Transparency system for large regional investment projects

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The Multisectoral Framework on regional aid for large investment projects (2) (hereafter ‘MSF 2002’) entered into force on 1 January 2003 for the motor vehicle (3) and the synthetic fibres sectors, and in 2004 for the other economic sectors (4). In 2005, the Commission decided to integrate the MSF 2002 in the new guidelines for national regional aid for the period 2007-2013 (5) (hereafter ‘RAG 2007-2013’). The MSF 2002 introduced a specific information and screening system for the control of non-notifiable (6) cases of regional aid granted to large investment projects (the so-called ‘transparency mechanism’), which is maintained in the RAG 2007-2013, applicable for regional aid granted as from 1 January 2007 (7).

A ‘large investment project’ is an ‘initial investment’ (8) with an eligible expenditure above € 50 million.

(1) Directorate-General for Competition, unit H-1. The content of this article does not necessarily reflect the official position of the European Communities. Responsibility for the information and views expressed lies entirely with the authors.


(3) As defined in annex C to the MSF 2002 (as amended). The motor vehicle sector was subject to the specific rules of point 42 of the MSF 2002.

(4) See also section 1 of the MSF 2002. Excluded sectors are the synthetic fibres sector, the agriculture, fisheries and transport sectors, and the coal industry are subject to specific State aid rules.


(6) For aid which requires notification, the monitoring of regional aid for large investment projects is normally ensured by specific reporting obligations included in the Commission decision. A separate monitoring activity is carried out for aid granted under the former Multisectoral Framework on regional aid for large investment projects 1998 (OJ C 107, 7.4.1998, p. 7, hereafter ‘MSF 1998’), in accordance with point 6.2 of this framework.

(7) The current transparency system applies to all sectors except to those excluded in section 2 of the RAG 2007-2013. Under the RAG 2007-2013, the motor vehicle sector is assimilated to the other economic sectors. Excluded sectors are steel, synthetic fibres, and the production of agricultural products listed in Annex I to the Treaty. Special rules apply to the fisheries sector, coal, transport and shipbuilding.

(8) As defined by the RAG 2007-2013, and previously by the former guidelines for the period 2000-2006 (OJ C 74, 10.3.1998, p. 9, hereafter ‘RAG 1998’).

Purpose of the multisectoral framework/ specific rules for large investment projects under RAG 2007-2013

Reduce the volume of aid

The main purpose of the multisectoral frameworks was to reduce the volume of regional aid. Until 2004, under the MSF 1998, a different notification threshold (9) and different approval requirements applied for regional aid to large investment projects. With the introduction of the MSF 2002, the Commission imposed a more severe reduction of aid to large investment projects. Member States accepted fundamental changes and a more restrictive approach for aid to large investments, provided this meant a substantial reduction of the number of notifications. By accepting a higher notification threshold, the Commission could ensure a more effective scaling down system for aid granted to large investments (compared to the MSF 1998), and at the same time maintain control by introducing the transparency mechanism for non-notifiable regional aid.

New notification threshold

Instead of being tied to the investment volume, under the MSF 2002 and the RAG 2007-2013, the notification requirement is now tied to the amount of aid to be granted, and the threshold varies depending on the regional aid ceiling (the ceiling in force for large enterprises in the approved regional aid map on the date the aid has been granted). Regional investment aid for large investment projects is subject to an adjusted regional aid ceiling, on the basis of the following scale (10):

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(9) Point 2.1 of the MSF 1998.

(10) Points 21 and 22 of the MSF 2002, respectively paragraph 67 of the RAG 2007-2013. Under the specific rules of the MSF 2002, the motor vehicle sector is subject to a more severe reduction: for aid amounts exceeding € 5 million, regional aid to large investment projects in this sector must be limited to 30% of the full (unadjusted) regional aid ceiling.

The starting point for the calculation of the reduced aid ceiling is always the maximum aid intensity allowed for aid for large enterprises. Under the MSF 2002, the aid intensity could be higher when an SME bonus had been awarded or if the conditions for the granting of a cohesion bonus were fulfilled (points 25 and 26 of the MSF 2002). Under the RAG 2007-2013, the cohesion bonus is abolished, and no SME bonuses may be granted to large investment projects.
— eligible expenditure up to € 50 million: 100% of regional ceiling;
— for the part between € 50 million and € 100 million: 50% of regional ceiling;
— for the part exceeding € 100 million: 34% of regional ceiling.

Member States are required to notify individually to the Commission any aid to be awarded to investment projects under an existing aid scheme (in the meaning of the procedural regulation (11)) if the aid proposed from all sources is more than the maximum allowable amount of aid that an investment with eligible expenditure of € 100 million can receive under the above scaling down system (12). Aid exceeding this threshold is submitted by the Commission to an economic assessment taking into account the sectoral and market power effects of the aid measure (13).

**Transparency mechanism for non-notifiable large investment projects**

Point 36 of the MSF 2002 (paragraph 65 of the RAG 2007-2013) installed a system for ex-post monitoring of state aid granted to non-notifiable large investment projects, also called the ‘transparency mechanism’. The non-notifiable large investment projects are projects for which the aid amount does not exceed the notification threshold, i.e. 75% of the maximum amount of aid an investment with eligible expenditure of € 100 million could receive, applying the standard aid ceiling in force for large enterprises in the approved regional aid map on the date the aid has been granted (14).

Under the transparency mechanism, whenever regional aid is granted on the basis of existing aid schemes (15) for non-notifiable large investment projects, Member States must, within 20 working days starting from the granting of the aid by the competent authority, provide the Commission with the information requested in the standard form laid down in Annex III (16) to the MSF 2002, respectively the RAG 2007-2013 (17). Summary information is then published on the DG Competition website (http://ec.europa.eu/competition/index_en.html) (18).

Additional to this more ‘systematic’ monitoring, the Commission can of course always request information on a particular case (ex officio, on the basis of a complaint…). Member States are obliged to maintain detailed records regarding the granting of aid for all large investment projects, and such records must be maintained for 10 years from the date on which the aid was granted (19).

**Objectives of the transparency system**

The objective of the transparency system is to reduce the administrative burden put on Member States, by reducing the number of notifications and installing a much lighter administrative procedure, but at the same time to ensure transparency and effective control of state aid to large regional investment projects. The internet publication of the summary information gives third parties a basis to comment and allows potential complainants to inform the Commission on aid received by competitors not appearing in the published lists.

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(12) Point 24 of the MSF 2002, respectively paragraph 64 of the RAG 2007-2013. Point 24 of the MSF 2002 however does not apply to the motor vehicle sector. Under the MSF 2002, for aid granted before 2007, in this sector, only individual *ad hoc* aid had to be notified and the transparency system applied to all regional aid for large investment projects which was granted under existing aid schemes.
(13) Point 24(6) and (b) of the MSF 2002, respectively paragraph 68 of the RAG 2007-2013. Under the MSF 2002, no aid (above the maximum aid for an investment with eligible expenditure of € 100 million) could be given if the market share of the beneficiary exceeded 25% or if the project increased the capacity on a market in relative decline with more than 5%. Under the new rules, these thresholds are used to trigger an in-depth assessment where several factors can be taken into account and used in a balancing test. The aid can be allowed if the incentive effect is clear and if the benefits of the aid outweigh the distortion of competition and effect on trade of the aid.
(14) Under the MSF 2002, in the motor vehicle sector, the transparency system applied to all regional aid for large investment projects which was granted under existing aid schemes (see also footnote 12).
(15) Individual aid granted outside approved schemes (*ad hoc* aid) always has to be notified to the Commission.
(16) The standardized reporting form is also available in Excel format on the DG Competition website: http://ec.europa.eu/competition/state_aid/legislation/forms.cfm
(17) The information sheets are registered at the Commission with a code 'MF' that is followed by a number (e.g. MF 45/2006, for case number 45 registered in the year 2006).
(18) Unlike for aid granted in accordance with block exemption regulations, the information is not to be published in the Official Journal.
**Screening of transparency cases**

Once a Member State has sent the information to the Commission, DG Competition verifies the case and checks whether the aid complies with the applicable rules and the relevant Commission decisions on the applied aid scheme(s) and commitments accepted by the Member state under relevant appropriate measures’ exercises.

DG Competition will check the following:

1) Is the information given in the information sheet complete? If necessary, additional information or clarification will be requested from the Member State.

2) Does the case fall under the transparency procedure for regional aid to large investment projects?
   a) Do the eligible costs exceed € 50 million (20)?
   b) Is the case a case of application of one or several existing aid schemes within their period of validity and does it not require notification pursuant to the notification requirement laid down in Article 88(3) of the EC Treaty for any new aid?
   c) Are the product(s) or services not belonging to sectors excluded from regional aid?
   d) Does the total amount of aid exceed the individual notification threshold (21)? If so, the Commission will inform the Member State that the transparency mechanism does not apply, and transfer the case to the register of NN-cases (non-notified aid), for further investigation.

3) Are all conditions of the applied aid scheme(s) respected (including those resulting from appropriate measures pursuant to Article 88(1) of the EC Treaty (22))?  
   a) Are the eligible costs indicated in the information sheet in line with the applied aid scheme?
   b) Is the aid given (gross grant equivalent) under the individual scheme(s) applied in line with the aid intensity ceiling(s) allowed under the individual scheme(s), taking into account that this aid intensity has to abide for all sectors with the reduced aid intensity ceiling that applies under point 21 of the MSF 2002, respectively paragraph 67 of the RAG 2007-2013?
   c) Is the total amount of aid resulting from the combination of several aid schemes in line with the cumulation rules (23) and with the reduced aid intensity ceiling that applies under point 21 of the MSF 2002, respectively paragraph 67 of the RAG 2007-2013?
   d) Are the following conditions attached to the payment or the award of the aid?
      i) The investment or the employment created has to be maintained in the region for a minimum period of five years after its completion (three years for SMEs).
      ii) The aid recipient’s own contribution to the financing of the investment project is at least 25% of the eligible costs.
      iii) The aid has been applied for by the beneficiary before the investment project was started.
      iv) Following the entry into force of the RAG 2007-2013, the Commission also verifies that the authority responsible for administering the aid scheme has subsequently confirmed in writing that the project in principle meets the conditions of eligibility laid down by the scheme, or the aid was awarded on the basis of legal provisions giving the beneficiary the legal right to aid according to objective criteria and without further exercise of discretion by the Member State.

**Green-lighting of transparency cases**

When no problems arise from this screening, the summary information is made available to the public through the DG Competition website (http://ec.europa.eu/competition/index_en.html).

If this verification does not permit to confirm the compliance, the case is transferred to the register of CP-cases (complaints and presumed cases of notifiable aid) and its assessment continued under the standard procedures applicable to these cases. If the CP-examination does not confirm the initial doubts, the CP-case is closed, and the case is retransferred to the MF-register and green-lighted for publication.

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(20) Present value at the date of granting.
(21) Point 24 of the MSF 2002, respectively paragraph 64 of the RAG 2007-2013.
(22) For aid granted under existing aid schemes in force before 2007.
(23) Points 4.18 to 4.21 of the RAG 1998, respectively section 4.4 of the RAG 2007-2013.
If there is clear evidence that the applicable rules have not been respected, the case is registered as NN-case, and its assessment continued under the standard rules for unlawful aid.

State of play end August 2007

At the time of writing (end August 2007), since the introduction of the transparency mechanism in 2003, the Commission received some 150 standard information sheets, reporting a total aid amount close to € 2.9 billion, for a total eligible investment cost of some € 15 billion, with an average aid intensity of about 20%. Amounts of aid granted range from € 1 million to € 70 million.

The table below gives an idea of the evolution of the system over the years of its applicability.

In 2003, the transparency system only applied to the motor vehicle sector. Until end 2006, in this sector, regional aid granted under existing aid schemes was exempted from individual notification. It is therefore not surprising that more than 20% of the transparency cases relating to aid granted before 2007 concern the manufacture of motor vehicles or parts and accessories for motor vehicles and their engines (24). These cases represent a total aid amount of approximately € 780 million (about 27% of the total aid granted for the 150 transparency cases). The prevalence of cases in this sector in the start years of the transparency mechanism is also an explanation for the higher average aid amounts per case in the years 2003-2004, as these cases were exempted from notification, and very large investments are not unusual in this capital-intensive sector. For most of the car sector cases, the eligible expenses exceed € 100 million (but aid is limited to 30% of the standard regional aid ceiling).

Outside the motor vehicle sector, the main sectors concerned are:

— manufacture of electrical, optical and medical equipment (22 cases, of which 7 related to the production of solar wafers, cells and/or modules);
— manufacture of chemicals (18 cases);
— energy sector (electricity, gas, coke, petroleum, biofuels: 17 cases);
— wood and paper sector (15 cases).

The table reflects the normal ‘business cycle’ related to the introduction of new rules. As the MSF 2002 implied a significant reduction of the admissible aid intensities for regional aid to large investment projects, and Member States were not familiar with these new rules, a large number of cases were notified before 2003-2004 (under the MSF 1998), which explains the ‘slow’ start of the transparency system. A similar attitude is observed in the context of the new RAG 2007-2013: Member States granted aid to a large number of regional investment projects just before the expiry of the MSF 2002 (54 transparency sheets submitted to the Commission in 2006, and 49 still based on the MSF 2002 submitted in 2007).

<table>
<thead>
<tr>
<th>Submission year</th>
<th>Number of cases</th>
<th>Number of cases in car sector</th>
<th>Total aid amount (in €)</th>
<th>Average aid per case (in €)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2003</td>
<td>1*</td>
<td>1</td>
<td>29.145.135</td>
<td>29.145.135</td>
</tr>
<tr>
<td>2004</td>
<td>14*</td>
<td>10</td>
<td>398.994.821</td>
<td>28.499.630</td>
</tr>
<tr>
<td>2005</td>
<td>20</td>
<td>5</td>
<td>346.372.518</td>
<td>17.318.626</td>
</tr>
<tr>
<td>2006</td>
<td>54</td>
<td>5</td>
<td>901.233.154</td>
<td>16.689.503</td>
</tr>
<tr>
<td>2007 (to end Aug)</td>
<td>61**</td>
<td>10***</td>
<td>1.181.301.688</td>
<td>19.365.601</td>
</tr>
<tr>
<td>Total</td>
<td>150</td>
<td>31</td>
<td>2.857.047.316</td>
<td>19.046.982</td>
</tr>
</tbody>
</table>

* Not included: one case which was transferred to the NN-register because it related to ad hoc aid.
** State of play end August 2007. Of these 61 information sheets, 49 refer to aid granted before end 2006 (on the basis of the RAG 1998 and the MSF 2002).
*** All but one of these cases refer to aid granted before end 2006 (on the basis of the RAG 1998 and the MSF 2002).

(24) Prodcom codes 34.30 and 34.10.
The following table gives an overview of the situation per Member State. The largest numbers of cases are submitted by Spain, Germany and Hungary (together 83 of the 150 cases, for a total aid of about € 1.7 billion). Spain and Italy totalize half of the car sector cases. The largest average aid amounts are observed in Member States which have the poorest regions and hence higher standard regional aid ceilings.

<table>
<thead>
<tr>
<th>Member State</th>
<th>Number of cases</th>
<th>Number of cases in car sector</th>
<th>Total aid amount (in €)</th>
<th>% of aid per Member State</th>
<th>Average aid per case (in €)</th>
</tr>
</thead>
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<tr>
<td>AT</td>
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<td>9.897.800</td>
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<td>3</td>
<td>344.652.000</td>
<td>12,06</td>
<td>31.332.000</td>
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<td>645.107.348</td>
<td>22,58</td>
<td>22.245.081</td>
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<td>17,86</td>
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<td>IT</td>
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<td>28.939.736</td>
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<td>4.910.000</td>
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<td>12.248.952</td>
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<tr>
<td>Total</td>
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<td>31</td>
<td>2.857.047.316</td>
<td>100,00</td>
<td>19.046.982</td>
</tr>
</tbody>
</table>

**Conclusion**

**Did the transparency system meet its objectives?**

One of the objectives of the introduction of the transparency system was to reduce the administrative burden put on Member States. Under the former MSF 1998, most of the actual transparency cases would have required notification, which means completing much more detailed notification forms than the summary information sheet requested under the transparency mechanism, and a longer approval procedure. The reaction time in case of anomalies is faster: where the screening shows errors, Member States can easily proceed to auto-correction.

The system also has an effect on the workload within the Commission. Compared to the procedure resulting in the adoption of a Commission decision, the screening of a transparency case is a much lighter process. This allows the Commission to concentrate on more important and potentially more distortive cases of regional aid to large investment projects.

As for the objective ‘transparency’, the publication of the summary information on the DG Competition website indeed sometimes leads to reactions from competitors, sectoral bodies or other stakeholders, varying from questions related to the respect of the aid amount/intensity or sectoral aspects, to information or complaints on aid granted to projects which do not appear in the green-lighted lists.

**Further development of the transparency system?**

The transparency system for aid to large investment projects revealed to be an effective tool for the monitoring of State aid, at the same time allowing a substantial reduction of the number of notifications. This is why the new Community Framework for State aid for Research, Development and Innovation (25) in its point 10.1.3 has introduced a very similar system of information sheets for large R&D&I projects involving aid above € 3 million but below the threshold for individual notification.

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