Financing of Infrastructure

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Principles:
- Infrastructures financing shall **respect state aid rules if the 5 state aid criteria are met.**
- Analysis must be done at **3 levels**: developer/owner - operator or concession holder - user

**No state aid** for infrastructure financing in following cases:
1) **Non economic** Infrastructure
2) **No distortion of competition**
3) Infrastructure with **no effect on trade between MS**

**If state aid** it can be compatible on following options:
1) Apply an **aid scheme** exempted on GBER basis
2) Apply “**de minimis**” regulation
3) Apply **SGEI exemption decision**
4) **Notification** to EC
No state aid (1)

1) Non economic infrastructures (1):

- Infrastructure with no commercial exploitation with open & free access (Notice on state aid pt. 203)
- Infrastructure with ancillary economic activity - less than 20% (pt. 207)
- Infrastructure used for activities in exercise of public powers, for instance (pt 17):
  - Military, police, prison facilities,
  - Air traffic control in airports, Maritime traffic control, lighthouses etc.
  - Flood protection and low water management in the public interest,
  - Development and revitalization of public land by public authorities
No state aid (1)

1) Non economic infrastructures (2):

- Public education infrastructure within the national educational system funded and supervised by the State (pt. 28)

- Cultural et heritage conservation infrastructure, non predominantly financed by visitors or other commercial means (pt. 33)

- Primary activities of R&D infrastructures : independent R&D, education and wide dissemination of research results (framework for state aid for RDI pt. 29)

- Knowledge & transfert activities.
No state aid (2)

2) No distortion of competition (1):
   - No economic advantage that distort or threaten to distort competition

  2.1) Market economy investor principle (MEIP)
   - No economic advantage if public bodies carried out transaction in line with normal market conditions
     - “Pari passu” operation
       - transaction is carried out under the same terms and conditions by public bodies and private operators who are in a comparable situation
       - Same time intervention
       - Same term & conditions of transaction
       - If Private operator intervention has a real economic significance (30%)
No state aid (3)

2) No distortion of competition (2):
   - 2.2) Public procurement
     - When public authorities purchase goods or services through calls for tenders that comply with EU public procurement rules, this is in principle sufficient to ensure that the transaction is free of State aid elements.
     - No economic advantage for the beneficiary of the call
No state aid (4)

3) No effect on trade between MS

3 cumulative CRITERIA for purely local impact measures
   1) The activity is intended for a local clientele (or marginally European)
   2) The activity is not aimed at attracting European customers or European investors (or marginally)
   3) The beneficiary is not in competition with cross-border operators (with European dimension)

E.G in state aid notice 19/7/2016
- Swimming pool (GER)
- Local Museum (ITA)
- Archeological Museum (GRE)
- Tourism infrastructure (POL, NL,...)
- Health infrastructure (POR, GER)
- Congress center (SWE)
- Yacht Harbour (NL) (GE) (SLO)
- Small cinemas (FRA)
- Training Center (UK)
## Examples of non-undertakings

### Transport

- **Non-economic activities**
  - Air traffic control
  - Customs and police
  - Security equipment and related infrastructure

### R&D&I

- **Non-economic activities**
  - University buildings
  - Lecture halls
  - Libraries
  - Laboratories & equipment used for teaching
  - Independent research
Examples of non-undertakings

**Culture**

<table>
<thead>
<tr>
<th>Non-economic activities</th>
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<tbody>
<tr>
<td>Educational, cultural and social areas</td>
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<tr>
<td>Public libraries</td>
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<tr>
<td>Nature protection and conservation activities</td>
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<td>Small museums</td>
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**Waste management**

<table>
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<tr>
<th>Non-economic activities</th>
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<td>Local services to households and businesses</td>
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Economic versus non-economic activities

- Funding for ancillary economic activities = **No aid**
- Ancillary activities should not exceed **20%** of the infrastructure’s overall annual capacity
- Customary amenities = **No effect on trade**
Assessment of aid at different levels

Diagram:
- Developer/Owner
- Operator or concession holder
- Infrastructure
- Users
At the level of the developer/owner

- Economic activity: in principle yes – a sector by sector analysis
- No advantage if there is clear prospect for recoupment of the investment
- No effect on trade if intended for local use
At the level of the Operator or Concession holder

Owner with operator or concession holder

Public Procurement  economy investor
At the level of the Operator or Concession holder

- Is there an open competition? If yes, no aid
- *Pari Passu* arrangements? If yes, no aid
- Market economy investor principle (FNPV analysis)
  - Long term recoupment (*ex ante* profitability assessment)
  - Justification of market failure for contribution from structural funds
- Does the concession contract with the owner correspond to market terms (e.g. through separate valuations for comparable infrastructures)? If yes, no aid
At the level of the Operator or Concession holder (2)

- Does the concession fee paid to the owner allow for the recovery of the entire investment costs and ensure a rate of return over a reference period of time? **If yes, no aid**
  - 25 years is considered normal
- Does the contract provide for a system of recovery of excessive profits stemming from the operation of infrastructure? **If yes, no aid**
At the level of the Users

- No aid if they enjoy equal and no discriminatory access
  - E.g. tariffs paid are the same for all users and similar to tariffs in comparable infrastructures
    - They can be centrally regulated
  - Infrastructure is not dedicated
  - Fees charged by concessionaires should be able to pay for concession fees and make a profit
    - The concession fee can be established through public and open tender
  - Fees charged by the operator directly should cover at least the incremental costs incurred by the operator in relation to the activity of the specific user
Distortion of competition excluded if

Construction
- Natural monopoly
- Insignificant private financing
- Non-dedicated infrastructure

Operation/contruction
- Legal monopoly that excludes competition on and for the market
- No competition with other services
- Cross-subsidization is excluded with another market open to competition
Infrastructure analytical grids

- Broadband
- Airports
- Ports
- R&D&I
- Culture
- Sport
- Energy
- Energy
- Waste management
- Rail, metro and local transport
- Roads, bridges, tunnels
- Water infrastructure
Structure

- Aid is **NOT** present
  - Non-economic activity
  - Altmark or de minimis aid
  - Criteria of 107(1) TFEU are not all met
- Aid **IS** present but notification is **NOT** necessary
  - GBER
  - SGEI Decision
- Aid **IS** present and notification **IS** necessary
  - Applicable guidelines and general state aid rules

Culture, heritage and nature conservation

- No economic activities: public libraries, small museums etc.
- Ancillary activities that do not constitute state aid
  - Renting of infrastructure
  - Ancillary activities limited in scope (<20% overall annual capacity)
- Purely local impact
  - Customary amenities do not affect trade
- MEIP – advantage
  - Investments jointly with the State
  - Sound business plan and adequate return
  - Fees in line with market conditions
Culture, heritage and nature conservation (2)

- De minimis or SGEI de minimis
- Compatibility and notification
  - 107(3)(d)
  - SGEI Framework and 106(2)
- Compatibility without notification
  - GBER (Articles 14 and 53)
  - SGEI Decision (EU 15 million per year)
Ports and airports

- No economic activities: security, control
- MEIP – difficult to justify
  - Investments jointly with the State
  - long term recoulement
- Compatibility and notification
  - 107(3) (c) directly for ports
  - 107(3)(c) and Guidelines for airports
  - SGEI Framework and 106(2)
- Compatibility without notification
  - GBER (Article 56(a), (b) and (c))
  - SGEI Decision (200 000 passengers for airports and 300 000 for ports)
R&D&I infrastructure

- No economic activities: construction of buildings used for teaching and research (libraries, laboratories), of databases used to disseminate the results of research
- MEIP – difficult to justify
  - Investments jointly with the State
  - Long term recoupment
- Ancillary activities of economic nature that do not constitute state aid
  - Renting of infrastructure
  - Ancillary activities limited in scope (<20% overall annual capacity)
- De minimis aid
R&D&I infrastructure (2)

- Compatibility and notification
  - 107 (3)(c) and the Framework
  - 107 (3)(c) and RAG

- Compatibility without notification
  - GBER (regional aid, R&D&I aid)
Road, bridges, tunnels

- Non-economic activities: non-tolled roads, free public use
- No distortion of competition and effect on trade for construction
  - Natural monopoly and insignificant private financing
  - Non-dedicated infrastructure
- No distortion of competition and effect on trade for operation
  - Legal monopoly that excludes competition on and for the market
  - No competition with other services
  - Cross-subsidization is excluded
  - Purely local impact
Road, bridges, tunnels (2)

- MEIP – difficult to justify
  - Investments jointly with the State
  - Long term recoupment
- Compatibility and notification
  - 107 (3)(c) directly
  - 107(3)(b)
  - SGEI Framework and 106(2)
- Compatibility without notification
  - GBER (Article 56)
Water infrastructure

- Non-economic activities: desalination plants, hydrological basins for flood risk prevention
- No distortion of competition and effect on trade for construction
  - Natural monopoly and insignificant private financing
  - Non-dedicated infrastructure
- No distortion of competition and effect on trade for operation
  - Legal monopoly that excludes competition on and for the market
  - No competition with other services
  - Cross-subsidization is excluded
  - Purely local impact
Water infrastructure (2)

- De minimis (SGEI de minimis)
- MEIP – difficult to justify
  - Investments jointly with the State
  - Long term recoupeent
- Compatibility and notification
  - 107 (3)(c) and environmental guidelines
  - SGEI Framework and 106(2)
- Compatibility without notification
  - GBER (Article 56 – Article 14)
  - SGEI Decision (EUR 15 million per year)
Thank You!