Basic principles of EU State aid policy and the impact on the ESIF

Bojana Vrcek
European Commission
DG Competition
Regional aid
Overview

1. Relevance of State aid policy for ESI Funds
2. ESI Funds & State aid rules
3. Basic principles of State aid policy
4. State aid reform
5. Conclusions
A fair system for all EU regions
(eligibility simulation)

3 categories of regions

- Less developed regions
- Transition regions
- More developed regions

GDP/capita*
- < 75% of EU average
- 75-90%
- > 90%

*index EU27=100

Regional GDP figures: 2006-07-08
GNI figures: 2007-08-09
© EuroGeographics Association for the administrative boundaries
Relevance of SA policy for ESI Funds

■ EU SA policy:
  ► Essential component of EU cohesion policy
  ► Strict control of MS spending on SA is necessary to ensure level playing field in the internal market and limit subsidy races

■ 42% ESI moneys allocated to actions involving SA
  ► MS have discretion on the allocation of EU and MS financial contributions to ESI Funds operations
  ► Hence a need to subject these contributions to SA control
SA & ESI expenditure (2007-13)

42% (€ 146m) of ESI budget → allocated to SA actions

Actions involving SA:
- RTD & Entrepreneurship
- Information Society
- Transport
- Energy & Environment
- Training
1. Relevance of State aid policy for ESI Funds
2. ESI Funds & State aid rules
3. Basic principles of State aid policy
4. State aid reform
5. Conclusions
Principle 1 – SA compliance requirement

Compliance requirement:

*Operations supported by the ESI Funds shall comply with applicable Union law and national law relating to its application* (Art. 6 CPR)

Wide definition of State aid:

'State aid' means aid falling under Article 107(1) TFEU which shall be deemed for the purposes of this Regulation also to include de minimis aid. (Art. 2(13) CPR)
**ESI & SA – Basic principles - 2**

- **Principle 2 – MS/MA Responsibility**
  - MS has primary responsibility for the implementation and control of operations (Recital 66, CPR)
  - MA bears main responsibility for the effective and efficient implementation of the Funds (Recital 108, CPR)

- **Principle 3 – Dual track approach**
  - Legal separation between ESI Fund and SA procedures
  - COM Decision approving allocation of ESI Fund resources to OP’s does not prejudice COM position on SA aspects
No “gap funding” assessment for revenue generating projects involving SA (Art. 61(8) CPR)

Ex Ante Conditionality provisions in PAs/OPs

MA’s to play crucial role in ensuring compliance with SA rules

PA’s/OP’s:
- Assessment of existence of arrangements for ensuring compliance with SA rules (diffusion of knowledge, admin capacity, …)
- Action plan to remedy deficiencies
Approval of Major Projects

- CPR introduces new approval procedure
  - Quality Review Report by Independent Expert
  - Tacit COM approval unless “significant weakness” in QRR

- Quid “State aid” approval?
  - SA issues should be solved before MA submits MP application
  - Possibility for Independent Expert to consult DG COMP
1. Relevance of State aid policy for ESI Funds
2. ESI Funds & State aid rules
3. Basic principles of State aid policy
4. State aid reform
5. Conclusions
Basic principles of SA policy - 1

- EU SA policy established in 1958 Treaty of Rome

- Main objective:
  - Avoid distortion of competition in internal market
  - Support economic and social cohesion
Basic principles of SA policy - 2

- **Substance** (*Article 107 TFEU*):
  - SA in principle “incompatible” with the common market
  - Exemptions from ban defined in the Treaty

- **Procedure** (*Article 108 TFEU*):
  - COM has exclusive competence to control exemptions
  - Ex ante control: Notification + Standstill obligation
  - Violation of SA rules:
    - Complaints + Ex Officio investigations
    - EC orders recovery of illegal & incompatible SA
Questions for ESI Fund operators

Two key State aid related questions:

- **Question 1**: Does the project involve “State aid”?

- **Question 2**: What to do if the project involves State Aid?
Question 1:
Does a measure constitute State aid?
Definition of “State aid” is contained in Article 107(1) TFEU:

“Save as otherwise provided in the Treaties, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, insofar as it affects trade between Member States, be incompatible with the common market”
SA Definition: “Notion of aid”

- **Four criteria** defining a measure as “State aid”:
  - Aid granted by a Member State or through *State resources*;
  - Providing an *advantage* (“favouring”) to an *undertaking*;
  - It is *selective* (“certain” undertakings or “certain” goods);
  - It *effects trade* between Member States.

- **All four criteria need to be fulfilled simultaneously!**
ESI Fund resources are EU resources. They are not "State resources" and therefore fall outside the scope of EU State aid rules.

True

False
SA Definition: “State resources”

- Financial resources under the control of the “State”
  - State at any level (National, regional, public enterprises…)
  - ESI Fund moneys → Allocated by MS → Therefore SA
  - Horizon 2020 moneys → Allocated by COM → Not SA

- State resources in “any form”:
  - Grants, tax exemptions, interest rate subsidies, …
  - But also sale of land below market price or capital injection not in line with market economy investor principle
SA Definition: “Undertakings”

- **Concept of “Undertaking”:**
  Any entity engaged in economic activity regardless ownership status

- **Concept of “Economic activity”:**
  - Activity offering goods/services in the market
  - Non-economic activity:
    - Public remit functions (police, state supervisory tasks…)
    - Activities in non-liberalised markets provided strict conditions are complied with (e.g. water supply)
Money granted for construction of airport infrastructure does not constitute State aid and therefore falls outside the scope of State aid rules.

True

False
**SA Definition: “Undertaking”**

- **Traditional MS view:**
  - Aid for construction of infrastructure is public interest task
  - Not subject to SA control

- **Leipzig-Halle Judgment:**
  - Operation of airport infrastructure can be economic activity
  - Also construction of infrastructure which is linked to its later operation constitutes an economic activity

- **Widening of scope of SA rules with significant implications for ESI operations**
SA Definition: “Advantage”

- Economic benefit that an undertaking would not have obtained under normal market conditions
  - Benchmark: Transaction on market terms
  - To be checked at different levels

- No advantage in following cases:
  - Normal market price is paid
  - There is significant private participation on same terms
  - Minimisation of advantage → Open, non-discriminatory and unconditional tendering procedure
**SA Definition: “Selectivity”**

- Measure favours “certain undertakings or the production of certain goods”:
  - Geographical selectivity
  - Sector selectivity
  - Selectivity on the basis type of undertaking (SME, …)

- General measures are not regarded as State aid
  - Measure applicable to any undertaking in any sector/region
  - Example: Aid for recruitment of long-term unemployed
SA Definition: “Effect on trade”

- **ECJ:** This condition is almost always satisfied:
  - Possibility of (minor) distortion of trade is sufficient
  - Sufficient if beneficiary is producing a product that is traded between MS, even if he is not exporting himself

- **Only exception: “De Minimis aid”:**
  - Too small to have potential to distort trade between MS
    - € 200,000 over 3 years per undertaking
    - € 500,000 over 3 years per undertaking for SGEI
  - However: Transparency and monitoring requirement
Question 2:
If a measure constitutes State aid, can it be accepted?
Compatibility: “Exemptions”

- TFEU defines exemptions from ban on SA such as:
  - Aid to promote the development of less developed regions or of certain activities
  - Aid to promote culture and heritage conservation

- Exemptions are not unconditional:
  - Aid should contribute to an objective of common interest
  - Aid should “not adversely affect trading conditions to an extent contrary to the common interest”

- COM controls application of exemptions
Compatibility: “Balancing test”

- Assessment of compatibility → “balancing test”:
  - Benefits (contribution to objective of EU interest)
  - Costs (distortion of competition and trade)

- Compatibility assessment covers i.a.
  - Contribution to objective of common interest?
  - Incentive effect?
  - Is the aid proportional?
  - Distortions of competition limited?
Compatibility: “Codification of criteria”

- COM codified “compatibility criteria” for main categories of SA
  - Criteria: Eligible projects and costs, max. aid intensities …
  - Guidelines, Regulations, Notices for:
    - *Horizontal aid*: Regional aid, SME, Training, RTD, Environment, …
    - *Sectoral aid*: Broadband, Airlines, Audiovisual, …

- Published on DG Competition’s website:
Compatibility: “Procedural aspects”

- **General Rule:** All aid to be notified & approved

- **Exceptions:**
  - Aid under approved **aid schemes**
  - Aid under General Block Exemption Regulation (**GBER**)
    - COM defined clear compatibility criteria for certain types of aid (SME aid, Regional Investment aid, …)
    - Aid measures satisfying these conditions are exempted from notification & standstill requirement

- Aid not falling under these exceptions and granted without Commission approval is “illegal aid”
# State aid Architecture

<table>
<thead>
<tr>
<th>NO AID</th>
<th>De Minimis</th>
<th>Too small to distort trade</th>
<th>No Notification</th>
<th>No Information</th>
<th>Cumulation control</th>
</tr>
</thead>
</table>
| AID    | Block Exemption Regulation | • Routine aid  
• Clear compatibility criteria  
• Limited risk of distortion | No Notification | Information sheet |
| AID    | Guidelines, frameworks, etc. | • Criteria published  
• Potential compatibility issues (distortion, incentive effect, …) | Ex Ante Notification |
| AID    | Directly on TFEU | • Very limited experience  
• No criteria published  
• Ad hoc assessment | Ex Ante Notification |
Thank you!
bojana.vrcek@ec.europa.eu