

The last point I will treat refers to the Commission Communication on State aid elements in sales of land and buildings by public authorities

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## 1) INTRODUCTION

The present guidance to Member States is aimed at providing transparency to the general approach and at reducing the number of cases to be examined by the Commission.

The guidance describes a procedure to prevent the existence of State aid, to specify cases to be notified to the Commission and to enable the Commission to deal with complaints from third parties.

The scope of the Communication is only the sale of publicly owned land and buildings.

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## 2) PRINCIPLES

### a) Sale through an unconditional bidding procedure

A sale of land and buildings following a sufficiently well-publicised, open and unconditional bidding procedure, accepting the best or only bid is by definition at market value and consequently does not contain State aid.

The communications provides with several definitions:

- Offer sufficiently well-publicised:

When it is repeatedly advertised over a reasonably long period (two months or more) in the national press, estate gazettes or other appropriate

publications and through real-estate agents addressing a broad range of potential buyers, so that it can come to the notice of all potential buyers.

If the sale may attract investors operating on a Europe-wide or international scale, it should be announced in publications which have a regular international circulation.

- Unconditional offer:

When any buyer, irrespective of whether or not he runs a business or of the nature of his business, is generally free to acquire the land and buildings and to use it for his own purposes.

b) Sale without an unconditional bidding procedure

In this case, several factors have to be considered.

*Independent expert evaluation*

If no unconditional bidding procedure takes place, an independent evaluation should be carried out by one or more independent asset experts prior to the sale negotiations in order to establish the market value.

The market price thus established is the minimum purchase price that can be agreed without granting State aid.

The communication continues by describing the skills and background of the expert that will value the assets (appropriate degree or member of a recognized professional body, suitable experience and competence). The expert must be independent.

“Market value” means the price at which land and buildings could be sold under private contract between a willing seller and an arm's length buyer.

### *Margin*

A divergence of up to 5 % from the market value can be accepted, in case of inexistence of offers after a reasonable effort to sell the asset. In case this % is not enough to sell the asset, a new valuation, taking into account the offers or inexistence of offers received, may be done.

### *Special obligations*

Special obligations that relate to the land and buildings and not to the purchaser or his economic activities may be attached to the sale in the public interest provided that every potential buyer is required, and in principle is able, to fulfil them.

### *Cost to the authorities*

The primary cost to the public authorities of acquiring land and buildings is an indicator for the market value unless a significant period of time elapsed between the purchase and the sale of the land and buildings. In principle, therefore, the market value should not be set below primary costs during a period of at least three years after acquisition.

### Notification

Member States should notify to the Commission, (i) any sale that was not concluded on the basis of an open and unconditional bidding procedure, accepting the best or only bid; and (ii) any sale that was, in the absence of such procedure, conducted at less than market value as established by independent experts.