

# ESI Funds in Compliance with State Aid Rules

Day 1 – Monday, 4 December 2023

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## Structure of Presentation

- State aid provisions in ESI Funds regulations
  - TFEU provisions
  - Regulations
  - Distribution of functions
- State aid & management verification of ESIF expenditure
  - Alignment with State aid rules
  - State aid control
  - State aid errors
  - Recovery
- Cumulating State aid with ESIF
- Temporary Crisis & Transition Framework

## Treaty Provisions

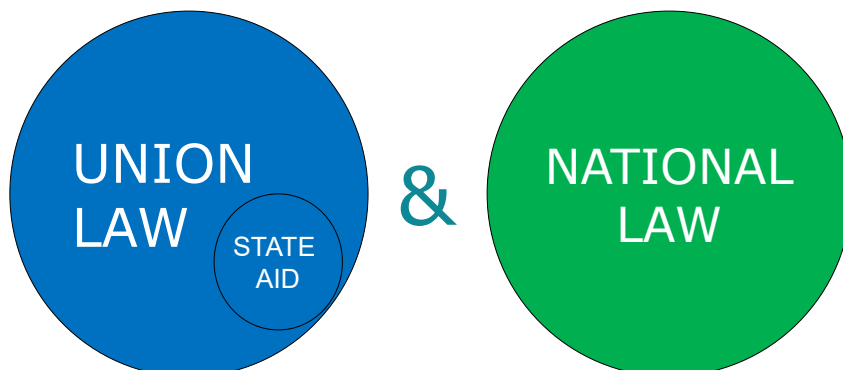
### TFEU 107 (1)

"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 favoring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market."

### TFEU 174

"In order to promote its overall harmonious development, the Union shall develop and pursue its actions leading to the strengthening of its economic, social and territorial cohesion.

In particular, the Union shall aim at reducing disparities between the levels of development of the various regions and the backwardness of the least favoured regions."





## Regulation 1303/2013 (CPR) Art.2 (13)

Definition of 'State aid' for the purposes of the Regulation



Art 2 (13) '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 within the meaning of Commission Regulation (EC) No 1998/2006, Commission Regulation (EC) No 1535/2007 and Commission Regulation (EC) No 875/2007;



## Common Provisions Regulation – Reg (EU) 2021/1060

No definition of State aid, but see Recital 6 – “In order to protect the integrity of the internal market, operations benefiting undertakings are to comply with Union State aid rules as set out in Articles 107 and 108 TFEU.”

### Article 2 - Definitions

#### (9) 'beneficiary' means:

- a) a public or private body, an entity with or without legal personality, or a natural person, responsible for initiating or both initiating and implementing operations;
- b) in the context of public-private partnerships ('PPPs'), the public body initiating a PPP operation or the private partner selected for its implementation;
- c) **in the context of State aid schemes, the undertaking which receives the aid;**
- d) **in the context of de minimis aid provided in accordance with Commission Regulations (EU) No 1407/2013 (main de minimis Regulation) or (EU) No 717/2014 (fishery and aquaculture), the Member State may decide that the beneficiary for the purposes of this Regulation is the body granting the aid, where it is responsible for initiating or both initiating and implementing the operation;**
- e) **in the context of financial instruments, the body that implements the holding fund or, where there is no holding fund structure, the body that implements the specific fund or, where the managing authority manages the financial instrument, the managing authority;**



## Distribution of Functions in MS

### Which institution shall be responsible for:

1. Identification of State aid within the measure?
2. Preparation of State aid measure?
3. Negotiation and notification of the measure to EC?
4. Publication of the measure (e.g. if GBER) – where?
5. Assessment of the State aid aspect in the project ?
6. Investigating the irregularity linked with State aid?
7. Deciding on amount to be recovered due to State aid non-compliance?
8. Registering the aid in the MS's *de minimis* register (if MS has a register) or, within 6 mths of the adoption of the 2022 *de minimis* Regulation, setting up a central Register in the MS?
9. Interpreting State aid requirements?



## State Aid Control – DG Comp

- Aid can only be granted after approval by the Commission.
- TFEU Art.108(3) – Member States must notify and standstill
- Cion has powers to investigate & order recovery of incompatible State aid from beneficiaries & ESIF funds.
- Companies and consumers in the European Union may trigger investigations by lodging complaints with the Cion.
- State Aid Notification System (SANI)
- State Aid Reporting Interactive (SARI)
- State Aid Transparency Module (SATM)
- Central MS or Union *de minimis* register - from 1 Jan 2026?



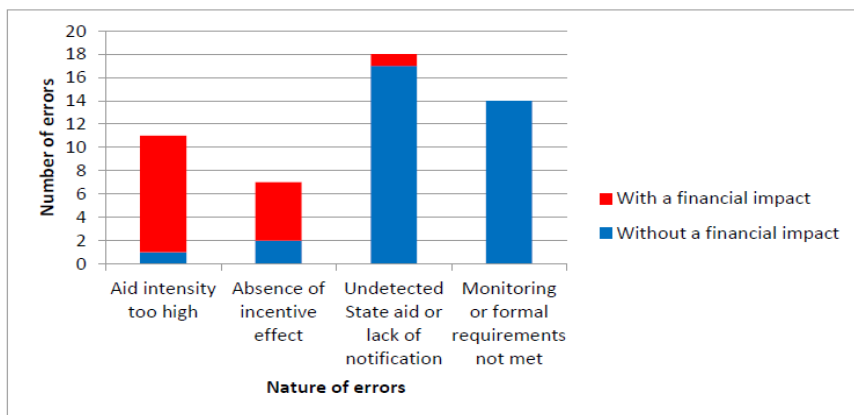
## State Aid – Advice & Support

- DG Comp State aid web pages  
[https://competition-policy.ec.europa.eu/state-aid\\_en](https://competition-policy.ec.europa.eu/state-aid_en)
- Commission Notice on the notion of State aid  
[https://competition-policy.ec.europa.eu/state-aid/legislation/notion-aid\\_en](https://competition-policy.ec.europa.eu/state-aid/legislation/notion-aid_en)
- State aid Publications  
[https://competition-policy.ec.europa.eu/state-aid/publications\\_en](https://competition-policy.ec.europa.eu/state-aid/publications_en)
- TAIEX REGIO PEER 2 PEER  
[https://ec.europa.eu/regional\\_policy/policy/how/improving-investment/regio-peer-2-peer\\_en](https://ec.europa.eu/regional_policy/policy/how/improving-investment/regio-peer-2-peer_en)
- Training for Member States  
[https://ec.europa.eu/regional\\_policy/policy/how/improving-investment/training\\_en](https://ec.europa.eu/regional_policy/policy/how/improving-investment/training_en)
- Dedicated IT-platform (eState aid WIKI) – limited access
- Member State's State aid control / advice units  
<https://www.economy-ni.gov.uk/topics/economic-policy/state-aid-and-subsidy-control>



## State Aid Errors

Nature and number of State aid errors, 2010-2014



Source: European Court of Auditors.



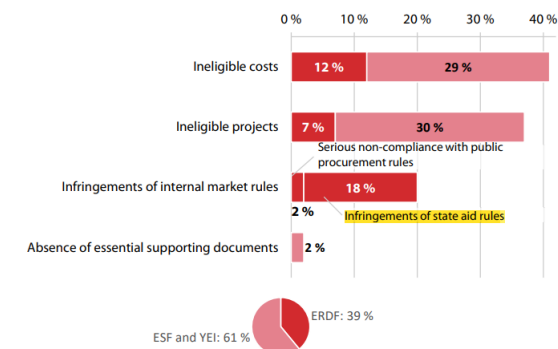


## State Aid Errors

### 2021 Annual report European Court of Auditors 1/3

[https://www.eca.europa.eu/Lists/ECADocuments/annualreports-2021/annualreports-2021\\_EN.pdf](https://www.eca.europa.eu/Lists/ECADocuments/annualreports-2021/annualreports-2021_EN.pdf)

Figure 5.3 – Breakdown of the errors found



Source: ECA.

Source: European Court of Auditors.



## State Aid Errors

### 2021 Annual report European Court of Auditors 2/3

#### Infringements of internal market rules

**5.29.** This year we found 19 infringements of internal market rules, four of which were quantifiable. **Five of the infringements related to state aid**, and 14 to public procurement.

#### Five projects infringed state aid rules

**5.30.** Unless below a 'de minimis' ceiling, state aid is incompatible with the internal market since it may distort trade between Member States. However, there are exceptions to this rule, in particular if a project is covered by the *General Block Exemption Regulation (GBER)*<sup>15</sup> or if the Commission specifically gives its approval.

**5.31.** This year we identified five ERDF projects that infringed the EU's state aid rules. We consider that three of them should have obtained less public funding, or none at all, from the EU and/or the Member State. These accounted for 0.7 percentage points of the estimated level of error. We have not quantified the other two errors, as they had no impact on the level of public funding. We provide an example of a state aid error in *Box 5.6*.

Source: European Court of Auditors.



## State Aid Errors

### 2021 Annual report European Court of Auditors 3/3

#### Box 5.6

##### Aid granted to excluded sector

A financial instrument in Hungary provided a loan and a grant in support of a company's research, development and innovation activities. The loan related to the development of an optimised self-cleaning drying system, and the beneficiary was active in the primary agricultural sector. The managing authority approved the construction of a drying facility under the GBER regional investment aid scheme. Since that scheme excludes payments for agricultural activities, the construction element of the project was ineligible.

We found other state aid errors in Portugal and Poland.

Source: European Court of Auditors.



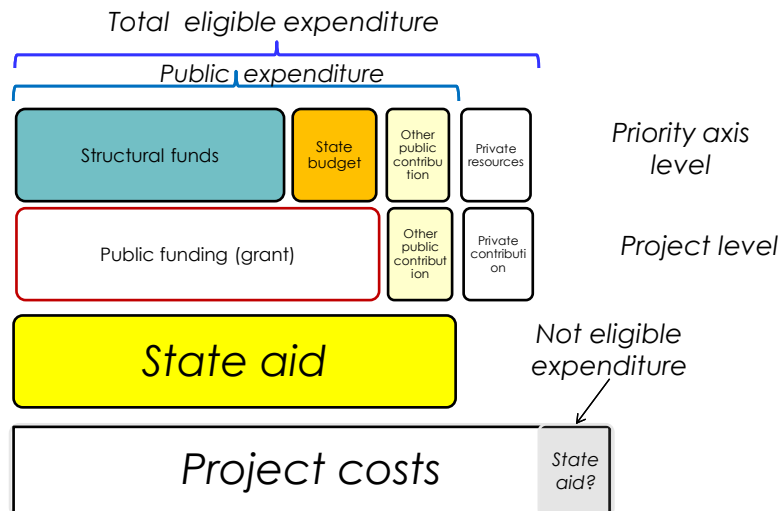
## Recovery of State aid

### Obligations of Member States

**Regulation (EU) No 1303/2013 - Article 146** - "A financial correction by the Commission shall not prejudice the Member State's obligation to pursue recoveries under Article 143(2) of this Regulation and to recover State aid within the meaning of Article 107(1) TFEU and under Article 14 of Council Regulation (EC) No 659/1999."

**Regulation (EU) 2021/1060 (CPR)** – less clear that State aid must be recovered – but remember Recital 6 – "In order to protect the integrity of the internal market, operations benefiting undertakings are to comply with Union State aid rules as set out in Articles 107 and 108 TFEU."

## Cumulation of State Aid with ESIF



## Example 1 – Infrastructure Project



- Extension of the Belfast Waterfront Hall
- £29.5 million project
- Funded by:
  - Belfast City Council (£10.96 million),
  - Tourism NI (£5.24 million)
  - ERDF (£13.3 million)
- No State aid – Market Economy Investor Principle





## Example 2 – RDI project

### Environmental Marketing Solutions (EMS)

- Design and development of a compact density separator primarily for mixed municipal waste. It separates waste streams into lights and heavies, reducing waste disposal costs.
- Invest Northern Ireland offered £70,340 of assistance, part funded by the European Regional Development Fund
- State aid – GBER – N215/2008 - Grant for Research and Development (Grant for R&D) Programme
- Programme 50% co-financed by ERDF



## Temporary Crisis and Transition Framework 1/2

- 23 March 2022, the European Commission adopted a Temporary Crisis Framework (TCF) for State aid measures to support economies impacted by Russia's invasion of Ukraine.
- Framework amended on 20 July 2022 and 28 October 2022
- 9 March 2023, the Commission adopted the Temporary Crisis and Transition Framework to foster support measures in sectors which are key for the transition to a net-zero economy, in line with the Green Deal Industrial Plan.
- 20 November 2023, European Commission adopts an amendment to the State aid Temporary Crisis and Transition Framework to prolong by six months a limited number of sections.  
[https://competition-policy.ec.europa.eu/state-aid/temporary-crisis-and-transition-framework\\_en](https://competition-policy.ec.europa.eu/state-aid/temporary-crisis-and-transition-framework_en)



## Temporary Crisis and Transition Framework 2/2

- Key revisions:
  - Limited amounts of aid (section 2.1 of the Framework) continues until 30 June 2024 and permits up to €280,000 for the agricultural sector, €335,000 for the fisheries and aquaculture sectors and €2.25 million for all other sectors.
  - Aid to compensate for high energy prices (section 2.4 of the Framework) also continues until 30 June 2024 for additional energy costs, but only as far as the energy prices significantly exceed pre-crisis levels.
  - Other crisis-related sections of the Framework (i.e. sections 2.2. and 2.3. on liquidity support in form of State guarantees and subsidised loans, and section 2.7. on measures aimed at supporting electricity demand reduction) will not be extended beyond their current expiry date, which is 31 December 2023.
  - The sections of the Framework covering the transition towards a net-zero economy, are not affected by the amendment and will remain available until 31 December 2025.



***Thank you for your attention!***

