The Multisectoral Framework 2002: new rules on regional aid to large investment projects

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1. Introduction

The Multisectoral Framework (MSF from now onwards) was adopted in 2002 and modified at the end of 2003. It entered into force on 1 January 2004 and will be applicable until 31 December 2009 (1).

Its aim is to establish a simple and transparent system of control of regional aid to large investment projects, replacing the 1998 MSF (2) and specific sectoral rules for steel, cars etc. In order to understand the new rules, it is useful to start by recalling some basic concepts of regional aid.

Regional aid is designed to develop the less favoured regions, by supporting investment and job creation in a sustainable context. The possibility to grant an appropriate level of aid in a less favoured region is an incentive which should compensate the regional handicaps and encourage firms to settle there, triggering a process of regional development.

This is why the 1998 Guidelines on national regional aid (3) foresaw the notification of regional aid ‘maps’ by all Member States and their approval by the Commission. These maps include:

— the list of less favoured regions, which are entitled to receive regional state aid;

— the maximum aid ceilings allowed in each region. These ceilings are modulated depending on the importance of the regional handicaps, and their pattern is approximately the following:

<table>
<thead>
<tr>
<th>Region Type</th>
<th>Aid Ceiling Percentage of Eligible Costs of Investment Project</th>
</tr>
</thead>
<tbody>
<tr>
<td>Extremely disadvantaged area ('87.3.a’ areas)</td>
<td>35% - 40% - 50%</td>
</tr>
<tr>
<td>Disadvantaged area ('87.3.c’ areas)</td>
<td>10% - 20%</td>
</tr>
</tbody>
</table>

This identification of the regions and of the maximum aid ceilings allowed is of strategic importance. Member states will rely on the maps to identify in which areas they can give aid, and to which extent.

The regional aid ceilings mentioned above rest, implicitly, on the assumption that regional handicaps affect all firms and investment projects in the same way, independently of sectors, size, technologies etc. However, the incentives that can be awarded according to the maps authorised by the Commission are not appropriate anymore when large investment projects are concerned. It is here that the Multisectoral Framework on regional aid to large investment projects comes into the play.

Large investment projects can effectively contribute to regional development.

However, large-scale projects located in a less favoured region are likely to be less affected by specific local handicaps. A large investment usually creates economies of scale which reduce the additional costs resulting from the location in a disadvantaged area. It can easily obtain capital and labour on a global market, therefore being untouched by the corresponding difficulties on the local market. Therefore, it would be disproportionately favoured, if it was entitled to the full regional ceiling which is designed for investment projects of all sizes.

Moreover, large-scale projects often have a very ‘mobile’ nature. They can be carried out in several alternative sites. This could lead to significant negotiating power on the part of the investor, and to a spiral of increasingly higher promises of aid from governments in order to attract the project to a specific area. The amount of the aid can be determined more by this play of powers, than by the effective link to the regional handicaps.

Finally, large-scale investments are more likely to have a considerable effect on trade, as the beneficiaries are often significant players on the market,

(2) The old 1998 MSF (OJ C 107, 7.4.1998) ‘did not have a significant impact on state aid levels for large investment projects’, as section 2.1, point 8 of the new MSF states.
(3) OJ C 74, 10.2.1998.
and being usually capital-intensive they contribute less to job creation and unemployment reduction.

Taking into account all the above, the main economic rationale behind the MSF 2002 is to ensure a more restrictive approach for large ‘mobile’ investment projects. This is why, as we will see in the next paragraphs, the MSF provides for a substantial reduction of the regional aid ceilings in case of large scale projects.

Besides this main concern for limitation of aid, the MSF has other objectives worth mentioning: the wish for a simple and effective tool, transparency (through the integration in the MSF of a number of pre-existing frameworks), reduction of the administrative burden on administrations, enhanced predictability of the Commission decisions, and finally introduction or maintenance of stricter rules for sectors suffering from structural difficulties.

In the following paragraphs we will try to explain briefly the main features of the MSF 2002. The final paragraph is dedicated to a view into future perspectives.

2. Scope of application

The MSF 2002 applies to regional aid that aims to promote initial investment, including job creation linked to initial investment (1). The eligible costs of an investment project are determined on the basis of the guidelines on national regional aid (which include material investment such as land, building and machinery and immaterial investments, or wages in the case of job creation linked to initial investment).

As far as economic sectors are concerned, the MSF 2002 in principle is applicable to the same sectors to which the regional aid guidelines apply (2), with the sole exception of shipbuilding which is governed by sector-specific rules. In addition to that, the framework contains stricter rules for sectors suffering from structural difficulties (steel, motor vehicle and synthetic fibres sectors).

3. The reduction of the regional aid ceilings

The MSF 2002 contains one simple rule which defines the applicable reduction of the regional aid ceilings in function of the ‘size’ of the large investment projects. Large investment projects are implicitly defined as projects with eligible costs exceeding EUR 50 million. The rule is given in the following table:

<table>
<thead>
<tr>
<th>Eligible expenditure</th>
<th>Adjusted aid ceiling</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to EUR 50 million</td>
<td>100% of regional ceiling</td>
</tr>
<tr>
<td>For the part between EUR 50 and EUR 100 million</td>
<td>50% of regional ceiling</td>
</tr>
<tr>
<td>For the part exceeding EUR 100 million</td>
<td>34% of regional ceiling</td>
</tr>
</tbody>
</table>

As the table clearly shows, projects with eligible costs up to EUR 50 million are not subject to the aid ceiling reduction foreseen in the MSF. They can benefit of the full regional ceiling and no reduction applies.

When eligible costs exceed EUR 50 million, the MSF 2002 aid reduction becomes applicable. The regional aid ceiling must be ‘adjusted’. This reduction starts at a medium pace (50% of regional ceiling), and then continues at a faster pace (34%) when the projects’ costs exceed EUR 100 million.

The result is shown in the following graphs (3), which give a clear idea of how much the allowable aid amounts are reduced for large projects as a consequence of the entering into force of the new MSF. As graph 1 shows, for instance, a project with eligible costs of EUR 250 million, located in an area with a full regional aid ceiling of 40%, can get a maximum aid of 50.4 million under the MSF, whilst it could get up to 100 million without the MSF reduction. The graph also shows that there is no difference in aid amounts for projects with

(1) Regional aid in the form of operating aid does not fall within the scope of application of the framework. The framework does not affect the operation of the rescue and restructuring guidelines, nor of the existing horizontal frameworks, such as R&D and environment. Aid cases which fall under these provisions will therefore continue to be covered by them, also when they concern large investment projects.

(2) Therefore, the MSF 2002 does not apply to sectors concerning the production, processing and marketing of products listed in Annex I of the treaty (agriculture and fisheries) and to coal. Special rules apply in the transport sector.

(3) Graphs have been prepared by Patrick De Ridder.
eligible costs up to 50 million; the reduction of the full ceiling starts from that point and then gradually increases (the red curve inclination changes in correspondence with eligible costs of EUR 100 million, where the MSF reduction passes from 50% to 34% of the full regional ceiling).

The same effect can be seen in terms of aid intensities in the following graph. Graph 2 shows what happens to an investment project in a region with a 40% full regional aid ceiling. Without the MSF, the investment would always get the 40% aid intensity, independently of its size. Under the MSF, on the contrary, the aid intensity remains at 40% only if the investment project costs are up to 50m euro. Once this threshold of eligible costs is exceeded, the maximum aid intensity allowed is progressively reduced. At the right end of the graph, we see that a project of 600m eligible costs can have a maximum aid intensity of 16,3%.

It is interesting to note also that the maximum aid intensities resulting from the MSF can be increased when the large investment is carried out by a small and medium enterprise (not a common case, but still possible) (1).

4. The cohesion bonus

The table and graphs above show the maximum aid intensities allowed by the MSF.

There is, however, the possibility to increase the said aid intensities if the project receives co-financing from the structural funds. This possibility is only valid for projects that are notifiable under state aid rules, i.e. if the aid amount proposed is more than the maximum allowable aid that an investment of 100 million could obtain.

In presence of structural funds co-financing, there are strong grounds to consider that the investment project in case can help pursuing the objectives of social and economic cohesion of the Community, reducing the disparities between the regions and effectively contribute to regional development.

Projects of this size, in fact, have also to be notified under structural funds rules, and will be co-financed only if they offer a significant contribution to regional development.

Therefore, in such cases a ‘cohesion bonus’ can be applied which increases the applicable aid intensity by multiplying it by a factor of 1.15. The rate of co-financing must be at least 10% of the total public expenditure if the project is located in an area eligible for aid under Article 87.3.c of the treaty, or 25% if the area is eligible under Article 87.3.a area.

There is a maximum cap to the increase due to the cohesion bonus: the aid increase can never lead to an aid intensity higher than that allowed for an investment of EUR 100 million, i.e. 75% of the unadjusted regional aid ceiling.

5. Advance notification and ex post monitoring

The MSF 2002 establishes a notification requirement for individual cases of application of existing aid schemes (i.e. normally aid authorised by the Commission (2)). No advance notification is

(1) In this case, the SME bonus foreseen in the regional aid guidelines and in the SME Regulation No 70/2001 can apply, in addition to the maximum aid intensity of the MSF which, as signalled in point 51 of the framework, refers to the maximum authorised for large companies. This SME bonus is not subject to the aid ceiling reduction of the MSF.

(2) The definition of existing aid is given in Article 1(b) of Council Regulation No 659/1999 (OJ L 83, 27.3.1999).
required of aid below certain thresholds, granted in accordance with an existing aid scheme approved by the Commission (1).

The notification thresholds for individual aid under approved schemes are much higher than in the 1998 MSF (2). According to the new MSF the notification is required, for aid granted in accordance with an approved scheme, only if the aid proposed is more than the maximum allowable aid that an investment of EUR 100 million could obtain (i.e. 75% of the unadjusted regional aid ceiling).

This means that the applicable notification threshold varies in function of the regional aid ceiling of the specific region where the project is located. For instance, in a region that benefits of a full regional aid ceiling of 40%, the maximum allowable aid that an investment of EUR 100 million could obtain under the scaling of the MSF is EUR 30 million. This is, therefore, the notification threshold in the region. However, if you consider a region that benefits of a full regional aid ceiling of 20%, then the maximum allowable aid that an investment of EUR 100 million could obtain is only EUR 15 million. Therefore, the notification threshold varies; it is lower in "richer" assisted regions with lower regional aid ceilings.

For all investments exceeding 50 million and not subject to notification, the MSF sets a new specific ‘ex post’ information requirement. In order to ensure transparency and effective monitoring, Member States must provide the Commission with summary information, in a special form, within 20 working days from the granting of aid for investment above 50 million. This information is published on the Internet and serves as a basis for an ex post monitoring by the Commission.

The publication on Internet is a transparency mechanism of particular relevance in the context of the new MSF. It grants information to third parties and eventual competitors, which will have the possibility to contact the Commission, provide information and file complaints. Any interested party may in fact inform the Commission of any alleged unlawful aid and any alleged misuse of aid (a ‘complaint’) (3) and the Commission will examine that information without delay.

This new MSF approach can prove particularly helpful for Member States, as it makes available a swift mechanism for the implementation of large projects in less favoured regions, it helps to reduce red tape and administrative burdens, and it does not slow down the investment project. We consider that, on the basis of the information available on past cases, the MSF 2002 will approximately result in a 50% reduction in MSF notified cases as from 2004 (effects of enlargement not being taken into account). This reduction in the number of the notified cases does not imply, as far as the Commission is concerned, a reduction in the level of controls nor in workload. The cases under the above transparency procedure will allow a thorough ex post monitoring by the Commission.

6. Assessment of cases notifiable under the MSF 2002

In cases where there is a notification of aid granted in accordance with an approved scheme, how will the Commission proceed to the assessment?

Once the aid is notified, the Commission will assess whether the notified aid is awarded in line with the approved scheme (i.e. respects the compatibility criteria as laid down in the regional aid guidelines and the progressive reduction of aid ceilings foreseen in the MSF).

Moreover, in order to avoid serious distortions of competition, the Commission will assess whether the notified aid is awarded in line with the approved scheme (i.e. respects the compatibility criteria as laid down in the regional aid guidelines and the progressive reduction of aid ceilings foreseen in the MSF).

In these situations, aid is likely to have a strong detrimental impact on competition, while its beneficial effect on the region is doubtful. Therefore, no approval will be given when:

— the aid beneficiary accounts for more than 25% of the sales of the product concerned, before or after the investment;

(1) Regional ad hoc aid, i.e. new individual aid not granted in accordance with an aid scheme approved by the Commission, always needs to be notified pursuant to Article 88(3) EC Treaty, unless it falls within the SME block exemption Regulation No 70/2001. It will be assessed on the basis of the MSF rules and in line with the general assessment criteria of the regional aid guidelines. This means that the Member State will have to provide a justification in terms of effect on regional development.

(2) Under the old MSF, notification was required where the project costs were at least EUR 50 million, and the cumulative aid intensity was at least 50% of the regional aid ceiling and aid per job created or safeguarded amounted to at least EUR 40,000; or where the total aid was at least EUR 50 million.

— the capacity created by the project is more than 5% of the size of the market, unless the market in question has an annual growth above the European average (1).

These tests do not apply, however, when the investment projects concerns a new product market, created through genuine innovation.

7. The ‘sensitive’ sectors

Besides the cases mentioned in the paragraph above, an important distortion of competition is likely to occur for investment projects in sectors suffering from structural difficulties. The MSF therefore separately regulates the granting of aid in such sectors, in order to prevent serious distortions of competition.

The framework prohibits any aid for investment projects in the steel industry, irrespective of the size of the investment. The prohibition also applies to SMEs, unless the aid is exempted under Regulation No 70/2001.

Moreover, a list of sectors with structural difficulties should have been established by the end of 2003. Due to the methodological and technical difficulties in establishing such a list, and taking into account the requests of Member States, the Commission decided to postpone the adoption of the list.

In the absence of a list of sectors, on 30 October 2003 the Commission proposed to all Member States, as appropriate measure pursuant to Article 88(1) of the Treaty, the extension of the existing transitional rules for large investment projects in ‘sensitive’ sectors until 31.12.2006. These rules foresee that no aid can be allowed to large investment projects in the synthetic fibres sector, and that only limited aid can be allowed in the car sector (30% of the corresponding regional aid ceiling).

All Member States accepted the Commission proposals, and the MSF 2002 has been accordingly modified (2). The technical feasibility and the political and economic opportunity to adopt a list of sectors with structural difficulties will be examined again by the Commission before the end of 2005.

8. Conclusion

The MSF 2002 seems to constitute an efficient tool to control aid to large investment projects and help economic and social cohesion in Europe.

At the same time these rules, which affect the realisation of large investment projects in the common market, have a clear importance and a high political impact. The new MSF still has to be put to the test, as no case has been decided up to now under the new rules; its implementation has to be reviewed carefully.

It is interesting to note that, between the lines, the new MSF might reveal a number of trends of current state aid policy: from the reduction of the impact of aid on de-localisation (which could be considered in the light of the enlargement context), to a more focused approach in the Commission control on state aid, relying on the responsible action of Member States and on the growing role of third parties. The Commission deals with all measures qualifying as State aid; however, the clear rules and low notification thresholds of the MSF can help setting priorities and concentrating resources on the most important cases and on the activities for which a particularly high level of attention should be maintained.

As a final point, we would like to signal that, in the context of a more efficient approach to community legislation, large part of the rules of the MSF 2002 could be integrated into the regional aid guidelines, profiting of the fundamental review which will take place in view of their expiry on 31.12.2006. The Commission already announced to Member States that the MSF 2002 might be revised in the context of the review of the regional aid guidelines.

(1) More precisely, unless the average annual growth rate of its apparent consumption over the last five years is above the average annual growth rate of the European Economic Area’s GDP.

(2) OJ C 263, 1.11.2003.