



The notion of aid Article 107(1) TFEU

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These slides accompany the explanation of the acquis to Albania and North Macedonia and can only be used for that purpose. Their content is subject to further development of the acquis and interpretation by the Court of Justice of the European Union.

Notion of aid - Overview

- Undertaking and economic activity
- State resources and imputability
- Advantage
- Selectivity
- Effect on trade
- Distortion of competition
- *De minimis* Regulation

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Notion of aid – EU acquis

- Article 107(1)

“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”

- Notice on the notion of aid



Notion of aid – basic principles

- Objective notion
- Relevant are the (economic) effects
 - Not: objective
 - Not: legal/administrative form

Notion of aid – undertaking and economic activity

Undertaking = every entity engaged in an economic activity, regardless of its legal status and the way in which it is financed

- Relevant is the nature of the activity
- Irrelevant is the legal form of the entity, the way of financing, or that it is a non-profit/ charity organisation
- Classification as 'undertaking' always relates to a specific activity (ie for one activity an entity may qualify as 'undertaking' and for another activity not)

Notion of aid – undertaking and economic activity

Economic activity = offering goods and services on the market

- Whether market exists depends on the situation in the MS (legal differences between MS, developments over time)
- Examples for **non**-economic activities:
 - public remit functions: e.g. police, customs control
 - Social security/health systems if based on solidarity principle
 - Public education, certain research activities
 - Certain cultural activities and heritage conservation

Notion of aid - State resources and imputability

"granted by a Member State or through State resources, in any form whatsoever" (Art. 107)

- translates into:
 - is there a transfer
 - of State resources and
 - is this transfer imputable to the State?

Notion of aid – State resources and imputability

Transfer

- aid is granted as soon as there is a challengeable act under national law
- not necessary that aid was actually paid out (or the guarantee triggered), but concrete risk: foregoing state revenue is sufficient
- actual payment important for recovery only

Notion of aid – State resources and imputability

State resources

- funds under control and at disposal of State who have discretion as to their use
- transferred in any form whatsoever (directly and indirectly):
 - positive transfer: direct grants, loans, capital participation
 - foregone revenues: tax waivers or deferrals, sale of assets below market price (e.g. land sale, privatisations), omission to collect or enforce debt
 - exposure of State funds: guarantees (special issue: unlimited guarantees)



Notion of aid – State resources and imputability

Imputability

- what is "the state"?
 - central, regional or local authorities
 - other public or private bodies designated or established by the state
- Publicly owned companies can be considered as part of "the state" (Stardust Marine C-482/99):
 - who is really taking decision?
 - degree of intervention of the state?

Notion of aid – advantage

"favouring certain undertakings or the production of certain goods" (Art. 107)

- Depends on type of aid measure, e.g.:
 - economic advantage that the company would not have obtained under normal market conditions
 - relief from charges (e.g. tax advantages or reduction of social security contributions) which a company normally has to bear, for free or without adequate remuneration.

Notion of aid - advantage

- Relevant are foreseeable effects and not actual effects
- At the time when the State aid is granted
- Tool to test: Market Economy Operator Principle:
no advantage if state behaves like "normal" player on market

Notion of aid - advantage

Market Economy operator test

- What would commercial operator do?
- not relevant:
 - revenues related to state prerogatives (tax revenues, savings on unemployment benefits)
 - positive externalities related to public policy remit (regional development, industrial / employment policy)
 - philanthropic, social considerations



Thank you for your attention!

