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Driving European recovery

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Annex I

A PROGRAMME FOR FINANCIAL MARKET REFORM

To deliver responsible and reliable financial markets for the future, the Commission will propose an ambitious new reform programme in the course of this year with five key objectives:

(a) Providing the EU with a **supervisory framework** that detects potential risks early, deals with them effectively before they have an impact, and meets the challenge of complex international financial markets;

(b) Filling the gaps where European or national **regulation** is insufficient or incomplete, based on a "safety first" approach;

(c) Ensuring that European investors and small and medium-sized companies can be **confident** about their savings, access to credit and their rights as investors in financial products;

(d) Improving **risk management** in financial firms and aligning pay incentives with sustainable performance;

(e) Ensuring more **effective sanctions** against market wrongdoing.

Reforming the European supervisory framework

One of the major lessons of the crisis was that when it came to the crunch, cross-border supervisory cooperation was ineffective and unresponsive. The EU's supervisory system has failed to adjust to the complexity, internationalisation and inter-linkages of financial markets.

Building on the recommendations of the de Larosière Group, the Commission will present a European financial supervision package before the end of May 2009, for decision at the June European Council. The legislative changes to give effect to these proposals will follow in the autumn and should be adopted in time for the renewed supervisory arrangements to be up and running by the end of 2010. The package will include measures to establish a **European body to oversee the stability of the financial system as a whole** and proposals on the architecture of a **European financial supervision system.**

It is also crucial to strengthen the EU's **crisis management and intervention mechanisms**. Appropriate crisis intervention tools must be available in all Member States to allow early intervention in ailing banks or insurance firms to stabilise the financial sector, ensure confidence in the financial system and guarantee the continuity of key financial services, whilst minimising the costs to the taxpayer. Given the increasing degree to which the EU financial market is integrated, cross-border crisis arrangements need to be efficient and generate confidence among Member States. The Commission will publish a White Paper on early intervention by June 2009.

Stronger, more comprehensive and 'safety-first' regulation

The crisis exposed certain shortcomings in current European and national regulatory frameworks. It also brought to light the problems of a fragmented and incomplete regulatory coverage of the financial sector. Parts of the financial system were free from any effective regulatory oversight. Some complex financial products were inadequately understood or regulated. Debates have very much focused on **hedge funds and private equity**. By the end of April the Commission will come forward with legislative proposals to ensure appropriate oversight and regulation of these and other systemically important market players.

Equally, there needs to be **better capitalisation and less debt and leverage**. The Commission is therefore reviewing the prudential treatment of bank's trading activities and will reinforce both the level and the quality of capital. In particular, it will:

- reinforce capital requirements for **trading book activities** (i.e. the capital requirements related to assets that banks hold for short-term resale). This proposal will be introduced in the context of the revision of the Capital Requirements Directive (CRD), to be presented by June 2009;

- upgrade capital requirements for **complex securitisations**, both in the banking and the trading book. This proposal will also be introduced in the context of the revision of the Capital Requirements Directive (CRD), to be proposed by June 2009;

- mitigate any excessive **procyclicality** of existing capital requirements through measures including the possibility of building up additional reserves in good times. It is also crucial to provide good and transparent accounting treatment of these counter-cyclical buffers ('dynamic provisioning'). Conversely, banks should be allowed to reduce capital buffers during difficult times, thus ensuring adequate availability of capital over the whole economic cycle. A report on "excessive" pro-cyclicality in the CRD will be presented by the end of 2009;

- initiate a rolling programme of actions to introduce a far more **consistent set of supervisory rules**. Key differences in national legislation stemming from exceptions, derogations, additions made at national level or ambiguities contained in current directives should be identified and removed, so a harmonised core set of standards is defined and applied throughout the Member States;

- work on measures supplementary to **risk-based requirements** in the CRD. In the G-20 and the Basel Committee fora, the Commission has already raised the need for a new and simple metric to supplement the existing risk-based capital requirements (e.g. addressing leverage and/or liquidity risk). The international dimension and the need for coordination and coherence are important when developing this work. Nevertheless, the specific needs of the EU banking system may require the EU to adopt different measures that are most suited to its own needs. The Commission will present proposals in autumn 2009.

The EU also needs to act to avert the dangers of **complex financial products** that pose systemic risks. The Commission will come forward with initiatives to make sure that the industry uses central counterparty clearing for such products. On 19 February, the industry confirmed its engagement to use EU-based central clearing for eligible EU contracts by end-

July 2009. Signatories will work closely with infrastructure providers, regulators and the European authorities including the ECB in resolving outstanding technical, regulatory, legal and practical issues. Moreover, as part of a review of complex financial products the Commission will present a report on the use of derivatives by June 2009 and will follow this up with appropriate initiatives to increase transparency and address any financial stability concerns.

The Commission will also introduce legislation to simplify and harmonise the national substantive laws regarding **securities holding** and transaction in the EU by the end of 2009.

While the **UCITS** regulatory framework has worked well during the crisis in shielding investors from exposure to risks other than market risk, some weaknesses have been revealed. Particular attention will be paid to money market funds and the lessons from the alleged Madoff fraud.

Reinforcing the protection of investors, consumers and small companies

The interests of European investors, consumers and SMEs, must be at the centre of the reform. Additional measures are needed to **reinforce depositor, investor and policy holder protection**, covering the overall adequacy and scope of a broad range of existing financial market directives.

An effective and comprehensive legal framework for **retail financial services** needs to be put into place. The Commission will therefore:

- come forward with a Communication by April 2009 on **retail investment products**. This will explain the legislative actions that the Commission will propose to strengthen the effectiveness of safeguards to be respected when financial institutions market, sell or recommend packaged investment products to retail investors. These measures will aim to create a regulatory environment that takes account of consumer behaviour, delivers clear comparable pre-contractual information to investors, places clear responsibilities on financial intermediaries to help retail investors in selecting investments adapted to their needs and risk profile.

- review, by the end of the year, the adequacy of existing **deposit guarantee schemes** in banking, securities and insurance and make appropriate legislative proposals;

- reflect on how to ensure **responsible lending and borrowing**, including a reliable framework on credit intermediation. A public hearing on **responsible lending and borrowing** will be organised in July 2009. Follow-up measures will be presented by autumn 2009;

- ensure that the **voice of European investors** is much more strongly heard on all financial issues. The Commission therefore proposes to provide direct funding to facilitate the capacity-building of investor stakeholders to represent their interests in financial services policies at EU level, through training, research and information. A proposal will be presented by the end of 2009;

- promote the strengthening of **financial education** throughout Europe, by continuing to help teachers to incorporate financial matters into the school curriculum, while respecting the competence of Member States in the field of education;

- examine ways to ensure that **foreclosure procedures** are avoided wherever possible, to prevent citizens from losing their homes. A report setting out best practices in this area will be published by the end of this year;

- come forward by mid-2009 with proposals to ensure that the full benefits of a **Single Euro Payments Area** are realised.

Improving risk management and getting pay incentives right

Pay and bonuses inside many financial institutions have been inappropriate and too orientated towards **excessive risk-taking**. Questionable profits and short-termism have been rewarded. Long-term planning was ignored. Controls by shareholders were almost non-existent. If financial institutions are to earn back the trust and confidence of the European investors and businesses, action must be taken on corporate governance and remuneration structures.

The Commission will strengthen its 2004 Recommendation on **remuneration of directors** of listed companies by April 2009. On remuneration schemes in the financial sector, perverse incentives and excessive risk-taking must be urgently addressed throughout firms. In April the Commission will therefore also table a new Recommendation specifically on **remuneration in financial services**. In autumn, the Commission will, in the context of the revision of the Capital Requirements Directive as well as in other relevant sectoral legislation, provide that supervisory authorities may impose **capital 'sanctions'** on financial institutions whose remuneration policy is found to generate unacceptable risk.

More generally, the Commission will examine the application of the Basel Committee recommendations on **corporate governance** for banks. By the end of 2009 the Commission will report on current practices. Regulatory action may have to be initiated on the basis of this analysis.

Making sanctions more of a deterrent

If confidence is to return to markets and adequate incentives for good behaviour are to be put in place, investors, consumers and companies must be confident that misbehaviour within the financial industry will be dealt with quickly, fairly and effectively. At present, **sanctioning regimes** are often weak and quite heterogeneous. The Commission is examining this issue and will report to the ECOFIN Council in autumn 2009. In this context, the Commission will review the **Market Abuse Directive** by autumn 2009. In the light of this review, it will make proposals on how Member State sanctions should be strengthened and adequately enforced..

Annex II

STRUCTURAL REFORM STIMULI MEASURES IN RESPONSE TO THE EERP

1. An overview and some first general insights.

Structural reform measures are a central part of the EERP. The December European Council endorsed a multifaceted European Economic Recovery Programme (EERP). *Inter alia,* it called for an overall fiscal stimulus equivalent to 1.5% of EU27 GDP as well as for priority to be given to structural reform measures as part of the Lisbon strategy for Growth and Jobs. Thus, the EERP recognised that while the aim of structural reforms is to tackle long-run strategic challenges, many measures can immediately contribute to recovery efforts by sustaining aggregate demand, supporting employment, addressing competitiveness problems and protecting incomes of disadvantaged groups.

Member States have taken relevant action across a broad spectrum of policy areas. Based on information drawn from National Reform Programmes, stability/convergence programmes and a consultation with national authorities via the Economic Policy Committee and the Employment Committee, some 500 measures have been identified which are relevant for the recovery process in 2009 and 2010. These can be grouped under four broad policy types namely: i) measures and reforms aimed towards supporting industrial sectors, businesses and companies; ii) measures and reforms aimed at supporting a good functioning of labour markets; iii) measures and reforms aimed at supporting investment activity; iv) measures and reforms that support household purchasing power, including social policies.

It is too early to comprehensively assess the impact of these measures, but some first insights can already be drawn. As shown on Table 1, a substantial part of the measures (32% of the measures in the data set) fall under the heading of "supporting investment activity", reflecting a degree of commonality across Member States. Of the 500 measures for which information is available, some 30% are classified as "supporting industrial sectors, business and companies", whilst lowest share (16%) is for to "supporting the labour market", which may reflect the lagging impact of the slowdown on the labour market so far. More than half (55%) are considered to bolster "aggregate demand", and a large share (28%) are considered relevant for supporting employment. Interestingly, approximately half of all measures were already planned as part of medium-term reform strategies, and the other half can be considered as a new response of governments to the slowdown.

The fiscal space is diminishing and there is growing evidence that measures have cross-border spill-over effects raising questions as regards the effectiveness and protection of the single market. A first reading suggests that many measures are in areas identified as potentially useful in the EERP, and there are no obvious cases of rolling-back past reform measures or repeating major policy errors, e.g. widening access to early retirement schemes which reduces labour supply or large scale direct employment creation schemes which have proved ineffective. There is nonetheless an opportunity to better understand the effectiveness of measures in coming months. An exchange of best practices can help to improve mutual learning and enhance the effectiveness of measures in order to use the potential of the single market to the full.

Table 1: Overview of structural reform measures relevant for recovery programmes based on available information

Member States	Policy type				Economic policy objectives				Status		
	1. Supporting industrial sectors, businesses and companies	2. Supporting a good functioning of labour markets	3. Supporting the investment activity	4. Supporting the household purchasing power	Sustaining aggregate demand	Sustaining employment	Addressing competitiveness problems	Protecting incomes of disadvantaged groups	Implementation of medium term agenda	Frontloading/ upgrading of medium term agenda	New action
BE	6	12	5	6	9	14	3	6	6	1	18
BG	6	8	7	1	9	9	3	1	11	2	6
CZ	6	2	18	2	25	10	1	0	15	0	11
DK	2	0	3	2	7	0	0	0	2	1	3
DE	11	6	6	12	18	13	0	4	2	4	24
EE	2	3	9	0	9	7	0	0	9	2	1
IE	2	0	6	2	8	2	0	1	6	1	1
EL	5	7	6	4	11	4	5	3	12	0	3
ES	21	5	9	13	20	10	10	4	5	2	12
FR	19	6	11	13	26	7	2	1	10	3	16
IT	6	2	8	5	9	4	4	2	6	1	10
CY	3	0	7	2	10	4	1	0	6	0	4
LV	8	2	8	5	6	2	5	4	9	3	3
LT	4	3	13	11	14	7	1	3	10	2	11
LU	6	1	7	5	10	5	2	1	6	0	7
HU	6	2	6	2	12	7	0	1	3	2	7
MT	3	2	3	2	6	4	2	0	4	3	2
NL	8	3	3	5	14	3	0	2	3	2	10
AT	11	3	9	9	16	6	2	0	4	0	3
PL	8	4	19	3	20	6	3	2	18	2	8
PT	11	5	5	5	19	9	1	3	1	3	12
RO	11	6	3	5	9	4	0	2	0	0	21
SI	7	1	9	0	10	6	5	0	5	0	2
SK	3	2	2	0	5	3	0	0	1	1	4
FI	2	2	4	2	6	6	2	0	3	1	6
SE	5	6	3	8	6	7	1	1	2	3	4
UK	5	4	6	4	9	6	4	3	1	8	7
total EU27	187	97	195	128	323	165	57	44	160	47	216
% Total	**31%**	**16%**	**32%**	**21%**	**55%**	**28%**	**10%**	**7%**	**38%**	**11%**	**51%**

Note: In some cases, a measure can be relevantly classified under two policy type headings or to contribute to multiple policy objectives. The resulting "double counting" implies that in the summary tables reported below, the total sum of measures are not always equal to 503, but can be more or less. For example, they have been classified 607 times under the different policy types. Finally, the status of 80 measures needs clarification and these measures have, therefore, not been included.

2. A closer look at individual policy areas

Measures aimed at supporting industrial sectors, businesses and companies

These account for 31% of all actions (see Table 2). The majority of these measures (60%) are designed to alleviate financing constraints of businesses and SMEs, which seems to reflect the very restrictive credit conditions facing companies. They are envisaged in practically all Member States. Many measures are very similar in nature to existing SME access-to-finance schemes which address market failures associated with information asymmetries, and thus they tend to focus either on increasing the volumes of subsidised loans or loan guarantees available and/or their concessionary nature. Measures bolstering sector-specific demand represent about 16% of the proposed actions. Most measures are fiscal incentives or direct subsidies to consumers in the car, tourism and construction sectors, sometimes also related to environmental policy objectives, such as CO_2 emissions.

An example are measures in support of demand in the car industry (AT, DE, ES, FR, IT, LU, RO) which couple tax exemptions for cars with lower CO_2 emissions with a direct financial incentive for scrapping an old vehicle when buying a new one. Measures providing non-financial support to businesses concern mainly reductions in administrative burdens or the expansion of special public SME support services: they are envisaged in 12 Member States. Sector-specific direct subsidies to firms are only proposed in nine Member State (BE, CY, EL, ES, FR, IT, LU, AT, SE) and concern fiscal advantages and aid to lengthen the maturity structure of debt for companies in the real estate sector as well as the creation of a fund to aid strategically important sectors. It can also be mentioned that in many countries, investments in social services infrastructures (incl. health care, social housing, child care, long-term care) are intended to boost the construction sector and generate labour demand, while improving access to various social services (CZ, DE, DK, FI, IE, HU, LT, PT,RO, SK, SE, UK).

As noted above, measures which provide specific support to individual sectors warrant reflection to ensure efficiency at EU level. A key question is whether the focus of sector specific actions should be on supporting workers, with a high priority on demand side measures.

Table 2: Summary of structural reform measures; business sector and labour markets

Member States	1. Supporting industrial sectors, businesses and companies					2. Supporting a good functioning of labour markets				
	1.1 Easing financing constraints for businesses/ SMEs	1.2 Sector-specific demand support	1.3 Non-financial measures supporting business (e.g. regulatory)	1.4 Sector-specific direct subsidies	1.5 Partial state takeovers of large non-financial companies	2.1 Promoting wage moderation.	2.2 Temporary working-time reduction	2.3 Reduction of tax on labour	2.4 Unemployment benefit system and social assistance	2.5 Easing labour market transitions (training, placement, other job-search help)
BE	4	0	1	1	0	0	0	7	1	4
BG	3	1	2	0	0	1	1	1	1	4
CZ	6	0	0	0	0	0	0	2	0	0
DK	2	0	0	0	0	0	0	0	0	0
DE	8	3	0	0	0	0	2	1	2	3
EE	0	0	1	0	0	1	0	0	1	1
IE	1	1	0	0	0	0	0	0	0	0
EL	3	0	0	2	0	0	0	1	3	3
ES	7	2	4	7	0	0	0	2	1	2
FR	9	7	0	3	0	0	1	3	1	2
IT	1	1	1	1	0	0	0	2	0	1
CY	0	1	0	2	0	0	0	0	0	0
LV	7	1	0	0	0	1	0	0	0	0
LT	1	0	2	0	0	1	0	1	0	1
LU	3	2	0	1	0	0	1	0	0	0
HU	4	0	2	0	0	0	0	0	0	1
MT	0	2	1	0	0	0	0	1	0	2
NL	7	1	0	0	0	0	2	0	0	1
AT	7	1	1	2	0	0	1	0	0	2
PL	5	1	2	0	0	0	0	2	0	1
PT	6	2	3	0	0	0	0	3	1	4
RO	8	2	2	0	0	2	0	1	1	2
SI	6	0	0	0	0	0	1	1	0	0
SK	2	1	0	0	0	0	0	0	0	2
FI	2	0	0	0	0	0	0	1	1	1
SE	4	0	0	1	0	0	0	4	0	2
UK	4	1	0	0	0	0	0	0	0	3
Total EU27	110	30	22	20	0	6	9	33	13	41
% Total	**60%**	**16%**	**12%**	**11%**	**0%**	**6%**	**9%**	**32%**	**13%**	**40%**

Deleted:

Member States	1. Supporting indu	
	1.1 Easing financing constraints for businesses/ SMEs	1.2 Se specifi deman suppor
BE	4	0
BG	3	1
CZ	6	0
DK	2	0
DE	8	3
EE	0	0
IE	1	1
EL	3	0
ES	7	2
FR	9	7
IT	1	1
CY	0	1
LV	7	1
LT	1	0
LU	3	2
HU	4	0
MT	0	2
NL	7	1
AT	7	1
PL	5	1
PT	6	2
RO	8	2
SI	6	0
SK	2	1
FI	2	0
SE	4	0
UK	4	1
Total EU27	110	30
% Total	**60%**	**16%**

Measures and reforms aimed at supporting a good functioning of labour markets

These account for 16% of measures in the information set. Many of them facilitate flexibility within firms (through retraining and working time arrangement) or labour market transitions (through job placement, training, and encouragement to geographical mobility). Temporary working-time reductions and flexible working-time arrangements might prove to be a key instrument to prevent mass lay-offs during times of crisis. Measures extending or introducing new forms of support to short-time schemes are recorded in AT, BG, DE, LU, NL, PT and SI**.** In some countries, these arrangements have been agreed or in the process of negotiation with social partners (AT, LT) and, in some cases, the cancelled hours of work are used for training and lifelong learning activities (DE, CZ, HU, SI). A wide variety of reforms focus on easing labour market transitions by increasing training opportunities (e.g. in BG, FI, IE, IT, PT) and strengthening the public employment agencies to limit the friction in the labour market and enhance the matching process between workers and firms (AT, ES, DE, EL, FR, PT, RO, UK). The improvement of the job-search counselling to the unemployed and the modernization of public employment services (PES) are a priority in several Member States (for example in BE, DE, DK, ES, FI, FR, HU, LT, NL, SE, SK, UK). Some countries are making recently laid off people and new unemployed people a priority group for ALMPs (e.g. BG, EL, ES and FR). Others are providing funds to encourage start-ups (AT, PT) or self-employment (CZ, ES, LT, SE, SI). Reduction of taxes on labour is applied in many Member States (32% of labour market measures) and can boost both labour demand and labour supply while supporting household purchasing power. General cuts in social security contributions have for example been implemented or planned in SE and RO, whereas targeted tax cuts (generally on the low-skilled and low-paid) are recorded in several Member States (such as AT, BE, BG, CZ, DE, ES, FR, IT, FI, MT, PL, PT, RO and SE). These actions need to be seen together with targeted changes in the design of unemployment benefit systems, which have been applied or planned in a number of countries. Such measures tend to take two main directions, either guaranteeing an adequate safety net by increasing the level of unemployment benefits (BG, FR), extending their duration (LT, RO) or coverage (ES, FR, FI), or fostering activation (e.g. BG, CZ, DK, IT, SK).

Finally, important measures to promote wage developments in line with productivity have been taken by some non-euro area countries, especially those with large current account imbalances. While EE, LV and LT have cut the public sector wage bill, BG has aligned incomes in the public sector to productivity growth: these developments may contribute to restore competitiveness positions. The overview again point to the need to look at policy responses also from the perspective of cross-country spill-over effects, for example, for temporary working time reductions and targeted transfer payments.

Measures to support investment activity

These account for 32% of measures in the information set (see Table 3). Regarding physical infrastructure (42% of investment measures), many measures consist of investment in roads, railroads, ports and airports, but also measures to increase the share of renewable energy. Also, most transport infrastructure projects imply regular implementation of medium term agendas, in many cases co-financed from Structural and Cohesion funds. Energy efficiency measures (25%) vary according to their targeted beneficiary, i.e., households or firms. Such projects usually consist of financial instruments for promoting investments (e.g. subsidies, loans with lower interest rates, tax credits), regulatory instruments (regulations for buildings, regulations on energy saving production), and public grants for certain types of investment. R&D and innovation (33%) measures mostly consist of funding activities (i.e., increase R&D

spending), both across the economy, specifically targeted at start-ups, SMEs, sectors (e.g. automobile), specific purposes (e.g. green transport, biotechnologies), and institutions (such as universities). Other measures concern patent regulations, develop or implement R&D plans and support the recruitment of researchers. While the majority of infrastructure measures have specific budgets and clear timelines, the budgets and transposition of R&D investment measures are less certain. Nevertheless, a number of Member States have announced ambitious new increase in investment funding (for example DE). AT, LU, FI, ES, and UK are among countries that plan significant increase in investment in 2009-2010 either as new or frontloaded projects. Recently acceded Member States appear to prioritise existing commitments that are often co-financed by the Structural Funds.

A first assessment tentatively suggests that more than half of measures could come on stream in 2009 and 2010, thus bolstering aggregate demand in this period. Some projects may produce positive spill-over effects on other Member States and contribute to value added at EU level. For example, about a third of countries plan to modernise railway infrastructure, including projects in the TEN-T network, and about half of all physical infrastructure investments are co-financed from Structural Funds. Going forward, the demand will need to focus on efficiency especially as public investment budgets will come under pressure given fiscal consolidation needs. One key question is whether more emphasis should be placed ion the maintenance of existing infrastructure and the upgrading private housing (e.g. energy efficiency) as opposed to large scale new projects.

Table 3: Summary of structural reform measures – investment and purchasing power

Member States	3. Supporting the investment activity			4. Supporting the household purchasing power		
	3.1 Physical infrastructure	3.2 Energy efficiency	3.3 R&D and innovation	4.1 Income support, general	4.2 Income support, targeted	4.3 Household subsidy for certain type of goods/services
BE	3	1	0	2	4	0
BG	1	1	3	0	1	0
CZ	8	1	8	2	0	0
DK	1	1	1	2	0	0
DE	2	2	0	4	5	1
EE	2	1	6	0	0	0
IE	2	4	0	0	1	1
EL	1	0	3	1	3	0
ES	1	1	1	8	3	2
FR	4	1	1	3	5	4
IT	1	3	4	0	4	1
CY	3	2	1	0	1	1
LV	0	0	3	1	4	0
LT	6	3	4	4	4	1
LU	4	1	2	1	1	3
HU	3	0	0	0	1	0
MT	1	2	0	2	0	0
NL	1	1	1	3	2	0
AT	1	4	3	1	6	2
PL	9	3	4	1	1	0
PT	2	3	0	1	4	0
RO	2	0	1	1	2	2
SI	3	1	4	0	0	0
SK	1	1	0	0	0	0
FI	1	1	2	2	0	0
SE	1	0	0	2	5	0
UK	3	2	0	2	1	1
Total EU27	67	40	52	43	58	19
% Total	**42%**	**25%**	**33%**	**36%**	**48%**	**16%**

Measures to support household purchasing power

Those account for 21% of all measures in the information set (see Table3), and of these some 60% are targeted towards specific groups, in particular low income households (but also pensioners and families with children). By focussing on groups with relatively high marginal propensity to consume such measures may be efficient in terms of impact on consumption. General tax reductions have been most pronounced in those Member States where these tax cuts, in particular on labour income, have been part of a longer term structural policy agenda to lower taxes on labour (AT, SE, DK, FI and EL). This suggests positive effects of ensuring that short term countercyclical policies are consistent with the long term structural policy agenda. Other countries have made more limited changes to tax bands or other parametric changes (such as LU, ES, MT, LV). General income tax reductions have the advantage of being transparent, easily implemented, unbiased towards specific sectors, and increase incentives to work. However, they are not targeted and are often costly from a fiscal perspective, which may explain their limited scope in many Member States.

Several countries have adjusted social security contributions paid by employees (for example DE, CZ, DK, NL). Such measures benefit by concentrating the increase in disposable incomes and the reduction in work disincentives on low and middle class households. Finally, a relatively large number of countries have introduced income support measures that target low income households (for example AT, BE, BG, ES, EL, DE, NL, PT, RO, UK), although they often are of a quite limited overall size in terms of budget impact. As low income households also covers unemployed persons it would seem to be a group that is particularly hit by the crisis. While in some cases questions could be posed as regards negative incentives to work this may overall be less of a concern in a context of a shortfall of labour demand. A more important concern may instead relate to the prospects of reversibility given that these measures generally top-up of transfers or allowances (for example higher allowances to meet higher energy costs which may now be on their way down). A particularly relevant issue to consider in the context of changes to tax and benefits is the interplay between short term efficiency and effectiveness to stimulate aggregate demand and the challenge to provide proper incentives for employment and growth in the medium term.

Some Member States are introducing temporary or one-off measures to increase social benefits, such one-off payments in child benefits (AT, DE) and a temporary special allowances (FR), one off payment for heating charges to low income households (BG) and a lump-sum to the unemployed, low-income pensioners and persons with disabilities on the basis of specific criteria in EL .Member States have reviewed their capacity to monitor closely the social impacts of the crisis. Such monitoring exists in some countries (CZ, DK, DE, LT, PT, FI, SE) or is being set up in others (FR, EE, EL, AT, SK, UK).

Annex III

MEMBER STATES' RECOVERY MEASURES AND INTERNAL MARKET RULES

The internal market represents the home basis for EU business. Its smooth functioning is essential for growth and job creation. It provides the Union with tools to better cope with external shocks. At the same time, the internal market guarantees a high degree of protection of health and environment as well as safety.

For EU countries the internal market has been of paramount importance when reaping the productivity gains from openness. Focusing on intra-EU trade, recent research confirms the important role of the internal market for productivity growth[1]. Findings stress the importance of the Single Market, a common currency and eliminating border controls for doing business within the EU and underline the economic potential of further improvements of the functioning of the internal market.

Following the European Recovery Plan, in order to fight against the negative consequences of the financial crisis on their domestic economies, Member States have undertaken a number of recovery initiatives. These initiatives, while being designed domestically have a European dimension as regards their impact.

In view of further maximising the benefits of the recovery measures for individual Member States and for the European Union as a whole, Member States are invited to fully profit from the possibilities foreseen in the EU legislation and flexibilities the Commission has established within the EU rules.

Also providing the Commission with the information about the intended recovery measures offers Member States additional transparency and constitutes opportunity for early exchange of information as well as helps to avoid gold plating.

In order to best assist Member States in designing their recovery measures, the Commission wishes to recall the main principles to be followed in order to ensure compatibility of the recovery measures with the EU legislation.

1. RECOVERY MEASURES AND INTERNAL MARKET PRINCIPLES

In general, recovery measures must be characterised by:

- Non-discrimination of products, service-providers or investment on the basis of their nationality or origin;

1 It is estimated that average productivity would be reduced by 13% if bilateral trade within the EU was eliminated. Furthermore, it is also estimated that productivity can increase by 2% if trade costs within the EU are further reduced by 5%.

- Prohibition of quantitative restrictions or quotas;
- Prohibition of national campaigns promoting or inciting the purchasing of national products, services or capital;
- With regard to public procurement, avoidance of measures aiming to award a supply contract or work contract to tenderers offering/using national products;
- Avoidance of restrictive conditions in tax benefits schemes or subsidies schemes;
- Setting of maximum price that makes the sale of imported products or services more difficult than the sale of domestic products or services.

Full details are set out in table below.

While designing their recovery measures, Member States shall refrain from creating any direct or indirect barriers to the free movement of capital and investment within the Internal Market and in the global context.

Member States may opt for nationalisation of undertakings as an economic policy option which is fully compatible with the Treaty (Art. 295 EC). Just like in case of privatisation, nationalisation process will have to be conducted in full respect of EU law and the principles of the Treaty. Such recovery measures will have to be characterised by non-discrimination as well as compensation and the respect of shareholders' rights as necessary elements to ensure that the measures can be considered proportionate.

The Commission together with Member States will work to ensure that any national measures do not further add to the current economic downturn and do not provoke further negative economic policy reactions inconsistent with Treaty principles.

2. RECOVERY MEASURES AND PUBLIC PROCUREMENT RULES

The EC public procurement Directives 2004/17/EC and 2004/18/EC set out minimum standards for the award of public contracts above certain thresholds[2].

The Directives themselves allow for some flexibility in the application of the rules, in order to speed up procurement procedures and thereby support Member States' action on economic recovery. Directive 2004/18/EC provides for an accelerated procurement procedure in cases where urgency renders impracticable the regular time limits. Following the conclusions of the European Council of last December, the Commission recognized that the exceptional nature of the current economic situation can justify the use of this accelerated procedure for major public projects. This will bring the time limits of the procedure down from 87 to 30 days.

Another way of simplifying and speeding up procurement procedures, which is of particular importance for national recovery measures, is a greater use of the possibilities of electronic procurement provided for by the EU public procurement Directives. In case of a fully electronic tender procedure, the time limits can be reduced to 25 days.

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2 € 5,15 million for works, € 211 000 for services and supplies.

As national public procurement legislation and practice often add additional requirements which go beyond those of the EU public procurement rules and can therefore considerably slow down and complicate the procurement process[3], Member States are encouraged to disburden public procurement procedures by applying a variety of simplification measures[4]. For example, binding self-declarations should be regarded as a sufficient means of proof during the tender procedure. Certificates should be valid for more than one tender procedure or should have to be produced only by the winning bidder.

3. RECOVERY MEASURES AND STATE AIDS RULES

Whilst, Member States enjoy considerable discretion in designing State aid measures to help companies restructure by making smart and sustainable investments that increase long term productivity and business prospects, Member States must respect EU State aid rules.

Member States are invited to fully exploit the possibilities offered by EU State aid rules to help companies to make such investments. In particular, MS can avail themselves of the possibilities offered by the Commission Regulation (EC) No 800/2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty (General block exemption)[5] and by the additional flexibility provided in the new Temporary Community framework for State aid measures[6] to support access to finance in the current crisis[7]. For undertakings that are in difficulty due to structural problems going beyond the current crisis, the Rescue and Restructuring guidelines[8] appear to be the appropriate State aid framework.

In its very nature, State aid distorts competition in the Internal Market which means that through economic incentives it impacts on the free movement of goods, services and capital. Therefore, State aid is only acceptable if its positive effects on the achievement of objectives of common interest outweigh the negative effects on trade and competition[9]. Furthermore, the State aid amount must be limited to the minimum necessary and any negative effect may not go beyond what is indispensable in order to achieve the objective of the State aid scheme[10].

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3 For example, national laws often contain disproportionate requirements for documentary evidence, making life difficult for contracting authorities and undertakings alike.

4 Member States can for instance draw inspiration from the recommendations of the High Level Group of Independent Stakeholders on Administrative Burdens (the "Stoiber Group") in its report of 10 December 2008.

5 Commission Regulation (EC) No 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty (General block exemption Regulation) (OJ L 214, 9.8.2008, p. 3).

6 Communication from the Commission – Temporary framework for State aid measures to support access to finance in the current financial and economic crises (OJ C 16, 22.1.2009, p. 1).

7 Measures covered by Commission Regulation (EC) No 800/2008 do not need to be notified. Measures covered by the Temporary Framework need to be modified and the Commission, in close cooperation with the Member States concerned ensures swift adoption of decisions upon complete notification of measures complying with the conditions laid down.

8 Commission Guidelines on State aid for rescuing and restructuring firms in difficulty (OJ C 244, 1.10.2004, p. 2).

9 Article 87 of the EC Treaty.

10 ECJ of 22 March 1977, Ianelli, Case 74/76: "Those aspects of aid which contravene specific provisions of the treaty other than Art. 92 and 93 may be so indissolubly linked to the objective of the aid that it is impossible to evaluate them separately so that their effect on the compatibility or incompatibility of the

If the aid is subject to conditions which are not inherent to the aid itself and contravene internal market rules it will for that reason be held to be incompatible with the Treaty. This would be the case e.g. with an aid scheme which submits the granting of the aid to the fact that the company would purchase only domestic goods or to limitations in the choice of subcontractors. Similarly, conditions concerning the localisation of certain activities carried out by the beneficiary may be permissible only if they are indispensable to achieve the legitimate objective of the aid (e.g. to help underdeveloped regions in line with the relevant Commission guidelines[11]).

4. RECOVERY MEASURES AND DIRECTIVE 98/34/EC

In accordance with Directive 98/34/EC, technical regulations have to be notified at a draft stage. Technical regulations include so-called de facto technical regulations which are inter alia "technical specifications or other requirements or rules on services which are linked to fiscal or financial measures affecting the consumption of products or services by encouraging compliance with such technical specifications or other requirements or rules on services; technical specifications or other requirements or rules on services linked to national social security systems are not included".

In practice, recovery measures such as fiscal or financial incentives linked to the acquisition of products presenting certain characteristics affecting the consumption of products by encouraging compliance purchase of products compliant with certain technical specifications (such as scrapping schemes linked to CO_2 emissions, Euro emission standards etc.) constitute *de facto* technical regulations and have to be notified to the Commission (which subsequently circulates them to all Member States) at a draft stage[12].

The European Court of Justice established that the breach of the notification obligation renders the adopted technical regulation inapplicable vis-à-vis third parties[13].

Without prejudice to any legal obligations, Member States are invited to **always notify** the Commission about their recovery measures which fall in the scope of Directive 98/34/EC on technical regulations in the interest of transparency and to avoid problems after a scheme has been put in place. The Commission commits to assess the scheme within 15 working days and, if appropriate, to provide comments. Bilateral contacts could be rapidly established in

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aid viewed as a whole must therefore of necessity be determined in the light of the procedure prescribed by Art. 93."

11 Commission Guidelines on national regional aid for 2007-2013 (OJ C 54, 4.3.2006, p. 13).

12 However, according to Article 10(4) of Directive 98/34/EC no standstill period is laid down for the adoption of technical specifications, 'other requirements' or rules on services linked to fiscal or financial measures by Member States. However, the Commission and Member State have the right to issue comments on the notified technical specifications and to issue a so-called detailed opinion where the measure envisaged may create obstacles to the free movement of goods within the internal market. With regard to fiscal or financial incentives such comments or detailed opinions may only concern aspects "*which may hinder trade […] and not the fiscal or financial aspects of the measure*" (Article 8, point 1, last paragraph).

13 In its judgment, the Court ruled that Articles 8 and 9 of Directive 83/189/EEC (today Articles 8 and 9 of Directive 98/34/EC): "*are to be interpreted as meaning that individuals may rely upon them before the national court which must decline to apply a national technical regulation which has not been notified in accordance with the directive*." ("CIA Security", Case C-194/94, ECR 1996 I-2201).

order to assist Member States in rendering their proposed measures compatible with the Single Market rules.

Table: Examples of measures which are not compatible with Articles 28-30 of the EC Treaty

1.Quantitative restrictions or quotas	State measures that establish quantitative restrictions and thereby favour e.g. the national production/economy – such measures would consist in a total or partial restraint on imports or goods in transit. Quota systems are quantitative restrictions which apply when certain import or export ceilings have been reached.
2. National campaigns to promote or incite the purchasing of national products	Measures which encourage or give preference to the purchase of domestic products only, are considered as breaching the free movement of goods principles, for example the launching by national authorities of a large campaign encouraging the purchase of domestic goods rather than imported products. **It is important to note that no justification is possible, except for products covered by rules on geographical indication or designation of origin.**
3. Financial incentives for consumers (example: "scrapping measures")	National measures could promote the sale of new goods and at the same time the scrapping of old ones, through a bonus system (in general, for environmental or energy efficiency purposes). This bonus system is linked to the acquisition of products presenting certain characteristics (meeting certain standards on the level of quality or of performance). The products most concerned are cars, household appliances, construction products and other consumer goods. **Such measures would be compatible with internal market rules if the characteristics of the product are not set in a way to discriminate on the basis of Articles 28 to 30 EC similar products coming from other Member States.**
4. Tax benefits/subsidies scheme	National recovery measures comprise tax cuts or fiscal deductibility measures and various incentives/subsidies schemes (e.g. for the purchase of "greener" products including cars, better building isolation, benefit schemes for biofuels, etc.). On occasion it has been held that tax benefits schemes or subsidies schemes contravened the free movement of goods rules where restrictive conditions (technical or not) were attached to these schemes: For example the national measure granting a tax advantage to newspaper publishers on the condition that publications were

	printed in France has been considered as incompatible with Article 28 EC[14].In another case the granting of subsidies for purchase of national vehicles was also held to contravene Article 28 EC[15]. **It is not the scheme as such which is incompatible with Internal Market rules, but a particular condition attached to it or its feature, which are considered unnecessary and disproportionate.**
5. Price fixing regime	Among the different measures to support household purchasing power, price controls measures, in particular the setting of maximum prices, might be contemplated by national authorities. It should be reminded that although a maximum price applicable without distinction to domestic products and imported products does not in itself violate the internal market rules, it may have such an effect if it is fixed at a level which makes the sale of the imported product either impossible or more difficult than that of the domestic product[16]. The same principle applies to price freezes. This may concern in particular such products as: petrol, alcohol, pharmaceutical products. **Price fixing regime cannot make the sale of the imported product either impossible or more difficult than that of the domestic product**
6. Guaranteed prices for the exportation	National insurance schemes aimed at guaranteeing to exporters the stability of the cost prices of the elements included in tenders for export (supply contracts, provision of services, etc) **will be contrary to Article 28, if only the domestic elements of the tender may benefit from the insurance.**
7. Public procurement restrictions	National recovery plans include measures to support investments. Regarding public investments, it should be reminded that measures aiming to award a supply contract or work contract to tenderers offering/using national products might violate the free movement of goods rules This is the case where the inclusion in the contract specification for tender for a public works contract of a clause stipulating that the materials used must be certified as complying with a national technical standard[17]. **This kind of measures will be covered by public procurement directives. However, below the thresholds they provide for, Article 28 EC is still applicable.**

[14] Court of Justice (Case 14/84 – Commission v France).
[15] Court of Justice (Case 103/84 – Commission v Italy).
[16] Court of Justice (Case 65/75 – Tasca).
[17] Court of Justice (Case 45/87 – Commission v Ireland).