State aid control and regeneration: rubber straitjacket or passepartout?

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The Commission recently took important decisions on a number of notified aid measures aiming to regenerate problem areas in rural and urban regions. The challenges related to the regeneration of such problem areas are typically multifaceted. Consequently, the respective problems faced by Member States as well as their strategies and policy actions to answer these problems vary significantly. It is therefore essential that the Commission’s state aid control policy incorporate the need for variety in this important policy area. This is best done by building upon the existing close cooperation between Member States and the Commission and by striving to enhance the transparency of the Commission’s approach to state aid control in regeneration.

What exactly is meant by ‘regeneration’?

The concept of regeneration evades precise definition and leaves ample room for ambiguities and different interpretations. Regeneration typically designates a renewal process, i.e. some form of repair or improvement. In the context of public policy, the term is used to describe courses of action to transform some set of physical and socio-economic variables. A regeneration process is therefore commonly targeted at revitalizing problem areas in cities and their surroundings, but also in rural settings.

Regenerating urban problem areas

The public policy discussion in the regeneration domain is predominantly focused on the specific needs of urban areas. Sustainable cities today must simultaneously accomplish economic competitiveness and social and environmental progress amidst major socio-economic transformations, illustrated by the remodeling of the industrial structure and the transition to service economies. These transformations have frequently engendered significant challenges for cities such as a lack of job opportunities, sweeping poverty, labour force migration, housing decline, default of local business and commerce and the surge of crime. These challenges are generally interrelated and intertwined and threaten to precipitate the decay of whole urban neighbourhoods.

Complex problems demand comprehensive solutions

Interrelated and multifaceted phenomena such as the regeneration of urban and rural problem areas pose specific challenges to the Member States. Policy makers must draft and implement savvy strategies that will accomplish comprehensive and well-tuned actions and outcomes. In general, a holistic approach that integrates and reconciles diverse sectoral policies seems specifically suited to create these outcomes. Holistically designed regeneration policies will therefore often be tailor-made to perfectly suit the unique problem situations encountered by local, regional and national administrations in the Member States.

Implications for the Commission’s state aid control policy

Holistic and innovative strategies and actions of Member States, designed to respond to complex urban and rural regeneration problems, test the capacity of the Commission’s State aid regime to proactively adapt to changes. In the past years the Commission has had to deal with schemes involving investment aid for the physical regeneration of business premises or aid to attract new companies to deprived areas or to prevent existing companies from moving away. Such aid, especially if it is awarded to large companies, has a high potential for distorting competition and affecting trade between Member States. Furthermore, many of these deprived areas are in reality pockets of deprivation inside wealthier regions, where no aid for regional development reasons is allowed. The State aid regime, i.e. the State aid rules and their every-day application in close cooperation with Member States, must therefore deliver comprehensible, transparent and quick answers to sophisticated policy questions such as the regeneration of problem areas. Frequently, Member States will adopt fresh approaches such as the cooperation between public and private partners in redeveloping degraded land as...
described in the excursus below. Modern state aid control policy must build upon intensive cooperation with Member States in order to discern new developments and to develop coherent answers to them.

Lessons from the past, lessons for the future

The Commission’s regeneration track record demonstrates that the State aid regime is prepared to deal with intricate public policy phenomena. In the regeneration domain, the Commission approved a host of measures in areas as diverse as the provision of social housing, heritage conservation, property development, risk capital funding and tax reliefs for small and medium-sized enterprises in disadvantaged communities, and tax exemptions for land sales in disadvantaged regions. Progress in this field is considerably owed to substantial and fruitful cooperation with Member States. Member States and the Commission are thereby gradually building up a broadening knowledge base in the domain of regeneration.

The call for a formal regeneration framework

Along with the ongoing effort to gradually build up the knowledge base in the area of regeneration, an open debate about the usefulness of a formal regeneration framework emerged. Frameworks and guidelines typically specify the Commission’s position on a certain policy issue. For the purpose of state aid control, a framework would outline the conditions that would have to be met in a specified policy area in order for an aid measure to be declared compatible. Frameworks and guidelines have proven to be important and succesful instruments, promoting predictability and transparency. Unfortunately, they can also fall short of their potential if the subject area is not sufficiently defined.

The ‘Guidelines for undertakings in deprived urban areas’

The Commission’s ‘Guidelines on State aid for undertakings in deprived urban areas’ (1), adopted in 1996 in order to identify urban districts qualifying for classification as deprived urban areas eligible for state aid, exemplify guidelines that do not live up to their full potential. Modeled against the background of one Member State’s specific experiences, these guidelines only represented a very narrow fraction of potential regeneration situations encountered in reality. As the Member States did not make use of these guidelines, the Commission – in its effort to simplify and streamline legislation – decided to abandon them. (2)

State aid control: Rubber straitjacket or passepartout?

A formal regeneration framework based upon limited experience can quickly turn out to restrict choices and options and become a rubber straitjacket. The challenges associated with the regeneration of problem areas are numerous and diverse and sometimes even contradictory. And Member States’ approaches and instruments in this domain are often too dissimilar and new in order to define an all-embracing and exhaustive general line on a European level. Therefore, for the time being, the current state aid rules – applied by and enriched through extensive cooperation between Member States and the Commission – deliver the necessary flexibility to accommodate all regeneration measures fulfilling the conditions of the EC Treaty. The fundamental transparency of the Commission’s approach will be safeguarded by the publication of a concise manual for practitioners on the world wide web, following a joint initiative of Commissioners Monti and Barnier and subsequent fine tuning by Directors General of DG Competition and DG Regional Policy.

Excursus: Recent developments

In the context of the aforementioned evolution of the existing state aid rules in cooperation with the Member States, the Commission recently adopted far-reaching decisions on several notified regeneration schemes. In the following, we will briefly introduce the main elements of a decision on the remediation of degraded land. (3)

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What does the scheme intend to achieve?
The scheme intends to bring contaminated land (1), brownfield land (2) and derelict land (3) back into productive use by addressing the detrimental effects of previous usage. The remediation of such land reduces the pressure for development on greenfield land (4). The reclamation of such degraded land is a first necessary step towards socio-economic regeneration.

Degraded land: How does it hamper socio-economic development?
The adverse consequences of contaminated land, brownfield land and derelict land go well beyond the impact on the physical environment. In urban areas, such sites have often been left as wasteland or derelict buildings that have environmental, economic and social negative effects on the surrounding area. Such areas accordingly undergo a decline in business activity, lost employment opportunities, reduced tax revenues, as well as a spotted community image.

What does remediating degraded land mean?
Remediating degraded land means transforming it in order to make it suitable for new uses. A large part of degraded land justifies remediation, but it generally is particularly hard to develop, which places it at a significant competitive disadvantage compared to greenfield land.

How does the UK advocate the remediation of degraded land?
As part of the UK’s urban regeneration strategy, the reuse of contaminated land, brownfield land and derelict land is strongly favoured to using greenfield land. Around 66,000 hectares of degraded land are available for redevelopment in England. The government has set a national target to increase the proportion of new homes built on such land to 60 per cent by 2008.

Why does the UK encourage private participation?
The UK’s approach to the remediation of degraded land is focused on public-private partnerships (PPPs). The partnership approach with the private sector advocates the time-limited use of public funding in order to leverage resources from the private sector. By leveraging private sector money, a relatively small amount of public money will bring in larger amounts of private money and private sector knowledge.

How is private risk aversion overcome?
The remediation of degraded land is complicated by the significant risks associated with contamination. The introduction of public money via public-private partnerships will stimulate private sector engagement in the redevelopment of degraded land. This redevelopment will in turn ensure the cleaning up of the land and reduce pressure on the development of greenfield land.

How does public money kick-start regeneration?
The redevelopment of contaminated, brownfield and derelict land transforms surrounding areas and promotes the reconstruction of their socio-economic base. Land and property values will increase, the image of problem areas will improve, and higher confidence will help to secure future private investment. Public money will only be used to kick-start this process.

What are the features of the aid instrument?
A dereliction aid grant will be obtainable for identified and approved remediation programmes aiming to remediate contaminated land, brownfield land and derelict land. The eligible costs will be equal to the cost of the work less the increase in the value of the land and will include a

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(1) *Contaminated land* is any land which appears to be in such a condition – by reasons of substances in, on or under the land – that significant harm is being caused or there is a significant possibility of such harm being caused; or pollution of controlled waters is being, or is likely to be caused.

(2) *Brownfield land* – more recently referred to as ‘previously developed land’ – is land which is or was occupied by a permanent structure and associated fixed surface infrastructure. Previously developed land may occur in both built-up and rural settings. The definition includes defence buildings and land used for mineral extraction and waste disposal where provision for restoration has not been made through development control procedures.

(3) *Derelict land* is land that is so damaged by industrial or other development such that it is incapable of beneficial use without treatment.

(4) *Greenfield land* is land that has not previously been developed.
reasonable level of profit. The aid intensity will be up to 100% of eligible costs.

How is public aid limited to the minimum necessary?

All aid applicants must demonstrate that their application will deliver value for money. The regeneration bodies will rigorously appraise that the public sector support is the minimum necessary to enable the remediation to proceed. Remediation projects will be subject to open competition between prospective applicants and applications must demonstrate that all works have been competitively procured. (1)

How is the ‘polluter pays principle’ respected?

Where the person responsible for causing the pollution is clearly identified, that person must finance the rehabilitation and there will be no public support. Where the person responsible for the pollution is not identified or cannot be made to bear the cost, the person undertaking the rehabilitation work may receive public support.

How is cumulation ruled out?

Remediation projects covered by this scheme will be treated as separate, discrete projects from any subsequent development of the land in question. Grants under the scheme cannot be cumulated with any other form of aid.

How did the Commission assess the scheme?

The Commission concluded that the measures under the scheme constitute aid within the meaning of Article 87(1) EC. Those submeasures of the scheme aimed at remediating contaminated polluted industrial sites were found to be compatible as they satisfy the conditions outlined under point 38 of the Community guidelines on State aid for environmental protection. (2)

In the case of aid to remediate land on which there are buildings, structures or works that are derelict and aid to remediate land damaged from or suffering risk of subsidence, the Commission concluded that none of its existing guidelines, frameworks or regulations were applicable. Although the submeasures have evident environmental objectives, the Community guidelines on State aid for environmental protection were not applicable because of their strict definition of pollution.

The Commission therefore assessed these submeasures directly on the basis of Article 87(3)(c) with regard to their necessity to ensure environmental protection and sustainable development without having disproportionate effects on competition and economic growth. It concluded that these measures contributed to the achievement of the Community objectives of environmental protection and sustainable development while at the same time excluding disproportionate effects on competition and economic growth.

(1) Where open and transparent competition to carry out the remediation work has not been possible, independent Chartered Surveyors will assess the cost of remediation to a state where the land is ready for a wide range of new uses.

(2) OJ C 37, 3.2.2001, p. 3-15.