


Communication to the Member States concerning public authorities holdings in company capital (Bulletin EC 9 — 1984)

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Article	Communication to the Member States concerning public authorities holdings in company capital (Bulletin EC 9 — 1984)
Key words	Public authorities holdings, company capital, Bulletin EC 9 — 1984
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Question	<p>1. Is Communication to the Member States concerning public authorities' holdings in company capital (Bulletin EC 9 — 1984) still in force?</p> <p>2. Can it be considered that, with the entry into force of the <i>Commission Notice on the notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union(2016/C 262/01)</i> and the replacement (in point 229 of the Commission Notice) of the <i>Commission Communication to the Member States (93/C-307/03) on the application of Articles 92 and 93 of the EEC Treaty and of Article 5 of Commission Directive 80/723/EEC to public undertakings in the manufacturing sector</i>, the Communication to the Member States concerning public authorities holdings in company capital (Bulletin EC 9 — 1984) has been also repealed?</p> <p>(As far as point 16 of the Commission Communication (93/C 307/03) confirms the use of Bulletin EC 9 — 1984 concerning public authorities holdings in company capital)</p> <p>3. Can the reference to points 2 (c) and 3.2 (ii) of the Bulletin EC 9 — 1984 concerning public authorities holdings in company capital be used to demonstrate compliance with the 'market economy investor principle' in the case of public authorities' investments in company capital?</p> <p>4. Should it be considered that, since the entry into force of the Commission Notice on the notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union(2016/C 262/01) in all cases referred to in question 3 the 'market economy investor principle' should be demonstrated only by means of Section 4.2 of the Notice?</p>
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<p>COMP Reply</p>	<p>According to point 229 of the Commission Notice on the notion of aid (OJ C 262, 19.7.2016, p. 1), the latter replaces the Commission Communication to the Member States 93/C-307/03 on the application of Articles 92 and 93 of the EEC Treaty and of Article 5 of Commission Directive 80/723/EEC to public undertakings in the manufacturing sector (OJ C 307, 13.11.1993, p. 3). It does not replace/repeal the Commission Communication to the Member States concerning public authorities' holdings in company capital (Bulletin EC 9 — 1984).</p> <p>Nevertheless, according to point 3 of the Commission Notice on the notion of aid: <i>“Given that the notion of State aid is an objective and legal concept defined directly by the Treaty, this Notice clarifies the Commission's understanding of Article 107(1) of the Treaty, as interpreted by the Court of Justice and the General Court ('the Union Courts'). On issues that have not yet been considered by the Union Courts, the Commission will set out how it considers that the notion of State aid should be construed. The views set out in this Notice are without prejudice to the interpretation of the notion of State aid by the Union Courts; the primary reference for interpreting the Treaty is always the case-law of the Union Courts”</i>.</p> <p>In light of the above, the primary reference for the interpretation and application of the market economy operator principle is the case law of the Union Courts. In this context, the Commission Communication to the Member States concerning public authorities' holdings in company capital and the Commission Notice on the notion of aid are not mutually exclusive, meaning that reference can be made to the elements set out in both instruments on a case-by-case basis and to the extent that those instruments reflect the case law of the Union Courts.</p> <p><i>Disclaimer: This reply does not represent a formal and definite position of the European Commission but is only an informal guidance provided by the services of DG Competition to facilitate the application of the GBER. It is therefore not binding and cannot create legal certainty or legitimate expectations.</i></p>
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