
EU State Aid Control: economic principles and guidance

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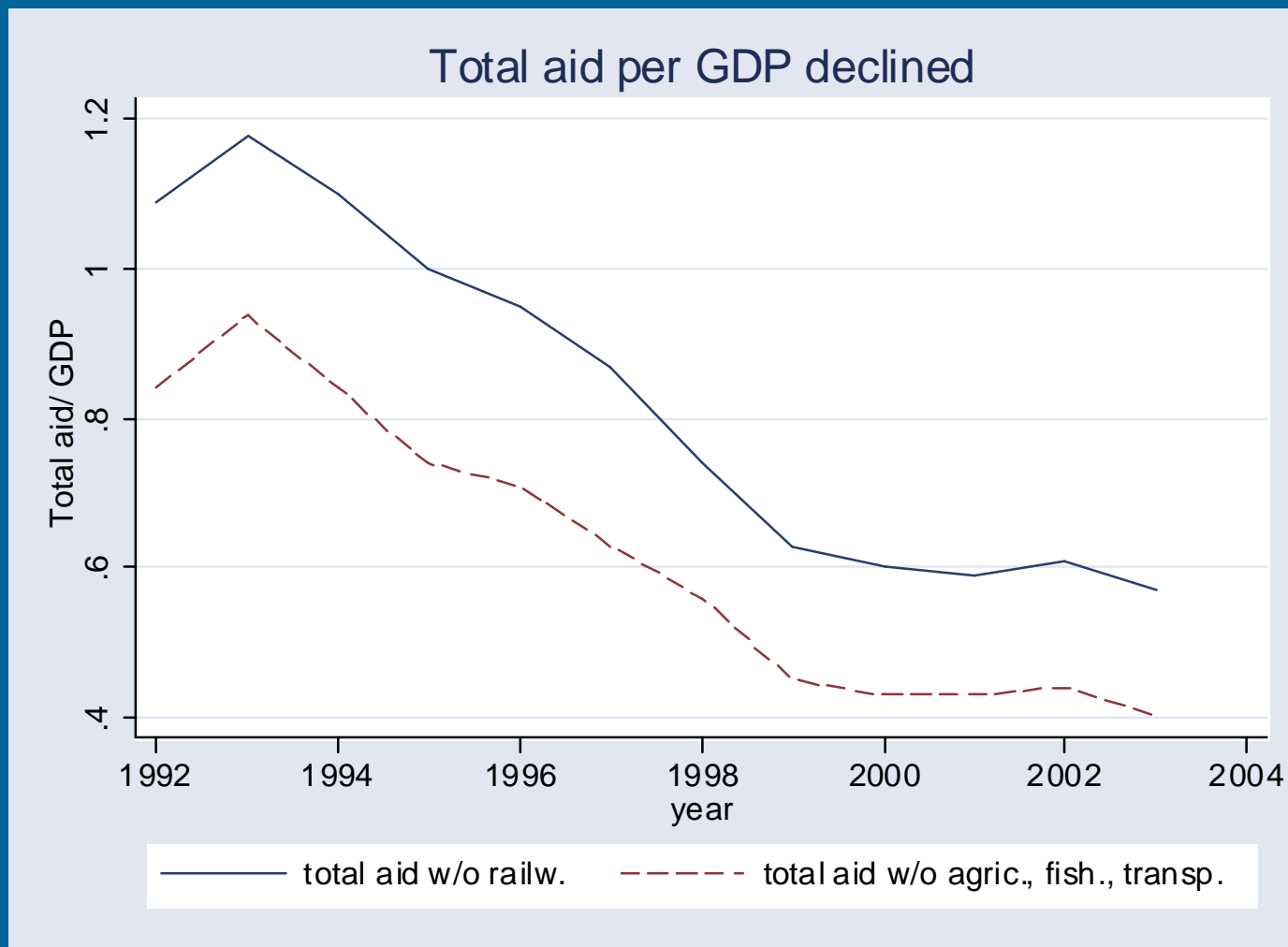
Overview

- n recent trends
- n the current framework
- n the current reform
- n 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, ...)

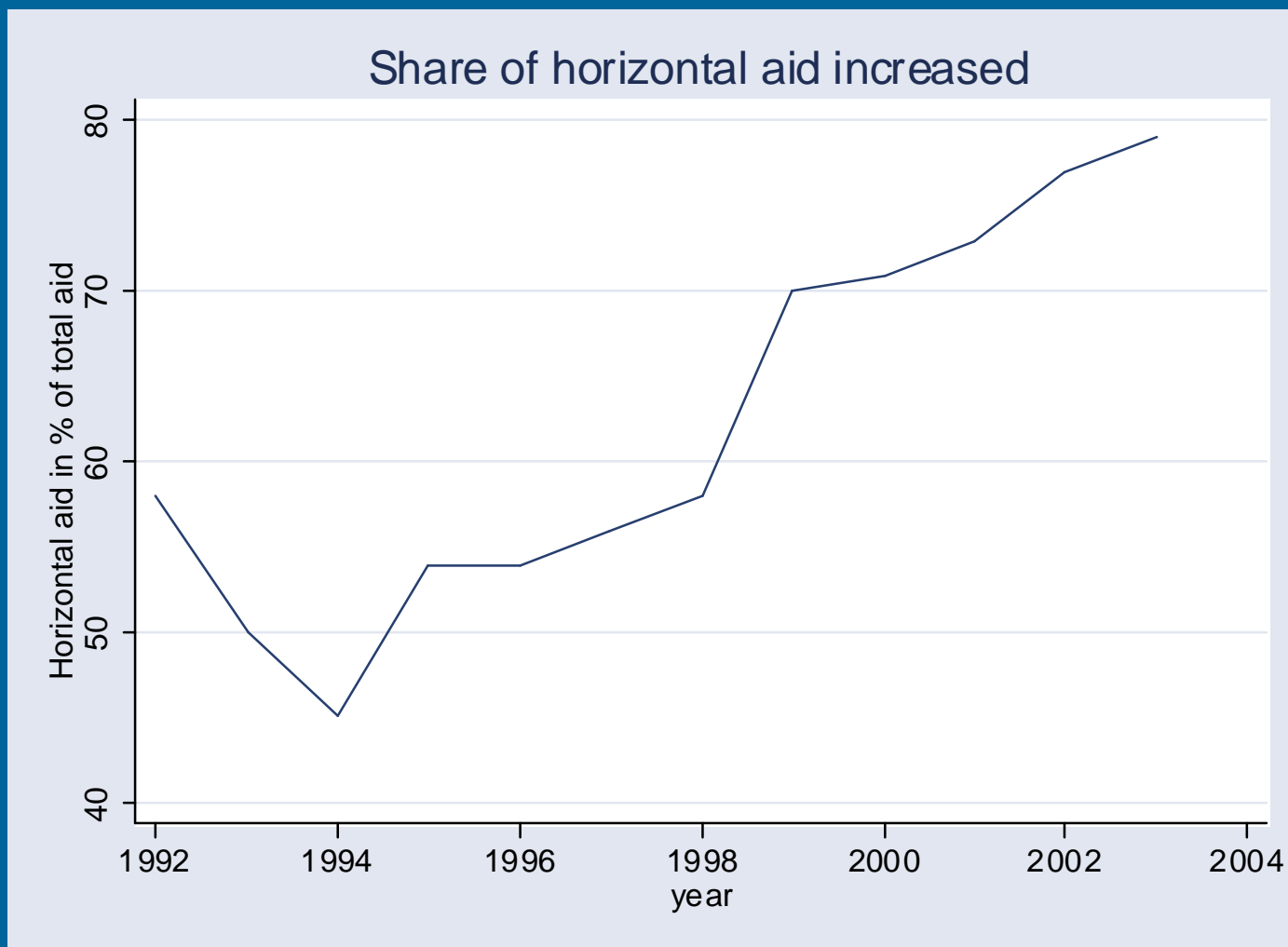
Trend 1 – state aid per GDP



Note: Credit Lyonnais case in France excluded. Otherwise kink in 1997

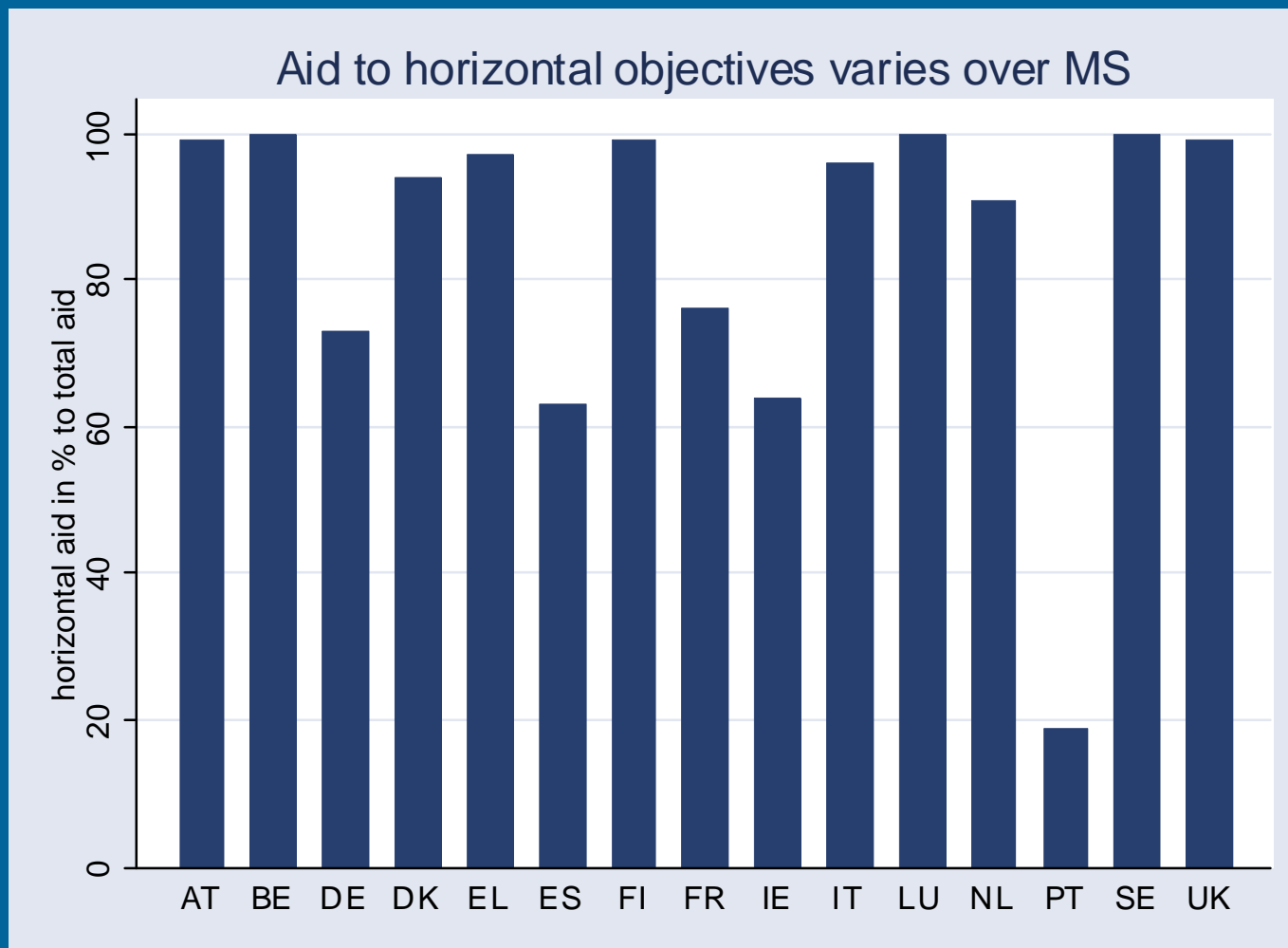
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Trend 2 - horizontal objectives



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

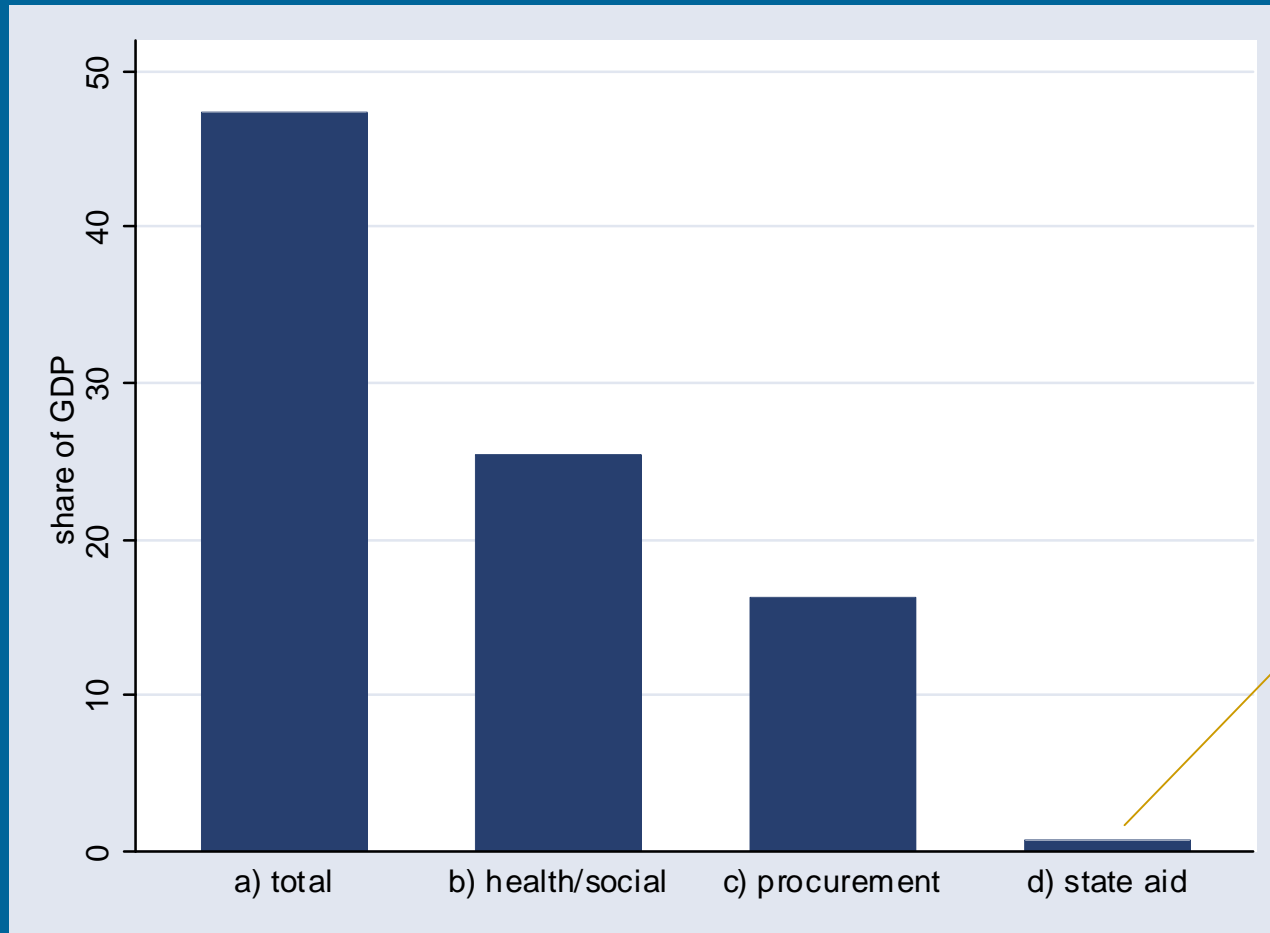
Trend 3 - country heterogeneity



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

..... to put it into perspective

Different types of public expenditures



0.61%
€57 Bn

EU-15, 2002, Eurostat; State aid without railways

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 (by favouring certain undertakings or the production of certain goods (selectivity))~~
- ~~n It affects trade between member states~~

Based on case law the last two criteria are assumed to hold in most cases where selectivity is shown



Negative presumption

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

Scope for economic analysis under Art. 87(1)

n Advantage to firms

- q Market Economy Investor Principle (in the context of state investments)
- q 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 it compatible?

General provisions

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

Specific Guidelines

- n Horizontal aid
 - q Efficiency related
 - n for R&D
 - n for SMEs
 - n for risk capital
 - n for employment
 - n for training
 - n for environmental protection
 - q Cohesion related
 - n For specific regions
- n Non-horizontal aid
 - q For specific sectors
 - q For rescue&restructuring

Scope for economic analysis under Art. 87(3)

n Guidelines/Block Exemptions/Frameworks

- q issue of market failure addressed, but not always made very explicit (market failures reflected in “Community objectives”)
- q distortions of competition mainly addressed on the basis of maximum aid intensities - “Check list approach”

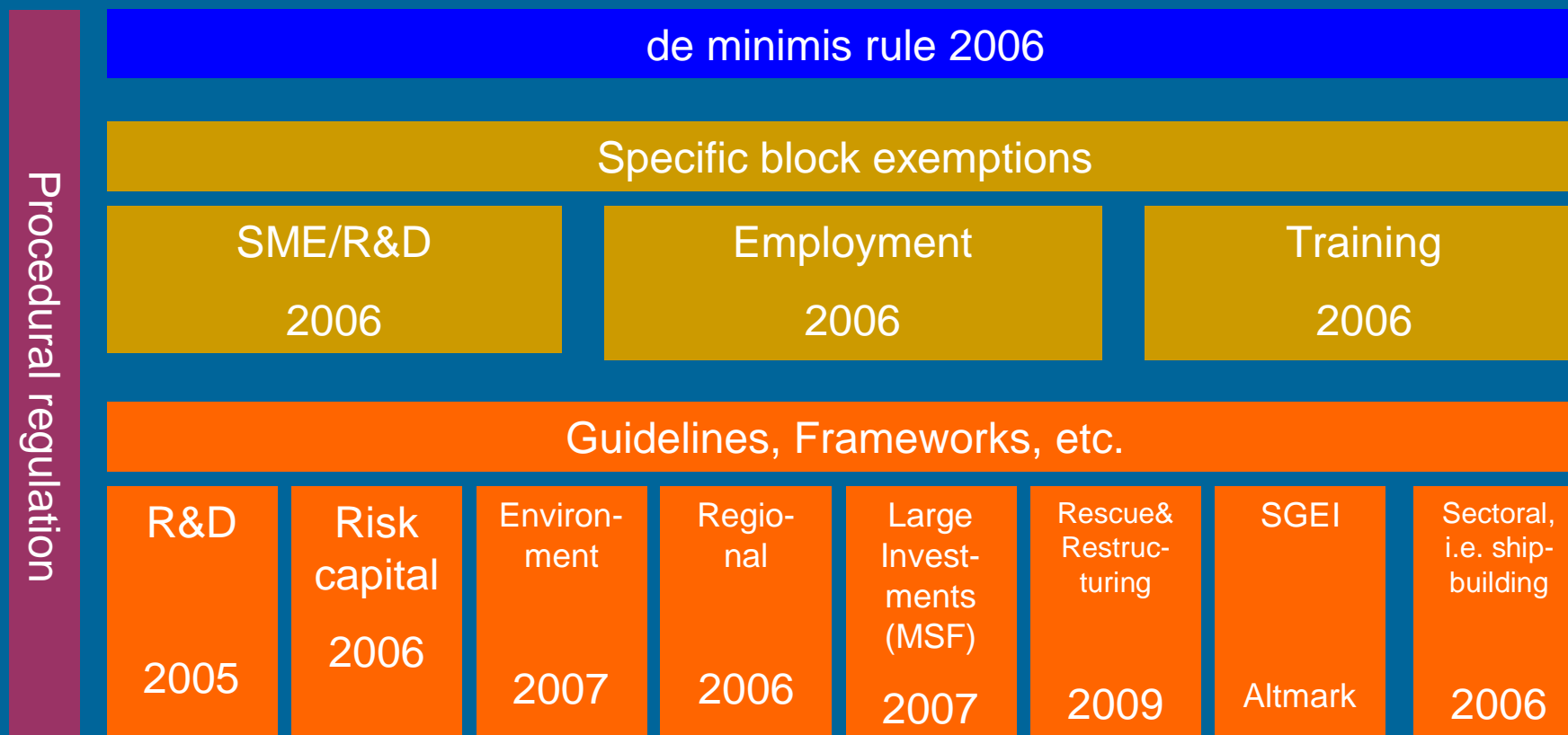
n Direct assessment under Article 87 (3)

- q risk capital guidelines; R&D Guidelines; MSF



economic analysis of minor importance for most cases

Current architecture and expiration dates*



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

The State Aid Action Plan: The Reform

- n "less and better targeted"
- n reform of the architecture

"Less and better targeted aid"

"less"



to reduce the overall level

"better targeted"



increase effectiveness of state aid to achieve economic and social objectives



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

Economic approach redirects state aid to increase its effectiveness

- ∅ increase effectiveness in achieving economic objectives by
 - q focus on market failures vs. distortion of competition (the economic test)
 - q priority setting (using economic impact)
 - q simplicity, transparency, predictability (crucial for investment and jobs)

Economic approach to state aid control – the economic test

- a. existence of a market failures (is there a problem?)
- b. targeting the market failure (does the aid solve the problem?)
 - q indispensability / proportionality / incentive
 - 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 strong 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 for the economic test

- n measuring market failures
- n distortion of competition for horizontal measures (schemes)
- n static vs. dynamic effects
 - q Static effects always good for the consumer (if funds at no costs)
 - q dynamic factors crucial
 - q cost to taxpayers
- n cohesion objectives

priority setting & simplicity, transparency, predictability

- n 500 cases/year, 350 decisions, 2 yrs, >2 bn €
- n increase de minimis
- n consolidate block exemptions (priority setting)
- n guidelines
 - q presumptions and thresholds (intensities)
 - q spell out economic approach (bonuses) – the economic test
- n case analysis – full economic assessment in certain cases (like other areas of competition policy)

Consistency with other areas of competition policy

- n focus on functioning of markets (1st limb: what is the problem?)
- n focus on indispensability and proportionality (2nd limb)
- n balancing of effects (efficiencies ~ market failures) and market distortions (3rd limb)
- n effects-based approach rather than form-based
 - q Block exemptions, Guidelines, Case analysis
 - q Burden of proof for market failures (like efficiencies in merger guidelines, Article 81(3))
- n allows for setting priorities

EU and National state aid control

n Member state level

- n same economic problem (market failures vs. distortion)
- n scope to cooperate within 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
- n “better targeted aid”
 - ⇒ raise effectiveness of state aid
 - ⇒ Lisbon objectives
- n simplify and streamline rules and procedures
- n concentrate resources on most harmful aid (set priorities)
- n “economic test” is consistent with other competition policies