European Commission

Recent developments in EU State Aid control

Gert-Jan KOOPMAN
Deputy Director-General

23. Berliner Gesprächskreis, 12 April 2013

Challenges for State aid control

Impact of the crisis:
- *Need to foster growth*
- *Fiscal consolidation, quality of public finance*
- *Lessons learned (coordination, speed)*

EU policies:
- *Europe 2020 priorities*
- *Multiannual financial framework*
- *Structural funds (ex ante State Aid approval)*
- *Internal market*

Enforcement challenges:
- *Case-law and complex rules*
- *Enforcement issues (monitoring)*
- *Handling complaints*
- *Lack of evaluation*
- *Review of key State aid instruments*

➢ *twin challenge for a general modernisation of State aid policy: contribute to growth policies and to more sustainable public budgets*

European Commission

Building-blocks & objectives of the SAM package

- Communication on the notion of aid
- Reviewed de minimis Regulation
- Larger notification exemptions (GBER)
- Review of compatibility Guidelines
- Review of the Procedural Regulation

More with less: re-launch growth by a more effective and efficient use of (scarcer) public finances (**good vs. bad aid**)

Simplify & target enforcement rules, according to competition threat and impact on the Single Market (**GBER & GLs**)

Clarify rules and improve procedures for faster decisions, based on a common economic approach, and better compliance

First objective: 'More with less'

Granting aid where it is needed

- Revised scope of guidelines - in line with Europe 2020 objectives and in coordination with other EU policies (structural funds, internal market), in order to promote e.g.:
  - access to finance (risk capital and risk finance),
  - internal energy market (interconnectors, conditions for capacity mechanisms)
- Better identification and addressing the market failures, avoiding measures that fragment internal market (better targeted support for RES)

Well-designed aid

- Application of 'net extra cost' approach in revised guidelines (i.e. the cost necessary to achieve the objective of common interest)
- Mechanisms to ensure incentive effect and aid limited to the minimum (tenders in broadband, increasing use of repayable advances)

Leveraging the positive effects:

- Incentive for aid addressing several objectives of common interest

Second objective: 'Simplify and target'

Focus on the most distortive cases

- More *ex officio* investigations and complaints with real impact on the internal market

Simplifying rules for smaller and unproblematic cases

- Review of GBER (verified aid intensities and notification thresholds, exemption of new types of regional & environmental aid measures)
- Revision of the Enabling Regulation to allow for additional block-exemptions to cover cases of limited competition distortions and effect on trade:
  - culture and heritage conservation sectors, aid in relation to natural disasters, innovation, forestry, social aid to residents of remote regions to travel to the mainland, certain broadband infrastructures

Reviewing the treatment of schemes

- More categories of schemes to be included in the GBER, rules to be simplified
- Transparency requirements to receive information on aid granted via schemes
- Evaluation tools to assess impact of large/long schemes (benefitting from experience gathered by some Member States)

Third objective: 'Clarify rules and enhance efficiency

Clarify the notion of aid - Summary and guidance

Simplify and harmonise across the framework – common methodology

Reinforce the efficiency of State aid procedures

- Improving the quality of the information received from the complainants; e.g. complaints form as mandatory filter
- Interest to act of the complainant as an admissibility criterion; complaint deemed withdrawn if complainant does not provide meaningful relevant information
- Role of the national courts to be reinforced (amicus curiae)

Gather the appropriate information within business relevant deadlines

- Possibility to obtain faster/more reliable information from market participants when appropriate (during the formal investigation procedure)
- Market Information Tools (sector inquiries)
  - ➢ Additional safeguards possible/necessary
  - ➢ Useful tool to gather information, e.g. on financing of regional airports

State of play and next steps in 2013 & 2014

Latest steps

- *Public consultations on issues papers (GBER, RDI, risk finance, EEAG) and draft guidelines (RAG) and de minimis Regulation*
- *Broadband guidelines adopted (19/12/2012)*
- *On-going discussion on Enabling and Procedural Council Regulations*

Around Summer 2013: consultations

- *Public consultations / multilaterals / advisory committees inter alia on: GBER, de minimis, RDI, Risk Finance, rescue and restructuring, EEAG, aviation*
- *Council negotiations on Procedural and Enabling Regulations*
- *Adoption of RAG*

By end 2013 / beginning 2014: main elements of the package in place

- *Adoption of GBER and de minimis Regulation*
- *Adoption of guidelines (e.g. RDI, Risk Finance, R&R, then EEAG)*
- *Adoption of Notion of aid Communication*
- *Council adoption Procedural and Enabling Regulations*

European Commission

Energy & Environment: main areas under review

1. Harmonise and simplify rules
2. Energy infrastructure
3. System stability and generation adequacy
4. Support to low-carbon energy sources
5. Exemptions from taxes and other charges

Key considerations

- Increased link between environmental and energy policy, e.g. integration of more intermittent RES
- Underinvestment in generation and grids due to market failures and uncertainty on future market developments
- Risk of (further) fragmentation of internal energy market through national support measures, e.g. RES, capacity mechanism
- Implications for industrial competitiveness
- Technological neutrality

European Commission

Renewable Energy: Context

- Binding target of a 20 % share of renewable energies in overall EU energy consumption by 2020
- Share of RES in the EU increased from 8.6% (2005) to 12.7 % in 2010.
- Rapidly increasing expenditures on RES
- Scaling down of support to RES by some MS: budgetary constraints and/or lower costs of RES?
- National scope of support schemes

Renewable energy support schemes: challenges

- How to create cost-efficient support schemes?
- How to make schemes more market oriented?
- Technology neutral tendering for mature RES?
- Specific support for less mature technologies?
- How to include cross-border supply?
- Support to other low-carbon energy sources?
- Competitiveness aid?

Exemptions from taxes and other charges

- Energy tax exemptions - simpler test to demonstrate necessity?
- Reflection on whether partial exemptions from RES financing systems could be warranted and how distortions of competition could be limited

Rescue and restructuring aid in the crisis

- RR aid for financial institutions is based on the same principles as RR aid to industrial firms
  - Return to viability
  - Own contribution
  - Burden sharing
  - Limited competition distortions
- Aid can is allowed when it is in the "common interest"
  - Financial stability overarching interest rooted in externality of bank failures (systemic risk)
- Commission is bound to balance benefits for financial stability with potential distortions of competition

State aid rules for the financial crisis

- No single mechanism at EU-level to ensure consistent approach to bank RR - internal market in jeopardy
- State aid control as the only coordination tool for R&R to banks at EU level
- Commission guidance on debt guarantees, recapitalisations, impaired asset measures based on 3 pillars:

VIABILITY	**BURDENSHARING**	**COMPETITION**
Return to long term viability, remuneration of capital	Minimisation of cost for the State / the taxpayer	Proportionate remedies, reflecting a) market characteristics
No more public support after restructuring	Mitigation of moral hazard	b) relative/absolute size of the aid

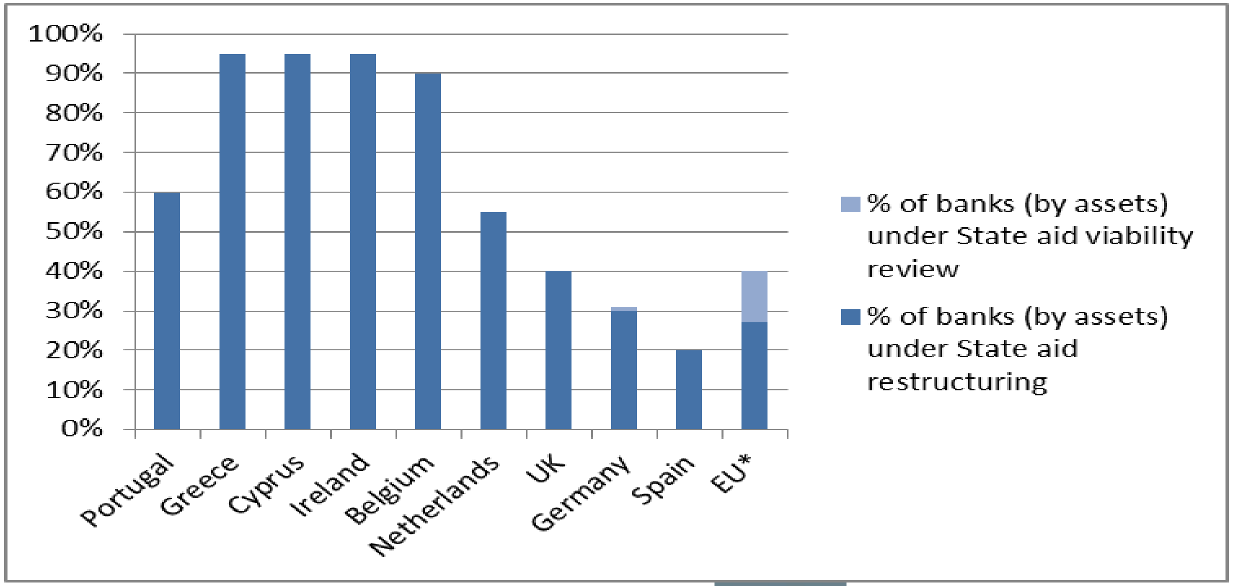
European Commission

State aid rules for the financial crisis

- Are more flexible and more targeted than "normal" rules
  - Possibility to inject capital but on predefined terms
  - Possibility for Member States to get a scheme authorisation (to grant aid to several recipients based on one Commission decision) subject to 6 month evaluation
- Entail procedural innovations
  - Temporary approvals of structural measures to cope with urgency, followed by in-depth analysis / negotiation of restructuring plans
  - Speedier Commission internal decision making, enabling the Commission to provide legal certainty within days from notification
- Have been constantly adapted to changing market circumstances
  - Revised pricing of state guarantees to cater for sovereign crisis
- Stronger burden-sharing requirements, imposed by ESM: Partial bail-in of shareholders and junior creditors as well as depositors(Cyprus)
  - Where should be the limit of the stricter burden-sharing requirement?

Significance of crisis aid control

- So far 59 banks restructured (thereof 19 resolved), 29 cases ongoing; 44 schemes, ~400 decisions
- ~ € 4.9 trillion of aid approved (39% GDP), thereof € 1.7 trillion used (13.5% GDP)
- Large parts of banking sector under State aid scrutiny



Challenges for the future

- Divergent treatment of bank rescue (e.g. burden sharing inside and outside programme countries)

  → How to preserve internal market / prevent distortions of competition?

- Transitional phase until steady-state bank resolution system is operational (time needed to set it up, build up resolution fund(s), bail-in provisions as of 2018)

  → How to ensure smooth transition and homogeneous national resolutions?

- How can State aid control play a more pro-active role, processes become speedier and the level playing field maintained in the new regulatory landscape?