IMPLEMENTING EU STATE AID POLICY
An EU and Member State perspective

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Implementing EU State aid policy

1. Rationale and basic principles
2. The notion of State aid
3. State aid procedure
4. The General Block Exemption Regulation (GBER)
5. Assessing regional investment aid (system / case)
6. Investigating complaints (procedure / case)
7. Transparency and Monitoring
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7. Transparency and Monitoring
Rationale for EU State aid policy

- EU State aid policy closely linked to “internal market”
  - No longer possible to protect national producers
  - MS tempted to subsidise national firms to strengthen their competitive position or to delay restructuring

- State aid can have negative effects:
  - Distorted price signals $\rightarrow$ inefficient allocation of resources
  - Weakening of dynamic incentives to innovate and adapt
  - Subsidy races $\rightarrow$ Impact on public finance
    $\rightarrow$ Impact on “territorial cohesion”

- State aid policy to improve quality of public expenditure
  - Incentive effect
  - Transparency
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    → Impact on “territorial cohesion”

- State aid policy to improve quality of public expenditure
  - Incentive effect
  - Transparency
Amazon threatens to cancel New York City Headquarters if it doesn’t receive $3 billion in subsidies
## State aid and cohesion - 1

<table>
<thead>
<tr>
<th>2015</th>
<th>10 Richest Member States</th>
<th>10 Poorest Member States</th>
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<tbody>
<tr>
<td>GDP per capita (EU28 = 100)</td>
<td>136</td>
<td>38</td>
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<tr>
<td>State aid (as % of GDP)</td>
<td>0.70%</td>
<td>0.93%</td>
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<tr>
<td>State aid (annual, per capita)</td>
<td>€ 272</td>
<td>€ 102</td>
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<td>State aid Volume (billion € / year)</td>
<td>€ 58 bn</td>
<td>€ 10 bn</td>
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Richer MS have deeper pockets and more to spend on SA…

Positive correlation GDP/cap - SA/cap

Pearson Correlation: 0.53

Data for EU28 excl. Luxembourg
## Regional disparities: EU & China

### GDP per capita 2016

**EU = 100**

<table>
<thead>
<tr>
<th>Country</th>
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<td>Ireland</td>
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Basic principles of EU State aid policy

● EU SA policy established in 1958 Treaty of Rome

● Main objectives:
  + Avoid distortion of competition in internal market
  + Support economic and social cohesion

● Basic State aid rules have remained almost unchanged since 1958
Basic principles of EU State aid policy /2

- **Rules on “substance”** (*Article 107 TFEU)*:
  + SA in principle “incompatible” with the common market
  + Exemptions from ban defined in the Treaty

- **Rules on “procedure”** (*Article 108 TFEU)*:
  + Commission has “exclusive” competence to control exemptions
  + Ex ante control:
    - Notification
    - Standstill obligation
  + Sanction → Recovery of illegal & incompatible aid
Basic principles of EU State aid policy /3

Two key questions:
1. Is there State aid? → “Notion of State aid”
   + Not all public support measures constitute State aid
   + Definition of State aid is set in the EU Treaty
   + No discretion for Commission – Interpreted by EU Court
2. Is the State aid allowed? → “Compatibility of aid”
   + Not all State aid measures are prohibited
   + Conditions under which State aid is acceptable:
     - Defined by EU Commission
     - Criteria published in “Guidelines”, “Regulations”, etc
The notion of “State aid” /1

Definition of “State aid” is contained in Article 107(1) of the EU Treaty:

“Save as otherwise provided in the Treaties, 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, insofar as it affects trade between Member States, be incompatible with the common market”
The notion of “State aid” /2

● **Five criteria** defining a measure as “State aid”:
  + The presence of an economic activity (notion of “undertaking”)
  + Financing through **State resources**
  + The presence of an economic advantage for the beneficiary ("favouring")
  + Selectivity ("**certain** undertakings", "**certain** goods")
  + **Effect on competition and trade**

● All five criteria need to be fulfilled **simultaneously**!
Compatibility: Exemptions

- Markets are not always perfect
  - Deficiencies (e.g. external effects)
  - Equity concerns (e.g. regional inequalities)

- Treaty defines “exemptions” from ban on SA such as:
  - Aid to make good the damage caused by natural disasters
  - Aid to promote the development of less developed regions (regional aid)
  - Aid to facilitate the development of certain economic activities (e.g. SME aid, R&D aid, Environmental aid, Aid for renewables, …)
  - Aid to promote culture and heritage conservation
Compatibility: Exemptions

- Exemptions are not unconditional:
  - Aid should contribute to an “objective of common interest”
    - A more balanced regional development
    - Promotion of R&D
    - Environmental protection
  - Aid should “not adversely affect trading conditions to an extent contrary to the common interest”

- COM controls application of exemptions
  - COM defines the conditions under which MS are allowed to grant State aid
  - MS still decides on granting of aid within the framework set by the COM
Compatibility – Balancing test

- How do we assess whether an aid measure is “compatible with the “common market”? 
- COM applies a “balancing test”:
  - Benefits (contribution to objective of EU interest)
  - Costs (distortion of competition and trade)
- Compatibility assessment covers i.a.
  - Contribution to objective of common interest?
  - Has the aid an incentive effect?
  - Is the aid proportional?
  - Are distortions of competition limited?
  - ....
Compatibility - Criteria

- COM defined “criteria” used for the compatibility assessment for different types of State aid:
  + Objectives of common interest such as:
    - Horizontal: Regional, SME, RDI, environment, …
    - Sectoral: Airports, Broadband, …
  + Main compatibility conditions:
    - Eligible types of projects
    - Eligible costs
    - Maximum aid intensities
    - …

- Criteria used for assessment of compatibility published in Guidelines and Block Exemption Regulation
Compatibility – Secondary legislation

● 1990’s: “Guidelines” and “Frameworks”:
  + Criteria used by COM to assess notified SA
  + Potentially more distortive aid (e.g. large investment aid)
  + Notification & standstill requirement

● Early 2000’s: “Block Exemption Regulations” (BER)
  + Clear compatibility conditions for different types of aid
  + If complied with, measure is regarded as compatible
  + No notification required

● 2014: State Aid Modernisation → “General BER” (GBER)
  → Since early 2000s: Huge widening of scope of BER
The growing importance of GBER

Use of GBER in the European Union

- Total GBER reported SA expenditure as % of total reported expenditure (simple average)
- Total GBER cases as % of total cases with reported expenditure
- Total new GBER cases as % of total new cases with reported expenditure

* Entry in force of most rules on 1st July 2014
Published on DG Competition’s website:
Illegal and incompatible aid

• EU State aid rules:
  + Formal (procedural) rules
    - Standstill and notification obligation
    - Violation → “Illegal aid”
  + Substantive rules
    - Eligible activities, maximum aid, eligible costs, …
    - Violation → “Incompatible aid”

• Implications:
  + Illegality of aid is not sufficient ground for recovery decision
  + Commission recovery order: only for aid that is illegal & incompatible
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The notion of State aid

Criteria in Article 107 (1)
1. The presence of an economic activity (notion of „undertaking“)
2. Financing through State resources
3. The presence of an economic advantage for the beneficiary
4. Selectivity
5. Effect on competition and trade

Cumulative conditions: if one is missing → there is no State aid in the meaning of Art. 107 (1)
1. Economic activity

**Undertaking** – entity engaged in an economic activity regardless of it’s legal status and the way in which it is financed.

- any activity consisting in offering goods and services on a market

State can be engaged in economic activity.
1. Economic activity – Examples of non-economic activity

- Public power
- Health care and social security based on the principle of solidarity
- Public education as integral part of the national educational system
- Provision and supervision of land in line with urban development plans
- Construction of infrastructure that is not meant to be commercially exploited
2. Transfer of state resources

Aid granted by a Member State
- Central government, ministries or departments
- Regional government, local authorities, councils

Or through State resources
- Public undertakings or agencies of the State
- Funds or associations controlled by the State

If the actions are imputable to the State
- Does the State has discretion to control the actions of its bodies?
2. Transfer of state resources - Imputability

Measures of a public undertaking not *per se* imputable

special indicators:

- special decision / directive issued by governmental bodies,
- integration of the public undertaking into the public administration,
- the degree of the supervision over the management,
- any other indicator showing the involvement of the public authorities
2. Transfer of state resources


Soft loan for a firm granted by a bank partly owned by the state

- The measure does not need to charge the central budget

Imputability: the presence of state control on the concrete decision is decisive
2. Transfer of state resources

C-262/12. Vent de Colére (FR)

- levy imposed on consumers of electricity by law to compensate for the extra costs of electricity distributors paid to renewable electricity producers
- the sums to offset the additional costs are collected from all consumers of electricity by a public body
- the amount of the charge is determined by the Minister for Energy, and there is an administrative penalty if the charge is not paid

The charges for offsetting the additional costs imposed by the purchase obligation are collected and managed according to the rules laid down by the state. The funds collected are paid out by the public body to the distributors.

the fund is under permanent state control = qualifies as state resource
3. Advantage

- Any economic benefit which an undertaking would not have obtained under normal market conditions
- The effect, not the cause or the objective is relevant
- Form is irrelevant
  - Both positive economic advantage and relief from economic burdens
  - Both direct and indirect advantages
- Advantage at different levels (e.g. owner, operator and user of infrastructure)
3. Advantage

C-403/10 P Mediaset SpA v Commission (IT)

- Obligation of digital switchover in Italy until the end of 2006
- Every user of broadcasting service who pays the relevant subscription fee regularly receives EUR 150 in order to rent or buy digital terrestrial decoders

The measure offered an incentive to consumers to switch from analogue to digital terrestrial mode, while limiting the costs that those broadcasters had to bear

indirect advantage for the digital terrestrial broadcasters (vis-à-vis cable, satellite and pay-tv providers)
3. Advantage
Market Economy Operator test

- Art. 345 TFEU: neutrality with regard to the system of property ownership
- MS can act as an economic operator, but is subject to SA rules
- No SA (no advantage) if the economic transaction is carried out in line with normal market conditions
- Comparing the behaviour of the State with that of a comparable private operator in the same situation, under normal market conditions
- If such a private operator could reasonably have taken the same decision, there is no advantage and thus no aid
- Three variants:
  - Market Economy Investor Principle (MEIP): seeks profit
  - Market Economy Creditor Principle: seeks repayment
  - Market Economy Vendor Principle: seeks maximum price
4. Selectivity

- **Selective measure**: favoring certain undertaking(s), group of undertakings or economic sector directly or indirectly
  - Geographical specificity
  - Sectorial specificity
  - Specificity as to the type of company (SMEs, multinational companies or State companies)

- **General measure**: effectively open to all undertaking operating within the MS on an equal basis
  + scope cannot be reduced de facto
  + large number of eligible undertakings or the diversity of their sectors is not decisive
4. Selectivity

SA.35545 – Social measures in the employment sector (DK)

Aim of the scheme: integration of people with permanently handicapped people into the labour market (employees and self employers)

Aid intensity: 50-66% of the wages

- employees: the measure is open to all employers
  
  general measure

- self employers: the measure is selective
  
  state aid
4. Selectivity

SA.31722 – Tax benefit for the sport sector (HU)

Aim of the scheme: Encouraging investments in sport infrastructure and ensuring access of the public to sport infrastructure

Form of the measure: tax benefit for undertakings donating for sport development, backed up by corporate incentives

Beneficiaries: sport organizations of the 5 most popular team sports and professional sport clubs

Possible levels of selectivity

donors: the tax incentives are open for every undertaking with the same conditions

general measure

sport clubs: only the 5 most popular team sports and professional sport clubs are eligible

selective measure, state aid
5. Effect on competition and trade

- Aid distorts or threatens to distort competition when it improves the competitive position of the beneficiary compared to other undertakings with which it competes.

- Distortion of competition generally exists when aid is granted to an undertaking in a liberalised sector where there is, or could be, competition.

- Distortion of competition is excluded if the following cumulative conditions are met:
  - a service is subject to a legal monopoly
  - the legal monopoly also excludes competition for the market,
  - the service is not in competition with other services; and
  - if the service provider is active in another (geographical or product) market that is open to competition, cross-subsidisation has to be excluded.
5. Effect on competition and trade

The measure is liable to improve the competitive position of the undertaking compared to its competitors.

- even if the recipient is not involved in cross-border trade
- also applicable for supporting activities outside the EU

Exemptions from case law:

- activities with purely local impact
  + the aid does not lead to investments being attracted in the region concerned and
  + the (goods)/services produced by the beneficiary are purely local and/or have a geographically limited attraction zone and
  + there is no more than marginal effect on consumers from neighboring Member States and

- de minimis aid
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Legal basis

● Article 108 of EU Treaty:
  + Notification and standstill obligation for new aid
  + COM keeps national aid systems under constant review and can propose modifications
  + If aid is granted illegally and found to be incompatible, COM will order it to be abolished or altered
  + COM may adopt regulations to exempt certain categories of aid from notification

● Secondary legislation:
  + Council: Procedural regulation
  + COM: Implementing regulations, guidelines, BERs, …
Division of competences

- **Commission:**
  - Exclusive competence to determine whether a SA is compatible with the common market
  - Will also rule on the existence of State aid

- **National courts also play a role:**
  - Protect the jurisdiction of the COM through the standstill clause (rule on the existence and legality of aid)
  - Enforce COM decisions

- **All COM decisions are subject to review by the European Courts (General Courts and the European Court of Justice)**

- **Member States grant aid within the framework set by the COM**
Definitions - 1

● New aid
  + Including modification of existing aid
  + Needs to be notified and approved by the COM

● Unlawful or illegal aid:
  + New aid that has been put into effect without prior authorisation by the COM
  + Will be examined by the COM
  + When found to be incompatible with the common market, COM will order recovery
 Definitions - 2

- **Existing aid:**
  - Aid authorized by the Commission
  - Aid implemented under a General Block Exemption Regulation
  - Individual aid under an approved aid scheme
  - Aid that entered into force before accession
  - Aid granted more than 10 years ago

- **Aid scheme versus Individual aid versus Ad hoc aid**
  - **Aid scheme** is a legal instrument on the basis of which individual aid awards can be made to undertakings that are defined in a general and abstract manner
  - **Ad hoc aid** is aid not granted on the basis of an aid scheme:
Notified aid: Preliminary investigation

- Notification by Member State of new aid measure
  - Deadline COM decision: 2 months after complete notification
  - If notification is incomplete → COM sends info request to MS
  - MS submits complementary info → 2 months cycle restarted

- COM decision after preliminary investigation:
  - No aid decision
  - No objection decision (compatible aid)
  - Opening of formal investigation (doubts on compatibility)

- All decisions (reasoned) are published on website

- Preliminary investigation = bilateral procedure COM-MS
Notified aid: Overview

Informal pre-notification

Notification via Perm Rep

Info Request(s)

MS Reply

Commission Decision

No Aid

No objection

Formal Investigation
Notified aid: Formal investigation / 1

- Opening decision sent to Member State and published:
  - States reasons for opening ("doubts")
  - Invites MS and interested parties to comment
- MS can comment on observations from 3rd parties
- COMM Final decision:
  - No aid
  - Positive decision
  - Negative decision
  - Conditional decision
- Non-binding deadline: 18 months
Notified aid: Overview

1. **COM Decision initiating formal investigation**
2. **Publication in Official Journal**
   - **3rd party comments**
   - **Sent to MS**
     - **MS comments**
3. **Final Decision**
   - No Aid decision
   - Positive decision
   - Conditional decision
   - Negative decision
Unlawful aid (Non-Notified aid)

- Similar procedure as for notified aid
  - Preliminary investigation
  - Formal investigation (when doubts exist)
- Main differences:
  - Start of procedure: complaint or ex officio
  - No time limits
  - Possibility to use “injunctions”
    - Information injunction
    - Suspension injunction and recovery injunction
  - Negative decision leads to recovery order
Existing aid

- Existing aid:
  + Approved aid measures
  + Aid measures that existed before accession

- COM keeps existing aid “under constant review”

- If COM considers that existing aid is no longer acceptable:
  + Letter to MS explaining why aid is problematic
  + COM proposes “appropriate measures”: i.e. to discontinue or alter aid measure for the future
  + MS accepts → Measure must be altered/discontinued
  + MS rejects → COM can impose appropriate measures after opening of formal investigation
Information gathering tools

- Preliminary investigation phase:
  + Notified aid: Info submitted by MS in Notification forms and in replies to COM info requests
  + Unlawful aid: Info requests to MS + Information injunction

- Formal investigation phase:
  + Info submitted by MS
  + Comments submitted by 3rd parties
  + Market information tools
    - COM can address questions to 3rd parties, but only if procedure has been ineffective
    - Possibility of fines for providing incorrect info or failing to reply
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Legal framework of State Aid granting

State Aid is prohibited, save as the Treaty itself allows it (107 (1) TFEU)

If State Aid is allowed by the Treaty it must be notified to the Commission (108 (3) TFEU)

The Council is allowed to determine aid categories which are exempted from the notification (109 TFEU)

The Commission is allowed to determine the criteria of the compatibility of such aid categories (108 (4) TFEU)

GENERAL BLOCK EXEMPTION REGULATION (GBER)
Background

- GBER in force: Regulation 651/2014/EU of 26 June 2014
- Aim of the GBER
  + avoid notification procedure in certain cases,
  where enough experience at the COM and the MSs as well,
  COM can focus on more distortive cases
  + setting general rules for all exempted aid
  + compiling all the possible exempted aid measures in one legal act
Architecture of the GBER

- Chapter I: Common provisions (scope, definitions, notification thresholds, incentive effect, undertaking in difficulty)
- Chapter II: Monitoring
- Chapter III: Specific provisions for different categories of aid (Section 1-13)
- Chapter IV: Final Provisions
- Annexes (Definition of Small and Medium Enterprises)
Application of the GBER

be used, if

1. the category of aid, activity, or sector is within the scope of GBER,
2. the aid amount does not exceed the notification threshold,
3. the aid is transparent,
4. the aid has incentive effect,
5. the aid is proportional (intensities not exceeded)
6. cumulation rules fulfilled
7. publication rules fulfilled
8. special conditions related to the given aid category is fulfilled
Scope of the GBER

Not applicable

+ Export aid;
+ Measures favoring domestic over imported goods;
+ Fisheries and aquaculture with some exceptions (e.g. risk finance, R&D)
+ Primary agricultural production with some exceptions (e.g. risk finance, R&D, environmental aid, training)
+ Processing and marketing of agricultural products, if
  - If the aid amount is fixed on the basis of the price or amount of products purchased; or
  - If the aid is conditional on being passed over to the producer.
+ Coal sector;
+ Regional aid in the energy, steel, synthetic fibres and shipbuilding sectors;
+ Regional schemes applied only in one sector (except tourism);
Scope of the GBER

Not applicable

+ The scheme/measure does not contain the Deggendorf clause;
+ The scheme/measure violates the EU Law;
+ For Undertakings in difficulty except aid for make good the damages of natural disasters;
  – Undertakings in difficulty:
    – Limited liability companies: more than the half of the subscribed share capital has disappeared;
    – Companies with members with unlimited liability: more than the half of the capital has disappeared;
    – The undertaking is subject to or fulfills the criteria of collective insolvency
    – In case of large undertaking: for the past 2 years
      » The debt to equity ratio was > 7,5, and
      » The EBITDA interest coverage ratio was < 1.
Scope of the GBER

Material scope

• Regional aid;
• Aid to SME’s (investment aid, operating aid, access to finance aid);
• Aid for environmental protection;
• Aid for research, development and innovation;
• Training aid;
• Recruitment and employment aid for disadvantaged and disabled workers;
• Aid to make good the damages caused by natural disasters;
• Social aid for passenger transport;
• Aid for broadband infrastructures;
• Aid for culture and heritage conservation;
• Aid for audio-visual works;
• Aid for sport and multifunctional recreational infrastructures;
• Aid for local infrastructures;
• Aid for airport infrastructures;
• Aid for port infrastructures.
Measures under the scope of the GBER

- Still notified (guidelines/Treaty)
  - GBER extension (notification and intensity threshold)
  - Exemption areas
  - GBER extension (new types and categories)
- New De minimis

Type of aid

- Notified aid
- Block-exempted
- De minimis
Notification threshold

- Regional investment aid: the granted aid exceeds the maximal aid amount, which could be granted for an investment in the same region with 100 M € eligible costs, according to the formula

  \[ \text{Maximal aid amount} = R \times (50 + 0.50B + 0xC) \]

  - \( R \): maximal aid intensity according to the Regional Map
  - \( B \): eligible costs between EUR 50 Mio and 100
  - \( C \): eligible costs above EUR 100 Mio

- Risk finance aid for SMEs: EUR 15 Mio per undertaking
- Training aid: EUR 2 Mio per project
- Investment aid for culture: EUR 150 Mio per project
- Investment aid for local infrastructure: EUR 10 Mio aid per project or EUR 20 Mio total cost
Transparency of the aid measures

- The aid measure has to be transparent: the gross grant equivalent (GGE) can be calculated precisely and without risk assessment before the granting of aid.
  + Grant
  + Interest rate subsidy
  + Loan, if calculated on the basis of the reference rate
  + Guarantee, if calculated on the basis of the safe-harbour premiums
  + Equity, if the total equity is below the maximum aid amount
Incentive effect

The measure needs an incentive effect: the aid has to modify the behaviour of the beneficiary!

+ Beneficiary should apply for the aid before starting the project providing basic information
+ Ad hoc aid to large enterprises: additional proof required (size/duration of the project, amount spent, speed)
+ Except: automatic tax schemes in force before the start of the project
+ Further exemptions like natural disasters, culture, operating aid
Proportionality and cumulation

- **Proportionality**: aid intensity must not be exceeded
  Aid intensity: gross aid amount expressed as a percentage of the eligible costs
  \[ \text{Maximum aid amount} = \text{eligible costs} \times \text{aid intensity} \]

- **Cumulation**: all state aid (central/local budget, Structural funds) for the same eligible costs should be taken into account including *de minimis*
Publication, monitoring and reporting /1

- **Transparency:**
  + summary information about the implementation should be sent to the COM in 20 working days (annex)
  + COM publishes the summary in the Official Journal
  + Publication of the legal background’s full text on the internet (accessible)
  + Publication of aid measures above EUR 500,000 on the Commissions website

- **Monitoring:**
  + MSs keeping detailed records containing all the necessary information
  + COM letter to the MSs, reply 20 working days
Annual reporting – report on the amount of the aid granted from the existing aid measure
+ Not a real report, rather a compilation of data
+ Submitted to the COM by 30 June each year
On-line system since 2012: SARI
- Aid grantors have access, MS Authority checks data
+ COM publishes the Scoreboard around November each year, containing analyses of the information provided by Member States.
Rules for the single aid categories

Sample aid category: TRAINING AID

● Exclusion of mandatory training

● Eligible costs:
  + trainers' personnel costs
  + trainers' and trainees' operating costs directly relating to the training project
  + costs of advisory services linked to the training project
  + trainees' personnel costs and general indirect costs

● Aid intensity: 50% may be increased up to 70%
  + 10% for training for workers with disabilities
  + 20% for training for small enterprises, 10% for training for medium enterprises
Implementing of the GBER /1

- The GBER is a „menu”
  - Aid grantors can choose the most suitable aid category
  - Have to implement the aid category into the aid scheme
  - or
  - individual aid measure

any act on the basis of which, without further implementing measures being required, individual aid awards may be made to undertakings
Implementing of the GBER /2

Obligatory content on an aid measure / scheme:

● Name of the aid grantor
● Potential beneficiaries
● Aim of the measure
● Applicable aid category
● The rules for the applicable aid category
● Form of the aid measure
● Maximum aid intensity
● Amount of required own contribution
● Eligible costs
Benefits of using the GBER

- Easier everyday work
- Quicker decision-making at national level → lower amount of illegal aid

BUT

- Bigger responsibility at the MSs – informal contacts with the COM
- Lower legal certainty – prenotification / comfort letter
- Less notification - COM can concentrate on the heavy cases
Implementing EU State aid policy

1. Rationale and basic principles
2. The notion of State aid
3. State aid procedure
4. The General Block Exemption Regulation (GBER)
5. Assessing regional investment aid
   + The regional aid rules
   + The MOL case
6. Investigating complaints (procedure / case)
7. Transparency and Monitoring
Regional inequalities in EU ...

- Article 3 TEU:
  "The Union shall promote economic, social and territorial cohesion, and solidarity among Member States."

- Article 174 TFEU
  "In order to promote its overall harmonious development, the Union shall develop and pursue actions leading to a strengthening of economic, social and territorial cohesion."
EU Treaty exemptions for regional aid

- Exemption from the general ban on State aid for regional aid measures:
  + "Aid to promote the development of areas where the standard of living is abnormally low or where there is serious underemployment…" (Art. 107(3)(a) of EU Treaty)
  + "Aid to facilitate the development of … certain economic areas…" (Art. 107(3)(c) of EU Treaty)

- Criteria for the application of the regional aid exemptions:
  + Successive Communications since early 1970’s
  + Block Exemption Regulations (GBER) of 2006, 2008, 2014
Setting up the regional aid system

1. Evaluation of old rules
2. Consultation with the public
3. Consultation with MS
4. Draft COM PROPOSAL: Rules on maps & aid conditions
5. Internal impact assessment
6. COM DECISION: Rules on maps & aid conditions
7. Consultation with MS
8. MS sets up aid schemes under GBER
9. COM Decision on notification
10. MS notifies sensitive cases
11. COM DECISION: REGIONAL AID MAPS
12. MS PROPOSAL: REGIONAL AID MAPS
13. Implementation
RAG/GBER 2014-2020

● Purpose of regional aid:
  + To promote the development of disadvantaged areas by addressing their economic handicaps
  + To promote economic cohesion of the EU

● How?
  + Support for investment and job creation by undertakings
  + Support for operating expenses of undertakings (exceptionally)

● Criteria set out in RAG & GBER:
  + Where can regional aid be granted?
  + What can aid be granted for?
  + How much aid can be granted?
For regional aid to be effective, it needs to be focused on the regions that suffer the most serious difficulties.

Two types of regions:

- **Least developed regions** → “a” regions
  - GDP/cap > 75% of EU average
  - 25% of EU population
  - High maximum aid % allowed for investment projects

- **Other assisted regions** → “c” regions
  - Problematic at national level
  - 20% of EU population
  - Lower maximum levels of aid
Regional aid map also places limits on the amount of investment aid that can be granted in each region: → “Regional aid ceilings”

<table>
<thead>
<tr>
<th>Assisted area (% EU GDP/head)</th>
<th>Large firms(*)</th>
<th>Medium firms(*)</th>
<th>Small Firms(*)</th>
</tr>
</thead>
<tbody>
<tr>
<td>'a' areas (GDP/cap &lt;45% EU av.)</td>
<td>50%</td>
<td>60%</td>
<td>70%</td>
</tr>
<tr>
<td>'a' areas (GDP/cap 45%-60% EU av.)</td>
<td>35%</td>
<td>45%</td>
<td>55%</td>
</tr>
<tr>
<td>'a' areas (GDP/cap 60%-75% EU av.)</td>
<td>25%</td>
<td>35%</td>
<td>45%</td>
</tr>
<tr>
<td>'c' areas</td>
<td>10-15%</td>
<td>20-25%</td>
<td>30-35%</td>
</tr>
<tr>
<td>Non-assisted</td>
<td>0%</td>
<td>10%</td>
<td>20%</td>
</tr>
</tbody>
</table>

(*) Max. aid percentages are reduced for projects > EUR 50 mio
Regional aid maps - 3

Regional aid maps 2014-2017
Regional investment aid

- Experience: Most regional aid measures → unproblematic:
  + Obvious benefits → Cohesion objective (regional development)
  + No unacceptable distortion of competition & trade

- No need for COM scrutiny → **Exempted from notification**
  + Compatibility conditions are set out in GBER
  + If GBER conditions are met, MS can implement measure without need for COM approval

- High risk cases → **Notification obligation**
  + Large investment projects, relocation cases, …
  + Sticter compatibility conditions set out in Regional aid Guidelines
Regional investment aid – GBER / 1

● Eligible projects?
  + New investment projects in assisted regions
  + Examples of projects that are not covered (to be notified):
    - Large projects (> € 100 mio)
    - Sensitive projects (eg investments involving closure/relocation)

● Eligible costs?
  + Investment in material and immaterial assets
  + Labour costs (2 year salary cost of newly created jobs)

● Maximum aid amount?
  Maximum aid is defined as a percentage of eligible costs of the investment project
Regional investment aid – GBER / 2

• How much aid?
  + Maximum aid is defined as a percentage of eligible costs of the investment project
  + Maximum aid percentage for each region is set in the regional aid map
  + Example:
    - Large firm - New investment project of EUR 40 Mio
    - Region: Latvia → Max aid % = 35%
    - Max. aid: 35% * EUR 40 Mio = EUR 15 Mio
  + For larger investments (> EUR 50 Mio), the maximum aid % is reduced
Other conditions:

● Incentive effect:
  - Application of aid before start of work on project

● Transparency → Publication of:
  - text of aid scheme on central website
  - All individual aid awards (> EUR 0.5 Mio) + beneficiaries

● Commit to maintain investment for 3 (SME) / 5 years (LE)

● Commitment not to close / relocate activities from other regions
Regional investment aid – RAG

- High risk cases have to be notified – For example:
  + Large investment projects (investment projects of EUR 100 Mio);
  + Sectoral aid schemes, Relocation/Closure aid

- COM assessment on the basis of Regional aid Guidelines:
  + GBER conditions
  + Additional, more restrictive assessment:
    - Incentive effect: Without the aid:
      . Project would not be sufficiently profitable
      . Project would be carried out in more prosperous region
    - Proportionality: Exactly how much aid is needed?
    - No manifest negative effects: Extra capacity in declining sectors, anti-cohesion effect, aid causes relocation
Regional aid – Case study

How to influence the investment location with State aid?

Case study - MOL
The beneficiary

MOL Plc. - Hungarian Oil and Gas Public Limited Company

Key Activities

- **Upstream**
  - SPE 2P reserves
  - Daily production
  - Licensed acreage (including concession blocks)
  - Mining plots
  - Producing wells

- **Downstream**
  - Production portfolio structure
    - 40% diesel fuel
    - 17% gasolines
    - 12% polymer & monomer production
    - 7% chemicals
    - 14% black products
    - 9% others

Number of Employees:

- ~8,000

Sales:

- 56% domestic market
- 44% exports

Logistics:

- ~22 Mt annual manipulated volume
- ~2,200 km crude and product pipeline
- ~2,100 pcs rail tank car
- 105 pcs tank car
- 13 pcs fuel and PB terminal
Active in every area of the oil and gas industry, including exploration and production, refining, distribution, petrochemicals, power generation and trading.

MOL – among others - operates 4 refineries and 2 petrochemical plants in Central Europe
Investment plan

● New establishment to produce two new products: polyols and propylene glycols

● 2 potential locations (both in Hungary)
  + One close to Budapest, the capital
  + One in an underdeveloped region

● Eligible costs approx EUR 800 million
Dilemma for MOL: which location to choose?

Comparison of the investment costs and the planned production costs over the reference period of 30 years for the two sites

- **Close to the capital**
  - Lower investment costs
  - Lower production costs

- **Assisted region**
  - Extra facilities to be built
  - Cost due to the delay completing the project
  - State aid

- Higher investment costs (propylene loading and storage facilities, raw water supply and wastewater treatment facilities, steam generator, accommodation for workers)
- Higher production costs (transport costs due lower availability of feedstock, lower availability of trained workforce)
- Cost due to the delay completing the project (time for building the infrastructure and training of workforce)

Total cost disadvantage of EUR 131.5 Mio in Tiszaújváros as compared to the alternative location.
Why was the Government willing to support the project?

- Creation of 192 new jobs (25% for highly skilled workers) + indirect jobs in the connected industry sectors and in the construction phase
- Cooperation with local universities
- Significant transfer of knowledge in a structurally weak region
- R&D activities in collaboration with local industry and university actors
- Improvement of local infrastructure
- 30 years lifetime of the plant means longterm engagement in a very underdeveloped region
Why notification???

Maximum aid amount according to the Regional Aid Map: EUR 169 Mio.

BUT!!!

GBER – notification thresholds

<table>
<thead>
<tr>
<th>Percentage</th>
<th>Notification Required</th>
</tr>
</thead>
<tbody>
<tr>
<td>10% Region</td>
<td>Aid &gt; € 7.5 Mio</td>
</tr>
<tr>
<td>15% Region</td>
<td>Aid &gt; € 11.25 Mio</td>
</tr>
<tr>
<td>25% Region</td>
<td>Aid &gt; € 18.75 Mio</td>
</tr>
<tr>
<td>35% Region</td>
<td>Aid &gt; € 26.25 Mio</td>
</tr>
<tr>
<td>50% Region</td>
<td>Aid &gt; € 37.5 Mio</td>
</tr>
</tbody>
</table>

Under the RAG

The maximum aid amount is the net difference between the costs of the selected site and the counterfactual scenario!!!
Incentive effect of the aid

- State aid needs an incentive effect!!!
  - A decision on the location has not been made yet, site selection still in progress
  - The aid has a significant impact on site decision
  - Without the aid, the project would be located in a non assisted region
  - With the aid, the investment would be located in Tiszaújváros an assisted region with 50% max aid intensity
  - The works start only after the application for aid

The aid effectively has an impact on the investment locations choice, so it has substantial incentive effect.
Implementing EU State aid policy

1. Rationale and basic principles
2. The notion of State aid
3. State aid procedure
4. The General Block Exemption Regulation (GBER)
5. Assessing regional investment aid (system / case)
6. Investigating complaints
   + Procedure
   + Case: Malev
7. Transparency and Monitoring
Complaints are an important part of State aid workload:

Other State aid cases decided | State aid complaints closed
---|---
2007: 846 | 281
2008: 915 | 290
2009: 1126 | 363
2010: 770 | 346
2011: 762 | 357
2012: 766 | 282
2013: 956 | 275
2014: 920 | 296
2015: 631 | 260
2016: 590 | 184
2017: 507 | 161
Complaints

● State aid procedure:
  + Mainly procedure between COM and MS
  + Limited role for 3rd parties (except after opening of procedure)

● Complaints procedure
  + Procedural regulation
  + Best practice code
  + Case law

● Legal standing: “Interested parties” (competitors, industry associations, …)

● Requirement: Submission of complaints form

● Formal complaints \(\rightarrow\) Right to a decision
Complaints - Process

1. Complaint (CP) submitted
2. CP forwarded by COMP to MS
3. MS submits comments on CP
   - COMP: Problem!
4. COMP sends Preliminary Assessment Letter to complainant
   - No reaction complainant
   - Complainant insists
5. Administrative closure
   - COMP: No problem!
6. COM opens Formal Investigation
   - Publication + Comments 3rd parties & MS
7. COM Final Decision
   - No aid
   - Positive
   - Conditional
   - Negative
Complaints – Case study

The tragedy of the Hungarian airlines
Malév – Hungarian Airlines

Beneficiary: Malév - Hungarian Airlines

- The Hungarian national flag carrier established in 1946
- Based at Budapest Airport (In the capital of Hungary)
- The state owned company was partly sold to Alitalia in 1992
- Due to a negative decision of the European Commission on Alitalia, it had to sold its share in Malév (renationalization)
Malév – Hungarian Airlines

- Second privatisation via tender in 2007 – the new owner (Russian businessman) started with restructuring
- 2008: massive increase in fuel prices + global financial crisis
- Re-nationalized in 2010 and continued to have losses
- Operated a fleet of 22 aircraft to 52 destinations in Europe and the Middle East (2012)
- Transported 3.2 Mio passengers in 2009 (Population of Hungary is 10 million)
The Complainant

Complainant: Wizz Air

- Low cost airline based in Central Europe
- Transported 7.8 Mio passengers in 2009
- A main competitor of Malév
The complaint

Alleged aid measures for Malév

+ Privatisation in 2007 – a loan (EUR 76 Mio) granted by the Hungarian Development Bank (state-owned) was taken off Malév’s balance sheet

+ Tax deferral (EUR 51 Mio)

+ Renationalisation in February 2010 – capital increase (EUR 94 Mio) + conversation of shareholder loan to equity (EUR 34 Mio)

+ Capital increase (EUR 19 Mio) and shareholder loan (EUR 20 Mio) in September 2010

= EUR 294 Million
The procedure /1

- March 2010: COM asked information on the measures in the Wizzair compliant
- December 2010: opening of the formal investigation procedure
  + Hungary: the measures fulfilled the conditions of the Market Economic Investor / Creditor Principle
  + Complainant: Malév was an undertaking in difficulty since 2006

- COM is obliged to check the compatibility of an illegal aid measure
  + Possible compatibility ground would be the Rescue and Restructuring GL
The procedure /2

Compatibility on the basis of the Rescue and Restructuring guidelines

<table>
<thead>
<tr>
<th>Compatibility criteria</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>One time last time</td>
<td>✗</td>
</tr>
<tr>
<td>The measures have to be limited to the minimum</td>
<td>✗</td>
</tr>
<tr>
<td>The measures have to restore the long term viability of the company</td>
<td>✗</td>
</tr>
<tr>
<td>The measures have to avoid the undue distortion of competition</td>
<td>✗</td>
</tr>
</tbody>
</table>

The measure is incompatible with the EU law
COM decision – 9 January 2012

- The measures constitute state aid
- The measures are not compatible with Rescue and Restructuring GL
- The granted state aid has to be recovered with interests

End January 2012: MALÉV requested more subsidies from the Hungarian government. The Government was not allowed to help.

February 2012: Malév ceased its operations and went into liquidation.

February 2019: The EU recovery procedure was closed.
Implementing EU State aid policy

1. Rationale for and basic principles
2. The notion of State aid
3. State aid procedure
4. The General Block Exemption Regulation (GBER)
5. Assessing regional investment aid (system / case)
6. Investigating complaints (procedure / case)
7. Transparency and Monitoring
Transparency

● What?
Publication of information and data on the criteria used by COM in the enforcement of State aid policy and of aid granted by MS

● Objective:
+ Improve predictability of EU State aid policy and its enforcement
+ Allow tax payers, competitors and other authorities to obtain information on aid granted
+ To increase discipline and accountability
+ To facilitate monitoring and control at different levels
State aid modernisation - Safeguards

- Transparency and monitoring existed before SAM:
  + Publication of assessment criteria used by COM, of opening and final decisions, …
  + Sporadic monitoring of press & implementation of decisions

- Significant increase since SAM:
  + Shift from notification based system to block-exemption based system
  + Ex ante control by COM on less than 5% of State aid measures
  + Risks: Less transparency & Non-compliance

- Shift to GBER accompanied by flanking measures:
  + Transparency requirements
  + Ex post monitoring
Publication SA rules on COMP Website

European Commission > Competition > State Aid

State aid

Legislation

Current rules in force

Compilation of State aid rules - Download legislation in PDF:
- [de](#)
- [en](#)
- [fr](#)

Treaty Provisions on State aid

Rules on Procedure

Forms for Notifications and Reporting

Guidance on the notion of State aid

Block Exemption Regulations

Temporary rules in response to the crisis

Horizontal rules

Sector-specific rules

Specific aid instruments
### Publication Decisions on COMP Website

#### State Aid Cases

**Policy Area:** State Aid  
**Case Number:** SA.48382  
**Member State:** Hungary  
**Last Decision Date:** 25.10.2017  
**Title:** Regional investment aid to MOL Petrolkémia Zrt

**SA.48382 Regional investment aid to MOL Petrolkémia Zrt**

- **Member State:** Hungary  
- **Region:** Borsod-Abaúj-Zemplén  
- **Primary Objective:** Regional development  
- **Legal basis primary:** Art. 107(3)(a) TFEU - Least developed regions  
- **Legal basis secondary:** Regional - Regional Aid Guidelines, 2014-2020  
- **C.20.59 - Manufacture of other chemical products n.e.c.**  
- **Aid instrument:** Direct grant  
- **Case Type:** Tax allowance  
- **Scheme:**

**Notification or Registration Date:** 08.06.2017  
**DG Responsible:** Competition DG  
**Expenditures (in Millions):**
- 2017: HUF 40525  
- 2016: HUF 0  
- 2015: HUF 0  
- 2014: HUF 0

**Decision on 25.10.2017:** Decision not to raise objections  
**Press release:** IP/17/4161  
**Decision Text:** Letter to the Member State - authentic language on 08.02.2018  
**Publication on 02.03.2018:**
GBER Publication requirements - 1

- GBER:
  - MS required to publish legal basis of every GBER scheme on website
  - MS to submit to COM summary info sheets on every GBER measure (with a link to national web publication)
  - Summary info sheets are published on COM Official Journal website:
    - Title, aid granting authority
    - Objectives and characteristics of the aid measure
    - Budget
    - Link to legal basis
### GBER Publication requirements - 2

Information communicated by Member States regarding State aid granted under Commission Regulation (EC) No 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Articles 17 and 83 of the Treaty (General block exemption Regulation) in Text with EEA relevance

<table>
<thead>
<tr>
<th>Aid number</th>
<th>EA, 39393 (2014-X)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Member State</td>
<td></td>
</tr>
<tr>
<td>Member State reference number</td>
<td></td>
</tr>
<tr>
<td>Name of the Region (NUTS)</td>
<td>BORDER, MIDLAND AND WESTERN, SOUTHERN AND EASTERN</td>
</tr>
<tr>
<td>Granting authority</td>
<td>Bord Bia Chancellor Court, Lower Mount Street, Dublin 2 <a href="http://www.bordbia.ie">www.bordbia.ie</a></td>
</tr>
<tr>
<td>Title of the aid measure</td>
<td>Consultancy Services for SME’s</td>
</tr>
<tr>
<td>National legal basis (Reference to the relevant national official publication)</td>
<td>An Bord Bia Acts 1994-2004</td>
</tr>
<tr>
<td>Type of measure</td>
<td>Scheme</td>
</tr>
<tr>
<td>Amendment of an existing aid measure</td>
<td></td>
</tr>
<tr>
<td>Duration</td>
<td>01.09.2014 – 31.12.2020</td>
</tr>
<tr>
<td>Economic sector(s) concerned</td>
<td>Market research and public opinion polling</td>
</tr>
<tr>
<td>Type of beneficiary</td>
<td>SME</td>
</tr>
<tr>
<td>Annual overall amount of the budget planned under the scheme</td>
<td>EUR 800,000 (in millions)</td>
</tr>
<tr>
<td>Foreseen benefits</td>
<td></td>
</tr>
<tr>
<td>Aid instrument (Art. 5)</td>
<td>Other - Aid intensity max level 50%</td>
</tr>
<tr>
<td>Reference to the Commission decision</td>
<td>-</td>
</tr>
<tr>
<td>If co-financed by Community funds</td>
<td>-</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Objectives</th>
<th>Maximum aid intensity at % of Maximum aid amount in national currency</th>
<th>SME increase in %</th>
</tr>
</thead>
<tbody>
<tr>
<td>SME aid (Art. 17 - 19 - 18 - 20)</td>
<td>50 %</td>
<td></td>
</tr>
</tbody>
</table>

Web link to the full text of the aid measure:
http://www.bordbia.ie/industry/manufacturers/pages/consultancy-services.aspx
Transparency Award Module (TAM)

- TAM-tool since mid 2016
  - Publication by MS of info on every aid award > EUR 500,000
    - Name of beneficiary and size (small, medium, large)
    - Aid amount and nature of aid (grant, loan, …)
    - Region & sector
    - Aid granting authority
  - To assist MS, the COM set up an IT platform (Transparency Award Module – TAM) in which MS can encode info on aid awards
  - Award data publicly available on DG COMP website
  - Since 2016: Almost 50,000 aid awards published in TAM
Ex post monitoring

- Most aid is now implemented by MS on the basis of GBER without ex ante control by COM
- In 2006 → Introduction of systematic ex post monitoring:
  + Regular, sample-based ex post control to check legal compliance of block-exempted (and approved) aid schemes
  + Not “evaluation” of aid measures!
- Objectives:
  + To increase awareness of SA rules
  + To check compliance with GBER provisions (deterrence)
  + To detect errors in reporting
  + To improve SA rules
Ex post monitoring – Steps

1. Selection of sample of schemes (at least 45 each year)
2. MS are asked to submit information:
   + Legal basis of the scheme
   + Small sample of individual aid awards (full file)
3. COM verifies whether legal basis and individual award is in compliance with GBER (or with approved aid scheme)
4. Reporting of results to Commissioner
5. When irregularities are found:
   + Incompatible aid: Opening of formal investigation, with possible negative final decision + recovery
   + If issue can be addressed: MS requested to take voluntary action
Ex post monitoring – Findings

- Overall, a high majority of aid measures were found in compliance with EU State aid rules.
- In few instances, smaller portions of excess aid were granted which the Member States recovered from beneficiaries on a voluntary basis.
- Also, in few instances, Member States agreed voluntarily to amend the legal basis hence to improve further on clarity of their national rules when granting aid.
- In very few instances, the irregularities found have led to formal proceedings opened by the Commission and concluded with a decision to recover the aid.