



**EUROPEAN COMMISSION**

**Johannes Laitenberger**

Director-General for Competition, European Commission

## **State aid modernisation: The benefits of working more closely together**

Check Against Delivery  
Seul le texte prononcé fait foi  
Es gilt das gesprochene Wort

High Level Forum of Member States  
**Brussels, 28 June 2017**

Ladies and Gentlemen:

For 60 years, State aid has been a pillar of the single market, therefore a pillar of the EU project. The inclusion of State aid articles in the original Treaties gave to the European Commission a responsibility that no other competition authority has.

In the single market, the Commissioner has to check both anti-competitive and distortive practices from private business and from public authorities. As guardian of the Treaties, the Commission's statutory obligation is to protect the integrity of the internal market and to ensure its smooth functioning vis-à-vis all actors in the economy.

The Treaties are clear: it is our duty to check that subsidies and other forms of government support to businesses are not selective so they do not distort competition in a way that is contrary to the common market and to economic peace in the Union. When a subsidy meets a goal of common interest, we must prevent overcompensation and verify that the aid is necessary and proportionate.

Avoiding that public support creates unequal conditions and – as important – avoiding subsidy races between EU countries are not theoretical concerns. Let me just recall the spiral of guarantees to the banking sector in the autumn of 2008. Each national measure had an overspill on neighbouring countries. The single market could have been tilted at a steep angle. Maybe it would have fragmented beyond repair. To prevent this from happening, just weeks after Lehman brothers, the European Council asked the Commission to make full use of the tried and trusted State aid rules. At the time, State aid control was the only EU-wide mechanism that could ensure a consistent approach to bank rescue – and it did. Between 2007 and 2015 we had to look into 120 banks in 23 member States. Of the €45 trillion of assets in European banks, about one third has been under State aid control. Today, we have new rules under the Banking Union, and State aid control is still part of them.

We can of course think of a more recent example; the cases involving the tax treatment of multinational companies in some EU countries. But these are just the kinds of interventions that hit the headlines. Implementing the State aid articles of the Treaty is a much larger enterprise. Last year, the Commission took around 300 State aid decisions involving all EU countries and across all industries.

This said, I would like to make one point clear.

Ensuring that subsidies and other government support do not distort competition has inherent positive implications, even beyond competition policy. One is that it also helps EU governments improve the quality of public expenditure and finance the projects Europe needs to sustain the recovery after many years of financial and economic crisis.

### **State aid modernization strategy extends national policies' scope**

For the Commission implementing this instrument of EU competition law also means keeping it in line with the times and this is what the State aid modernization strategy rolled out since 2012 is doing.

The strategy has updated the rules and conditions in many industries and policy areas so that Europe's governments can grant aid in a way that is compatible with the single market in a simpler and more predictable manner. At the same time, the strategy has opened new avenues for EU countries to shape their public-investment policies in line with their needs and in the interest of all Europeans.

For instance, it has promoted significant investments in broadband, a crucial infrastructure in the digital age; in energy schemes, especially for renewables, and in research development and innovation. Let me put some figures under these headings:

- Aid to broadband projects has almost doubled in 2015 compared to 2014 – to the tune of about €1.7 billion;
- Almost half of total State aid spending is currently devoted to environmental and energy aid; and
- Spending in research, development and innovation has totalled €8.5 billion – including GBER measures.

This is squarely in line with the overall objectives President Juncker set for his Commission, spelled out in the Europe 2020 Strategy and its Investment Plan. Commissioner Vestager has said many times that the action of DG Competition – including in the State aid instrument – can support these broader objectives. She has also directed us to look exclusively at the law, the facts, and the jurisprudence of the Court when it comes to individual cases – but that goes without saying.

Crucially, the State aid Modernization strategy has clarified and simplified things with the Notion of Aid and the procedural review. The GBER is a core element of this simplification. The GBER was extended last month to include public investments in ports and airports, while also simplifying the rules for culture, multi-purpose sports arenas and the EU's outermost regions.

### **Sharing responsibilities**

Obviously, opening new avenues for EU governments entails that they must take responsibility for keeping the playing field level and protecting the single market. What can national governments do to rise to the new levels of responsibility set by the State aid modernisation strategy?

We are not starting from scratch. We have ten years of experience with shared responsibilities in antitrust and mergers. Of course there are differences between State aid and the other instruments – both in structural and institutional terms. On the one hand, State aid control is an

exclusive responsibility of the Commission. On the other hand, we have no power to interfere in the organisational set-up of Member States. But even before the GBER was reformed, national State aid authorities were the first instance to assess whether or not a public measure includes State aid, and whether it can be block-exempted. This is why enhancing the competence of national authorities for dealing with these matters is crucial for the success of the State aid modernisation.

A quick list would include:

- Developing appropriate administrative and decision-taking structures, according to each country's institutional set-up;
- Acquiring the necessary State aid expertise and sharing it at central, regional, and local levels;
- Ensuring proper ex-ante and ex-post monitoring and control; and last but not least
- More transparency.

Beside administrative bodies, national courts also play an important role in State aid control. As clarified by the European Court of Justice, national courts, just like the Commission, have the power and the obligation to prevent and stop the granting of illegal aid and to ensure respect of standstill obligations.

This gives national courts effective powers to protect the rights of individuals – but it also means that they are called upon regularly to check the notion of aid. This is no simple task. State aid is a complex creature which requires complex assessments, such as the notion of economic advantage, selectivity, or effect on trade. This is why we have adopted the Notice on the Notion of Aid, and why we are so strongly investing in effective cooperation with Member State authorities – be they administrative or judiciary.

### **A new compact between Commission and EU governments**

The State aid modernisation strategy has been a success so far. To keep our good record and improve on it, the Commission and EU governments should continue to work effectively together – bilaterally and multilaterally.

For our part, we will continue to assist in the implementation at national level, especially by clarifying the implications of the rules and working towards consistent application. We will also continue to facilitate the exchange of best practices among Member States within the framework of the Working Group for State aid modernisation.

I encourage government authorities to openly raise individual issues where there are tangible and well-defined difficulties in applying the rules. Sometimes we read sweeping comments such as 'State aid rules are holding us back'. We respect all views, but the conversation is a lot more

productive when it is about actual, well-defined glitches we can address together in a pragmatic fashion.

This way, we can make sure State aid rules achieve their objectives – which we've all agreed – without standing in the way of investment policies that do not harm or distort competition in the single market. In other words, the way to follow is more exchanges of information and good practices between government authorities, relying on the Commission as facilitator, and a frank and open debate for collective learning.

### **State aid modernization: Where do we stand?**

State aid modernization is a milestone, but we're still in the early stages. This is the time to look back; see what has been accomplished so far and what has worked less well; and plan for the future. So, how far have we come? Let me point at a few achievements.

### **Bigger on big, smaller on small**

Today, more than nine out of ten new aid measures across the EU are being paid out without requiring prior authorisation from the Commission. This avoids unnecessary delays and allows the Commission to focus on the more significant cases.

Between 2013 and 2015 the average budget of implemented notified measures has increased by more than 50%. This is a small but clear example of what the Commission means when it says it wants to be "bigger on big things and smaller on small things".

Let me add that the work the Commission continues to carry out on cases with a greater potential impact is not limited to spotting illegal aid. For instance, the Commission has helped national authorities improve their measures' design in about 40% of the cases it has recently approved. We are investing resources in guidance and support to national authorities. Examples include training, the country coordinators' network, the many country visits and the thematic working groups on transparency systems, evaluation, energy and infrastructure.

We have also developed enhanced bilateral cooperation with Member States that have wished to enter a dialogue focusing on country-specific needs, such as closer cooperation on major cases and technical support for improving knowledge and State aid control structures; and our doors remain open – notably through the country coordination network – for all Member States that wish to discuss specific needs, such as training.

### **Evaluation of national schemes**

Another feature introduced by State aid modernisation is the evaluation required for the more significant aid schemes. Both national authorities and the Commission are to collect solid evidence on the effectiveness *and*

the distortions of large aid measures. It is a learning exercise; the final objective is improving the way aid measures are designed and implemented.

As of today, we have launched 30 evaluations and several more are in the pipeline. Twelve countries are involved and a few more will join soon. These 30 schemes account for more than €40 billion in annual budget – which is a significant proportion of the total amount of aid spent in the EU. The evaluations concern the main categories of aid – regional aid, research and development, broadband, energy, SMEs – so that we can learn on all fronts.

As we start receiving the evaluation reports, we will make sure that they are thoroughly assessed, discussed as widely as possible, and that the results are used for better policy-making both at national and Commission level.

### Transparency

One final important aspect of State aid modernisation is the transparency requirement; the public must have access to information on aid measures over half a million euro.

To assist national authorities, we have set up a platform called Transparency Award Module, which everyone can access through the internet ([click here](#)). Last week, 26 EU countries were present on the platform – plus Iceland, which has started to use it – and over 6,700 aid awards have been published by 21 Member States.

So, things are taking shape as intended, but there's more work to do on this front. Publishing these data on the internet is a win-win move for everyone involved. As to government bodies, it helps them show to the people where their taxes go. It also helps administrators look up past decisions as they design new measures.

The platform is also a public record listing which companies are receiving subsidies for what. And let's not forget that companies that are *not* receiving subsidies can also browse. Everything is above the table, which is good to build a culture of openness and trust among entrepreneurs. But, above all, it is the people who have a right to know. Transparency promotes accountability and addresses a clear and specific need felt by citizens to have good and reliable information on State aid. The Transparency Award Module can show to the people our common rules in action. It is advocacy at its best. And because Europeans citizens are entitled to clear and thorough information on all public policies – not only government subsidies – I believe it sets an example that many can follow.

### Looking forward

As I said earlier, State aid modernisation was gradually put in place since 2012 . More time is needed to reap its full benefits. We are currently in

the implementation stage. Let us look at the evaluation and tune-up stages that will follow.

There is a sense in which the State aid modernisation strategy will always be work in progress. And that's the way it should be, because it is a collaboration game and there's quite a number of players. Current debates in the Working Group can give us an idea of the kind of work that awaits us in the future. The topics that are being discussed include:

- Clarifying the market economy operator principle;
- Discussing mechanisms to clarify the notion of undertakings in difficulty; and
- The debate has only just started on the EU countries' experience with SGEI.

An early conclusion that can be drawn at this stage from these and similar debates is that the application of State aid rules across the EU is still uneven – which is understandable to a point, but clearly a concern.

There may be several reasons for this state of affairs. One is that not every government body in the EU is familiar enough with the rationale and objectives of State aid. I understand that the working group often talks about wide gaps in knowledge and expertise between central State aid coordinating bodies on one side and regional and local governments on the other and of the measures taken to keep the latter in the loop. We also have some evidence of these gaps in our case practice.

The landscape is uneven also when one looks at the whole of the EU.

Some State aid coordinating bodies are well-equipped to take their responsibilities forward with momentum – and this regardless of whether they are centralized or not. Others still suffer from serious shortage of resources, lack of influence in decision-making, and sometimes are still building up the necessary expertise.

Against this background, the best way forward is to continue pushing for State aid modernisation with renewed determination and to continue pushing back the perception that State aid rules hinder public investment.

This is where the Working Group is particularly useful.

Rules should become more familiar, such as the notion of aid – especially as regards effects on trade as well as the concepts of undertaking, economic *versus* non-economic activity, and local activities and infrastructure.

Also, the GBER should be used to its full extent across the EU. Last year almost 90% of new aid measures were under the GBER on average in the EU – up from about 48% in 2013. However, there remain large differences. The figure stood well below that average in six countries and in two of them it was below 40%. And now that the GBER has been extended, we need to make the implications of the new rules as clear as possible.

Looking further ahead into the future – to the stage I called 'tune-up stage' – one could see national authorities and the Commission reflecting on further fine-tuning of responsibilities.

I have mentioned that national courts already have the power to rule on the stand-still clause for non-notified aid.

Also, we could incentivize national administrations to build stronger internal control structures, for example by revisiting the role of national or regional courts of auditors, to keep error rates to a minimum.

We could regularly check our rules, like the *de minimis* rule. More generally, we could envisage regular health checks on how the balance of responsibilities works out.

## Conclusion

Experience will tell. What counts is that, together, we continue to ensure that the single market is preserved and enriched while good aid is promoted. It has taken us 60 years to bring the single market to its present level – the single most valuable asset for the EU and every one of its members. But it would take a very short time to compromise it.

At this point in time, betting on the single market is more crucial than ever: economically, politically and geopolitically. It is also thanks to it that we have been able to defend our European values and principles and to project them to the world.

You and all those in the Member States who implement State aid rules are part of this. I look forward to extending our cooperation in a spirit of partnership and teamwork. Our culture at DG COMP must be even more one of working together with you. I thank you for your openness and cooperation – may it continue and bear fruit.

The single market has brought us economic peace – in fact, six decades of peace *tout court* to the countries of the EU. And only last week the Princess of Asturias award recognised this historic feat as the Nobel prize had done in 2012.