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**Subject: State aid N 305/2010 – Italy – Reduction of the digital divide in Trentino**

Sir,

## **I. SUMMARY**

- (1) I am pleased to be able to inform you that the European Commission has assessed the measure "*Reduction of the digital divide in Trentino*" and decided not to raise objections as the State aid contained therein is compatible with Article 107(3)(c) Treaty on the Functioning of the European Union (TFEU)<sup>1</sup>.

## **II. PROCEDURE**

- (2) Following pre-notification discussions, with a letter registered on 7 July 2010, the Italian authorities notified to the Commission pursuant to Art. 108(3) of the TFEU their project to support the development of enhanced broadband connectivity in Trentino. This information was complemented by additional submissions dated 30 August 2010, 7 and 21 October 2010.

## **III. CONTEXT**

- (3) Broadband connectivity<sup>2</sup> fosters the use of information and communication technologies and hence, the development of knowledge-based economies. Broadband connectivity accelerates the contribution of these technologies to economic growth, social development and innovation.

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<sup>1</sup> With effect from 1 December 2009, Articles 87 and 88 of the EC Treaty have become Articles 107 and 108, respectively, of the TFEU. The two sets of provisions are, in substance, identical. For the purposes of this Decision, references to Articles 107 and 108 of the TFEU should be understood as references to Articles 87 and 88, respectively, of the EC Treaty where appropriate.

<sup>2</sup> Broadband services can be delivered using various combinations of communications network technologies ("platforms"). Technologies can feature either fixed or radio based transmission infrastructure, and they can substitute or complement each other according to the individual situation.

- (4) In Trentino (autonomous province of Trento, hereinafter "APT"), the availability of broadband is uneven. The territory is typically mountainous: 196 out of 223 municipalities (which account for 88% of the municipalities and 49% of the population) are classified as mountainous or hilly. The remaining areas are in any event surrounded by mountains that make access difficult.
- (5) The province has a population of 500.000 people. Only the two main towns, Trento and Rovereto, have more than 20.000 inhabitants while the remaining population live spread throughout the territory (187 municipalities out of 223 have less than 2500 inhabitants). Trentino has over 40.000 enterprises, out of which 24% are located in the main town of Trento.
- (6) According to the results of the consultation carried out by the APT, there are four levels of connectivity within its territory:
  - (a) clusters enjoying maximum speeds<sup>3</sup> of 640 Kbps, which correspond to 66 local exchange areas (hereinafter "LEA")<sup>4</sup>;
  - (b) sub-clusters enjoying maximum speeds of 640 Kbps within larger clusters enjoying higher speeds (larger LEAs), which include 60 sub-clusters;
  - (c) clusters where the connectivity speed is between 4Mbps and 8 Mbps, served by 71 LEAs;
  - (d) clusters where the connectivity speed is at least 12 Mbps, served by 15 LEAs.
- (7) In relation to the classification in white, grey and black areas set forth by the *Community Guidelines for the application of State aid rules in relation to rapid deployment of broadband networks*<sup>5</sup> (hereinafter: "Broadband Guidelines"), the ATP represents that areas under (a) and (b) fall within the definition of "white areas"; most areas under (c) fall within the definition of "grey areas"; certain areas belonging to category (c) and all areas under (d) fall within the definition of "black areas" and will therefore be excluded from the scope of the measure.

#### IV. DESCRIPTION OF THE MEASURE

- (8) Objectives of the measure: The APT recognises the importance of investing in broadband as a tool to help fighting the current economic crisis and at the same time to spur long-term growth. The provincial authorities aim at: fighting the isolation of certain areas and improve the quality of life of the citizens living there; facilitate circulation of information and ideas; increase competitiveness of local undertakings on the European and global markets; reducing red tape and improve the effectiveness of the public administration.
- (9) The project seeks to achieve a step change to the broadband system in Trentino in areas with no broadband connectivity or low broadband speeds. In order to offer enhanced

<sup>3</sup> The speeds referred to are the maximum peak time downstream speeds.

<sup>4</sup> Due to the geographic discrepancy between municipalities and the network infrastructure, the APT considers that clusters served by Local Exchanges represent a better unit to determine the relevant areas for public intervention.

<sup>5</sup> OJ C 235 of 30.9.2009, p. 7.

access to broadband technology in Trentino, the APT set out the objective to have increased connectivity for at least 90% of the population at a guaranteed speed of at least 2.5 Mbps in download and 512 Kbps in upload for residential customers and of at least 4 Mbps (down) and 1 Mbps (up) for business customers. The measure will finance an overall investment project that will provide for a number of interventions at various levels of the network in order to enhance connectivity.

- (10) Targeted areas: The measure identifies different types of areas not on a municipality level but on a cluster level, by analysing the connectivity services available for each local exchange. Accordingly, the measure will target only those clusters (within a municipality, if the case) meeting the conditions to be considered “white areas” according to the definition of the Broadband Guidelines and to those “grey areas” where the public consultation revealed that due to the infrastructural limitation of the territory and the economic problems linked to less densely populated areas, no network upgrade is foreseen for at least the next three years. The identified targeted clusters are 185 out of 212 LEAs.
- (11) The public consultation: The APT has carried out a monitoring exercise on the coverage of broadband in Trentino by preparing a questionnaire meant to allow all national and international, wired and wireless telecommunications operators active in its territory to give their opinion on the project. The questionnaire was published on the Province's website<sup>6</sup> and several operators who sent their comments were invited to participate to a hearing to further substantiate their replies. The exercise resulted into a study which provides the map of the broadband connectivity and highlights the areas where demand is still unmet or inadequately met.
- (12) Legal Basis: The legal basis for the measure includes the Legislative Decrees of 1 August 2003 n.259: “Codice delle comunicazioni elettroniche” and of 7 March 2005 n. 82: “Codice della pubblica amministrazione digitale”, and the law L.P. of 15 December 2004 n. 10: “Disposizioni in materia di urbanistica, tutela dell'ambiente, acque pubbliche, trasporti, servizio antincendi, lavori pubblici e caccia” and in particular Art. 19: “Disposizioni per lo sviluppo della larga banda”.
- (13) Procurement and award criteria: The aid will be allocated on the basis of an open tender. The award criterion is the most economically advantageous offer. The tender documents detail the admissible costs and the relevant award criteria. The bids will be scored based on economic aspects such the level of subsidy requested (max. 30 points) and technical factors such as quality and quantity of services proposed (max. 70 points).
- (14) Technology neutrality and existing infrastructure: The measure is technologically neutral, allowing bidders to propose any suitable technological solution. The project expressly foresees that the beneficiary will be able to use own or third parties' existing infrastructures wherever available so as to avoid duplication.

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<sup>6</sup> Currently, it is retrievable at the address:  
[http://www.telecomunicazioni.provincia.tn.it/informazioni/rassegna\\_stampa/pagina60.html](http://www.telecomunicazioni.provincia.tn.it/informazioni/rassegna_stampa/pagina60.html).

- (15) Wholesale supply and tariffs: The beneficiary shall grant, regardless of the significant market power possibly held,<sup>7</sup> wholesale access to the subsidised network for at least 84 months to all operators at fair, reasonable and non-discriminatory conditions. Access obligations include active (bitstream) access, passive (ULL) access as well as access to other physical infrastructure of the beneficiary. Applicable access conditions will be benchmarked with those prevailing in other areas of Italy (or, if necessary, of other countries) where the services are already offered or, in any case, at the conditions set or approved by the National Regulatory Authority.
- (16) Monitoring and clawback mechanism: The contract with the beneficiary will also contain a clawback arrangement that will ensure that if the beneficiary generates higher revenues than foreseen, a proportional amount will be repaid back to the provincial government. The APT will rely on the following calculation:  $R_{max} = (C \times WACC) + Amm + Cop$ <sup>8</sup> where Rmax is the revenue ceiling and:
- C = Capital invested by the private operator;  
WACC = remuneration rate corresponding to the average costs of the resources used<sup>9</sup>;  
Amm. = amortisation of the private capital;  
Cop = Operating Cost to perform the activity.
- (17) The granting authority will carry out appropriate audit activities and the beneficiary will give access to its accounting reports. Reporting will take place every 6 months and the total duration of the monitoring activity will correspond to that of the project, i.e. of 48 months.
- (18) Beneficiaries: The direct beneficiaries of the aid will be the selected electronic communications operator offering broadband services. Indirect beneficiaries will be third party providers of telecommunication services and local SMEs in the targeted areas.
- (19) Budget, intensity and duration of the aid: The budget for the measure amounts to up to EUR 8.4 million to be paid to the selected operator from funds from the Autonomous Province of Trento. The aid will cover up to 70% of the total admissible costs for the period 2010-2013. Finally, the aid cannot be cumulated with other State aid.

## V. STATE AID ASSESSMENT OF THE MEASURE: PRESENCE OF AID

- (20) According to Article 107(1) of the TFEU, “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, in so far as it affects trade between Member States, be incompatible with the common market”. It follows that in order to be qualified as State aid, the following cumulative conditions have to be met: 1) the measure has to be granted out of State resources, 2) it has to confer an

<sup>7</sup> This provision does not encroach on the national regulatory provisions on significant market power and does not prevent NRAs to impose access obligations and other asymmetric measures which the market conditions might require.

<sup>8</sup> See also Commission Decision N 596/2009 of 08.02.2010 C(2010)888 - Bridging the digital divide in Lombardia.

<sup>9</sup> It will amount to 10%.

- economic advantage to undertakings, 3) the advantage has to be selective and distort or threaten to distort competition, 4) the measure has to affect intra-Community trade.
- (21) State resources: The current measure will be financed by state resources, namely by resources from the APT.
  - (22) Economic advantage: Although a competitive tender procedure tends to reduce the amount of financial support required, the selected operator will receive financial support which will enable it to enter the market and provide broadband services on conditions not otherwise available on the market. The selected operator will also acquire ownership of the network as well as other tangible and intangible assets with State funds (e.g. equipment, customer relations) even after the lifetime of the projects. In view of the above, it is clear that an economic advantage will be granted to the selected operator.
  - (23) Moreover, third party providers of broadband services will be able to access the enhanced network under non discriminatory terms and they will therefore also indirectly benefit from the state resources.
  - (24) Finally, the measure aims at improving the provision of existing broadband services to business users. Businesses in the targeted areas will therefore ultimately benefit from the improved service.
  - (25) Distortion of competition: The intervention of the State alters the existing market conditions. It will provide a selective advantage to the bidder prevailing in the tender and will moreover benefit all third party providers who use the improved infrastructure to compete with other third party providers.
  - (26) In addition, while the APT decided to intervene precisely in view of the lack of private initiatives in the concerned areas, it cannot be excluded that market initiatives could become viable in some areas in the long term. The chosen operator will be capable of establishing its business and developing its customer base earlier than prospective competitors, enjoying a first mover advantage over them.
  - (27) The scheme is also selective in that it is addressed to undertakings active only in certain regions and/or in the provision of broadband services, to the exclusion of other electronic communications services. These selectivity elements also induce a potential distortion of competition.
  - (28) Effect on trade: Insofar as the intervention affects providers of electronic communications services from other Member States and distorts competition between end users located in Trentino and elsewhere in Europe, the measure has an effect on trade. The markets for electronic communication services are open to competition between operators and service providers, which generally engage in activities that are subject to trade between Member States. There may also be an effect on trade between the businesses using the broadband services enabled by the measure and their competitors in other Member States.
  - (29) Conclusion: Having established that the project involves aid within the meaning of Article 107(1) of the TFEU to the selected service provider, third party providers and businesses, it is necessary to consider whether the measure can be found to be compatible with the common market.

## VI. COMPATIBILITY ASSESSMENT

- (30) The Commission has assessed the compatibility of the scheme according to Article 107(3)(c) of the TFEU and in the light of the *Community Guidelines for the application of State aid rules in relation to rapid deployment of broadband networks*<sup>10</sup> (hereinafter the "Broadband Guidelines").
- (31) The Broadband Guidelines contain a detailed interpretation of Article 107(3)(c) of the TFEU in this area of State aid law. As regards the applicable substantive provisions, the Commission has essentially analysed the measure in the light of the criteria developed in particular in paragraphs 31-51 of the Broadband Guidelines.

### The balancing test and its application to aid for broadband network deployment

- (32) As described in points 34 and 35 of the Broadband Guidelines, in assessing whether an aid measure can be deemed compatible with the common market, the Commission balances the positive impact of the aid measure in reaching an objective of common interest against its potential negative side effects, such as distortions of trade and competition.
- (33) In applying this balancing test, the Commission will assess the following questions:
- a. Is the aid measure aimed at a well-defined objective of common interest (*i.e.* does the proposed aid address a market failure or other objective)?
  - b. Is the aid well designed to deliver the objective of common interest? In particular:
    1. Is the aid measure an appropriate instrument, *i.e.* are there other, better placed instruments?
    2. Is there an incentive effect, *i.e.* does the aid change the behaviour of firms?
    3. Is the aid measure proportional, *i.e.* could the same change in behaviour be obtained with less aid?
  - c. Are the distortions of competition and the effect on trade limited, so that the overall balance is positive?
- (34) The individual steps of the balancing test in the field of broadband are set out in detail in Sections 2.3.2 and 2.3.3 of the referred Broadband Guidelines.

### Objective of the measure

#### *The aid is in line with the Community policy*

- (35) Broadband connectivity is a key component for the development, adoption and use of information and communication technologies (ICT) in the economy and in society. Broadband is of strategic importance because of its ability to accelerate the contribution of

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<sup>10</sup> *Community Guidelines for the application of State aid rules in relation to rapid deployment of broadband networks*, OJ C 235, 30.9.2009, p.7.

these technologies to growth and innovation in all sectors of the economy and to social and regional cohesion<sup>11</sup>. The Commission actively supports the widespread availability of broadband services for all the European citizens as laid down in the Lisbon strategy and subsequent Communications<sup>12</sup>.

- (36) Furthermore, in the context of the financial and economic crisis affecting severely the European economies, it was recognised by the Commission<sup>13</sup> that broadband investments can be considered as "*smart investments*" that are able to provide short term (employment)<sup>14</sup> benefits and long term (economic) advantages for the EU economies. Hence by accelerating broadband deployment, the current measure is also in line with the European interest to support fast recovery of the European economies.<sup>15</sup>
- (37) In particular, a well targeted state intervention in the broadband field can contribute to reducing the '*digital divide*' that sets apart areas or regions within a country where affordable and competitive broadband services are on offer and areas where such services are not. The notified measure addresses a market failure as it targets areas where, due to difficult geographic conditions and/or low density of the population, adequate broadband is currently not available and where, based on the findings of the public consultation launched by the APT, there are no plans by private investors to roll out such infrastructure in the near future.
- (38) The measure at hand forms an important part of the broadband strategy in Trentino. By improving broadband access for citizens and businesses in mountainous and sparsely populated areas of Trentino where these services are not yet available or are available at a low broadband speed, the measure helps achieving greater cohesion and is therefore in line with the common interest.

## **Well-designed aid**

### *Aid is the appropriate instrument*

- (39) As the public consultation conducted by the APT showed, it is highly unlikely that businesses in the targeted areas could avail themselves of adequate broadband services. In Clusters (a) and (b) as in most areas of cluster (c) the existing bandwidth speed is insufficient for the needs of local businesses in the short term future. The measure is indeed "need driven". It is designed in such a way as to be the minimum service to bring the biggest benefits to the largest number of SMEs. Supporting an NGA project is in the plans of the Italian authorities but due to the current economic situation and to budget constraints, the APT concluded that the delivery of a widespread fibre optic access

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<sup>11</sup> See for instance Fornefeld, Delaunay and Elixmann (2008): "The impact of broadband on growth and productivity" - A study on behalf of the European Commission, MICUS; Katz and Suter (2009): "Estimating the economic impact of the broadband stimulus plan". Columbia Institute for Tele-Information Working Paper.

<sup>12</sup> See for instance "i2010 – A European Information Society for growth and employment, COM(2005)229 final, 1 June 2005; "eEurope 2005: An information society for all" COM(2002)263 final, "Bridging the broadband gap", COM(2006)129.

<sup>13</sup> Brussels European Council, 19/20 March 2009 Presidency Conclusions.

<sup>14</sup> See also Katz et al. (2009) in the paper of "*The Impact of broadband on jobs and the German economy*" estimate that broadband network development within the framework of the National Broadband Strategy of Germany could create 407.000 jobs between 2010 and 2014 as a result of network construction and network externalities.

<sup>15</sup> Communication from the Commission to the European Council: *A European Economic Recovery Plan*, Brussels, 26.11.2008.

network did not represent the best value for money at this time,<sup>16</sup> although it will be pursued in the future as part of a comprehensive broadband strategy, in line with the objectives of the Digital Agenda<sup>17</sup>. This decision therefore does not cover any support to NGA projects. Given the very small and mountainous market in Trentino, there are no plans for affordable broadband coverage of this speed in the areas concerned in the next three years due to the limited profitability of such an endeavour.

- (40) Based on the information provided by the Italian authorities, in view of the limited availability of broadband in mountainous and remote areas of Trentino, the Commission considers that the support provided by the notified measure is an appropriate instrument to achieve the set objectives.

*The aid provides the right incentives to operators*

- (41) As set out in paragraph 50 of the Broadband Guidelines, regarding the incentive effect of the measure, it needs to be examined whether the broadband network investment concerned would not have been undertaken within the same timeframe without any State aid. According to the results of the public consultation, in the targeted areas no investment would take place without public funding within three years, hence the aid produces a change in the investment decisions of the operators. Moreover, as explained above, the beneficiary of the aid will be selected by public tender. Bidders will submit investment plans indicating the amount of aid that they considered to be necessary to carry out the investment given the anticipated investment and operating costs and revenues. Therefore, the aid should provide a direct and appropriate investment incentive for the selected operator.

*Proportionality*

- (42) The APT has designed the measure in such a way as to minimise the State aid involved and potential distortions of competition arising from the measure. In this respect, the Commission notes, *inter alia*, the following positive elements in the design of the measure:

- (a) *Detailed mapping and coverage analysis, consultation with stakeholders:* the APT has undertaken an analysis of the existing broadband infrastructures in order to clearly identify the areas where public intervention is necessary. All stakeholders have been given the opportunity to be consulted. The statements of the operators were double checked and verified vis-à-vis an analysis of the demand on the concerned territory, including customers' satisfaction. By consulting existing operators in an open and transparent manner, the APT ensures that public funds are used only in areas where it is necessary and limits the possibility of crowding out private investments and distortion of competition to the minimum possible.
- (b) *Open tender process:* the APT will select the beneficiary of the aid through an open and transparent competitive procedure, with the application of the principles and safeguards provided for by the rules on public procurement. Open tender procedures are considered to be effective means to minimise the aid necessary for the measure.

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<sup>16</sup> In the same sense, see Commission Decision of 05.11.2009, N 418/2009 – Northern Ireland Next Generation Broadband, C(2009)8687

<sup>17</sup> Communication of the Commission "A Digital Agenda for Europe", 26.8.2010 COM(2010) 245 final/2



- (c) *Most economically advantageous offers*: within the context of an open competitive procedure, the APT will select the most economically advantageous offers among those presented by the operators. Pursuant to the Broadband Guidelines, the awarding criteria are established in the call for tender and include: lowest price, most innovative solutions, timing and maintenance. At similar quality conditions, the bidder with the lowest amount of aid requested should receive more priority points in the assessment of its bid.
  - (d) *Technology neutrality*: The current measure does not favour any particular technology or network platform leaving it to commercial operators to come up with the most appropriate technological solutions to provide broadband services to end users.
  - (e) *Wholesale access*: The selected operators will have to provide access to the subsidised networks to other operators on equal and non-discriminatory terms for at least seven years at the conditions prevailing in other more competitive areas or, in any event, at the conditions set or approved by the National Regulator. Access will have to be granted at all possible level of the infrastructure, both active and passive and for all available products.
  - (f) *Opinion of the Regulatory and Competition authorities*: The National Regulatory Authority AGCOM and the Competition authority AGCM have been consulted on the notified project. Both authorities expressed positive comments on the pro-competitive aspects of the measure at hand, focusing in particular on the access obligations as a tool to promote competition in the electronic communication sector in the targeted areas. AGCOM stressed in particular the importance for competition to grant access at all possible levels, including all passive and active products. The Trento authorities shared the views of the national regulator and committed to implement such suggestions in the final version of the tender documents.
  - (g) *Use of existing infrastructure*: Bidders will be able to use their own or third parties' infrastructure in order to limit duplication. This may be liable to enhance economic efficiency and limit the economic impact for operators that may already have infrastructure in place.
  - (h) *Monitoring and clawback provision*: The monitoring and clawback provision will ensure that in case of higher revenues than initially foreseen, a proportional amount of the aid will be repaid to the granting authority.
- (43) As far as the clusters of category (c) are concerned, the Italian authorities allege that they constitute "grey areas", i.e. areas in which there is one available infrastructure able to provide – in principle – adequate broadband services. Accordingly, in addition to the above consideration, the Italian authorities submitted information to demonstrate that for the targeted clusters within this category (as detailed in the notification documents)<sup>18</sup> the conditions laid down in paragraph 46 of the Broadband Guidelines are fulfilled.
- (44) In particular, the Italian authorities provided evidence that (i) no affordable or adequate services are offered to satisfy the needs of citizens or business users and that (ii) there are no less distortive measures available (including ex ante regulation) to reach the same goals.

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<sup>18</sup> In some of the clusters, the Italian authorities recognize that ULL at an upgraded speed of 20 Mbps is available and that therefore these areas cannot be targeted by the aid measure.

- (45) For the purpose of establishing the above, the Italian authorities provided evidence that:
- (a) the overall market conditions are not adequate, by looking, inter alia, into the level of current broadband prices, the type of services offered to end-users (residential and business users) and the conditions attached thereto. In particular the Italian authorities represented that for the type of services of public interest offered by the local authorities, the quality of the service currently available is not suitable.
  - (b) the technical features of the existing infrastructure evidence a structural deficit that does not allow the creation of conditions conducive to effective competition, even in the presence of access obligations;
  - (c) the overall entry barriers preclude potential entry of other electronic communication operators, referring in particular to the low density of population and the limited size of the potential market in those areas;
- (46) Hence although a broadband infrastructure exists on the targeted areas, the evidence provided by the Italian authorities suggests that the areas are not profitable from a private investor perspective and that a market failure is present which needs to be corrected with the help of state funds.

**The distortions of competition and the effect on trade are limited, so that the overall impact of the measure is positive**

- (47) The Commission concludes that the notified measure will offset a geographical and commercial handicap and is objectively justified to address the lack of availability of enhanced broadband services due to the commercial unattractiveness of upgrading existing broadband services in the targeted areas.
- (48) In view of the characteristics of the project and of the safeguards applied by the APT, the overall impact on competition is deemed to be positive. On the effect on trade, the Commission does not identify negative spill-over for other Member States.
- (49) On balance, the Commission concludes that the overall effect of the measure is deemed to be positive. The measure is clearly in line with the objectives of Article 107(3)(c) of the TFEU as it facilitates the development of certain economic activities (broadband services) in certain remote and rural areas. The intervention is designed in a way that does not distort competition or adversely affect trading conditions to an extent contrary to the common interest.

## Conclusion

- (50) The Commission concludes that the compatibility criteria set out in the Broadband Guidelines are met, hence the aid involved in the notified measure is compatible with Article 107(3)(c) of the TFEU.

## VII. DECISION

- (51) On the basis of the foregoing assessment, the Commission has accordingly decided that the aid measure "*Reduction of the digital divide in Trentino*" is compatible with Article 107(3)(c) of the TFEU.
- (52) The Italian authorities are reminded that, pursuant to Article 108(3) of the TFEU, they are obliged to inform the Commission of any plan to extend or amend the measure.
- (53) 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/eu\\_law/state\\_aids/state\\_aids\\_texts\\_en.htm](http://ec.europa.eu/eu_law/state_aids/state_aids_texts_en.htm)

- (54) Your request should be sent by encrypted e-mail to [stateaidgreffe@ec.europa.eu](mailto:stateaidgreffe@ec.europa.eu) or, alternatively, by registered letter or fax to:

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State Aid Greffe  
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B-1049 Brussels  
Fax No: +32 2 2961242

Yours faithfully,

*Joaquin ALMUNIA*  
Vice-President of the Commission