

State aid – rules on substance (III): COMPATIBILITY

Arianna Podesta

DG COMP.A5

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.

Main Legal Bases

- Art. 107(2): automatic compatibility
- Art. 107(3): margin of discretion to define criteria
 - frameworks and guidelines
 - General Block Exemption Regulation
- Art. 106(2): SGEI (also margin of discretion)

Legal Bases

- Art. 107(2) TFEU: "shall be compatible"
 - (a) aid having a social character, granted to individual consumers, 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 compensate for disadvantages caused by the division of Germany [obsolete]

Legal Bases

- Art. 107(3) TFEU: "may be considered"
 - (a) economic development of most disadvantaged regions of Community
 - (b) important common European project or serious disturbance in the economy of a Member State
 - (c) development of certain economic activities or certain economic areas
 - (d) culture and heritage conservation
 - (e) other categories as may be specified by a decision of the Council



Legal Bases

- Art. 106(2) TFEU: services of general economic interest
- Art. 93 TFEU: coordination of transport + certain SGEIs in the transport sector



Assessment of a Measure

1. under "secondary legislation"
2. directly on the basis of the Treaty:
 - only if measure not covered by existing "secondary legislation"

Basic Principles of Compatibility

- general goal: positive effects of aid should outweigh negative effects
- pre-SAM: balancing test
- post-SAM: common principles
- used for assessment directly under the Treaty
- incorporated directly into secondary legislation

Common Principles

1. contribution to well-defined objective of common interest
2. need for state intervention
3. appropriateness of state aid as policy instrument
4. existence of incentive effect
5. proportionality of the aid amount (aid limited to minimum necessary)
6. avoidance of undue negative effects on competition and trade
7. transparency

Objective of Common Interest

- depends on Guidelines concerned
 - Regional Aid: reduce developmental gap between regions
 - R&D&I: promotion of R&D&I
 - Aviation (aid to airports): increase mobility of Union citizens and connectivity of regions by establishing access points for intra-Union flights, combat air traffic congestion at major Union hub airports or facilitate regional development

Need for State Intervention

- general principle: target aid to bring about material improvement which market cannot deliver
- efficiency and equity considerations
- specific qualifications in guidelines:
 - Aviation: no market failure for large airports

Appropriateness

- aid must be appropriate policy instrument
- selection of least distortive tool
- potential alternatives:
 - other policy instruments (e.g. regulation)
 - other forms of aid (e.g. grant vs loan / repayable advance)

Incentive Effect

- aid must induce recipient to change behaviour in line with common objective
- need to ensure that, in absence of aid, same objective would not have been reached
- Substantive test: counterfactual analysis – what would company do with and without aid?
- Formal test: application for aid must proceed work



Proportionality

- aid must be proportionate = limited to minimum
- limits expressed as caps on aid amount and/or aid intensity
- aid amount: e.g. net extra cost to achieve objective
- aid intensity: proportion of eligible costs

Negative Effects

- aid must avoid undue negative effects on competition and trade
- positive effects must outweigh negative effects
- depends on relevant product and geographical markets
- Often: List with manifest negative effects

Transparency

- Member States have an obligation to establish **comprehensive State aid websites** at regional or national level **for the publication of information on aid measures and their beneficiaries**
 - if the aid award per individual beneficiary is equal or above EUR 500.000
 - with sectorial exceptions (SGEI, Rail, road, maritime transport, banking, broadcasting, coal, ETS, short term export credit)

Transparency

Key elements to be published:

- Name of the beneficiary
- Beneficiary identifier
- Type of beneficiary
- Region
- Sector of activity
- Aid instrument
- Objective
- Date of granting
- Amount
- Granting authority

Key concepts

- Granting act
- Deadline for publishing
- Cumulation

Transparency

- Legal basis for enforcement
 - Aid granted under GBER: Automatic
 - Aid granted under guidelines or Treaty:

Reference to the Transparency obligation in the notification (MS/COMP) and in the decision (COMP)



Thank you for your attention!

