



# THE NATURE OF THE CREDIT CRUNCH AND GOVERNMENT SUPPORT FOR AUTOMOTIVE MANUFACTURERS

## Political Imperative and State Aid Rules

Ever since the credit crunch took hold there have been cries, from Detroit to Dagenham, for government support for the automotive industry. High profile examples include Jaguar Land Rover's approaches to the UK government and those made by the German automotive industry and engineering union IG Metall to the German government. As a large employer and an important contributor to GDP in the United States and many European Union economies the automotive industry has significant political clout.

Politics will no doubt play a key role in deciding whether or not governments provide state support and in the United States some state support has now been put in place. However, within the European Union, each Member State must pay close regard to the EC Treaty provisions on state aid. State aid is essentially financial or other support granted by European Union Member State governments to support industry within that nation state. Clearly if national governments support national industries this could cause a significant distortion of competition between different Member States and for this reason, subject to certain exemptions, state aid within the European Union is unlawful.

Any state support to the automotive industry

within the European Union will almost certainly amount to state aid and so can only be granted if there is an exemption. Despite the huge amounts of aid granted to the banking and financial sector, the automotive industry will likely find itself in a different position - this article looks at what those differences are and their implications.

## Difference in Approach as Compared to the Financial Sector

On an almost daily basis the governments of the European Union Member States have, in response to the credit crunch, along with most developed economies, been providing

banks and firms within the financial sector with a wide variety of support from direct payments to loan guarantees. Under the EC Treaty most if not all of this support will amount to state aid yet the Commission has approved almost all of these measures. The question therefore arises that if the banks can have access to such funds and resources why should the position be any different for the automotive industry? The answer lies in the way in which state aid to each of these different sectors may be exempted.

In relation to the banking and financial sector a very little used exemption has been



brought into play namely Article 87(3)(b) of the EC Treaty which allows state aid to be found to be compatible where its purpose is “to remedy a serious disturbance in the economy of a Member State”. It is generally considered that a “serious disturbance” to the economy would need to be extreme for this provision to be invoked and it is for this reason that its use has been rare. In view of the current economic turmoil the European Commission issued guidance in October stating that it does consider the economic position to be so serious that this provision may now be used. However, the Commission’s guidance only envisages the use of this exemption in relation to financial services and not other economic areas including the automotive sector. This is because the financial sector is at the eye of the storm, banks will not now lend to each other and therefore every possible measure needs to be taken to increase financial liquidity. In contrast the automotive sector is not at the very centre of this crisis and although of huge economic importance support for the industry cannot form a fundamental part of the economic solutions now required. It seems unlikely therefore that the Commission will also allow this exemption to be used in relation to the automotive sector. Without recourse to this exemption it will be more difficult to exempt

aid to the automotive sector and Member State governments will therefore probably find that their options are more restricted than in relation to the financial sector.

**Rescue and Restructuring Aid for the Automotive Sector**

State aid to the automotive sector will, in the absence of other factors such as the location of a manufacturing unit in a poorer area of the EU, need to be exempted under Article 87(3)(c) of the EC Treaty which may be used to exempt aid for the “development of certain economic activities”. In relation to firms in financial difficulties such aid would normally fall to be considered under the Commission’s guidelines on Rescue and Restructuring Aid. This guidance explains that state aid may only be granted to businesses where they are in serious financial difficulties. Although there is no precise Commission definition of what amounts to a sufficient degree of difficulty the guidance does suggest that the financial situation would need to be so dire that the enterprise in question would go out of business within the short to medium term. It is also clear that the purpose of this exemption is not to allow inefficient companies to continue operating when they should in fact fail.

Based on the considerations above it seems likely that only some automotive businesses will be in a sufficiently difficult situation to be able to benefit from state support. Further, the exemption of state aid for rescue and restructuring has led to some of the most controversial cases in the past and it seems likely to do so again in relation to any future aid granted to the automotive sector. Not every European Union Member State has a large automotive manufacturing base and it is likely that those with lesser interests in the sector would question attempts by those with more significant interests to support their national industrial base where that would or may distort competition.

In conclusion, while it is clear that the current economic crisis has put considerable pressure on the European Commission to relax its approach to state aid it will certainly not wish to be seen to have done so unless it acts strictly in compliance with the provisions of the EC Treaty. Therefore, it remains to be seen to what extent government support to automotive manufacturers within the European Union can be made to fit within the exemptions to the state aid rules - this is a debate and process that is likely to raise significant controversy.

**The article contains a summary of complicated issues and should not be relied upon for specific matters. You are advised to take legal advice on particular problems.**

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