



Managing compliance of ESI Funds with State aid rules

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ESI & SA – Basic principles - 1

■ 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 selection, the implementation and the control of operations (Recital 66, CPR)
- ▶ Selection procedures and criteria for the selection of operations shall be non discriminatory and transparent
- ▶ MA bears main responsibility for the effective and efficient implementation of the Funds (Recital 108, CPR)

ESI & SA – Basic principles - 3

- **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**

ESI & SA – Practical – 1

- 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

ESI & SA – Practical – 2

■ 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

Basic principles of SA policy

- **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

Definition of “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!**

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:**

http://ec.europa.eu/competition/state_aid/legislation/compilation/index_en.html

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

NO AID	De Minimis	Too small to distort trade	No Notification No Information Cumulation control
AID	Block Exemption Regulation	<ul style="list-style-type: none"> • Routine aid • Clear compatibility criteria • Limited risk of distortion 	No Notification Information sheet
AID	Guidelines, frameworks, etc.	<ul style="list-style-type: none"> • Criteria published • Potential compatibility issues (distortion, incentive effect, ...) 	Ex Ante Notification
AID	Directly on TFEU	<ul style="list-style-type: none"> • Very limited experience • No criteria published • Ad hoc assessment 	Ex Ante Notification



Thank you !