



State aid rules in the TFEU

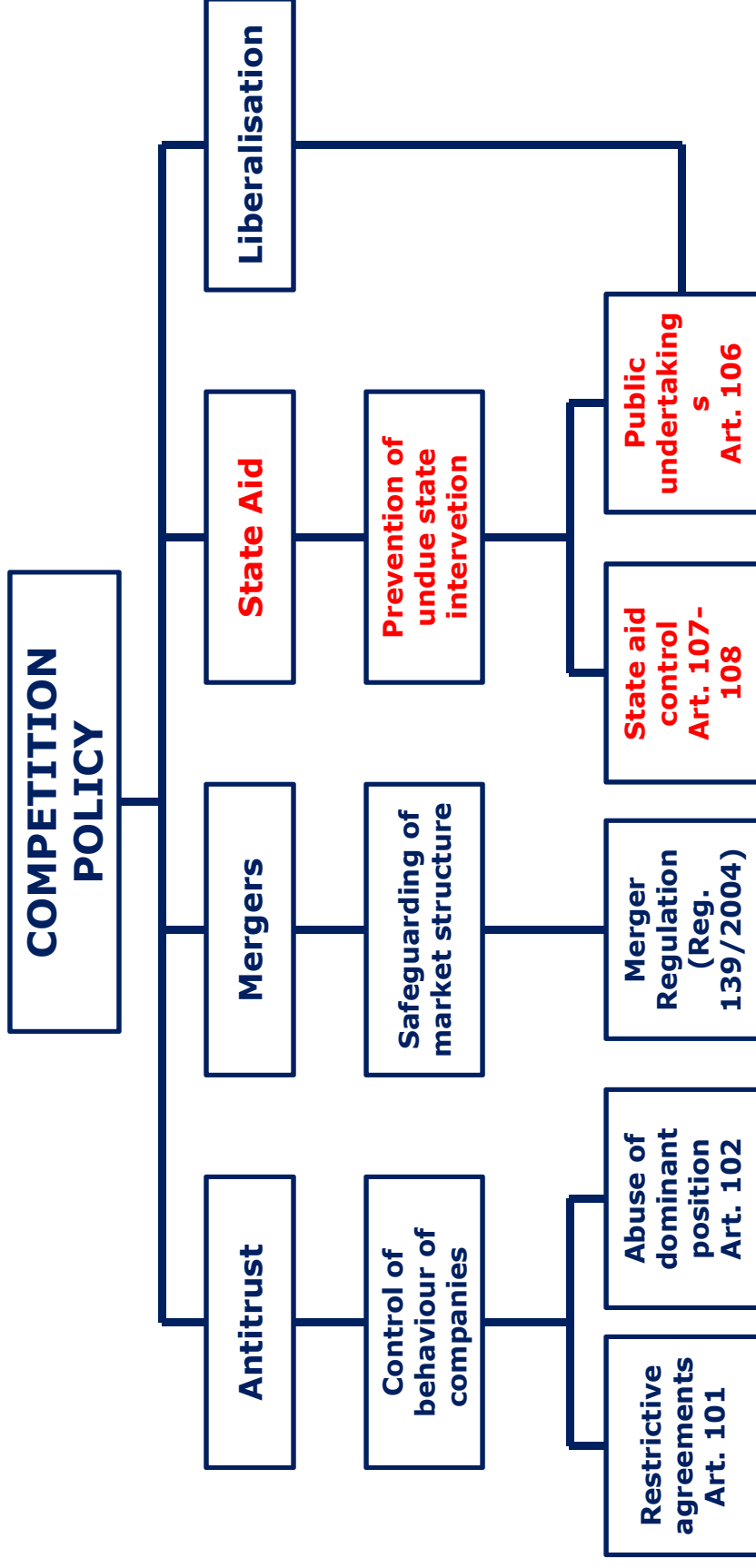
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These slides accompany the explanation of the acquis to Albania and North Macedonia and can only be used for that purpose. Their content is subject to further development of the acquis and interpretation by the Court of Justice of the European Union.



European
Commission

State aid and EU Competition policy



Why State aid control?

- State aid control = part of competition policy
- Some reasons for state aid control:
 - Level playing field within the internal market
 - Avoid subsidy races
 - Element of cohesion
 - Ensure transparency



ARTICLE 107 TFEU



Article 107 (1) TFEU: Notion of aid and general prohibition

1. *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, in so far as it affects trade between Member States, be incompatible with the internal market.*

Article 107 (1) TFEU: Notion of aid and general prohibition

INCOMPATIBLE WITH THE INTERNAL MARKET

- Aid granted by Member States or through **State resources**
- Distorts or threatens to **distort competition**
- **Favours** certain **undertakings** or production of certain goods
- Affects **trade** between Member States

Article 107(2) TFEU: Compatibility of aid

2. *The following shall be compatible with the internal market:*
- (a) aid having a **social character**, granted to **individual consumers**, provided that such aid is granted **without discrimination** related to the **origin** of the products concerned;*
 - (b) aid to make good the damage caused by **natural disasters** or **exceptional occurrences**;*
 - (c) aid granted to the economy of **certain areas** of the **Federal Republic of Germany** affected by the division of Germany, in so far as such aid is required in order to **compensate** for the **economic disadvantages** caused by that division. Five years after the entry into force of the Treaty of Lisbon, the Council, acting on a proposal from the Commission, may adopt a decision repealing this point.*

Article 107(2) TFEU: Compatibility of aid

AID SHALL BE COMPATIBLE

- a. Social character, to individual consumers
- b. Natural disasters or exceptional occurrences
- c. Certain areas of Federal Republic of Germany

Article 107(3) TFEU: Compatible aid

3. The following **may be considered to be compatible** with the internal market:
- (a) aid to promote the **economic development of areas** where the standard of living is **abnormally low** or where there is serious **underemployment**, and of the regions referred to in Article 349, in view of their structural, economic and social situation;
 - (b) aid to promote the execution of an **important project of common European interest** or to remedy a serious disturbance in the economy of a Member State;
 - (c) aid to facilitate the **development of certain economic activities** or of certain **economic areas**, where such aid **does not adversely affect trading** conditions to an extent contrary to the common interest;
 - (d) aid to promote **culture and heritage conservation** where such aid does not affect trading conditions and competition in the Union to an extent that is contrary to the common interest;
 - (e) such **other categories** of aid as may be specified by decision of the Council on a proposal from the Commission.

Article 107(3) TFEU: Compatible aid

AID MAY BE COMPATIBLE

- a. Economic development of areas:** standard of living is abnormally low, serious underemployment, and regions referred to in Article 349 TFEU.
- b. Important project of common European interest and serious disturbance** in the economy
- c.** Development of certain **economic activities** or areas
- d. Culture and heritage** conservation
- e.** Other **categories:** decision of the Council on a proposal from the Commission.



ARTICLE 108 TFEU



Article 108 (1) (2) TFEU

- 1. The **Commission** shall, in cooperation with Member States, keep under **constant review all systems of aid** existing in those States. It shall propose to the latter any appropriate measures required by the progressive development or by the functioning of the internal market.
- 2. If, after giving notice to the parties concerned to submit their comments, **the Commission finds** that aid granted by a State or through State resources **is not compatible** with the internal market having regard to Article 107, or that such aid is being misused, it shall decide that the **State concerned shall abolish or alter such aid** within a period of time to be determined by the Commission.
- If the State concerned does not comply with this decision within the prescribed time, the Commission or any other interested State may, in derogation from the provisions of Articles 258 and 259, refer the matter to the **Court of Justice of the European Union** direct.
- On application by a **Member State, the Council may, acting unanimously, decide that aid which that State is granting or intends to grant shall be considered to be compatible** with the internal market, in derogation from the provisions of Article 107 or from the regulations provided for in Article 109, if such a decision is justified by **exceptional circumstances**. If, as regards the aid in question, the Commission has already initiated the procedure provided for in the first subparagraph of this paragraph, the fact that the State concerned has made its application to the Council shall have the **effect of suspending that procedure** until the Council has made its attitude known.
- If, however, the Council has not made its attitude known within three months of the said application being made, the Commission shall give its decision on the case.



Article 108(3)(4) TFEU

3. The **Commission** shall be **informed**, in sufficient time to enable it to submit its comments, of any **plans to grant or alter aid**. If it considers that any such plan is **not compatible** with the internal market having regard to Article 107, it shall without delay initiate the **procedure** provided for in **paragraph 2**. The Member State concerned **shall not put its proposed measures into effect** until this procedure has resulted in a **final decision**.
4. The Commission may **adopt regulations** relating to the **categories of State aid** that the **Council has**, pursuant to **Article 109**, determined may be **exempted from the procedure** provided for by paragraph 3 of this Article.

Article 108 TFEU

1. Commission constant review. Appropriate measures
2. Commission finds that aid is incompatible: decision abolishing or altering aid
3. Notification. Standstill obligation
4. Commission may adopt block exemption regulations on the state aid categories determined by Council



ARTICLE 109 TFEU



Article 109 TFEU

*The Council, on a proposal from the Commission and after consulting the European Parliament, may make any appropriate **regulations** for the application of Articles 107 and 108 and may in particular determine the conditions in which Article 108(3) shall apply and the categories of **aid exempted from this procedure**.*

Article 109 TFEU

- Council, after Commission's proposal
- Regulations for application of Article 107 TFEU and Article 108 TFEU
- In particular, aid exempted from procedure Article 108(3) TFEU (Block exemption regulation)



ARTICLE 106 TFEU



ARTICLE 106 TFEU

1. In the case of **public undertakings** and undertakings to which Member States grant **special or exclusive rights**, Member States shall neither enact nor maintain in force any measure contrary to the rules contained in the Treaties, in particular to those rules provided for in Article 18 and **Articles 101 to 109**.
2. Undertakings entrusted with the operation of **services of general economic interest** or **having the character of a revenue-producing monopoly** shall be subject to the rules contained in the Treaties, in particular to the **rules on competition**, in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them. The development of trade must not be affected to such an extent as would be contrary to the interests of the Union.
3. The Commission shall ensure the application of the provisions of this Article and shall, where necessary, address appropriate directives or decisions to Member States.

ARTICLE 106 TFEU

1. State aid rules applicable to **public undertakings** and undertakings with **exclusive rights**
2. Undertakings entrusted with **Services of General Economic Interest** (SGEIs): subject to State aid rules, as long as:
 - The application of SA rules does not obstruct the performance of the tasks
 - Trade not affected (contrary to the interests of the EU)
3. Commission ensure the application. Directives or decisions to MS



ARTICLE 93 TFEU



Article 93 TFEU

Aids shall be compatible with the Treaties if they meet the needs of coordination of transport or if they represent reimbursement for the discharge of certain obligations inherent in the concept of a public service.

Article 93 TFEU

IT SHALL BE COMPATIBLE:

- **Coordination:** Aid to that meet the needs of coordination of transport
- **PSO:** Aid that represent reimbursement for the discharge of certain public service obligations



Thank you!

