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WORKING DOCUMENT

on ECA Special Report 24/2016 (Discharge 2015): More efforts needed to enforce compliance with and raise awareness of State aid rules in cohesion policy

Committee on Budgetary Control

Rapporteur: Nedzhmi Ali

Introduction

In principle, State aid is prohibited in order to ensure the proper functioning of the internal market. However, aid of a certain size, in certain sectors, geographical areas or in special circumstances, may be compatible with the internal market. During the period 2010 to 2014, Member States have granted an average of 76.6 billion euro of State aid per year, excluding aid to the financial sector, to the railway sector and to public services such as postal services. This corresponds to over 0.5 % of EU Member States' gross domestic product (GDP).

Overall, there is a correlation between Member States' per capita GDP and their spending on State aid. For the 2010-2014 period, the three Member States that spent most on State aid per capita on average were Denmark, Finland and Sweden.

The allocation of cohesion policy funds is determined by taking into account differences in GDP levels, with poorer regions receiving higher levels of financial support. As a result, these funds account for a significant share of total government spending in several Member States. This is the case in particular for those Member States, which joined the EU in 2004 and 2007: for example, the allocation of cohesion policy funds in 2014 accounted for more than 5 % of all government spending in Estonia, Hungary, Latvia, Lithuania and Poland. The Commission estimates that during the 2007-2013 programme period, around 40 % of cohesion policy funds, amounting to EUR 139 billion, was awarded to projects subject to State aid rules (28% of total State aid spending).

Audit approach and objectives

Through this audit, the Court assessed the level of non-compliance with State aid rules in cohesion policy (i.e. the European Regional Development Fund - ERDF/Cohesion Fund - CF and The European Social Fund - ESF) in the 2007-2013 programme period and the extent to which the Commission was aware of the causes of non-compliance. The Court analysed in particular:

- whether the Commission had a comprehensive and up-to-date overview of the causes of non-compliance with State aid rules in cohesion policy, and whether Commission DGs and Member States detected infringements of State aid rules. We also examined whether the Commission's actions in response to State aid errors had led to an appropriate number of corrective actions; and
- whether the Commission had taken appropriate actions to prevent infringements of State aid rules in cohesion policy in future.

The Court's conclusions

- Over the 2010-2014 period, the Commission and the Court of Auditors detected infringements of State aid rules in a significant number of our audits. State aid errors in ERDF and CF were an important factor contributing to our estimated level of error in cohesion policy. Audit authorities in Member States have not focused sufficiently on State aid in the course of their audits.
- During the 2007-2013 programme period the Commission did not record the State aid errors it detected or those reported by Member States in a way, which allowed it to perform a proper analysis. The Commission has developed a database for the 2014-2020 programme period for recording information on cases of non-compliance with State aid rules (Management of audit processes, activities and resources - MAPAR) it detects during its own audits for ERDF, CF and ESF. This system represents a considerable improvement, but no access has been granted to DG Competition (COMP).
- Particularly in the beginning of the 2007-2013 programme period, the Commission did not systematically verify major projects for State aid compliance. Subsequently, the Commission stepped up its internal preventive measures and it introduced an alternative approval procedure including an Independent Quality Review for the 2014-2020 programme period. Major projects will only be approved after internal State aid clearance, independent of the procedure used by the Member State.
- DG COMP considers that around 36 % of all aid schemes were affected by problems in the 2009-2014 period. Problems, which affected compatibility (7.3 % of all schemes), were particularly significant. For the 2010-2014 period, DG Regional and Urban Policy (REGIO) has implemented or was in the process of implementing 18 financial corrections against seven Member States that resulted at least partially from infringements of State aid rules. Ten resulted from DG REGIO's own audits, five from ECA's audits and three from DG REGIO's review of the audit authorities' annual control reports. Eleven of these financial corrections, amounting to 38.4 million euro in total and covering five Member States (Austria, France, Greece, Poland and Spain) were solely related to State aid.
- State aid errors reported by Member State authorities are encoded in the Commission's Irregularity Management System (IMS). IMS shows several weaknesses such as the absence of a specific error typology for State aid and an insufficient description of errors; it is therefore of limited use in practice. DG COMP does not have access to IMS.
- The Commission decision approving major projects is not designed always to provide legal certainty for Member State as to compliance with State aid rules at the time the major project decision is taken.

- Almost all audit authorities considered the EU’s legal framework for State aid to be complex. Audit authorities expressed a need for additional support in relation to auditing compliance with State aid rules, in particular for a practical guidebook with case studies.
- The Commission adopted a new General Block Exemption Regulation (GBER) for the 2014-2020 programme period. The scope of the 2014 GBER has increased significantly, which will lead to even more aid measures falling under it. By increasing the scope of the GBER, the Commission has significantly reduced administrative burdens for Member States and itself, since significantly less aid measures will need to be notified.
- To improve the way in which Member States design aid schemes, the Commission introduced ex post evaluations for the 2014-2020 programme period. Evaluation in particular will be carried out for the largest aid schemes – under the GBER, evaluation is mandatory in certain categories for aid schemes with an annual budget exceeding EUR 150 million.
- The Common Provisions Regulation introduced ex ante conditionalities regarding Member States’ State aid systems. Fulfilment of these conditions could reduce infringements of State aid rules.
- The promotion of administrative capacity by the Commission and the introduction of ex post evaluation can compensate for the increased responsibility of Member States.

The position of the European Commission

- In order to address deficiencies, the Commission services (at the level of the DG REGIO and DG COMP) are implementing a common action plan on “Strengthening Administrative Capacity for the Management of the Funds of Member States in the Field of State Aid”.
- For the 2014-2020 financial period, the Common Provisions Regulations foresees an ex-ante conditionality related to State aid with the purpose to ensure ex-ante conditions for effective application of EU State aid rules.
- The Commission closely and continuously works with audit authorities to improve their capacity as regards audit of State aid. The Commission's own verifications have lately found significant improvements concerning the quality of State aid check lists used by audit authorities, in line with the Court’s assessment.
- DG COMP shared in March 2016 its experience in ex-post monitoring of State aid schemes with DG REGIO and DG EMPL. In particular, DG COMP provided the outcome of the 2015 monitoring cycle to DGs REGIO and EMPL.
- Appropriate checks and balances have been introduced, in the major projects information requirements and in both decision-making procedures concerning major

projects, as preventive measures to avoid that State Aid non-compliant decisions are taken on major projects in 2014-2020.

- DG COMP reinforced its sample based monitoring of implementation of State aid measures. It shares with the Member States (through the Member States' working groups, the country coordinators network etc.) the experience and lessons learned from monitoring.
- DG COMP considers that it properly uses available corrective measures in case monitoring detects incompliance with State aid rules.
- The Commission notes that both DG REGIO and DG EMPL have made use of databases to record their audit findings under the 2007-2013 financial period. While these databases were not intended to serve as tools for an analysis of sources of errors, this did not prevent the Commission from identifying the recurrent types of errors in this area, and to implement concrete and targeted measures to prevent State aid errors.
- DGs REGIO and EMPL will be able to provide more detailed overview of the type of irregularities on the basis of its IT audit tool MAPAR, which covers the 2014-2020 programme period for ERDF/CF and ESF.
- IMS is a tool dedicated to the irregularity (including fraud) reporting by Member States. It is not a State-aid control instrument, but it is possible to add a specific typology for State aid to the already existing drop-down-lists.
- The Commission stresses that the ex-ante obligation to notify State aid measures lies with the Member States and the decision on the major project is not a decision on compliance of the major project with State aid rules.
- The annual control reports (ACR) of audit authorities may understate their capacity to detect State aid, as there did not exist any obligation to detail the nature of errors under the 2007-2013 regulatory framework.
- The Commission services have shared with Member States audit and coordination bodies the GBER checklists enabling them to check in advance whether all compatibility conditions are fulfilled or to improve audits in this area.

The Court's recommendations

The Commission:

1. Should impose corrective actions where aid measures do not comply with State aid rules;
2. Should also :
 - a. use MAPAR to record irregularities in a way that allows easy analysis of, for example, their type, frequency, seriousness, geographical origin and cause; the

database should equally contain information on the follow-up of these irregularities (such as financial corrections imposed);

- b. adapt the database's structure of the IMS so that information on irregularities such as State aid can be extracted and analysed across Member States and type;
 - c. give DG COMP access to all relevant information on State aid irregularities contained in MAPAR and IMS on a regular basis;
3. Should approve major projects only after internal State aid clearance and consistently ask Member States to notify aid where needed with a view to ensuring legal certainty, independent of the application procedure used by the Member State;
4. Should:
- a. ensure that the scope and quality of audit authorities' checks of compliance with State aid rules are sufficient;
 - b. ask audit authorities to check the State aid compliance of those major projects that have been approved before the end of 2012 during the closure of the 2007-2013 period;
 - c. develop further guidance material, including in particular case studies illustrating good practices and the most common types and causes of infringements of State aid rules;
 - d. encourage Member States to set up a central register for monitoring "de minimis" aid;
 - e. set up a central EU-wide database in which relevant Member State authorities can consult the identity of undertakings subject to State aid recovery orders as well as the status of recovery proceedings;
5. Should:
- a. use its powers to suspend payments to the Member States concerned until they have rectified all significant shortcomings, if the ex-ante conditionality concerning State aid is not fulfilled by the end of 2016;
 - b. follow up, every two years, on Member States' capacity to comply with State aid rules by carrying out analyses of, for example, the type, frequency, seriousness, geographical origin and cause of State aid errors detected by the Commission itself or by Member State authorities.

Recommendations by the rapporteur for possible inclusion in the 2016 Commission discharge report

The European Parliament:

1. Welcomes the Court's special report and endorses its recommendations;
2. Notes with satisfaction that the Commission will implement the vast majority of the recommendations;
3. Underlines that all directorates general concerned, and in particular DG COMP and DG REGIO, must have access to all data bases held by Commission services, which enables them to effectively assume their responsibilities;
4. Calls on the Commission to review its refusal to implement recommendation 4(b), as this may endanger the protection of the Union's financial interests;
5. Can accept the Commission's reticence to put in practice recommendation 4(d), for as long as alternative methods chosen by Member States are equally effective as a central register for monitoring "de minimis" aid and calls on the Commission to ensure that this is the case;
6. Is convinced that it is of prime importance for Member States to have legal certainty of applicable State aid rules before undertaking major projects as clear and coherent rules can contribute to bring down the error rate in this area;
7. Calls on the Commission to ensure that national audit authorities are familiar with and verify applicable State-aid rules before filing their annual control report;
8. Supports the Court in its call for a central EU-wide database in which relevant Member State authorities can consult the identity of undertakings subject to State aid recovery orders as well as the status of recovery proceedings. Such a data base could be important for future risk analyses.