



Practical application of the EU State Aid control rules

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Overview

1. Underlying principle of state aid control
2. The basic legislation
3. Regulations and guidelines
4. Specific examples
 - a. Regional aid
 - b. Rescue and restructuring aid

Underlying principle of state aid control

Markets do not always achieve the desired objectives of public interest:

- Efficiency (e.g. externalities, deficient information...)
- Equity (e.g. broadband roll out)

Treaty of the Functioning of the European Union (TFEU):

- Prohibition subject to exceptions with strict conditions:
- Exceptions for state aid granted to achieve benefits that are broader than interest of beneficiary companies:
 - contribute to EU objectives in the common interest (e.g. environmental protection, education, infrastructure...)
 - do not adversely affect trading conditions to an extent contrary to the common interest



The basic legislation

Article 107(2) TFEU: automatic compatibility

- Aid with a social character, granted to individual consumers without discrimination
- Aid to repair damage caused by natural disasters or exceptional occurrences

Article 107(3) TFEU : Commission has discretionary power

- Regional aid for most disadvantaged regions (GDP/capita below 75% of Community average)
- Important project of common European interest or serious disturbance in the economy of a Member State
- Development of certain economic activities or certain economic areas (disadvantaged regions compared to national average)
- Culture and heritage conservation

Article 106(2) TFEU : services of general economic interest



Regulations, Guidelines...

The basic legislation is implemented through numerous horizontal Regulations and Guidelines and Communications, among others:

- Aid to promote the execution of important projects of common European interest
- Aid to disadvantaged and disabled workers
- Training aid
- Regional aid
- Research and Development and Innovation
- Environmental aid
- Risk capital
- Rescue and restructuring aid
- Definition of SMEs
- Communication on the notion of aid

Examples:

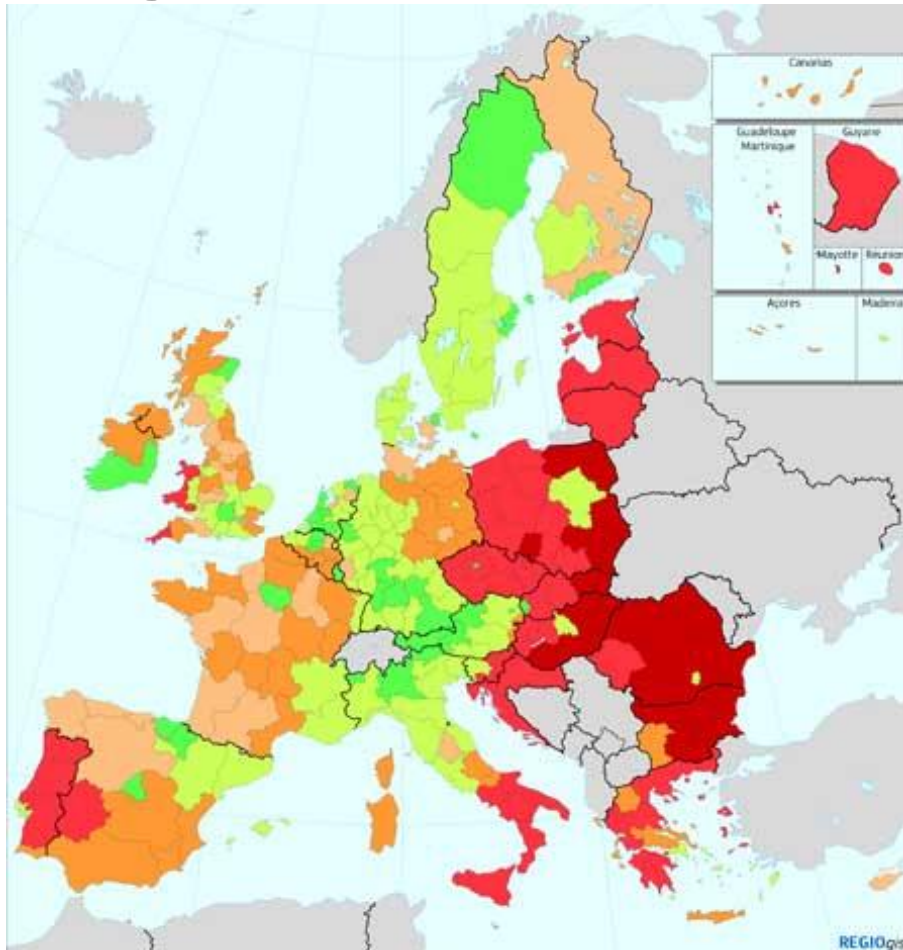
A. Regional aid

B. Rescue & restructuring aid

A. Regional aid

'Aid granted to companies in order to support the development of disadvantaged regions.'

Regional inequalities in the EU...



- Index, EU-28=100
- **<50**
- **50-75**
- **75-90**
- **90-100**
- **100-125**
- **>=125**
- No Data

Article 3
TFEU:
"The Union shall promote economic, social and territorial cohesion, and solidarity among Member States."



Regional Aid Guidelines

Purpose of regional aid:

- To promote the development of disadvantaged areas by addressing their economic handicaps
- To promote economic cohesion of the EU

How?

- Support for new investment and job creation by undertakings
- Support (exceptionally) operating expenses of undertakings

Criteria set out in Regional Aid Guidelines:

- Where can regional aid be granted?
- What can aid be granted for?
- How much aid can be granted?

Regional aid: Where?



Regional aid maps

For regional aid to be effective, it needs to be focused on the regions that suffer the most serious difficulties

Regions with abnormally low standard of living (**A-regions**)

- Reference point is EU average
- Criterion → GDP/cap lower than 75% EU average
→ Outermost Regions

Other disadvantaged areas (**C-regions**)

- Wider range of criteria, mostly regions that are disadvantaged in relation to the national average based on different criteria
- Former A-regions with a GDP/cap lower than 75% EU average
- Sparsely populated areas
- Other problem regions with population of at least 50,000

Regional aid: What for?

1. Initial Investment
2. Operating aid

Initial investment

* Investment in tangible and intangible assets relating to:

In A-regions & SME in C-regions:

- Setting up of a new establishment;
- Diversification of output of establishment into products not previously produced in the establishment;
- Extension of the capacity of an existing establishment;
- Fundamental change in the production process.

Large Enterprises (LE) in C-regions:

- Setting up of a new establishment;
- Diversification of activity of establishment, if new activity is not same as or similar to activity previously performed in the establishment;
- Diversification of existing establishments into new products or new process innovations.

Maintaining the investment (or jobs) in the region:

- 5 years for large enterprises
- 3 years for SMEs

Operating aid

Operating aid is:

- aimed at reducing a firm's current expenses
- not linked to initial investment

Normally prohibited

Permitted exceptionally where new investment aid alone is insufficient to trigger a process of regional development:

- In least developed A-regions (SMEs only)
- In very sparsely populated C-regions (SMEs+LE)
- In Outermost Regions (SMEs + LE (Large Enterprises))

Regional Aid UNDER WHICH CONDITIONS?

Common principles for compatibility assessment

- Contribution to a well-defined objective of common interest
- Need for state intervention
- Appropriateness of the aid measure
- Incentive effect
- Proportionality of the aid (aid limited to the minimum necessary)
- avoidance of undue negative effects on competition and trade between member States
- transparency of aid

NO aid if even a single principle is NOT respected

Compatibility Assessment

Incentive effect:

- Start of the project only after formal application has been submitted
- Information to be provided on “counterfactual”:
 - investment would not be sufficiently profitable without the aid
 - Investment would go to other region without the aid
- Large Enterprises to provide documentary evidence of “counterfactual”

Proportionality: Aid limited to the minimum needed

- SME’s: Respect of regional aid intensity ceiling
- Large Enterprises → Double cap:
 - Aid should not exceed “net extra cost”
 - Aid should not exceed regional aid intensity ceiling

Regional aid maps – aid intensities

Regional aid map places limits on the amount of investment aid that can be granted in each region:

Assisted area (% EU GDP/head)	Large firms	Medium-sized firms	Small firms
A-Regions (<45%)	50%	60%	70%
A-Regions (45%-60%)	35%	45%	55%
A-Regions (60%-75%)	25%	35%	45%
A-Regions areas (until end '17)	15%	25%	35%
Sparsely populated areas, external border areas	15%	25%	35%
Other C-Regions	10%	20%	30%

Compatibility Assessment

Avoidance of undue negative effects:

- Two types of effects:
 - Product market distortions (Over-capacity or Market power)
 - Location effects
- Avoid manifest negative effects:
 - NO authorisation, if aid attracts an investment from a poorer region (*) (°)
 - NO authorisation, if relocation of an investment due to the aid (°)
 - NO authorisation, if investment takes place on a market with structural overcapacity (°)

(*) Member States to verify this when awarding aid under schemes

(°) European Commission to verify this when assessing notified individual aid

B. Rescue and restructuring aid

Rationale of rescue and restructuring aid

- ❖ Basic market economy principle: The exit of inefficient firms is a normal part of the operation of the market
- ❖ Intervention Harm: Rescue and Restructuring aid prevents the exit, *i.e.* it is potentially the most distortive form of State aid
- ❖ Justification: If no market based solution available, State aid may help enterprise restructuring and save viable parts of a failing firm with the purpose of safeguarding jobs
- ❖ Solution: Rescue and Restructuring aid guidelines
 - Strict conditions to mitigate harm to competition
 - Better targeted aid
 - Filters to check whether intervention serves a real public interest (prevent social hardship / address market failure)
 - Member States to present a counterfactual not involving State aid

General principles

Scope:

- Exclusion of steel, coal and financial services

Eligibility:

- only "undertakings in difficulty" entitled to receive aid

"One-time, last-time principle"

- repeated State interventions should not be permitted – 10 years,
- covers all R&R aids including non-notified aids, irrespective of compatibility

Definition of "undertaking in difficulty"

- *Only hard criteria:*
 - >50% of capital has disappeared
 - Company insolvent or fulfils criteria under domestic law
 - For large undertakings:
Debt: equity > 7,5 and EBITDA interest coverage ratio <1 for the last 2 years
- *Excluded from R&R aid (even if in difficulty):*
 - Newly created firms
 - Firms belonging to larger business group

Types of Aid

- Rescue aid
- Restructuring aid
- Temporary Restructuring Support:
 - Only for SMEs and smaller State-owned enterprises

Rescue aid

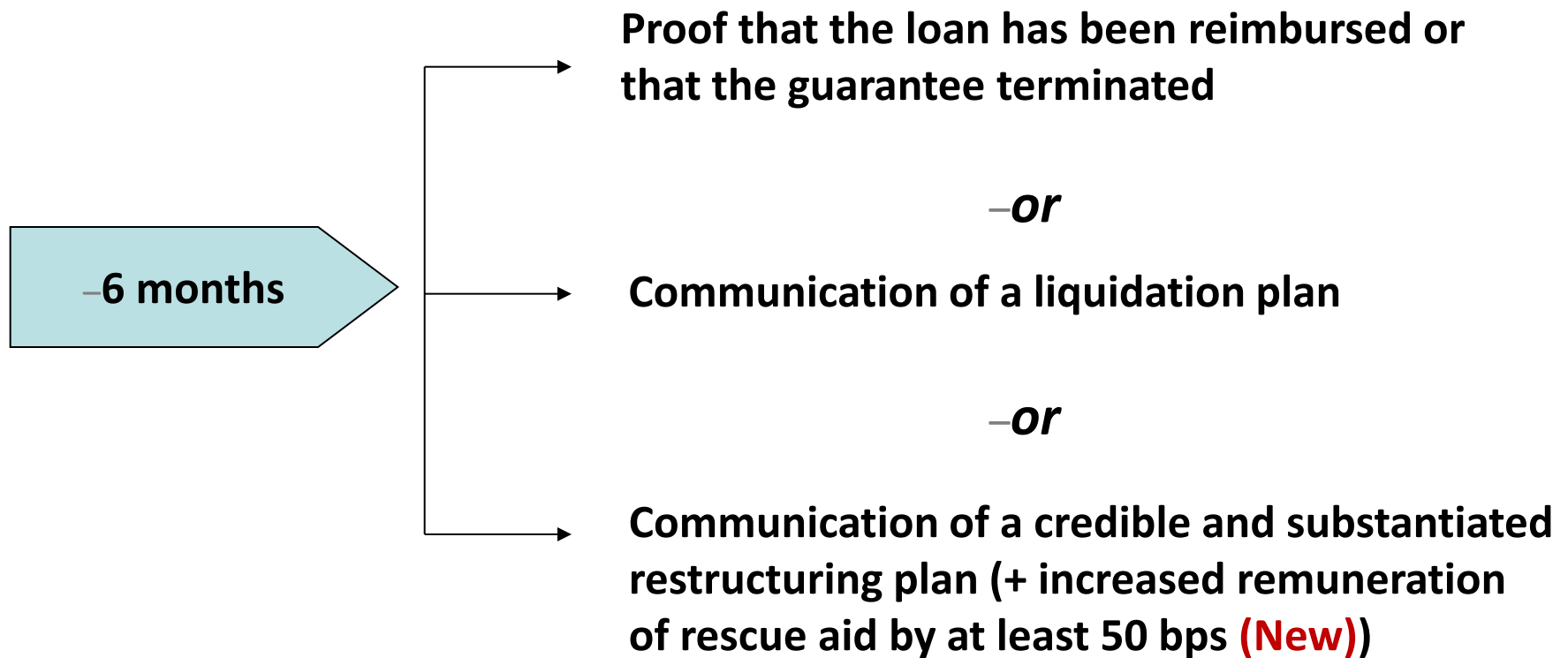
Definition:

- ✓ Temporary
- ✓ Reversible
- ✓ Minimum necessary (formula)

Conditions for approval:

- ✓ Social hardship or market failure
- ✓ Form: loans or guarantees
- ✓ Duration: max. 6 months
- ✓ Remuneration: 1-year IBOR + 400 bps

Follow-up to rescue aid



Restructuring aid – Compatibility Criteria

Based on "Common Principles":

- a) Contribution to an objective of common interest
- b) Need for State intervention
- c) Appropriateness
- d) Incentive effect
- e) Proportionality of aid
- f) Avoidance of undue negative effects ("one time, last time" + measures to limit distortions of competition)
- g) Transparency of aid (applicable only as of 1 July 2016)

Objective of common interest: Social hardship or market failure

The failure of the firm would likely involve serious social hardship or severe market failure:

- High and persistent unemployment (compared to EU or national average)
- Risk of disruption to an important service
- Important systemic role in the region or sector
- Risk of interruption of SGEI
- Failure of credit markets
- Irremediable loss of technical knowledge/expertise
- Other similar situations

Objective of common interest: return to long-term viability

Restructuring plan endorsed by the Commission
(Annex II of the R&R Guidelines)

- ✓ Market survey
- ✓ Analysis of sources of difficulties
- ✓ Solutions
- ✓ Scenario analysis
- ✓ Reasonable time-frame

Ultimate goal: **Long-term viability**

Need for State intervention & Incentive effect

Comparison with a credible alternative scenario not involving State aid

Demonstration that the objective of common interest would not be attained or to a lesser degree

Appropriateness

Member States can choose the form that restructuring aid takes (e.g. loan, grant, equity)

They must ensure that the instrument chosen is appropriate to the problems (liquidity or solvency?)

Proportionality: Aid limited to minimum

- **Restructuring aid limited to the minimum necessary**
- **Own contribution**
 - Normally at least 50% of restructuring costs (possibly lower, e.g. in assisted areas)
 - Should be comparable to the aid granted in terms of effects on solvency or liquidity (→ where aid enhances equity position, the own contribution should include similar measures)
 - Contributions must be real, excluding future profits and free of aid
- **Burden sharing**
 - If aid enhances the beneficiary's equity position, shareholders and (where necessary) subordinated creditors must absorb losses in full
 - State should receive a reasonable share of future gains

Measures to limit distortions of competition

- **Structural Measures:**
 - ✓ Divestments and reduction of profitable business activities
 - ✓ In the market where the undertaking will have a significant market position after restructuring
- **Behavioural Measures:**
 - ✓ Acquisition ban
 - ✓ No publicity with State support
 - ✓ Exceptionally: restrictions on prices/commercial behavior
- **(Possibly) Market opening Measures**

Temporary restructuring support

- As part of schemes for SMEs and smaller State-owned undertakings
- Liquidity aid: loan guarantees or loans
- Limited to 18 months
- Remuneration: 1-year IBOR + 400 bps (+ 50 bps after 12 months)
- After 6 months the Member State must approve a simplified restructuring plan
- After 18 months: aid terminated/restructuring plan/liquidation plan

Rescue & Restructuring schemes

- All R&R aid to SMEs and smaller State-owned undertakings should be granted under schemes
- Maximum individual aid amount limited to EUR 10 million
- Own contribution limited to 40% for medium-sized enterprises and 25% for small enterprises
- No competition measures required for small enterprises
- Duration of schemes normally limited to 4 years; evaluation possible

Thank you

For more information and documentation:
http://ec.europa.eu/competition/state_aid/overview/index_en.html