

Summary of principles of State Aid:

European competition policy: a brief overview - State aid control

Monitoring state subsidies which distort competition

State aid: a distortion of competition

By giving certain firms or products favoured treatment to the detriment of other firms or products, state aid seriously disrupts normal competitive forces. Neither the beneficiaries of state aid nor their competitors prosper in the long term. Very often, all public subsidies achieve is to delay inevitable restructuring operations without helping the recipient actually to return to competitiveness. Unsubsidised firms who must compete with those receiving public support may ultimately run into difficulties, causing loss of competitiveness and endangering the jobs of their employees. Ultimately, then, the entire market will suffer from state aid, and the general competitiveness of the European economy is imperilled.

State aid that distorts competition in the Common Market is prohibited by the EC Treaty.

The EC Treaty, however, allows exceptions to the ban on state aid where the proposed aid schemes may have a beneficial impact in overall Union terms. Article 87 of the EC Treaty allows the following forms of aid:

- aid having a social character, granted to individual consumers;
- aid to make good the damage caused by natural disasters or exceptional occurrences;
- aid designed to:
 - promote the economic development of underdeveloped areas (regarded as particularly backward in accordance with Community criteria);
 - promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State;
 - facilitate the development of certain activities or areas,
 - promote culture and heritage conservation;

(where, in the last two cases, such aid does not affect trading conditions and competition in the Community to an extent that is contrary to the common interest).

Article 87 of the EC Treaty prohibits 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 firms or the production of certain goods. The aid in question can take a variety of forms as, for instance:

- state grants;
- interest relief;

- tax relief;
- state guarantee or holding;
- provision by the state of goods and services on preferential terms.

The decision as to whether or not aid granted by Member States is compatible with the Common Market can be taken only by a supranational and independent authority. Exclusive authority for scrutinising the state aid schemes of EU governments was conferred on the European Commission by the Member States. The Commission's role is to monitor proposed and existing state aid measures by Member States to ensure that they are compatible with EU state aid legislation and do not distort intra-community competition.

The Commission has the power to require that aid granted by Member States which is incompatible with the common market be repaid by recipients to the public authorities which granted it. The Member State must recover the aid immediately in accordance with domestic procedures.

Guidelines and frameworks on state aid policy in certain fields

The Commission has adopted a number of "guidelines" or "frameworks" to clarify its State aid policy in a number of areas, listed below.

- Regions lagging behind in terms of development;
- **Research & development;**
- Employment;
- **Protection of the environment;**
- Rescue and restructuring of firms in difficulty.

The Commission has also adopted a number of "block exemption" regulations for state aid to:

- Small and medium-sized enterprises
- Aid for training
- Aid for employment

Aid granted in conformity with all the conditions set out in these regulations is automatically considered compatible with the common market.

Article 87 of the Treaty of the European Union (formerly Article 92 of the Treaty of Maastricht):

1. Save as otherwise provided in this Treaty, 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 common market.
2. The following aid shall be compatible with the common 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.
3. The following may be considered to be compatible with the common market:
- (a) aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment;
 - (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 provide culture and heritage conservation where such aid does not affect trading conditions and competition in the Community to an extent that it contrary to the common interest.
 - (e) **Such other categories of aid as may be specified by decision of the Council acting by a qualified majority on a proposal from the Commission.**

Environmental Guidelines

Official Journal 06092001:
Annex 1 - Aid for Environmental Protection

A. 6: "The Authority's approach in these guidelines consists in determining whether, and under what conditions, State aid may be regarded as necessary to ensure environmental protection and sustainable development without having disproportionate effects on competition and economic growth."

B. 7: "The design and manufacture of machines or means of transport, which can be operated with fewer natural resources, are not covered by these guidelines."

Research and Development Guidelines

Official Journal C045, 17/02/1996
With regard to Article 87 of the European Union Treaty:

2.2. **"The closer the R&D is to the market, the more significant may be the distortive effect of the State aid.** In order to determine the proximity to the market of the aided R&D, the Commission makes a distinction between fundamental research, industrial research and **precompetitive development activity.**"

Block Exemptions

- De minimis - if the amount of aid is less than 100,000 (£60,000) over rolling 3 year period.

OJEC 06/09/2001 Annex 1 "Aid for Environmental Protection"

B.7. "The rules on de minimis aid do not, however, apply to transport"

- Small/ Medium Enterprises:

Threshold defined for 'Small/ Medium Enterprises' is very low, and...

SME regulation 70/2001:

Excludes "aid favouring domestic goods over imports"