the car manufactures in difficulties according to the Community guidelines?

\(^{166}\)OJ C 323, 2006, R&D&I framework, para 5

\(^{167}\)OJ C 323, 2006, R&D&I framework, para 5.1.1. (f), & Reg. No. 800/2008/EC, GBER, Art.31(3)

\(^{168}\)OJ C 323, 2006, R&D&I framework, para 2.2 (f), & Reg. No. 800/2008/EC, GBER, Art.30(3)

\(^{169}\)OJ C 323, 2006, R&D&I framework, Para 5.1.2. For calculation of the eligible costs, cf. para 5.1.4.
acquiring, combining, shaping, and using of exiting scientific, technological, business
and other relevant knowledge and skills for the purpose of producing plans and
arrangements or designs for new, altered or improved products, processes or services.
These may also include for example, other activities aiming at the conceptual definition,
planning and documentation of new products, processes and services”\(^{170}\). The
development of proto-types fall within this category, if the prototype is necessarily the
final commercial product and where it is too expensive to produce for it only to be used
for demonstration and validation purposes\(^{171}\). In the development of a new or refined
engine standard or other R&D projects, the engineers may need to develop prototypes
for testing etc. Therefore, part of the car manufactures R&D projects may be
categorised as experimental development. The car manufacturers may receive state aid
up to 25 % of the eligible costs\(^{172}\) under this category. Additionally, there is a
possibility of additional 15 %, if the investment is pursued in cross-border collaboration
with another undertaking, e.g. in collaboration with an SME or research organisation, or
if the research results are disseminated\(^{173}\).

The aid measure must induce the car manufactures to increase the R&D&I activities to a
level, at which they would not otherwise have carried out or carried out in a more
restricted manner. The increase in R&D&I have to be demonstrated by an increase in
the project size, scope, speed or in the total R&D&I expenditure\(^{174}\).

The Commission questioned the incentive effect of aid in a case\(^{175}\) where France was
planning to grant aid to Peugeot-Citroën and partners under the R&D&I framework\(^{176}\).
The case concerned aid to the development of a hybrid diesel car, a less polluting car,
the planned aid amounted to € 96 million of the total R&D cost of € 470million, out of
which € 270 million would constitute costs eligible for aid. The Commission concern
was whether Peugeot-Citroën as the second largest automotive manufacturer in Europe
would not have undertaken the project anyway without the granting of aid. Being part of

\(^{170}\)OJ C 323, 2006, R&D&I framework, para 2.2 (g), & Reg. No. 800/2008/EC, GBER, Art.30(4)
\(^{171}\) OJ C 323, 2006, R&D&I framework, para 2.2 (g), & Reg. No. 800/2008/EC, GBER, Art.30(4)
\(^{172}\) OJ C 323, 2006, R&D&I framework, para 2.2 (f), & Reg. No. 800/2008/EC, GBER, Art.30(3)
\(^{173}\)OJ C 323, 2006, R&D&I framework, para. 5.1.
\(^{174}\) OJ C 323, 2006, R&D&I framework, para 1.3.4.
\(^{175}\) C-51/07 and N530/2007 – The public version of the decision is not yet available.
\(^{176}\) The R&D project was within the framework of the French Industrial Innovation Agency aid scheme
under which the aid was authorised by the Commission in July 2006 (IP/06/1020), and therefore felt
within the framework for R&D that expired the January 1st 2007. The Commission opened the he
in-depth investigation in 2007. The aid amounted to more than € 5 million, and was therefore under the
obligation to be notified to the Commission.
one of the most R&D intensive sectors in the European economy, and having competitors announcing similar environmental friendly projects, the Commission doubted that a market failure existed in the field. If no market failure existed, aid granted to Peugeot-Citroën would give an unfair advantage\textsuperscript{177}, and therefore not be compatible with the common market. After the Commission initiated the in-depth investigation of the aid notification, France withdrew its notification\textsuperscript{178}. Germany on the other hand, had an aid scheme approved for Rolls Royce in 2008, after the Commission had tested the aid based on the balancing test\textsuperscript{179}.

In a time with falling sales, hereby lower profits, and difficulties in the access to finance on reasonable terms, some car manufactures may have difficulties raising capital to investments. To be eligible for aid the manufacturers will furthermore have to commit even more resources to the project, as the eligible costs to which aid is granted is limited to the costs arising from the activities that would not have been taken without the aid\textsuperscript{180}. E.g. if the project qualify for aid of 50% of the eligible costs, the manufacturer should make an own contribution of the remaining 50% the project is above what the manufacturer would have initiated without the aid. However, the aid will be beneficial for the manufacturers and a project with aid will enable the manufacturer to get a lead to the competitors.

7.2.2 Aid to a project of common European interest
A project of common European interest can be exempted under article 87(3)(b)EC\textsuperscript{181}. A project of common European interest can e.g. be know-how creation or research networks throughout Europe\textsuperscript{182}. The framework for R&D&I outlines a list of conditions that must be fulfilled for a project to be considered as a project of common European interest by the Commission\textsuperscript{183}. Firstly, the project should be clearly defined in respect of the terms of implementation, including its participants as well as its objectives. Secondly, the project must be of common European interest, to be considered as such.

\textsuperscript{177} IP/07/1679, 2007
\textsuperscript{178} OJ C189, 2008 p. 14
\textsuperscript{179} OJ C118, 2008, p. 1
\textsuperscript{180} Although not mentioned in the R&D&I framework, it is assumed that the eligible costs is limited to the costs arising from activities, which would not have been taken without aid. jf. Communication: Training aid, 2009, para 16 & OJ C82, 2008, \textit{environmental guidelines}, para 80
\textsuperscript{181} See section 5.3.1 Article 87(3)(b)EC
\textsuperscript{182} Nicolaides, Kekelekis and Kreis,2008, p.49)
\textsuperscript{183} See OJ C 323, 2006, R&D&I framework, paras 2.1-2.4.
the project must; i) contribute in a concrete, clear and identifiable manner to the Community interest. ii) the achieved advantages must extend to the community as a whole. iii) the project must be a substantive lead forward of the community objectives and iv) must show positive effects and be of wider relevance. Thirdly, the aid must be necessary to achieve the defined objective of common European interest and present an incentive for the execution of the project, and 4) the project is of great importance with respect to its character and volume. Generally, the commission will consider notified projects more favourably if they include a significant own contribution of the beneficiary to the project and/or if the project involves undertakings or research organisations from a significant number of member states\textsuperscript{184}.

Reasoned in the uncertainty what the new standards will be e.g. in the field of engines, it may be advantageous for car manufactures to do research and create know-how in such areas in cooperation. It may reduce the overall expenditure on the R&D pursuing these objectives, because the participants in the project will share their findings, and the same ideas not will be pursued twice, this would release resources to investments in other areas. However, due to the high competition between the different manufactures, cooperation may more likely take place between manufacturers and their respective suppliers with which they beforehand have close ties, as manufactures have outsourced much of their development to these suppliers\textsuperscript{185}.

It is however, questionable whether such projects can be justified as being a project of common European interest and be eligible for aid, even that it e.g. reduce the level of CO\textsubscript{2} emissions. The advantages achieved by the project must extend to the community as a whole. If the objective of the common project is the engines CO\textsubscript{2} emissions, it may be argued to be beneficial for the wider community. However, it is still questionable whether the project can be justified as being in common interest. The project must present a sustainable lead forward for community objectives, this criteria may the car industry have difficulties to fulfil. The research and development in projects likely to be pursued in the car industry, can be argued generally to target and benefit only the car production, and have no or only limited spill-over effects of wider relevance to and appliance in alternative sectors etc.

\textsuperscript{184} Cf. OJ 323, 2006, \textit{R&D&I framework}, para 2. (4)
\textsuperscript{185} See section2.1 Facts about European car industry
Therefore, it must be concluded that the probability for the car manufactures to receive aid to projects of common European interest is much doubted. However, the industry may indirectly benefit from aids given to common projects, which objectives are more general.

7.3 Aid to Environmental protection
The car industry faces more and more obligations in order to comply with higher standards for environmental protection, both from a legal perspective but also from environmental conscious consumers. For example, in regard to the legal aspects, the Commission recently adopted a regulation\(^\text{186}\) setting out emission performance standards for new passenger cars.

7.3.1 Aid directly benefiting the car industry
In the second Annex to the communication “Responding to the crisis in the European automotive sector”\(^\text{187}\), the Commission stated that member states may grant aid to the car sector enabled under the guidelines for environmental protection\(^\text{188}\). However, the possibilities for granting aid to the car manufacturing industry in the field of environmental protection, seems limited.

The guidelines apply to all sectors, but “The design and manufacture of environmental friendly products, machines or means of transport with a view to operating with fewer natural resources... are not covered by the guidelines”\(^\text{189}\). Therefore, investments in the development of more fuel-efficient car engines cannot be granted aid under this framework. Aid relating to the research, development or innovation of environmental friendly products is subject to assessment under the R&D&I framework\(^\text{190}191\), with the exception from acquisition of eco-innovation assets. It leaves the Member States back

\(^{186}\) Reg No 443/2009/EC (part of the Community`s integrated approach to reduce CO2 emissions from light-duty vehicles)
\(^{187}\) COM(2009)104 final Responding to the crisis in the European automotive industry
\(^{188}\) COM(2009) 104 final - Annex 2 Inventory of state aid instruments, section 3
\(^{189}\) OJ C 82, environmental guidelines, para 59- 60.
\(^{191}\) In this regard, France granted in 2007 aid to a development programme which objective was to introduce innovative products to improve engine efficiency and economise on fuel consumption when cars start and stop, under the framework for R&D&I. The target of the programme was a 30 % reduction in the consumption of fuel and efforts to reduction of greenhouse gas emissions. (Source: IP/08/954)
with a limited range of possibilities to grant aid to environmental protection that directly will benefit the car manufacturers’ competitiveness and sales. However, aid may be granted in relation to more environmental beneficial production facilities, the use of recycle material, and the disposal of production waste.

In general, state aid in the field of environmental protection is to ensure that a higher level of protection will be achieved with than without the aid. Therefore, the Member States cannot grant any aid for the support the industry complying with existing or new Community standards\textsuperscript{192}. The aid granted must either go beyond Community standards, increase environmental protection in the absence of such standards or induce the early adoption of future community standards\textsuperscript{193}. The state aid should be linked to a market failure, and create an incentive for the manufacturer to pursue activities beneficial for the environment. Production is often organised in the interest of the manufacturer without regard to the social cost of the production, the optimal level of environmental protection are on that ground often not reached\textsuperscript{194}. Furthermore, even though it not being mentioned in the guidelines, it is assumed that the requirement of the firm not being in difficulties applies.

One of the possibilities emphasised in the Annex 2, is aid granted to support environmental studies. The objective of the study should be investigation of possible investments in measures going beyond community standards or increasing the level of environmental protection in the absence of such standards\textsuperscript{195}. This could be studies regarding investments in launching of an eco-innovation project\textsuperscript{196}, e.g. for the use of recyclable material in the production\textsuperscript{197}, and reduction or elimination of hazardous materials. The project objective must be new or substantially improved compared to exiting products, achieve a higher environmental benefit than the alternatives, and have a clear edge of risk involved. The aid intensity can be up to 50 % of the eligible costs, plus additional 10 % if the project concerns eco-innovation\textsuperscript{198}. The eligible cost must be

\textsuperscript{192} OJ C 82, 2008, \textit{environmental guidelines}, section 2.2
\textsuperscript{193} OJ C 82, 2008, \textit{environmental guidelines}, section 1.5
\textsuperscript{194} Vesterdorf and Nielsen, 2008, p. 108
\textsuperscript{195} (OJ C 82, 2008, \textit{environmental guidelines}, paras 73 and 91
\textsuperscript{196} A UK bus and coach manufacturer, Alexander Dennis Limited, achieved reductions of carbon emissions in their busses, a technology which was categorised as an eco-innovation. (Source: Alexander-Dennis, 2009) & \textit{“Bus firm praised for eco-innovation”}, 2008
\textsuperscript{197} Ex. In 2007 VW used 85% recycled material in their production, 14 months before it became a requirement under the Community standards. (source: Autosieger: VW Tiguanzu 85 % recyclebar - KBA verleihnt Zertifikat, 2007)
\textsuperscript{198} OJ C 82, 2008, \textit{environmental guidelines}, paras 76-78
limited to the extra investment costs necessary to achieve a higher level of environmental protection than required by the Community standards.\textsuperscript{199}

Another possibility is aid to improve the environmental performance in the production processes. This could be emission reductions in the manufacturing process, e.g. Volvo Truck Sweden was approved aid to investments that reduced the level of volatile organic compounds from painting the trucks, and reduction of the noise level from the production during nights.\textsuperscript{200} These initiatives resulted in emission levels better than required by the Community standards, and therefore qualified for aid under the guidelines.

7.3.2 Aid indirectly benefiting the car industry
In 2007, the European Council stressed certain minimum targets in emission reductions, among those, savings in the European energy consumption. One of the targets was a 10\% binding minimum target that should be achieved by all Member States in the share of biofuels in the overall EU transport petrol and diesel consumption by 2010.\textsuperscript{201}

Aid granted for sustainable biofuels to undertakings extracting bio-fuels, may have beneficial spill over effects on car industry for those car manufactures developing motors using biofuels.\textsuperscript{202} Development in sustainable biofuels may be advantageous in relation to the development of engines, as e.g. the use of biodiesel requires a special technology or design of the engine, as the consistence of biodiesel may become viscous at lower temperatures, depending on the feedstock used.\textsuperscript{203} Furthermore, the more widespread the biofuel becomes, the more demand for motor engines using biofuels may arrive.

\textsuperscript{199} OJ C 82, 2008, \textit{environmental guidelines}, para 80
\textsuperscript{200} N 75/2005 Sweden - C(2005) 1469 final 2005, See particular para 3.5 & 45
\textsuperscript{201} OJ C 82, 2008, \textit{environmental guidelines}, para 1.1.3.
\textsuperscript{202} COM(2009) 104 final – Annex 2 “\textit{inventory state aid instruments}”, p. 2
\textsuperscript{203} E.g. biodiesel (B100) may become viscous at low temperatures and attention have to be paid to this in the design and development of the motors, e.g. requirement of fuel-line heathers or a design hindering the B100 to enter the motor or it can be the use of specific synthetic rubber in the mechanical injection. Currently there is a few numbers of cars using biofuel or biodiesel are available on the European market. Generally, car manufactures recommend a blend of 15\% biodiesel and 85\% mineral diesel for use in “regular” engine cars systems. (Source: www.wikipedia.org)
Another area where the car industry may benefit indirectly is by aid granted to undertakings to the acquisition of green transport vehicles\textsuperscript{204}, as this will have positive effects the demand.

7.4 Aid to training activities

7.4.1 Training aid

The car industry is a major employer in the EU, and threats about lay-offs and closures to deal with structural problems and over-capacity are in concern by both employees and politicians.

Training plays an essential part in introducing new technologies and stimulating innovation and investment, and with the industry’s high investment in research & development, therefore aid to training activities will be advantageous. The Commission has stressed that it is critically important to maintain investment in training, even at time of rising unemployment, in order to develop new skills\textsuperscript{205}.

However, in Annex 2 to “The response to the crisis in the European Automotive industry”, the Commission has not emphasised the possibility available for the Member States to grant aid to training activities in car industry\textsuperscript{206}. Previously, training aid has been granted to the car industry, and may be a possibility for the Member States to consider in the current situation, both in relation to safeguarding employment and to build-up a skilled workforce.

In the assessment of planned aid, the Commission distinction between specific and general training aid. Specific aid has a more distortive nature, as the training more or less only is beneficial for the firm in question and not for the society as a whole\textsuperscript{207}. General training is more advantageous for the society, as it provides the employee with qualifications that are transferable to other firms or fields of work and improve the employability of the trained worker. Such training can be training certified by authorities, jointly organised training between independent companies etc.\textsuperscript{208}, but also

\textsuperscript{204} OJ C82, 2008, \textit{environmental guidelines}, para 44
\textsuperscript{205} OJ C83, 2009, \textit{Temporary framework}, p. 5
\textsuperscript{206} However, they mention training aid falling under the GBER EC No 800/2008, being exempt from notification if the aid measure does not exceed € 2 million.
\textsuperscript{207} Reg. No 800/2008/EC, \textit{GBER}, art. 38(1)
\textsuperscript{208} Cf. Reg. No 800/2008/EC, \textit{GBER}, art. 38 (2) (a)+(b)
training which in the end contribute to general objectives in the environmental field, such as eco-innovation, environmental management or corporate social responsibility are considered as general training. The Commission is much more likely to approve aid to general training activities.

Opel Austria was approved aid to training of their employees in order to manufacture a new small-size petrol engine they have developed, on the reason that the training activities was general, the project was innovative of nature and the trained employees acquired skills that was apart from their general field.

General training activities allow the Member States to grant a higher aid intensity. Training activities categorised as general training can be granted up to 60% of the eligible cost, whereas specific training only entails 25%. Member States may have an incentive to categorise as much training as possible under the general category, as it will entail them grant a higher amount of aid to their industries. In two Belgian cases, notified close to each other, regarding training aid to Opel Antwerp and Volvo Gent, the Commission questioned whether the Belgian State had interpreted the definition of general training aid to widely. After the Commission’s decision to initiate proceedings because of the doubt regarding the categorisation of the training, the Belgian State amended its notification in the Opel case by changing the questioned part of the general training to specific training. In the case for training aid to Volvo Gent, the Belgian state as able to document sufficient information that the training was of general nature.

The aid must entail the manufacturer to change its behaviour so that better or more training is provided than without the aid. In the case of training aid to Opel Antwerp, the Belgian State considered an extensive staff retraining programme necessary as

---

209 Reg. No. 800/2008, GBER, para 63
210 On the other hand, companies will be more interested in specific training rather than general, as specific training will create more certainty for recouping the investments.
211 Quigley, 2009, p.242
212 Reg. No. 800/8000/EC, GBER, art. 39. Under certain circumstances an aid intensity of up to 80% may be granted for general training measures.
213 In the previous regulation Reg. No 68/2001/EC a distinction was made between large and SME enterprises in the allowed aid intensities. (see Art. 4)
214 Commission decision: Aid to Volvo Gent, 2003, para 6
215 Commission decision: Aid to Volvo Gent, 2003, para 8
216 Commission decision: Aid to Opel Belgium, 2003, para 8
217 Commission decision: Aid to Opel Belgium 2003, para 22-24
218 Communication: Training aid, 2009, para 12
General Motors Europe intended to invest in the plant in Antwerp by extending the existing press shop and retool the plant for production of new car models as part of a restructuring plan\(^{219}\). In the case of Volvo Gent, Volvo intended to produce new models in the plant\(^{220}\). The incentive of the aid was not questioned by the Commission in any of cases and training aid were approved. In the Volvo Antwerp and Opel Gent cases, as well as the Opel Austria case, the training was intended in areas or machinery in which the plants not previously had expertise.

The aid measures must be justified by a market failure, which emerge when undertakings does not invest to the optimal social level of training seen from the perspective of the society\(^{221}\). Caused by the effects of the crisis, manufactures may be more reluctant to pursue training activities. The optimal social level of training may therefore not be reached, and can be argued to create a market failure that can justify state aid. On the other hand, planned aid to training activities, which have been cut down because of savings, can be argued not to have changed the behaviour of the manufacturer in the meaning intended. The training activities would have been provided or provided in a better quality or quantity had the economic crisis not made its entrance. The market failure have arisen on other criteria than those mentioned in the Communication, as the criteria for existence of a market failure in the Communication is all about the positive externalities of the training and the difficulties in appropriating the rents\(^{222}\). However, because of the crisis, the Commission might has an incentive to approve aid to training activities, which the manufactures due to needs of cost cutting have decided not to pursue or pursue in a smaller extent.

### 7.5 Aid to rescue and restructuring

Aid to Rescue and Restructuring is placed last in the section of aid to horizontal objectives, because the Commission has emphasised that the possibilities for granting aid under these guidelines should be considered only when aid to other horizontal objectives not is satisfying\(^{223}\).

---

\(^{219}\) Commission decision; Aid to Opel Beligum, 2003, para 4
\(^{220}\) Commission decision: Aid to Volvo Gent, 2003, para 4
\(^{221}\) Communication: Training aid 2009, para 2.1.
\(^{223}\) OJ C244, 2004, *R&R Guidelines*, para 21
Rescue and restructuring aid are covered by the same set of guidelines, as the public authority granting the aid in both cases are faced with a firm in difficulty, and the rescue and restructuring process often are two parts of a single operation\textsuperscript{224}. The guidelines are applicable to all sectors\textsuperscript{225}, and hereby also to the automotive sector.

Aid to rescue and restructuring is one of the most distortive forms of aid possible for Member States to grant\textsuperscript{226}, but may be the last possibility for Member States to save companies valuable to the society. The Member States may have different incentives whether to grant state aid to ailing car manufactures or not. Reasons to grant aid is of cause to maintain employment and growth, which among other things would secure incoming tax revenues. A car manufacturer going out of business could cause major unemployment in a region; the region of the Member State would receive less tax revenues and in the same time be obligated to pay out a major check to social benefits. However, the Member States could also have reasons not to grant aid to ailing firms. According to Sweden’s Enterprise Minister, Maud Olofssen, the reason to refuse aid to Saab in the first round (Feb 09) was a stand to defend the taxpayers’ money\textsuperscript{227}. Another reason to be reluctant could be the general level of the state aid budget. Moreover, Member States having car manufactures that are or have been a part of the General Motors US, argue that it is General Motors obligation to help manufactures that are under their wings\textsuperscript{228}. The governments have furthermore feared that aid granted to those manufacturers would go to the GM cooperation rather than benefitting the intended manufacturer\textsuperscript{229}. In the end, the Member States in general want to save their car industries, but want to make sure that the aid does not deviate from the primary target of being beneficial for the manufacturers and the society of the Member State.

### 7.5.1 Rescuing aid

If the situation comes so far in the European car industry that there is an urgent need for aid to keep the respective car manufacturer afloat, Member States may grant rescuing aid, eventually followed by aid to the restructuring process. This presupposes that the

\begin{itemize}
  \item \textsuperscript{224} OJ C244, 2004, \textit{R\&R guidelines}, para 14
  \item \textsuperscript{225} OJ C244, 2004, \textit{R\&R guidelines}, para 18
  \item \textsuperscript{226} Vesterdorf and Nielsen, 2008, p.139
  \item \textsuperscript{227} Shilton, 2009, \textit{Swedish automaker Saab seeks bankruptcy protection}. More about the granting of aid to Saab, see further section 7.5.2 Restructuring aid
  \item \textsuperscript{228} Shilton, Swedish automaker Saab seeks bankruptcy protection, 2009
  \item \textsuperscript{229} Willis, 2009
\end{itemize}
car manufacturer in question is determined as being a firm in difficulty, under the Commissions definition in the guidelines\textsuperscript{230}.

As discussed in the section 6.2, Opel Germany and Saab Sweden are currently the car manufactures eligible for aid pursuant the provisions in the rescue and restructuring guidelines. In case no purchasers would be found to these manufactures, or they are unable to keep the business afloat to the deal have taken place, their respective governments may have a possibility of providing a temporary and reversible assistance of rescue aid under the provisions of the guidelines. The rescue aid will give the firm time to analyse the issues, which gave rise to the difficulties, and to develop an appropriate plan to remedy those difficulties\textsuperscript{231}.

The following conditions must be met for rescue aid to be approved\textsuperscript{232}.

1) The aid is to be provided in the form of a loan guarantee or a loan, limited to the minimum necessary to keep the firm in business, with an interest rate comparable with the market rate for healthy undertakings and come to an end within 6 months\textsuperscript{233}.

2) The aid measure should be justifiable on the grounds of serious social difficulties and have no unduly spill-over effects on other Member States

3) The Member State must communicate to the Commission, no later than 6 months after the authorisation of the aid that a restructuring plan, liquidation plan has been authorised or proof that the loan has been reimbursed.

4) The aid is restricted to the minimum necessary to keep the firm in business for the period of the authorised aid, this thus may include aid to undertake immediate actions, to avoid further losses\textsuperscript{234}.

5) A one time, last time principle applies. The firm must not have received any aid to rescue or restructuring within the last 10 years. Is the firm part of a corporate group, the 10 years principle still applies, if the group as a whole previously has received rescue aid. On the other hand, if one undertaking under the corporate group has received rescue aid, the remaining undertakings and the group as a

\textsuperscript{230} Cf. section 6.2, Are the car manufactures in difficulties according to the Community guidelines?
\textsuperscript{231} OJ C244, 2004, R&R guidelines para 15
\textsuperscript{232} OJ C244, 2004, R&R guidelines para 25
\textsuperscript{233} OJ C244, 2004, R&R guidelines, para 15,16 and 25a
\textsuperscript{234} OJ C244, 2004, R&R guidelines, para 16 and 25 (d)
whole is eligible for rescue aid, if no aid is passed on in the corporation from the beneficiary undertaking\textsuperscript{235236}.

Once a restructuring or liquidation plan has been established and implemented, all further aid is considered restructuring aid. The arguments for the approval of aid to rescuing aid will more or less be identical to those of restructuring aid, and therefore will be assessed together in the following section.

7.5.2 Restructuring aid
The restructuring process shall restore the firms’ long-term viability, through either or both reorganisation or rationalisation. This must be demonstrated to the Commission in a restructuring plan, with a reasonable timescale and based on reliable assumptions to the future. The restructuring plan should convince the Commission that a restructuring of the firm would return it back to a competitive situation, being able to compete on its own merits\textsuperscript{237}. Any aid granted to the restructuring process must tackle the causes of the losses, and not just recover them. With-drawl the firm from loss making activities and making existing activities competitive again through restructuring are typical aspects of the restructuring process\textsuperscript{238}.

Are the car manufactures eligible for aid to rescue and restructuring? The car manufacturer must fulfil two general criteria; first the manufacturer must be determined as a firm in difficulties\textsuperscript{239}. Many car manufactures are cooperated, e.g. PSA Peugeot Citroën\textsuperscript{240} and Opel/Vauxhall\textsuperscript{241}. Furthermore are Opel, Vauxhall and Saab are part of the GM Europe. Have the group as whole or the manufacturer received aid under the objectives of these guidelines during the past 10 years, the possibility has been exploited and the manufacturer are not eligible for aid. Does the car manufacturer on the other hand meet

\textsuperscript{235} OJ C244, 2004, R&R guidelines, para 72-77
\textsuperscript{236} The “one time, last time principle” was introduced in the guidelines in the amendment in 2004, but the Commissions previous practice did follow the same principle (source: Quigley,2009,p.297, footnote 24)
\textsuperscript{237} OJ C244, 2004, R&R guidelines, para 35-37
\textsuperscript{238} OJ C244, 2004, R&R guidelines, para 17
\textsuperscript{239} Cf. Section 6.2. Are the car manufactures in difficulties according to the Community guidelines?
\textsuperscript{240} PSA Peugeot Citroën Main
\textsuperscript{241} Opel/vauxhall,1997-2007
these criteria; the issue is the justification of the aid and the Member States willingness to grant it.

The granting of restructuring aid is in principle only allowed in circumstances where it can be demonstrated that it does not run counter to Community interests. Therefore, strict criteria must be met and any distortion of competition in relation to other competitors and Member States must be offset by benefits following the firm’s survival. Those benefits can be the net effect of saved jobs in the industry and the effect on suppliers, or with concern to the market structure\textsuperscript{242}.

Hopefully, will car manufactures receiving aid stay in business, but will also keep a share of the market, a share that would have been beneficial for those manufactures that had been able to survive on their own. A high employment rate dependent on the car manufacturer staying in business in the region where the production is based, and additional spill-over effects on suppliers and related industries, may offset the distortion of competition. The closure of a manufacturer will not only effect the employment in the direct production, but suppliers may also be forced to go out of business as they are close tied with the respective manufacturers, and thereby further rise the unemployment rate. E.g., a closure of Saab will entail 4.100 Saab employees being laid-off, whereof 3.700 in the region where Saab is based and a further effect of 15.000 additional jobs, which is dependent on Saab’s survival\textsuperscript{243}.

In order to ensure that the adverse effects on trading conditions are minimised as much as possible, so that the positive effects pursued outweigh the adverse ones, compensatory measures must be taken\textsuperscript{244,245}. Such measures could be to comprise divestment of assets, reductions in capacity or market presence and reduction of entry barriers. If the market is suffering from long-term overcapacity, the reduction in the company’s capacity may have to be up to 100\textsuperscript{246}. If such compensatory measures is not taken, the aid will be considered being contrary to the common interest within article 87(3)(c)EC\textsuperscript{247}. 

\textsuperscript{242} OJ C244, 2004, R&R guidelines, para 31
\textsuperscript{243} Shilton, Swedish automaker Saab seeks bankruptcy protection, 2009
\textsuperscript{244} Quigley, 2009, p.304
\textsuperscript{245} This condition does not apply for SMEs cf. OJ C244, 2004, R&R guidelines, para 41
\textsuperscript{246} OJ C244, 2004, R&R guidelines, para 38-42
\textsuperscript{247} Quigley, 2009, p.304
Furthermore, the aid beneficial must show own commitment to the restructuring, large firms should contribute to the restructuring by at least 50 % of their own resources\textsuperscript{248}, the financing might derive from the sales of assets that are not part of the core business.

Saab and Volvo both sought bailout from the Swedish government, the government approved aid to Volvo\textsuperscript{249}, but did not believe in the sustainability of Saab’s restructuring plan, and neglected Saab aid\textsuperscript{250}. Thus, Saab was filled bankruptcy protection in February 2009, giving Saab time to find a buyer. The reasoning for the refusal of aid was according to the Enterprise Minister, Maud Olofsson, to defend the taxpayers’ money\textsuperscript{251}. An agreement have been reached for the purchase of Saab by Koeninggeeg, but part of the deal include the Swedish governments willingness to provide a state guarantee for a EIB loan, but Koeningegg is concerned whether the Swedish government in the end will refuse to provide such a guarantee\textsuperscript{252}.

Compared to the situation in the 80s where governments seemed benevolent to provide aid to help their struggling car industry, the governments seems to be more concerned on how they spend state money now. This may be a result of a limited state budget, political consideration but may also be an effect of the increased transparency of the state aid rules that has been implemented since the 80s.

7.6 Findings

Investment projects initiated by the car industry normally entail significant amounts of investment capital, and it may be concluded that most aid granted to the industry must be notified to Commission.

Generally applying, to be eligible for aid to promote objectives of public policy, such as environmental achievements and projects giving a lead forward etc, the car manufacturer most not be categorised as a firm in difficulty, according to the community guidelines for rescue and restructuring. The aid measure must be justified by a market failure, situations where the firms does not invest to the optimal social level

\textsuperscript{248} OJ C244, 2004, \textit{R&R guidelines}, para 43
\textsuperscript{249} Cf. Section 6.2 Are the car manufactures in difficulties according to the Community guidelines?
\textsuperscript{250} Shilton, \textit{Swedish automaker Saab seeks bankruptcy protection}, 2009
\textsuperscript{251} Shilton, \textit{Swedish automaker Saab seeks bankruptcy protection}, 2009
\textsuperscript{252} Shilton, \textit{Luxuary automaker koeningegg announces purchase of Saab}, 2009

48
seen from the perspective of the society. Furthermore, the aid granted must have an incentive effect, changing the behaviour of the manufacturer. The projects must go beyond what the manufacturer would have initiated without the aid. E.g. aid was granted to Volvo Trucks Sweden for investments reducing the noise from the production and reduction of the level compounds from paint, which went beyond Community Standards.

If the general requirements set out in; 1) the guidelines for environmental protection, and 2) the framework for R&D&I, and 3) the Communication for training aid are fulfilled, the Member States can grant the car industry aid to those objectives. However, the possibilities under the environmental guidelines, which directly will benefit the car manufactures competitiveness and sales are limited, as many investments relating to environmental achievements in the products will fall within the R&D.

Moreover, the granting of aid still depends to a certain extent on the manufactures financial situation, even if the manufactures are not considered being in difficulties. Due to lower profit, caused by lower sales, and the difficulties with the access to credit, some car manufactures may have difficulties to raise capital to finance their investments. The aid which the Member States can grant under the horizontal objectives, does only cover a part of the additional costs related to the investments going beyond what the manufacturer would have initiated without the aid.

The last possibility the Member States have to grant aid is to the rescue and restructuring processes of their car industry. The fundamental criteria is whether the manufacturer can be categorised as a firm in difficulty and whether the manufacturer or, if part of a corporate group, the group has not received aid to rescue or restructuring within the last ten years. If eligible for aid on these criteria, the granting of aid must be justified on the weighting of the distortive effects on competition against the benefits of keeping the manufacturer in business. The car manufacturers have a major influence on the economy of the Member State, in particular in relation to employment and spill-over effects on suppliers and related industries. If aid cannot be granted pursuant the provisions in the Temporary state aid rules, and the general criteria for granting aid to rescue and restructuring are meet, Member States may provide aid to their car industries on the provisions of these guidelines.
Comparing the situation to the past when governments were pumping state aid into their ailing car industries, the respective governments seem to be more reluctant to provide aid to their industries now, but there can be more reasons to this. It could be an outcome of stricter state aid rules, but can also be grounded in political reasons in relation to the state budget, objectives and political popularity.

8 Temporary state aid

8.1 The Temporary framework
Under the Recovery plan and in addition to the responses to remedy the crisis in the financial sector, the Commission adopted the Temporary framework in December 2008. The framework facilitates access to finance, through derogations from some of the existing horizontal aid measures. The Commission considered it necessary to adopt a set of Temporary state aid rules to help tackling the problems in the market with the access to finance.

The Commission has, in the Response to the car industry, emphasised the possibilities Member states have at their disposal under the traditional horizontal state aid rules to support their industries. Therefore, it can be argued that the Commission wish to encourage the Member States to consider state support under the traditional horizontal aid state rules, before looking at the possibilities provided in the temporary framework. Nonetheless, the possibilities to grant aid under the Temporary framework an important state aid instrument for the car industry.

The Temporary state aid framework pursues two objectives, firstly to unblock bank lending to companies and hereby guarantee continuity to their access to finance, and secondly, to encourage companies to continue investing in the future, in particular in a sustainable grow economy including the development of green products. The Commission is concerned that the significant progress that have been achieved, 

---

254 Quigley, 2009, p.351
255 OJ C83, 2009, Temporary framework, p. 1
256 OJ C83, 2009, Temporary framework, p. 2
257 OJ C83, 2009, Temporary framework, p. 2
50
especially in the environmental field are in risk of being haltered or reversed in course of the crisis.

The Temporary framework declare certain measures of state aid compatible with the common market on the basis of article 87(3)(b)EC to remedy a serious disturbance in the economy\textsuperscript{259}. The temporary framework only aims at facilitating access to credit to firms facing difficulties in the light of the financial and economic crisis. Firms that were in difficulties pre-dating the crisis cannot benefit from the temporary framework\textsuperscript{260}\textsuperscript{261}. The provisions of the temporary framework are currently applicable to measures granted before the 31\textsuperscript{st} December 2010\textsuperscript{262}.

Notified\textsuperscript{263} state aid under the Temporary framework must be necessary, appropriate and proportionate to remedy a serious disturbance in the economy\textsuperscript{264}, and the Member States must demonstrate this.

8.1.1 Temporary aid to the car industry
In the Commission’s view, the temporary aid measures provided in the framework may significantly help the car sector, such as subsidised guarantees and subsidised loans for investment in the development of green products\textsuperscript{265}. Four of the possible aid measures in the Temporary framework, may be relevant for the Member States for the granting of aid to the car manufactures.

The first option available to the Member States is aid in the form of a cash grant, the cash grand may amount up to € 500,000 per undertaking and must authorised under a scheme\textsuperscript{266}. The Commission have approved several of such schemes, and states in the State aid Scoreboard 2009\textsuperscript{267}, that these schemes also are applicable to the car sector\textsuperscript{268},

\textsuperscript{259} COM(2009) 164 final, *State aid scoreboard*, p. 22
\textsuperscript{260} See further section 6.2 Are the car manufactures in difficulties according to the Community guidelines?
\textsuperscript{261} Throughout the framework one of the conditions for state aid being considered as compatible with the common market is that the firms were not in difficulty on 1 July 2008. E.g. point 4.2.2. (c) in OJ C83, 2009, *Temporary framework*, p. 7
\textsuperscript{262} OJ C83, 2009, *Temporary framework*, paras 4.2.2.(f), 4.3.2.(e), 4.4.2.(a), 4.5.2.(f)
\textsuperscript{263} If aid approved under a scheme, the individual granted aid does not need to be notified. (Source: IP/08/1993, 2008)
\textsuperscript{264} OJ C83, 2009, *Temporary framework*, p. 6
\textsuperscript{265} MEMO/09/50, 2009
\textsuperscript{266} OJ C83, 2009 *Temporary framework*, para 4.2.2.
\textsuperscript{268} COM(2009)164 final, *State aid scoreboard*, p. 26
so far the manufacturer meet the criteria. However, a cash grant of € 500,000 will not
determinant to whether the manufacturer will stay in business, turn around the financial
situation in relation to restructuring nor be a significant support in relation to
investments269. The € 500,000 cash grant may therefore only be an advantageous for
suppliers to the car industry, and may this way around indirectly be beneficial for the
car manufactures.

A more advantageous possibility for the Member States to support their car industry,
and a possibility some Member States already have made use of, is the possibility to
grant aid in the form of guarantees270. To large enterprises the Temporary framework
allows a two year reduction of 15 % of the annual premium for new guarantees
calculated on the basis of a set of safe-harbour provisions271272. The state aid element is
the percentage difference between the annual safe-harbour premium and the reduced
premium multiplied by the guaranteed amount273. The guarantees must not exceed 90%
of the loan274, and the maximum loan must not exceed the total annual wage bill of the
beneficiary in 2008275. The guarantee may relate to both investment and working capital
loans276, which may make this aid measures preferable to manufactures with strong
liquidity problems caused by the economic crisis as the loan can be applied in the daily
operation.

The Commission authorised an ad-hoc state aid guarantee granted to Volvo Sweden.
The guarantee enabled Volvo to access loans from the European Investment Bank, loans

269 Cf. section 7.1 General Block Exemption Regulation for a comparison to the expenses in the car
industry.
270 OJ C83, 2009, Temporary framework, para 4.2.2.
271 OJ C83, 2009, Temporary framework, para 4.3.2.
272 The use of safe-harbour provisions is only temporary applicable for large enterprises.
273 Example: if a large company is granted a guarantee of € 200 million, has a rating of A in Standard and
Poor’s rating classes and a normal collateralisation the safe-harbour would be 0,55% (cf. Annex
Temporary framework OJ C-83 7.4.2009) the new premium would be 0,55*(1-0,15) =0,47% . The state
aid would constitute (0,55%-0,47%)*200million =€600.000. The lower payment capacity the higher is the
annual safe-harbour and the higher will the state aid element in the form of the guarantee be. Under
certain circumstances can a reference top-up rate be applied and the aid is calculated with this rate as the
basis rate. (cf. OJ C155 Commission notice on the appliaition of art. 87 and 88 of the EC treay to state
aid in the form of guarantees,2008) Normally, guarantees are compatible with the common market, and
therefore does not constitute state aid, in so far that the risk-carrying is remunerated by an appropriate
premium on based on the guaranteed at market oriented price or counter-guaranteed amount. (Source: OJ
C155 Commission notice on the appliaition of art. 87 and 88 of the EC treay to state aid in the form of
guarantees 2008) para. 3.2. (d))
274 Under the Notice on the application of articles 87 and 88 of the EC treaty to state aid in form of
guarantees, the guarantee must not exceed 80 % of the loan. Cf. Para 3.2( c) and 4.1 (c )
275 OJ C83, 2009, Temporary framework, para 4.3.2.(d)
276 OJ C83, 2009, Temporary framework, para 4.3.2.(g)
which should co-finance the development of environmentally friendly cars\textsuperscript{277}. Volvo will pay an adequate premium for the guarantee, which is in line with the provisions of the temporary framework; therefore, the aid guarantee is compatible with the common market under art. 87(3)(b)EC. Furthermore, Volvo has provided the Swedish government a high-quality collateral covering the full guaranteed amount\textsuperscript{278}.

The smaller sports car manufacturer Koenigsegg\textsuperscript{279} has confirmed the purchase of Saab, but on the condition that the Swedish government provide a state guarantee. If Saab is considered to have been in difficulties predating 1 July 2008, the guarantee must be granted to Koenigsegg or the Koenigsegg group, if such is founded, after the final purchase and not to Saab\textsuperscript{280}. The granted guarantee can both relate to investment and working capital loans. Depending on the Koenigsegg’s plans with Saab, the guarantee may be used to obtain loans to working capital, so the new subdivision has a capital fundament to build on.

The Commission have also approved several schemes to Member States allowing them to grant state guarantees, among them UK and Germany\textsuperscript{281}; under which schemes the Member States may grant guarantees to their car manufactures.

The framework also allows for aid measures in the form of a subsidised interest rate, the reduced interest rate may be applied for interest payments on public or private loans before 31 December 2010, after that date the normal interest rates apply\textsuperscript{282}.

The last possibility the Member States can use in relation to the car manufactures under the Temporary framework, is aid for the production of green products. Aid in the form of guarantees may not be sufficient to finance costly projects aiming at increasing environmental protection. Therefore, Member States may grant aid in the form of subsidised loans with an interest-rate reduction of 25 % to large enterprises for the production of green products\textsuperscript{283}. The subsidised interest rate may be applied in

\textsuperscript{277} IP/09/879, 2009

\textsuperscript{278} IP/09/879, 2009

\textsuperscript{279} Smaller Swedish sports car manufacturer, producing luxury sports cars, in the price category of € 2-4 million, to wealthy men in the middle East. Koenigsegg currently employees 50 employees.

\textsuperscript{280} Neither can a state guarantee be granted to a firm in financial difficulties under the traditional rules for state aid in the form of guarantees. (Source: OJ C155 Commission notice on the application of art. 87 and 88 of the EC treaty to state aid in the form of guarantees, 2008, para 3.2.(a))

\textsuperscript{281} IP/09/333, 2009


\textsuperscript{283} OJ C83, 2009, \textit{Temporary framework}, para. 4.5.2.(g)
maximum two years following the granting of the loan. Subsidised loans may cause serious distortions of completion and should be strictly limited to specific situations and target investments. The loan must be used to launch a project for production of new products that significantly improve environmental protection. Products involving early adoption or go beyond future Community standards, the product must be put on the market 2 years before the standards enters into force. The aid must be necessary for the launching of the project and may be granted to existing projects if it becomes necessary, due to the new economic situation. In the situation that the manufacturer are able to initiate the project themselves they are not eligible for the aid, but in the situation where they had initiated a project and due to falling revenues or hindrances to credit to the further finance of the project they are eligible for aid.

The Commission has among others, approved schemes for loans with reduced interest rate for green products to France and the UK, which may be used to grant aid to the car industry. The UK authorities indicated that the scheme initially would concern standards applicable to the car industry, but would open to all sectors. The soft loans to green products will help companies to shift their business models in accordance with EU environmental objectives, however, the companies have to launch projects that go beyond the community standards.

The conclusion of section 7.3 was that the Member States had limited possibility to grant aid to the car industry to pursue objectives of environmental protection under the environmental guidelines. With the use of the term “green products” it must be assumed that projects, which under the traditional state aid framework fall within the provisions of the R&D&I framework, may be eligible under the Temporary framework for the aid consisting of a subsidised loan to green products.

---

284 OJ C83, 2009, Temporary framework, para. 4.5.2.(g)
285 OJ C83, 2009, Temporary framework para 4.5.2. (h)
286 OJ C83, 2009, Temporary framework, Para 4.5.2.(b-d)
287 OJ C83, 2009, The Temporary framework, para. 4.5.2.(b)
288 MEMO/09/50, 2009
289 COM(2009) 164 final, State aid scoreboard, p. 26
290 IP/09/2005, 2009
291 IP/09/333, 2009
8.2 Fear of protectionism and illegal state aid

The Commission wants to take a stand, ensuring that protectionism measures not return to the internal market as a cause of the economic crisis. Member States may attempt to help their industries through the recession by introducing requirements protecting the national market. The Commission has pointed out that; any requirement, de jure or de facto, obligating beneficiaries of aid only to invest or make purchases within the national market are contrary to EU state aid and Single Market rules, as it would run the risk of a return to protectionism. Resurgence of protectionism would be of no-one’s interest as rising barriers within Europe not are they way out of the crisis292.

The Commission expressed their concern, after among others293, France in February had set out requirements for the granting of aid, obligating the benefitting car manufactures only to make investments in France or buy components from suppliers located in France294. Thus, the French authorities declared in a letter to the Commission later in February that neither the envisaged aid measures nor the planned loans containing aid to the French car manufactures would contain such requirements295.

Few weeks later, France was again in the spotlight of the Commission concern trying get around the competition rules. Rumours had said, that France had announced plans to give loans and other measures to the three main car manufactures in France, in exchange for not shutting down French plants or sack French workers. At the same time, Renault announced a planned relocation of part of its production from the Slovenia plant to a plant located in France, but the location would not create job losses in Slovenia296. The Commission was in concern whether the relocation, creating jobs in France was linked to the pledge of aid if jobs were kept in France. The argumentation for the relocation set forth by Renault was an intention to increase production of cheaper models in both countries, and that the shift was intended to meet a shortfall in capacity in the Slovenian plant. If the creation of jobs in France can be linked to the pledge of state aid, it is illegal under the EU rules297.

292 MEMO/09/50, 2009
293 In addition, Spanish and Italian aid plans to the car industry have concerned the Commission in regard to protectionism.
294 MEMO/09/50, 2009
295 MEMO/09/09 2009
296 BBC: Renault job row rocks EU summit, 2009
297 BBC: Renault job row rocks EU summit, 2009
8.3 Findings

The Temporary framework gives the Member States several possibilities to grant aid ad-hoc or under schemes to give the car industry better access to finance. The different forms of the aid are advantageous for different objectives, and are therefore not equally beneficial for the car manufactures.

Generally, to be eligible to aid under the Temporary framework the car manufactures must not have been in difficulties according to the Community guidelines on the 1 July 2008. The Member States must have granted the aid measure before the end of 2010, and must not make the granting of aid bound on counterbalance requirements of measures aiming at protecting the national market.

The most beneficial possibility for the Member States to grant aid to the car industry under the Temporary framework, can be argued to be aid in the form of a guarantee. The guarantee gives the flexibility that the loan obtained, both can be used to support investments but also be used as working capital. A possibility that is advantageous for car manufactures that have become in difficulties after 1 July 2008, and have become in need of working capital to the operations. This possibility is not available under the traditional state aid framework.

The Commission values environmental objectives high, and state guarantees may not be sufficient to finance costly projects pursuing objectives of environmental protection. Therefore, the Temporary framework provides the possibility that Member States may grant aid in the form of subsidised loans to investments for the production green products. The production of new products must significantly improve environmental protection, and if used to pursue future standards, these must be put on the market two years before the Community standards become effective.

9 Conclusion

The situation in the car industry is constantly changing. The thesis give a picture of how the situation looked at the time of writing, some problems may have been solved and others arrived. Already predating the economic crisis the European car industry was in need of structural changes, due to overcapacity, changing consumer demands, growing global competition and uncertainty of the direction to go in the development of e.g.
motor engines, as no common standards for the future yet are set. Furthermore, the increasing environmental obligations and other legal requirements for the production have been a challenge to many manufactures. The crisis made things worse, the demand dropped significantly and the access to finance became limited. There is a distinction between the commonly used definition of difficulties in the industry, and the Commission’s definition of a firm in difficulty. Two car manufactures are found to possibly be categorised as a firm in difficulty under the Commission’s definition. The determination of whether a firm is in difficulty under the Community guidelines is decisive to which aid the Member State can grant the car manufacturer.

The situations of overcapacity and need of structural changes in the past cannot be compared to the problems the car industry is facing today, as the limited access to credit have placed the car manufacturers in another situation and limited the manufacturers own possibilities to remedy the problems. Furthermore, the regime of state aid was ineffective and to the end of the 80’s the Member States more or less had loose reins to grant aid to the industry. Therefore, no experiences from the history can be drawn to handle the granting of aid today. However, the huge amounts of aid previously granted to the car industry have influenced the development of today’s state aid framework by setting requirements for the granting of aid.

The Commission have made several efforts to remedy the effects of the economic crisis. First, they adopted the European Recovery Plan in November 2008, focusing on boosting demand, encourage continued investments in R&D&I and ease the access to credit. In November 2008, the Temporary framework was adopted to give access to finance. State aid under this framework was justified by article 87(3)(b)EC to remedy a serious disturbance in the economy, a provision which the Commission previously had expressed only to be utilised in situations of risk and immediate impact comparable to the banking sector. One of the actions in the Recovery plan specially targeted the car industry with regard to maintaining developments in green technologies. Furthermore, the Commission adopted a framework to target the crisis in the automotive industry in February 2009, among others, the objectives focused on providing measures of capital to research and development investments with environmental benefits. In the annex 2 to the framework was an inventory of possible actions, which the Member States could use to support their car industry.
Except from the temporary possibility under article 87(3)(b)EC to grant aid to ease the access to credit, the article can also be used to justify aid to projects of common European interest. However, projects likely to be initiated by car manufactures may not be of relevance to the wider economy, this possibility may therefore be considered not relevant to the Member States.

Horizontal objectives are primary justified by the exemption in article 87(3)(c)EC. Aid granted under the traditional horizontal state aid rules, entail the manufactures to raise a significant amount of financing to launch the investments. The reason for the adoption of the Temporary state aid rules was the limited access to credit at reasonable terms, the car manufactures might therefore have difficulties raising the capital to launch investments pursuing the objectives that will make them eligible for aid. Furthermore, aid to horizontal objectives requires the manufacturer’s behaviour to change in regard to enhance the outcome of the objective, compared to situations without aid. Even compensated by aid, the car manufactures will need to make a higher investment, if they should be eligible for aid pursuing horizontal objectives. Especially with regard to investments pursuing objectives under the environmental guidelines, the manufactures incentives may be reduced because of the crisis. Aid granted pursuant these provisions will not directly be beneficial for the competitiveness, as they are limited to environmental achievements in the production process.

Therefore, the Temporary framework provides the best opportunities for the Member States to support ailing car manufacturers, so far the manufacturers where not in difficulties the 1 July 2008. The Member States may grant aid in form of guarantees that enable the manufacturers to obtain loans, which can be used to either investments or working capital. This possibility is the most flexible the Member States can grant, as the aid not is marked to a specific objective. Especially the possibility for working aid may be particular beneficial for manufactures which have come in problems regarding cash flows in the daily operation.

To maintain and enhance the achievements in environmental protection, the Member States may grant aid in the form of subsidised loans to the production of green products. The aid is assumed to be applicable to all investments aiming to achieve a sustainable lead forward in environmental protection, no matter whether the investment would fall within the guidelines for environmental protection or the framework for R&D&I.
Should some manufactures be determined to have fallen within the Community definition of a firm in difficulty, before the 1 July 2008, the Member States must look in the guidelines for rescue and restructuring to find provisions justifying aid to the car manufactures.

What effects the Commission’s and the Member States’ attempts to help the car industry through the crisis and enhance the global competitiveness will have, that only the future will show. The possibilities made available in the Temporary framework to the Member States, will not the less give the Member States a fair chance to help manufactures through the crisis, target the future demand and enhance the competitiveness, while paying attention to environmental protection.
10 Bibliography


IP/09/205 “Commission authoises France to introduce a temporary scheme to grant reduced interest loans to business producing green products” Brussels: Rapid Press releases RAPID, 3.2.2009.

IP/09/333. “State aid: Commission authorises the United Kingdom to introduce two temporary measures to grant loan guarantees on one hand, and interest rate subsidies to businesses producing green products on the other hand” Brussels: Rapid press release RAPID, 27.3.2009.


*All material with exception of books can be found on the enclosed CD.*

**Websites**

www.eib.org  
www.acea.be  
www.ec.europa.eu  
www.europa.eu  
www.euroinvestor.dk  
www.wikipidia.com
Attachment I

Graph of West European car sales
Source: J.D. Power report: June 2009 West European Car sales.