REGIONAL STATE AID

The purpose of regional State aid is to support economic development and job creation in Europe's most disadvantaged regions.

LEGAL BASIS

Article 107 of the Treaty on the Functioning of the European Union (TFEU), in particular 107(3)(a) and (c) thereof.

Council Regulation (EC) No 994/98 of 7 May 1998 on the application of Articles 92 and 93 of the Treaty establishing the European Community to certain categories of horizontal State aid (Enabling Regulation).

Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (General Block Exemption Regulation, GBER). The GBER was amended by Commission Regulation (EU) 2017/1084 of 14 June 2017 as regards aid for port and airport infrastructure, notification thresholds for aid for culture and heritage conservation and for aid for sport and multifunctional recreational infrastructures, and regional operating aid schemes for outermost regions.

The 'Guidelines on regional State aid for 2014-2020' (2013/C 209/01), hereinafter 'the Guidelines', were adopted by the Commission on 19 June 2013 and entered into force on 1 July 2014.

BACKGROUND

State aid, in general terms, means any aid (regardless of its form) granted to certain undertakings (actors carrying out economic activities) by national public authorities. Insofar as this type of aid distorts competition and affects trade, it is not compatible with the internal market, save as otherwise provided for in the Treaties. There is a need to control aid schemes, and Member States, in accordance with Article 108(3) of the TFEU, are therefore obliged to notify the Commission in advance of any plan to grant such aid. By adopting the 'Enabling Regulation', the Council made it possible for the Commission to define exemptions (through the adoption of block exemption regulations for State aid), and thus to declare specific categories of State aid as being compatible with the internal market and exempt from prior notification.

As one of the exemptions provided for, certain forms of aid may be regarded as being compatible with the internal market in certain regions. This type of aid is called regional aid, aiming to support economic development and job creation.

The GBER lays down specific provisions defining the conditions under which regional aid schemes are compatible with the common market and exempt from notification. Further to the GBER, guidance is provided by the Commission on aid measures that are not exempt from notification, including guidance on regional aid. The Guidelines are applied to notified regional aid schemes and individual aid.

TYPES OF AID AND ELIGIBILITY

The rules set out in the Guidelines form the basis for Member States to prepare regional aid maps by which they can identify: (1) the areas in which companies can receive regional State aid; and (2) the intensity of that aid.

A. Scope

The Guidelines apply, in principle, to all sectors of economic activity. However, the following activities are excluded from the scope of the Guidelines:

— Sectors in which regional aid is not compatible with the internal market: the steel industry and synthetic fibres;

— Sectors in which aid is subject to specific legal instruments and/or other State aid guidelines: fisheries and aquaculture, agriculture (with some specific exceptions), transport, airports, energy;

— Activities considered incompatible with the internal market, unless general conditions laid down in the Guidelines and additional specific conditions are met: broadband networks and research infrastructures.

In addition to the above, special consideration is given to aid to large undertakings and to operating aid:

— Regional aid to large undertakings is not compatible with the internal market under Article 107(3)(c) of the Treaty, unless it is in support of initial investments that create new economic activity or the diversification of existing establishments into new products or new process innovations;

— Aid to undertakings aimed at reducing expenses (operating aid) is not compatible with the internal market, unless its aim is to tackle specific or permanent handicaps in disadvantaged regions (i.e. to reduce difficulties faced by SMEs, to compensate for additional costs in outermost regions or to prevent or reduce depopulation in very sparsely populated areas).

B. Compatibility assessment of regional aid

Notified regional aid is subject to assessment by the Commission, meaning that an analysis is carried out to determine whether the positive impact of the aid towards an objective of common interest exceeds its negative effect on trade and competition. The analysis touches upon the following elements:

— Contribution to a well-defined objective of common interest in accordance with Article 107(3) of the Treaty;

— Need for state intervention (in situations where the market cannot deliver certain material improvements);

— Appropriateness of the aid measure to address the objective of common interest;

— Incentive effect resulting in a change of behaviour among undertakings (i.e. undertakings engage in additional activities);

— Proportionality of aid (i.e. aid is limited to a minimum to induce additional investment or activity);

— Avoidance of undue negative effects on competition and trade;

— Transparency (ease of access to information about the aid awarded).

Aid schemes that could significantly distort competition may also be subject to *ex post* evaluations and the Commission may limit the duration of such schemes. *Ex post* evaluation may be applied only in the case of aid schemes with large budgets, comprising novel characteristics or entailing significant market, technology or regulatory changes.

C. Regional aid maps — eligibility

Areas fulfilling the conditions set out under Article 107(3)(a) and (c) (hereinafter 'a' and 'c' areas), together with the levels of maximum aid intensity, must be identified by the Member States in regional aid maps. The Commission is notified of these maps and approves them so that regional aid can be awarded to undertakings located in areas designated on the maps. The ceiling for the overall coverage of 'a' and 'c' areas is set at 47% of the EU-28 population.

1. 'a' areas — Article 107(3)(a) TFEU

The Guidelines stipulate that the following can be designated as 'a' areas[1]:

— NUTS 2[2] regions with a gross domestic product (GDP) per capita in purchasing power standards (PPS) that is equal to or less than 75% of the EU-27 average;

— Outermost regions.

The ceilings for maximum aid intensity in 'a' areas are as follows:

— 50% gross grant equivalent (GGE) in NUTS 2 regions with a GDP per capita less than or equal to 45% of the EU-27 average;

— 35% GGE in NUTS 2 regions with a GDP per capita between 45% and 60% of the EU-27 average;

— 25% GGE in NUTS 2 regions with a GDP per capita above 60% of the EU-27 average.

The above ceilings may be increased by a maximum of 20% in less developed outermost regions and by 10% in other outermost regions. The maximum aid intensity may be increased by up to 20 percentage points for small enterprises or by 10 percentage points for medium-sized enterprises.

2. 'c' areas — Article 107(3)(c) TFEU

The Guidelines distinguish between two categories of 'c' area:

[1]Annex I to the Guidelines contains the list of eligible 'a' areas, broken down by Member State.
[2]NUTS: Nomenclature of territorial units for statistics.

— Predefined ‘c’ areas[3]: areas fulfilling pre-established conditions that can be designated by Member States without any further justification; this category includes NUTS 2 regions that were designated as ‘a’ areas in the 2011-2013 period and sparsely populated NUTS 2 and NUTS 3 regions, as well as parts of or areas adjacent to NUTS 3 regions, under certain conditions;

— Non-predefined ‘c’ areas[4]: areas that may be designated by a Member State provided that they fulfil certain socio-economic criteria.

In light of the impact of the economic crisis on Member States and of the aim of ensuring continuity in the regional aid maps, the Guidelines provide for a safety net and a minimum threshold for population coverage[5]. The Guidelines stipulate five sets of criteria that address socio-economic (GDP per capita, unemployment), geographical (isolation) or structural (major structural change, decline) problems, and which are to be used by Member States in designating non-predefined ‘c’ areas.

Ceilings for maximum aid intensity in ‘c’ areas are as follows:

— 15% GGE in sparsely populated areas and in areas (NUTS 3 regions or parts of NUTS 3 regions) that share a land border with a country outside the European Economic Area (EEA) or the European Free Trade Association (EFTA);

— 10% GGE in non-predefined ‘c’ areas.

These ceilings can be raised in former ‘a’ areas (from 10% GGE to 15%) and in ‘c’ areas that are adjacent to an ‘a’ area. The maximum aid intensity may be increased by up to 20 percentage points for small enterprises or by 10 percentage points for medium-sized enterprises.

D. Notification and mid-term review

Based on the provisions of the Guidelines, each Member State had to provide the Commission with a single regional aid map to be valid from 1 July 2014 to 31 December 2020. These maps were examined and adopted by the Commission, and also published in the Official Journal of the European Union, thereby constituting an integral part of the Guidelines.

A review of the eligibility of areas for regional aid (mid-term review of the regional aid maps) took place in 2016, and the amended regional aid maps will be in force from 1 January 2017 to 31 December 2020.

E. Reporting and monitoring

Member States must maintain detailed records on all aid measures for 10 years from the date of award of the aid and must submit the following to the Commission:

— Annual reports;

— Information on each individual aid measure exceeding EUR 3 million.

[3]Annex I includes the specific allocation for predefined ‘c’ coverage, broken down by Member State.
[4]Annex II to the Guidelines sets out the method for the allocation of non-predefined ‘c’ coverage.
[5]Non-predefined ‘c’ coverage including the aforementioned adjustments is set out in Annex I.

STATE AID AND COHESION POLICY

Projects supported by cohesion policy (under the European Structural and Investment Funds) must comply with Union and national law[6]. It is the responsibility of Member States to ensure that their aid schemes comply with laws on State aid, including the rules on regional State aid and, in this connection, to analyse interventions planned in the context of their (operational) programmes and to meet any obligations on notification. The strategic programming process provided for under cohesion policy and the analysis of aid under State aid rules remain separate, but there is a possibility, in certain cases, to make use of the analysis on which cohesion policy interventions are based as grounds for the justification of State aid.

The legislative framework[7] includes explicit references to State aid rules, in particular in the context of financial instruments, revenue-generating operations, public-private partnerships, durability of operations, etc. Moreover, to facilitate the effective application of State aid rules by Member States, the disbursement of funds is made conditional on the fulfilment of obligations (*ex ante* conditionalities)[8] that include arrangements in Member States to train staff and reinforce administrative capacity in this field.

The application of State aid rules is one of the 'risky' areas of cohesion policy implementation, and is often the reason for errors detected by auditors.

In November 2018, the Council adopted Regulation (EU) 2018/1911 amending Regulation (EU) 2015/1588 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to certain categories of horizontal State aid. Its aim is to improve the interplay of EU funding programmes with State aid rules. The changes concern three areas: national financing combined with the InvestEU Fund's instruments; research, development and innovation (Horizon Europe, 'Seal of Excellence' label); and Aid for European Territorial Cooperation.

ROLE OF THE EUROPEAN PARLIAMENT

Parliament has expressed its concern on a number of occasions regarding the consistency between economic, social and territorial cohesion on the one hand, and competition rules on the other.

During the State Aid Modernisation process (initiated in 2012), in which the Commission presented its proposals in accordance with Article 109 TFEU, Parliament was only consulted and had no say in the adoption of the Guidelines. However, in its resolution of 12 June 2013 on regional policy as a part of wider State support schemes, it backed the Commission's draft guidelines, called for increased consistency with the GBER and other guidelines, and expressed its concerns as to whether State aid rules are consistent with the implementation of cohesion policy instruments (the European Structural and Investment Funds), in particular regarding the equal treatment of areas belonging to the same category of region within the framework of cohesion policy.

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[6]Article 6 of Regulation (EU) No 1303/2013 of 17 December 2013.
[7]Regulation (EU) No 1303/2013 of 17 December 2013.
[8]Part II of Annex XI to Regulation (EU) No 1303/2013 of 17 December 2013.

Parliament called for the overall coverage of regional aid to be maintained or increased beyond the previous ceiling of 45% and supported the creation of a safety net for former ‘a’ regions and special provisions for sparsely populated, outermost and island regions. The need for specific derogations, in particular in areas severely affected by the economic crisis, was also highlighted.

Parliament is of the opinion that State aid should primarily be provided to SMEs, but that the exclusion of large enterprises could lead to job losses, and therefore that such undertakings should remain eligible in ‘c’ areas, subject, however, to particular scrutiny.

In its resolution of 13 September 2016 on implementation of the thematic objective ‘enhancing the competitiveness of SMEs’, Parliament called on the Commission to establish conditions for State aid which will not discriminate against SMEs and which should be in line with cohesion policy support for enterprises, and to make full use of aid schemes based on the GBER, while clarifying the link between the rules on ESI Funds for SMEs and the rules on State aid.

In its resolution of 17 April 2018 on strengthening economic, social and territorial cohesion in the European Union: the 7th report of the European Commission, Parliament considered that it was necessary to accelerate State aid procedures where compliance is required. Parliament also expressed support for consistent and more coherent treatment of European funds under direct management and cohesion funds when it comes to State aid.

In its resolution of 6 July 2017 on promoting cohesion and development in the outermost regions of the EU: implementation of Article 349 of the TFEU, Parliament calls on the Commission to rely further on Articles 107(3)(a) and 349 of the TFEU in the Regional State Aid Guidelines and the GBER in order to contribute to the economic and social development of the outermost regions and to pay greater attention to them.

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