

The Reform of EU State Aid Control

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*The views expressed are those of the author and do not necessarily reflect those of DG COMP

Overview

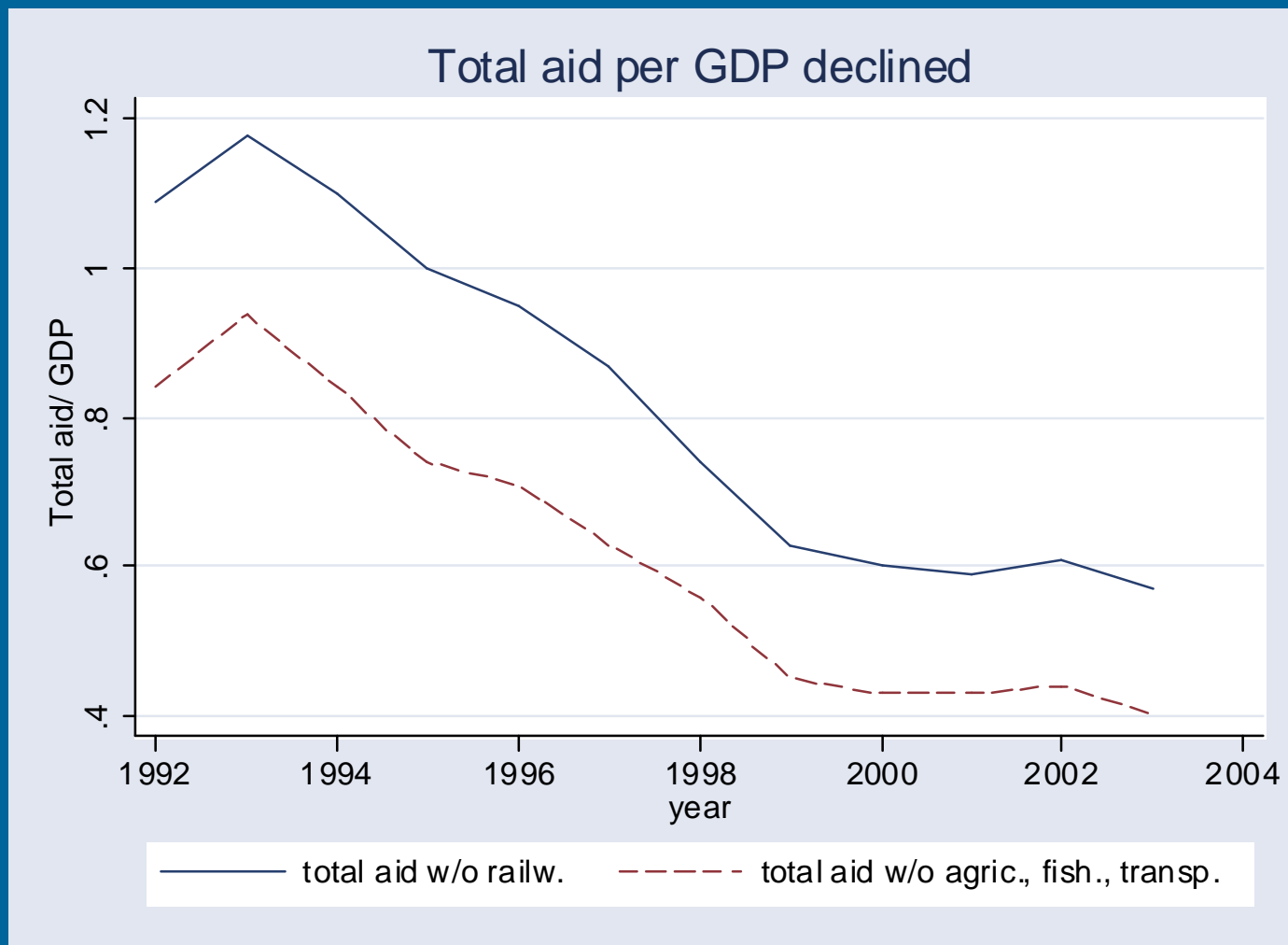
- n recent trends
- n the current framework
- n the current reform - an economic approach
- n concluding remarks

Preliminary remark

- n state aid policy is an integral part of competition policy
 - q functioning of markets
 - q there is a potential to distort competition and affect trade
 - q negative presumption
- n but state aid is different insofar....
 - q economic as well as social objectives
 - q “actors” are member states • beneficiaries are companies (political economy issues)
 - q state aid is a special form of state intervention: involves the transfer of state resources (via subsidies, tax breaks, ...)

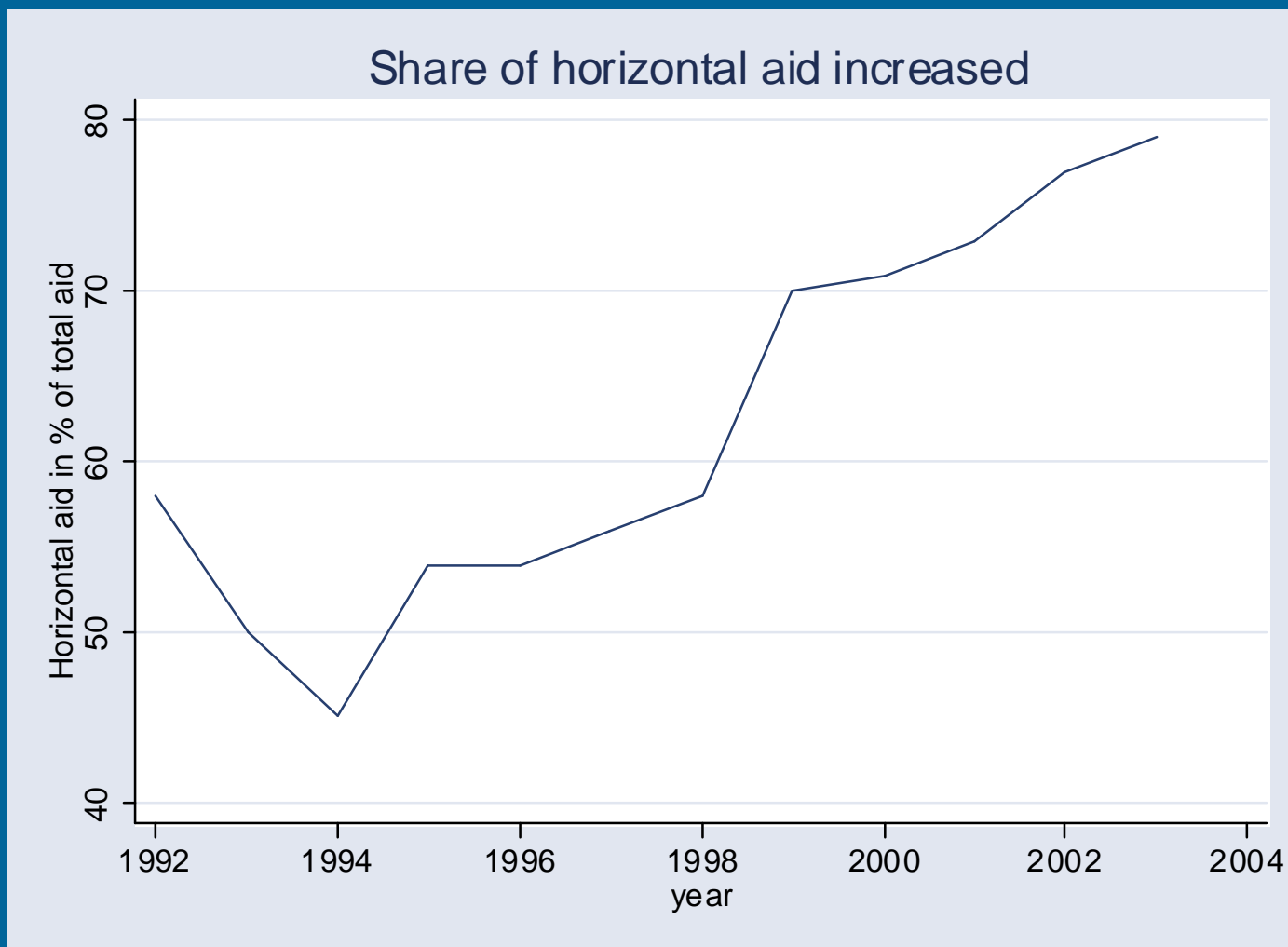
Facts.....

Trend 1 – state aid per GDP



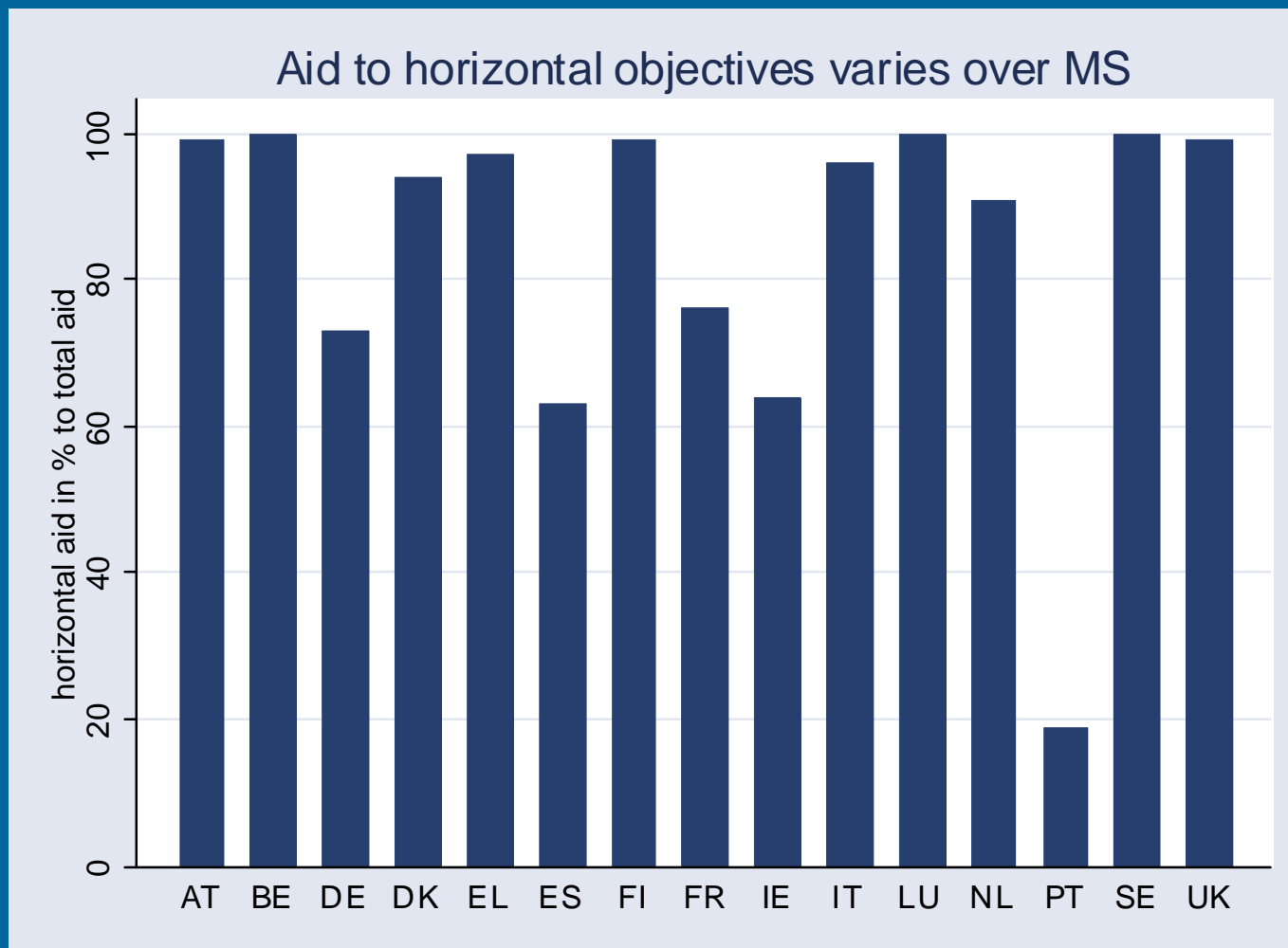
Note: Credit Lyonnais case in France excluded. Otherwise kink in 1997
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Trend 2 - horizontal objectives



Total aid without agriculture, fishery and transport, EU-15; Credit Lyonnais case in France excluded. Otherwise kink in 1997.

Trend 3 - country heterogeneity



Total aid without agriculture, fishery and transport 2003, EU-15
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current framework

The legal framework: what is state aid?

Article 87 (1) identifies four criteria defining state aid:

- n transfer of state resources
- n economic advantage
- n distorts or threaten to distort competition
- n it affects trade between member states

the last two criteria hold when selectivity is shown (favouring certain undertakings, the production of certain goods or regions)



Negative presumption , need to notify

De minimis rule: less than €100.000 for a 3 year period is considered no aid

Scope for economic analysis under Art. 87(1)

- n state resources
- n advantage to firms
 - n Market Economy Investor Principle (in the context of state investments)
 - n Altmark criteria (in the context of Services of General Economic Interest)
- n selectivity
 - n how close is the link between “selectivity” and “distortion of competition” and “effect on trade”? • more comprehensive analysis under Art. 87(3)

The legal framework: when is aid compatible?

- n Art. 87.2 - Compatible: natural disaster, social character, aid to individuals, etc.
- n Art. 87.3 - Possibly compatible: areas with low living standard or aid to facilitate the development of certain economic activities, etc.

Assessment – basic approach

common interests

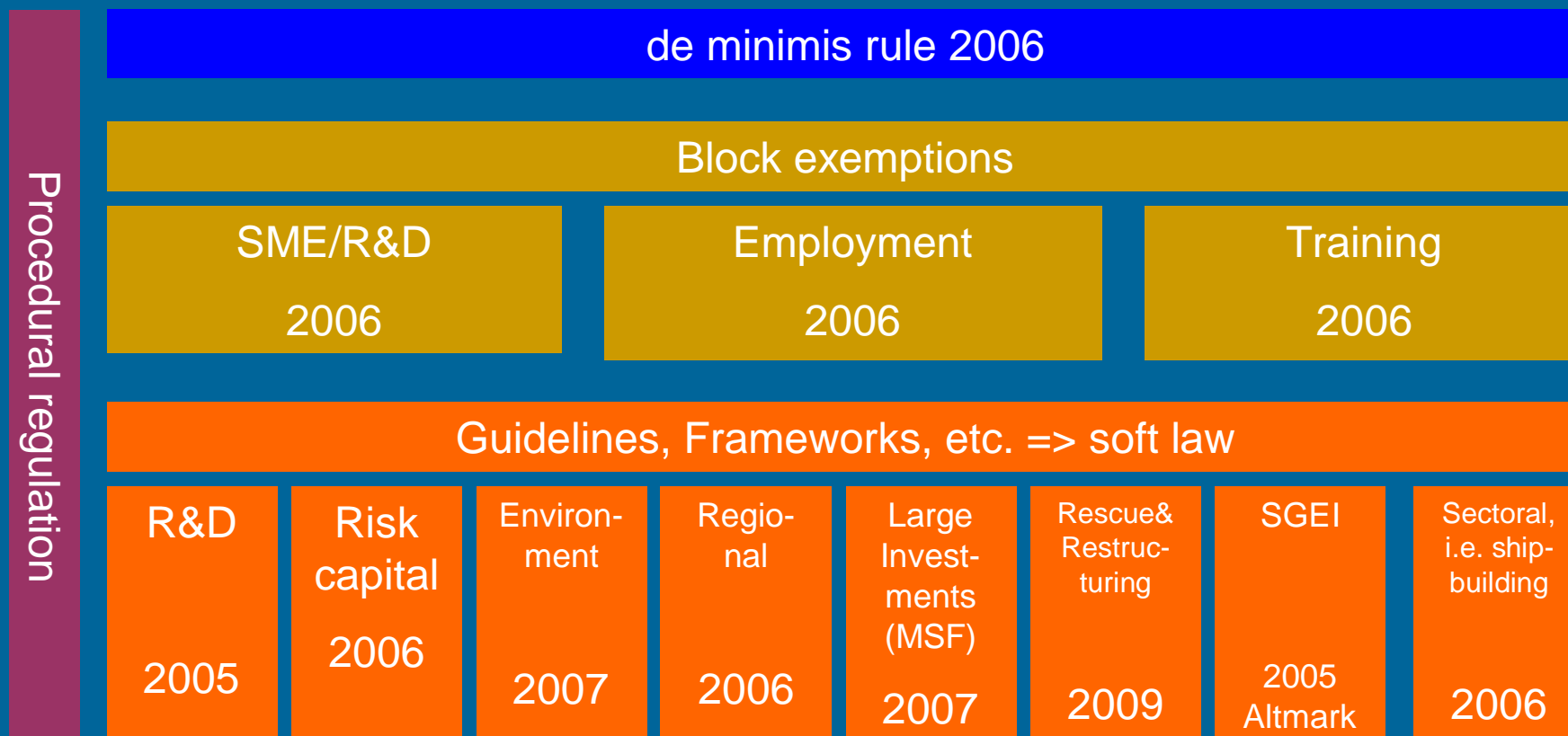
- n economic development
- n social cohesions
- n culture



distortion of competition & trade

- n maximum aid intensities
- n eligible costs
- n check list approach

Current architecture and expiration dates*



*Please note that this is no exhaustive list of soft law provisions.

Scope for economic analysis under Art. 87(3)

- n issue of market failure addressed, but not always made very explicit (market failures reflected in “Community objectives”)
- n distortions of competition primarily addressed on the basis of maximum aid intensities & eligible costs - “Check list approach”
- n balancing not explicitly carried out
- n form-based approach vs. effect-based approach



economic analysis of minor importance for most cases

- direct assessment under Article 87 (3) - risk capital guidelines; R&D guidelines; MSF

The Reform.....

The State Aid Action Plan: The Reform

"less and better targeted" – political mandate

- q reduce the overall level
- q increase effectiveness of state aid to achieve economic and social objectives
- q reform of the architecture
- q simplicity, transparency & predictability



economic approach is needed (like other areas of antitrust and merger control)

Economic approach to state aid control – the economic test

- a. existence of a market failure (is there a problem?)
- b. targeting the market failure (does the aid solve the problem?)
 - q Indispensability (better placed instrument?) / incentive effect / proportionality
 - q “regulatory failures”
 - n information problems
 - n picking winners / lobbying / rent seeking
 - n commitment problems (time inconsistency)
- c. distortion of competition



economic approach directs state aid towards positive balance of the above

..... the third limb of the economic test

- c. the 'distortions of competition' and 'effect on trade' should be limited so that the aid measure is not on balance contrary to the common interest.
- q selectivity (i.e. individual firms)
 - q market position of the firm (dominant?)
 - q markets affected are trade intensive or potentially trade intensive
 - q Aid intensity and type of aid (operational aid, horizontal, financial instrument)
 - q procedure for selecting beneficiaries

..... challenges

- n assessing market failures
- n distortion of competition
 - q horizontal measures (schemes)
 - q static vs. dynamic effects (welfare standard)
 - q cost to taxpayers
- n cohesion objectives

Possible Reform of the architecture.....

F 500 cases/year, 350 decisions, 2 yrs

n increase de minimis

n consolidate block exemptions (priority setting)

n guidelines & frameworks

q presumptions and thresholds = soft safe harbours

q spell out effect-based analysis (economic test)

n case analysis – full economic assessment in certain cases

n burden of proof on MS

F Minimize type I and II errors

F provide more transparency & predictability (simplicity)

The role of Member States

- F Commissioner Kroes: European State Aid Network (ESN)
- n Member state level
 - n same economic problem (effectiveness: market failures vs. distortion)
 - n more scope to cooperate if an explicit economic approach (like other areas of antitrust and mergers)
- n EU “best placed” when
 - n externalities across Member States (effect on trade)
 - n possible “commitment problem” at Member State level

Concluding remarks

- n redirect state aid in line with economic principles
 - Ø concentrate resources on most harmful aid (set priorities)
 - Ø raise effectiveness of state aid (type I and II errors)
 - Ø “better targeted aid” => Lisbon objective
- n simplify and streamline rules and procedures
- n Note: previous two conclusions are not contradictory!
- n “economic test” is consistent with other competition policies