Evaluation in the field of State aid

Assonime response to the European Commission public consultation
on modernising State aid policy through better evaluation

1. Comments on the general context and rationale

Ex-post evaluation is an important tool to ensure the effectiveness of policy measures, both within Member States and at the EU level. In a spending review perspective, evaluation can be a good practice for all major forms of use of public resources, even when they fall outside the scope of article 107 TFEU (for instance, also for measures which are not selective or do not affect trade). Policy makers face the challenge to select the appropriate modalities of evaluation so as to ensure that the benefits, in terms of improvement of public policy, exceed the costs of the exercise.

Within this broader context, the issue of how ex-post evaluation can contribute to improving the enforcement of EU State aid control has some peculiar features, since it involves a relation between the European Commission and Member States in the application of the rules of the TFEU.

a. Legal basis – need for symmetry between ex-ante scrutiny and ex-post evaluation

The legal basis for requiring ex-post evaluation of aid schemes can be found in the rules of the Treaty on the control of State aid. In this context, article 107 TFEU establishes the conditions under which State aid is incompatible or may be considered compatible with the common market. As stated in the draft Guidance Paper, in determining which types of aid are compatible with the common market, the ex-ante scrutiny - which is typically based on pre-defined criteria- should verify whether the positive impact in terms of attainment of proper public policy objectives exceeds the negative impact on competition and trade, i.e. whether the overall balance is positive.

In order to be consistent with the legal basis, the ex-post evaluation of State aid cannot go beyond what is relevant for the ex-ante assessment: some symmetry is needed. In this perspective, the Commission rightly stresses that “in the specific context of EU State aid control, the overall objective of ex-post evaluation is the verification of the balance between the public objective of the aid and its impact on competition and trade between Member States”, i.e. whether in the end the net balance turned out to be positive.

In particular, according to the draft paper, State aid evaluation should allow:
assessing whether the scheme is effective in achieving the direct objective for which it was introduced;
- detecting possible indirect effect on the objective of interest;
- detecting negative effects on competition and trade.

It is beyond dispute that the ex-post evaluation does not encroach upon the compatibility assessment of the aid scheme already made by the Commission; on the other hand, the results of the evaluation may be used by the Commission for future ex-ante assessment of a prolongation of the same scheme, or of a new scheme pursuing the same public policy objectives.

b. Focus and proportionality

The draft document recalls that the modernization initiative envisages a re-focus of the Commission’s enforcement efforts on the larger and potentially more distortive aid schemes. Member States will have more flexibility in the implementation of aid with a more local nature and with little effect on trade. On the other hand, in order not to lose control, simplification should be accompanied by greater transparency, effective evaluation and control of compliance at national and EU levels.

Reference to ex-post evaluation has already been included by the Commission in some decisions sup and in recent guidelines on the assessment of State aid, namely those on broadband and on regional aid. These guidelines indicate that the Commission, when assessing the compatibility of an aid scheme under article 107 TFEU, in order to ensure that distortions of competition are limited may require that certain schemes are subject to a time limitation (of normally 4 years or less) and to an evaluation in order to verify (i) whether the assumptions and conditions which led to the compatibility decision have been realised; (ii) the effectiveness of the measure in light of its predefined objectives; (iii) its impact on markets and competition. According to the guidelines, this evaluation should be carried out by an expert independent from the aid granting authority, on the basis of a common methodology which “may be provided by the Commission”, be made public and be submitted to the Commission in due time to allow for the assessment of the possible prolongation of the aid measure and “in any case upon expiry of the scheme”. Interestingly, the Guidelines indicate that “the precise scope and modalities of the evaluation shall be defined in the approval decision of the aid measure” and that “any subsequent aid measure with a similar objective shall take into account the results of that evaluation”.

1 E.g. Commission decision in case SA.33671 (2012/M) United Kingdom National Broadband Scheme for the UK - Broadband Delivery UK, C(2012) 8223 final, paragraph 88 (the UK has committed itself to submit an evaluation of the scheme to the Commission and re-notification of the scheme shall be subject to the results of that evaluation).
2 OJ C 25/12 of 26 January 2013, point 53; OJ C 209/1 of 23 July 2013, points 27, 142-144.
With the draft Guidance Paper the issue of ex-post evaluation is addressed in a horizontal perspective, consistently with the efforts undertaken in the modernization process to ensure a more systematic approach across the different areas of State aid control.

Encouraging Member States to verify the actual impact of allegedly welfare enhancing aid measures which are liable to distort competition deserves a strong support. On the other hand, the tasks imposed on Member States should remain proportionate and the costs of ex-post evaluation should be duly taken into account.

Therefore, the principle whereby ex-post evaluation will not be required for all aid schemes, but only for those with the largest potential distortion on the internal market, is important and should be applied by the Commission wisely, so as to gradually spread an evaluation culture, based on a common approach and leading to high quality and comparable assessments, in all Member States. Ex-post evaluation of aid measures should better be seen not as a dictated constraint but as a shared effort to improve public policies.

**c. Flexibility in the choice of methodology**

A closely related issue, because of its potential impact on costs, is the degree of flexibility that Member States will have in the choice of the methodology for ex-post evaluation. The Guidance Paper aims at helping public authorities by advocating for best practices and setting out some principles. On the other hand, the Commission wishes to “leave sufficient institutional and methodological choices to adapt to the specific situations of each evaluation exercise”.

The scope and the specific modalities of evaluation, which will be defined in the decision of approval of the aid scheme, should be carefully discussed with the Member State in order to ensure that the results will provide reliable information but, on the other hand, the evaluation commitments are feasible and proportionate.

As suggested in the draft document, discussion of practical experiences and best practices in Member States will lead to a learning by doing process, which will need to be reflected in future revisions of the Guidance Paper.

**2. Selection of aid schemes subject to ex-post evaluation**

Evaluation is always good practice but also resource-consuming; it would be disproportionate to mandate it for all notifiable schemes. Therefore, it is important to set priorities and to focus on the potentially more distortive measures. The criterion identified in the Guidance Paper, i.e. “schemes which potentially have a significant impact on the internal market” (p. 6) seems the
correct one: the negative impact of such schemes may be serious, while improvement of their design can be highly beneficial.

In this perspective, as suggested in the Guidance Paper, it is appropriate to focus first of all on large schemes, excluding those which despite their size do not entail problematic aspects (in such cases evaluation would not be particularly useful). The excluded large schemes should be identified not only ex-ante, with reference to certain categories of aid, such as compensation for natural disasters, but also on a case by case basis.

The focus on novel aid schemes also deserves support, but should be carefully qualified. The formal novelty of an instrument can be irrelevant; what matters is whether the net positive impact in terms of public policy objectives is uncertain due to lack of experience.

The third type of aid schemes mentioned in the Guidance Paper, i.e. those for which there is the possibility of significant (market, technological or regulatory) changes, deserves a different approach. In our view, this point should be illustrated more clearly in the Guidance Paper. Indeed, new regulations or market developments may be sufficient to eliminate the alleged market failure and therefore the justification for State aid, or may suggest a substantial modification of future schemes. If, in these cases, reduction of the duration of the scheme and reliance on a new ex-ante assessment is not appropriate or possible, the focus of ex-post evaluation should not be on the impact of the scheme during its whole life (showing for instance that before the changes the scheme had a net positive impact), but on the consequences of the changes in a public policy perspective.

The residual cases in which the Commission will consider the possibility to mandate an ex-post evaluation will be specified in the guidelines in the different policy fields and therefore it is difficult to express an opinion. In principle, the example of sectoral aid to industries at a constant decline seems appropriate: in such cases, it may be useful to assess the concrete effectiveness of aid schemes compared with other policy instruments which may be used to achieve the same goals (employment policies, reduction of regional disparity).

In any case, for the above-mentioned sets of schemes for which an ex-post evaluation may in principle be justified, the assessment of whether to mandate evaluation should not be automatic but should be made on a case by case basis in the decision authorizing the scheme, taking the costs and benefits into account.

3. The design and the process of evaluation

As for the design and process of evaluation, a major challenge is to find the right balance between the need to promote a proper (i.e. meaningful) evaluation of the impact of aid
schemes and the need of ensure that the requested analysis is manageable by the involved Member State and reasonable in terms of resources.

In this perspective, it seems advisable to distinguish between the principles (which should always be respected) and the methodology, which can vary depending on a number of factors. Member States know in advance that, while a rigorous methodology will ensure that the results will be influential on the assessment by the Commission of a prolongation of the scheme or on the approval of a similar scheme, a clearly inadequate assessment can lead the Commission to draw adverse inferences on the effectiveness of the scheme and of other possible future measures pursuing the same policy objective.

In our view, it is crucial to stick to the following principles and general criteria, taken from the draft Guidance Paper and integrated with a few additional points:

1. Evaluation should be objective, rigorous, impartial and transparent.

2. Evaluation needs to be carefully designed ex-ante: a good planning will reduce not only the work required for the evaluation, but also its costs, and is crucial to the quality of the report.

3. The evaluation plan, which will be agreed by the Member States and the Commission and shall be part of the approving decision for the aid scheme, should contain at least a minimum set of elements (including the objective of the evaluation, relevant indicators, range of allowed methodologies, assessment of the data necessary to the evaluation, information on data gathering and availability, independent evaluation and peer review; use of results).

4. In order to assess the impact of the aid scheme in terms of attainment of the public policy objectives and in terms of competition/market development, reference should be made to the appropriate counterfactual situation: in order to facilitate this task, evaluation should be designed at the same time as the policy itself.

5. The information on the impact of the scheme based on data should be complemented by different sources of information. The draft paper mentions surveys of aid beneficiaries and interviews of scheme managers. We suggest to consider also market tests i.e. public consultations allowing to collect also the views of other undertakings, independent researchers etc. The draft paper stresses that subjective assessments can be biased and therefore must be carefully interpreted. We respectfully submit that allowing all potentially interested parties to express their views on the positive/negative impact of the scheme through the market test may help to reduce the risk of a biased final assessment.
6. Econometric techniques are usually considered the appropriate instrument to assess the causal effect of a policy. The methodological appendix of the draft paper aims at providing guidance on the methodology requirements for carrying out such analyses, taking into account the developments in techniques accumulated in the last two decades. However, in some cases the Member States and the Commission might agree, on the basis of a preliminary assessment of the available data and information and of the costs and time length which would be required by an econometric assessment, that it is sufficient to follow a different and simpler methodology. Indeed, as competition authorities know very well, a much simpler econometric exercise (the ex-post assessment of the competitive impact of a merger) can require the work of a team of economists for several months. When a simplified approach is agreed upon, it should be based on an accurate choice of the relevant indicators and on a commitment to provide and elaborate all the relevant information which may be useful to interpret the available evidence, in order to provide meaningful results.

7. Member States, going beyond the obligation to foresee peer reviews as indicated in the Guidance Paper, may commit, on a voluntary basis, to make the data and methodology used in the assessment accessible to academic and practitioners not involved in the study, in order to promote checks, replication and refinements of empirical research on the impact of state interventions. This voluntary transparency commitment, accompanied by appropriate safeguards to ensure compliance with confidentiality obligations, might be considered an additional guarantee by the Commission when assessing the overall adequacy of the ex-post evaluation methodology.

3.1 Objective of the evaluation and relevant indicators

Because of the legal basis, the evaluation of the aid scheme must be symmetric to the ex-ante assessment of its compatibility with the internal market. Therefore, it is correct to state that the objective of the evaluation should be to determine whether the scheme has achieved its goals while limiting distortions. This implies asking questions on the market failure/public policy concern, the way in which the scheme was trying to address the concern, the incentive effect, the expected beneficial and distortive effects and whether they have materialized.

A comparison with other measures which might have been used to achieve the same aim may also be appropriate. In the perspective of the control of State aid, what matters is whether alternative tools may provide a better net effect (more positive effect and or less negative effect, i.e. they represent less distortive measures).

The document correctly indicates that the choice of performance indicators should be based on the questions the evaluation exercise aims to address.
3.2. Methodology

This section correctly points out that what ex-post evaluation should provide is identifying the causal impact of the policy, undistorted by other variables like general macroeconomic conditions or firm heterogeneity, and that in order to construct the counterfactual it is essential to find a proper control group.

Moreover, an important message in this section is that the choice of the method should depend on the details of the policy design and on the available data and that explicitly admitting and discussing limitations and assumptions of the chosen method can enhance the credibility of the study.

3.3. Monitoring and data availability

The Guidance Paper rightly stresses that when data from several sources are used, they should be collected in a format that allows their consistent matching and that unique identifiers for observation units in each data set may be necessary.

A delicate issue is how data subject to privacy and confidentiality rules can reliably be made available to evaluators, peer reviewers and, in our proposal, also to other independent researchers. The exchange of best practices between Member States in this respect may be of paramount importance.

As anticipated, as for additional sources of information we suggest to consider, beyond surveys of aid beneficiaries and/or interviews to scheme managers, also the possibility to conduct general market tests, so as to collect the view of all potentially interested parties.

3.4. Timeframe to carry out the evaluation

The timeframe of the evaluation, which should be outlined in the plan, in some cases may require a longer horizon than the one needed from an administrative viewpoint to allow the Commission to assess a request of prolongation of the scheme.

In order not to distort the assessment, once the evaluation framework has been built, it seems better not to artificially truncate the analysis. In such cases, the possibility to accept the submission of an interim report and allow the submission of the final report in due time should be considered.

3.5. The body conducting the evaluation, peer review and quality control

The approach whereby the evaluation should be carried out by a body with the necessary expertise that is “at least functionally independent from the granting authority” and,
moreover, peer review should contribute to ensuring the quality of evaluations seems to provide sufficient flexibility to Member States.

The choice whether to use know-how within the public administration (in bodies functionally independent from the granting authority) or to outsource the project is left to the interested Member State, which is best placed to assess the available resources and to evaluate the cost of the different alternatives.

Notably, familiarity with econometric techniques is not sufficient to carry out a meaningful evaluation. Depending on the aid scheme, (environmental aid, R&D aid, regional aid) a different know how may be required for the assessment of the impact of the scheme in terms of attainment of the public policy objectives; moreover, the assessment of the impact on competition may require the know-how of experts familiar with competition law and economics. A national team might be composed by experts from different administrations. In Italy, for instance, while coordination of State aid policy falls within the competence of the Government Department for EU policies, most empirical studies on the impact of subsidies have been carried out by the research department of the Bank of Italy, and relevant expertise can be found in the Ministry for Economic Development, in the Ministry of Economics, in the Court of Auditors, in the National Statistical Office, in the system of the Chambers of commerce (which hold very important data banks on companies operating in Italy), as well as in the Italian competition authority. In particular, the design of the evaluation process might be prepared by a working group with a number of permanent members (to ensure consistency and effectiveness of the learning process) and some members which vary depending on the scheme, including where appropriate regional/local expertise.

External experts and academics may be involved in the peer review exercise. The choice of peer reviewers should be based on reputation mechanisms and follow transparency rules; the curricula of the experts should be sent to DG Comp. The methodological insights resulting from the peer review should be re-used by the Member State to improve future evaluation plans.

As for DG Comp, we envisage that it will be available to discuss methodological issues with Member States and, as suggested in the Guidance Paper, will promote best practices by organizing thematic workshops on specific issues.

3.6. Use of the results

The Guidance Paper rightly identifies different ways in which evaluation of aid schemes may be helpful: it may help the interested Member State to improve the design of its public policies; it may facilitate the ex-ante appraisal of new schemes and allow the Commission to revise the set of block exempted schemes; it may also be used to promote best practices in other Member States.