

**DRAFT LETTER TO BE ADDRESSED TO THE MINISTER FOR FOREIGN
AFFAIRS OF THE MEMBER STATE**



EUROPEAN COMMISSION

Brussels, 19.02.2009
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PUBLIC VERSION

WORKING LANGUAGE

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Subject: **State aid N 33/2009 --National broadband project**
(extension of State aid N201/2006- Broadband access development in
underserved territories)

1. PROCEDURE

1. By letter of 23 January 2009, registered on the same day, the Greek authorities notified, under the simplified procedure, the extension of the scheme for the development of broadband access networks in the rural and peripheral areas of Greece.
2. The scheme was originally approved by the Commission on 04 July 2006 and covered the period from 1 June 2006 to 31 December 2008¹.
3. The Greek authorities have now notified an extension of the scheme from 1 January 2009 to 31 December 2010.

2. DESCRIPTION OF THE AID MEASURE

4. The notified measure aims at boosting investments in broadband infrastructure in order to enable access broadband providers to offer retail broadband services to end-users in rural and peripheral areas (“underserved territories”) of Greece at affordable prices. The aid takes the form of direct grants.

¹ State aid N 201/2006; C(2006)296 final; http://ec.europa.eu/community_law/state_aids/comp-2006/n201-06.pdf

5. The notification concerns exclusively the extension of the previously approved scheme by two years, with no additional increase of previous budget of € 210.000.000² All the remaining provisions of the scheme remain unchanged.
6. The project has two main axes, one targeting the supply side (broadband access infrastructure) and another targeting the demand side (end-users). The first axis (supply-side) will fund the provision by service providers of broadband access services in underserved areas of Greece. The second axis (demand side) of the project funds specific demand stimulation activities as a complementary action to the broadband access service offering.
7. Aid beneficiaries can be service providers investing in access broadband infrastructure as well as end users (companies and residential users).
8. The eligible costs are the infrastructure investment cost as well as the infrastructure leasing cost. Public financing can cover up to 50% of the total costs of each project.
9. The state funding is provided on the basis of an open tender, without favoring any given technology, aiming only areas where broadband infrastructure is not yet available.
10. Additionally, comprehensive mechanisms are put in place to ensure the ex-post monitoring of the broadband investments and the fulfilment of the tender requirements by the successful bidders.
11. The legal basis of the scheme is based on a series of interrelated government initiatives for a comprehensive national broadband policy, including in particular the 2860/2000 Act (*“Management Monitoring and Control of the Community Support Framework for the implementation of State Aid Programs funded by CSF 2000-2006”*) and Article 35 of the 3016/2002 Act (*“Corporate Governance, payroll issues and other provisions”*) that concerns state aid projects funded by Operational Programs of CSF³.

3. ASSESSMENT OF THE AID MEASURE

Notification requirement

12. The Greek authorities have complied with the procedural requirements of Article 88(3) of the EC Treaty by notifying the scheme before it is implemented. The Greek authorities have notified the extension of the scheme under the simplified

² The overall budget amounts to 210.000.000€ of which only 160,000.000€ are considered in the decision N201/2006 to be State aid. The remaining 50.000.000€ aimed for axis 2 (grants to residential users) fall under the "de minimis" rule.

³ Gazette of the Government, 17 May 2005, p. 1717.

procedure. According to Article 4(2) of the Procedural regulation⁴, the following alterations to existing aid shall be notified under the simplified procedure:

- increases in the budget of an authorised aid scheme exceeding 20 %;
- prolongation of an existing authorised aid scheme by up to six years, with or without an increase in the budget;
- tightening of the criteria for the application of an authorised aid scheme, a reduction of aid intensity or a reduction of eligible expenses;

13. In this case, the scheme is being extended by two years. The simplified procedure has therefore been correctly applied by the Greek authorities.

State aid in the sense of Article 87(1) of the EC Treaty

14. According to Article 87(1) of the EC Treaty, save as otherwise provided in the Treaty, any aid granted by a Member State or through State resources in any form whatsoever, which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall be incompatible with the common market, in so far as it affects trade between Member States.

15. As stated in the previous decision, the direct beneficiaries under axis 2 of the notified measure are (i) end-users and SMEs and (ii) certain socially or otherwise disadvantaged categories of the population. Given that residential users are not undertakings within the meaning of Article 87 (1), and that the eligible expenses for each beneficiary will not exceed 1.000€, and for the SMEs the funding will neither exceed the *de minimis* rule of Regulation No 69/2001, the second axis does not constitute aid within the meaning of Article 87 (1) of the Treaty. Accordingly only the first axis is assessed below under Article 87 (1) of the EC Treaty.

16. As laid down in decision N 201/2006,, the axis 1 involves state resources and favours certain undertakings and the production of certain goods. The axis 1 of this scheme is also considered to be selective in that it is addressed to undertakings active only on certain markets for electronic communications services (wholesale and retail broadband services). These selectivity elements also induce a potential distortion of competition⁵. Insofar as the intervention is liable to affect providers of electronic communications services and service providers from other Member States, the measure has an effect on trade.

Compatibility

17. The aid is to be granted as an extension of the existing aid scheme N 201/2006, which was considered by the Commission as compatible with the common market under Article 87(3)(c) of the EC Treaty, in its decision of 4 July 2006.

⁴ Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty *Official Journal L 140/1, 30.04.2004, p. 1-134*

⁵ Case, C-143/99, *Adria Wien Pipeline*, (ECR) 2001, I-8365

18. The notification concerns the prolongation of the scheme for two additional years with no modification of the previous budget of €210.000.000². Given that neither the facts of the scheme nor its legal basis changed, the Commission's assessment of the compatibility of the scheme with Article 87 (3)(c) EC Treaty in the decision N201/2006 remains valid.

4. CONCLUSION

19. The Commission has therefore decided that the extension of the scheme for the Broadband access development in underserved territories of Greece, to the extent that it constitutes State aid within the meaning of Article 87(1) of the EC Treaty, is compatible with the common market pursuant to Article 87(3)(c) of the EC Treaty.
20. If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site: http://ec.europa.eu/community_law/state_aids/index.htm. Your request should be sent by registered letter or fax to:

European Commission
Directorate-General for Competition
Directorate State Aid II
Rue de la Loi/Wetstraat, 200
B-1049 Brussels
Fax No: +32 2 296 12 42

Yours faithfully,
For the Commission

Neelie KROES
Member of the Commission