



Seminar dedicated to 'State aid in the management
of the **E**uropean **S**tructural and **I**vestment **F**unds (ESIF)'
Joint seminar for the Czech Republic and Slovakia
Prague, 15 October 2015



Main audit findings on State aid

Petr JIRMAN

Audit Directorate, DG Regional and Urban Policy
European Commission

Disclaimer: The views expressed are those of the author and cannot be regarded as stating an official position of the European Commission.

Introduction

- **Findings from 2007-2013 period (mainly related to regulatory framework before state aid modernisation in 2014);**
- **Audit = ex-post review;**
- **Sometimes long way from calls for applications to DG REGIO or ECA audits of certified expenditure;**
- **Some findings affect state aid notices from 2007;**
- **Audits of operations or system audits (checklists).**

Legal Framework – State Aid in EU

EU Treaty – Art 107 and 108

- Article 107 (1) – in general state aid is incompatible with internal market, however...
- Article 107 (3) – derogations deemed to be compatible (regions lagging behind, preservation of culture heritage, etc);

Other regulations, rules, guidelines, frameworks – before and after modernisation of 2014

General Block Exemptions, *de minimis*, SGEI, Regional investments aid, Aid to SMEs, Community Framework for state aid in R&D, Specific notified aid schemes etc...

Legal Framework – ERDF/CF

General Regulation No 1083/2006

Article 9.5: *"Operations financed by the Funds shall comply with the provisions of the Treaty and of acts adopted under it."*

Article 60 concerning the functions of the managing authorities:

- *"ensuring that operations are selected for funding in accordance with the criteria applicable to the operational programme and that they comply with applicable Community and national rules"*
- *"verifying [...] that the expenditure declared by the beneficiaries for operations has actually been incurred and complies with Community and national rules"*

Main audit findings

The compliance with the legal provisions applicable to state aid is not systematically checked by the intermediate bodies and/or managing authorities:

- Before and during the selection of operations (the design of the programme/state aid scheme, assessment of submitted projects/requests for financing);
- During the assessment of the documents submitted by the beneficiaries of the state aid scheme;
- When performing the management verifications required by Art. 13 of Regulation No 1828/2006 at the level of the managing authorities and/or intermediate bodies.


Audit findings - type of impact

Irregularities detected:

- At the level of the state aid scheme/operational programme;
- At the level of the call for applications/proposals;
- At project level.

Impact:

- **Illegal aid= not notified (formal error);**
- **Aid incompatible with the internal market = not compliant with the legal provisions in force** (e.g. ineligible costs/expenditure, lack of the incentive effect of the aid, ineligible operations and/or beneficiaries).



Financial corrections proposed at the level of the operations financed by ERDF (in some cases 100% of the total expenditure certified for the affected operation)

Examples of irregularities

- Incompliance with the requirements concerning the **incentive effect** of the aid;
- Incorrect assessment of the **legal status** of the applicant/beneficiary;
- No notification to the European Commission of the **aid exceeding the thresholds** established under the block exemption regulation;
- **Modification** of the aid intensity for an aid scheme already notified to the European Commission;
- **Other** (Climate change, SME consultancy, De minimis, R&D).

Incentive effect

- The implementation of the operation **started before** the request for aid was submitted by the beneficiary;
- In the case of the aid granted to **large enterprises**: the incentive effect of the aid is not justified by the beneficiary and/or assessed by the Member State (request and analysis of the aid/no aid scenario);
- Legal basis GBER 2008 (Art 8(3) and Recital 29) or Community framework for State Aid in R&D (Section 6);

**! Aid incompatible with the internal market
➡ ineligible operation (100%)**

Incorrect assessment of the legal status of the beneficiary

- Incorrect **assessment of the beneficiary as an SME** by relying exclusively on the legal status of the applicant without considering also the existing associates/partners/other linked companies;
- **SME definition** (Com Rec of 6/5/2003 annexed to GBER 2008) - less than 250 employees, 50m turnover, B/S 43m;
- Art 3 relates to **partner and linked enterprises**
- Incorrect calculation of the intensity of the aid - excessive aid granted (in all identified cases the intensity of the aid granted **exceeded the maximum limit applicable** to the legal status/type of beneficiary submitting the application);

! Ineligible Beneficiary ➡ Aid incompatible with the internal market ➡ Up to 100% financial corrections proposed

Failure to notify the European Commission

No notification to the European Commission of the aid exceeding the thresholds established under the block exception regulation

- Example 1: Pilot research and development project with a total value of EUR 33.3 million and an aid of 12 million (ERDF contribution 50%). Article 6 of GBER specified legal threshold of only 7,5 millions for this kind of activity;
- Example 2: Project related to a reconstruction of a former hospital and a church. Rooms in the renovated buildings are rented. The beneficiary is active in the hotel services market => max intensity of 50% allowed in the regional aid map was not respected (ERDF contribution of 70% from the total cost was approved by the MA).

Failure to notify the European Commission

Significant modification of the intensity of the aid for an already approved state aid scheme without notifying the modification to the European Commission:

- Example: Increase of the intensity of the aid with 50% in comparison to the state aid scheme previously approved by the European Commission (aid intensity increased from 30% to 80%).

Aid for adaptation to climate change

Environmental protection - aid granted for adaptation to climate change (for replacement of conventional energy producing facilities with facilities producing renewable energy):

- Example: **Total cost** of the investment concerning the installation of photovoltaic plants considered eligible (**instead of the additional costs** compared to a conventional power plant - GBER Article 23.3).

Aid to SMEs for consultancy services

- Example: The call for applications **defined as eligible the costs for advertising/publicity** (design and integration) using different media channels. The supporting documentation provided by the project beneficiary includes costs relating to consultancy services provided and billed by/reimbursed to a company linked to the beneficiary, without adequate evidence for compliance of the costs of the provided services to market price (GBER Article 26).

De-minimis aid

Inadequate verification of compliance with the thresholds applicable to *de-minimis* aid:

- Example 1: **Threshold applied only to aid recipients** without considering that the related companies and / or associates had also received *de-minimis* aid during the reference period;
- Example 2: In the absence of a register for the aid granted at national level, **verification is based on the statements submitted by the beneficiaries which are not always accurate** (errors detected in certain statements submitted by the beneficiaries).

Aid for R&D&I – DAS 2013/2014

- Potential indirect state aid in **collaboration activities** (automatic transfer of IP rights, industry partners receiving licences under favourable conditions, universities committing to purchase research results) – finally not quantified by ECA
- **Ancillary economic activities**
 - Example: Project of 28m EUR for setting up a research center. Aid covered 100% of the project cost (85% ERDF). Not notified. The ECA considers the share of economic activities too high (above 20% of revenues)
 - Distinction between **revenues** and **capacities**. Revenues not appropriate for comparing economic activity (if revenues more than 20%, but the capacity/use of equipment for the economic activity less than 20% => OK)

Questions?

Please do not hesitate to contact:
petr.jirman@ec.europa.eu