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European 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 trends
- n the current framework
- n the reform
- n concluding remarks

Preliminary remark

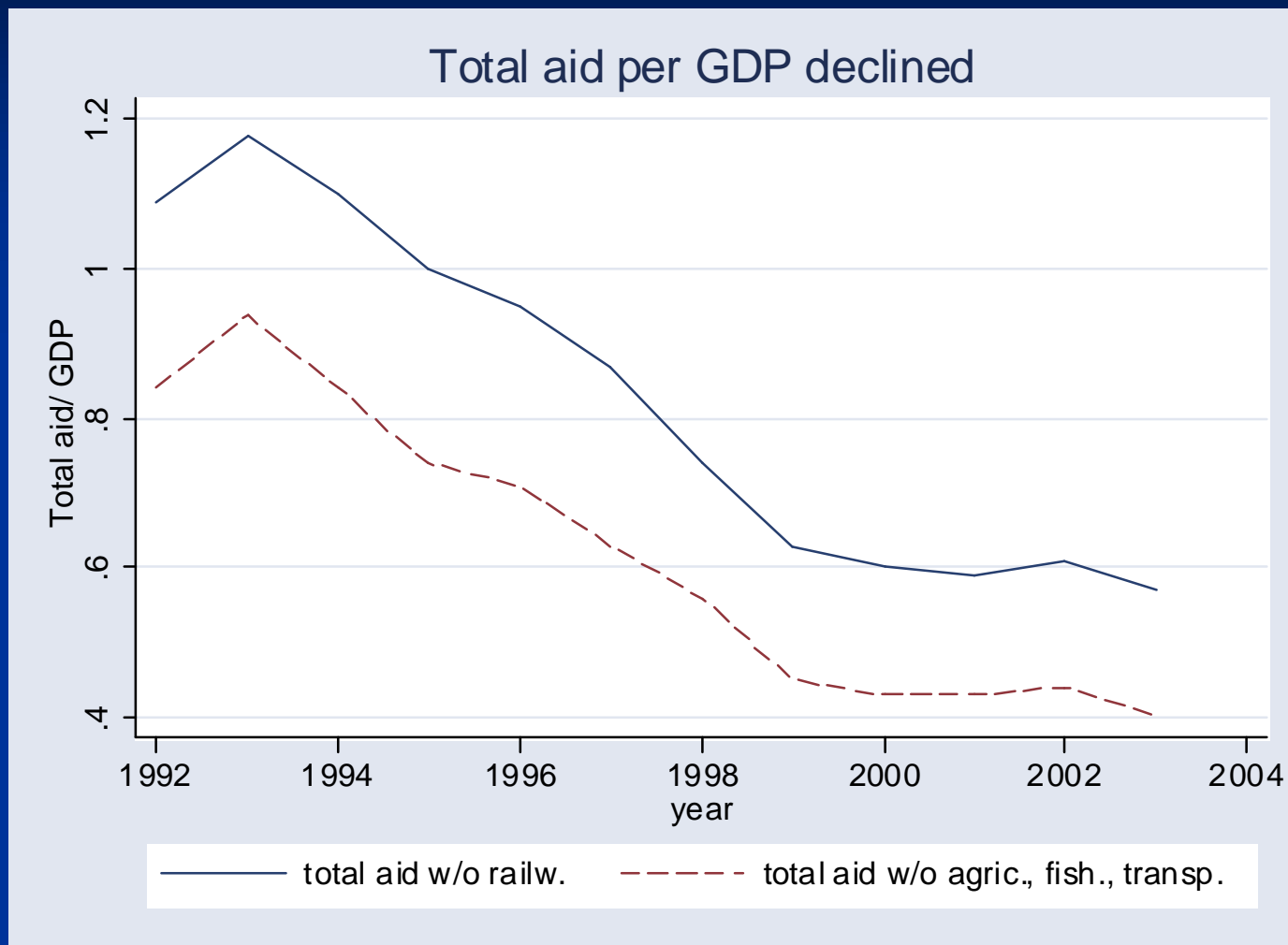


- n state aid policy is an integral part of competition policy
- n but state aid is different insofar....
 - n negative presumption
 - n economic as well as social objectives
 - n “actors” are member states • beneficiaries are companies (political economy issues)



trends.....

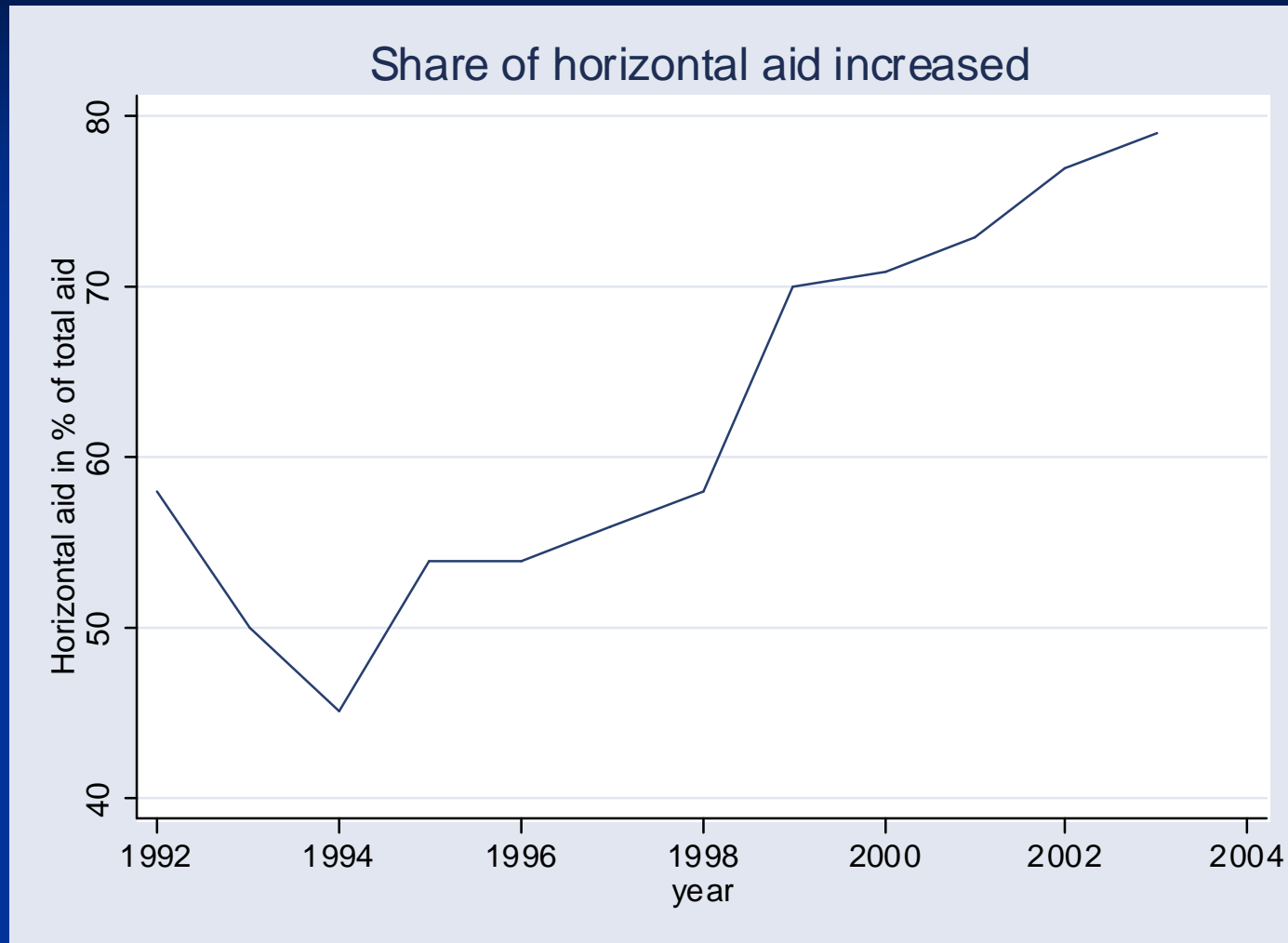
Trend 1 – state aid per GDP



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

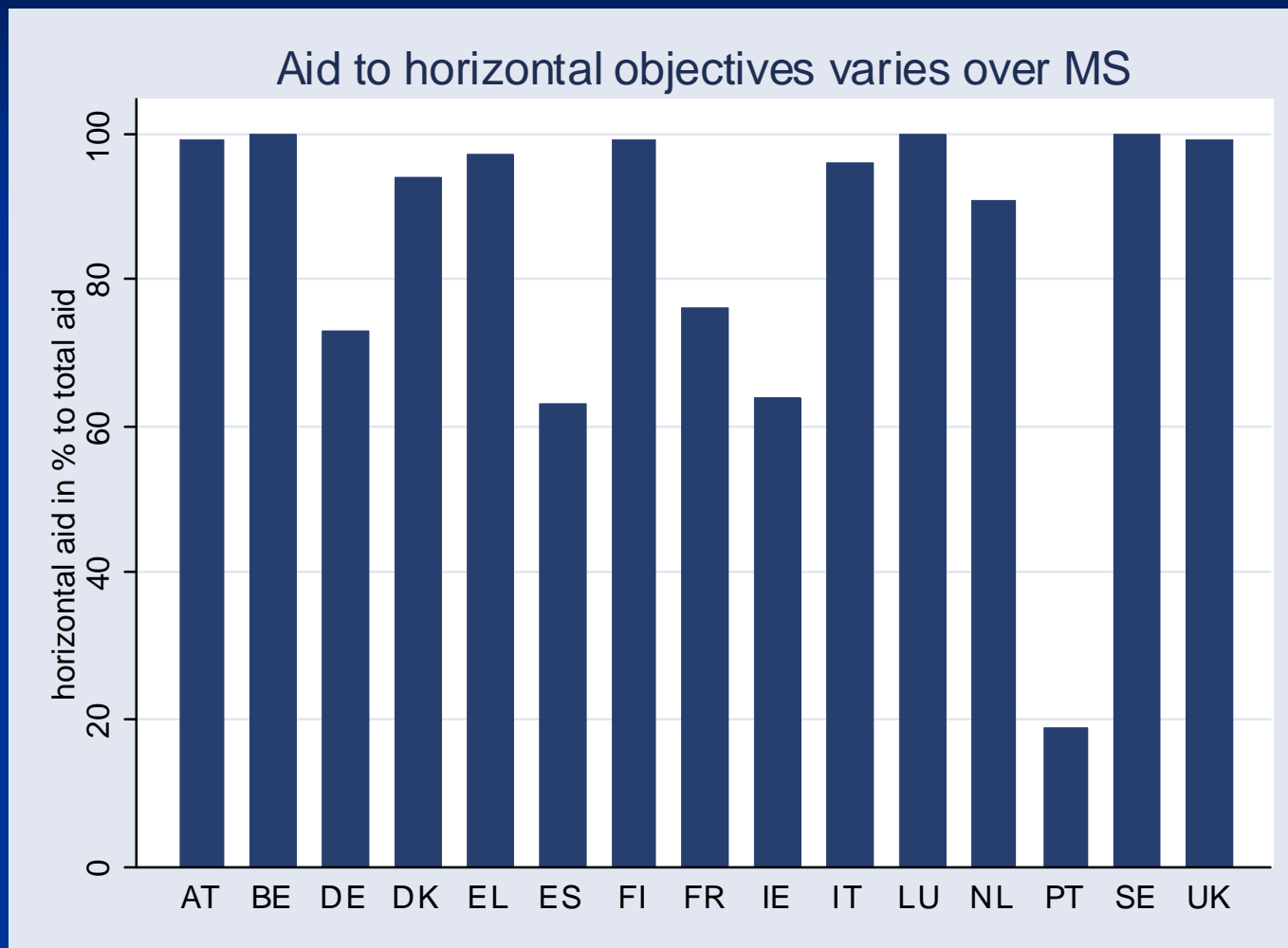
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Trend 2 - horizontal objectives



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



the current framework

legal framework: what is state aid?



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

- i. transfer of state resources
 - ii. economic advantage
 - iii. distorts or threaten to distort competition
 - iv. it affects trade between member states
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- ∅ 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 (France Telecom)
- 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 (distortion of competition and effect on trade)
- Ø Overall, limited economic assessment under Art 87(1) – primarily about jurisdiction
- Ø Still, some assessment may be appropriate (SIT- debate)



Compatibility – Art. 87(3)

- 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.

basic approach

common interests

- n economic development
- n social cohesions
- n culture

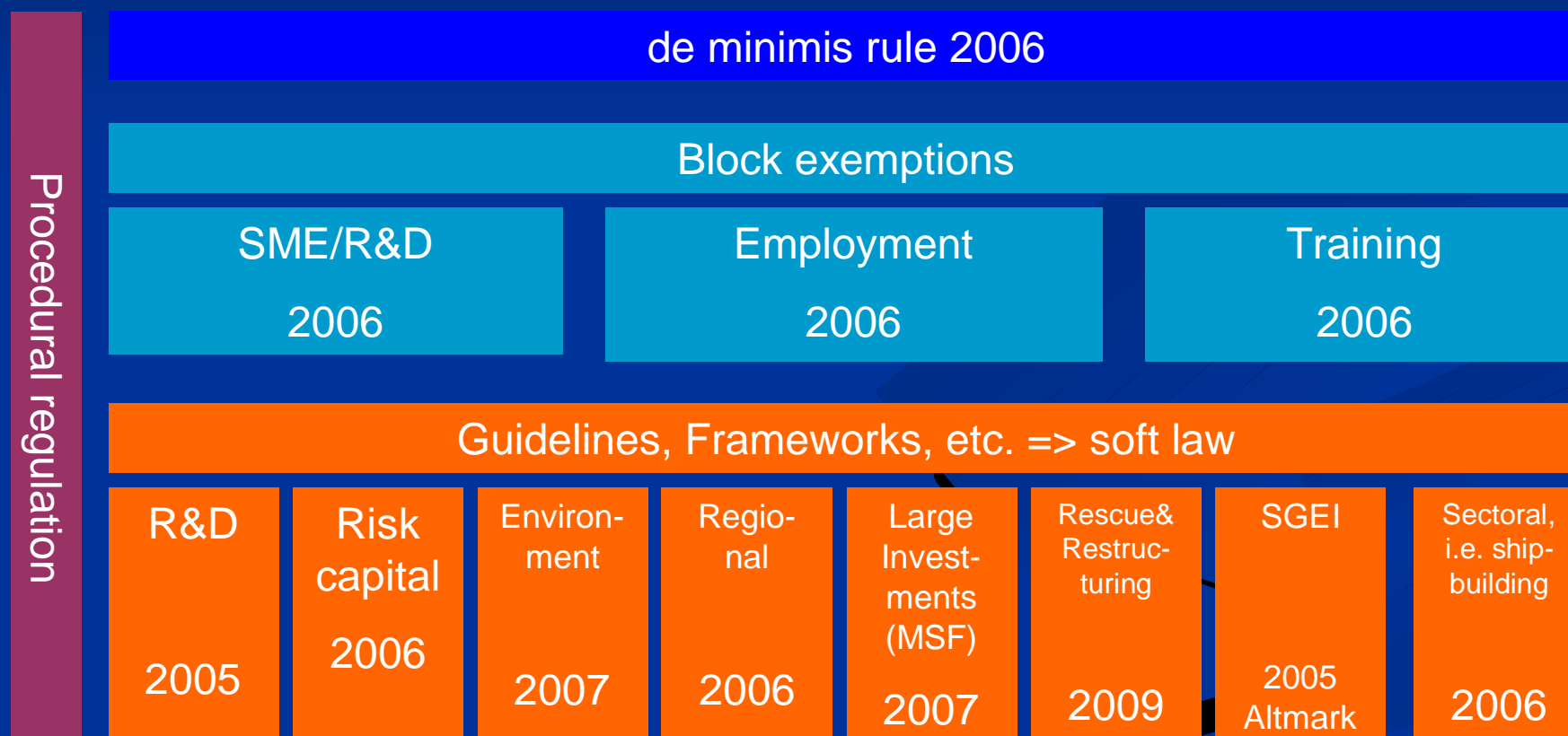


distortion of competition & trade

- 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 “common interest”)
- 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

Ø 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



"less and better targeted" – political mandate

- § reduce the overall level
- § increase effectiveness of state aid to achieve economic and social objectives
- § simplify the architecture
- § transparency & predictability



the objective of state aid control

- § social welfare / total welfare
- § consumer welfare standard
 - § conservative – counterbalances the bias
 - § consistency with other areas
- § include tax payers – opportunity costs of funds
 - § otherwise always positive (aid ~ consumers)
 - note: direct transfer from state to firms lowers standard (windfall profits)
- § other standards
 - § effect-on-rivals standard
 - § internal market standard



the “balancing” test

- a) existence of a market failure or social problem (is there a problem?)
 - b) targeting the market failure or social problem (does the aid solve the problem?)
 - i. appropriateness (better placed instrument?)
 - ii. incentive effect (windfall profits)
 - iii. proportionality (necessary)
 - c) distortion of competition, effect on trade + balancing
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- Ø remark on integrated approach
 - Ø remark on sequencing



the “balancing” test (2)

- § leg a. of the test (“is there a market failure or another objective of common interest”)
 - § necessary but not sufficient condition
 - § defining and assessing market failures or social objective
 - § define set of MF in guidelines
 - § not necessarily quantifiable
 - § provide empirically relevant conditions that identify MF
 - § depends on area of state aid
- § leg b. of the test (“is the aid measure targeted”)
 - § “regulatory failures”
 - § information problems
 - § picking winners / lobbying / rent seeking
 - § commitment problems (time inconsistency)



leg c. of the test

“Are the distortions of competition and effect on trade limited, so that the overall balance is positive?”

- n typology of theories of harm
 - n reducing effective competition between firms
 - n reducing effective competition by supporting inefficient production
 - n reducing effective competition by distorting dynamic incentives
 - n reducing effective competition by increasing market power - exclusionary practices
 - n distorting competition between MS
 - n distorting production and location decisions across Member States
- n criteria for distortions
 - n procedural aspects (selection)
 - n market characteristics (market share, entry barriers, tradable)
 - n amount & type of aid (variable cost, direct subsidy or tax, repetition, duration)

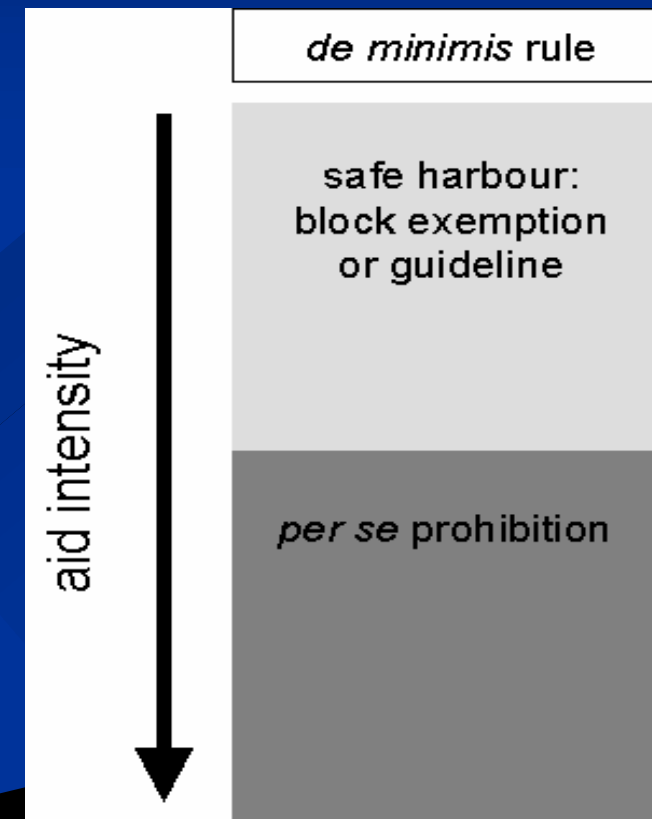
Ø Guidelines and Block exemptions



the current architecture

F 500 cases/year, 350 decisions, 2 yrs

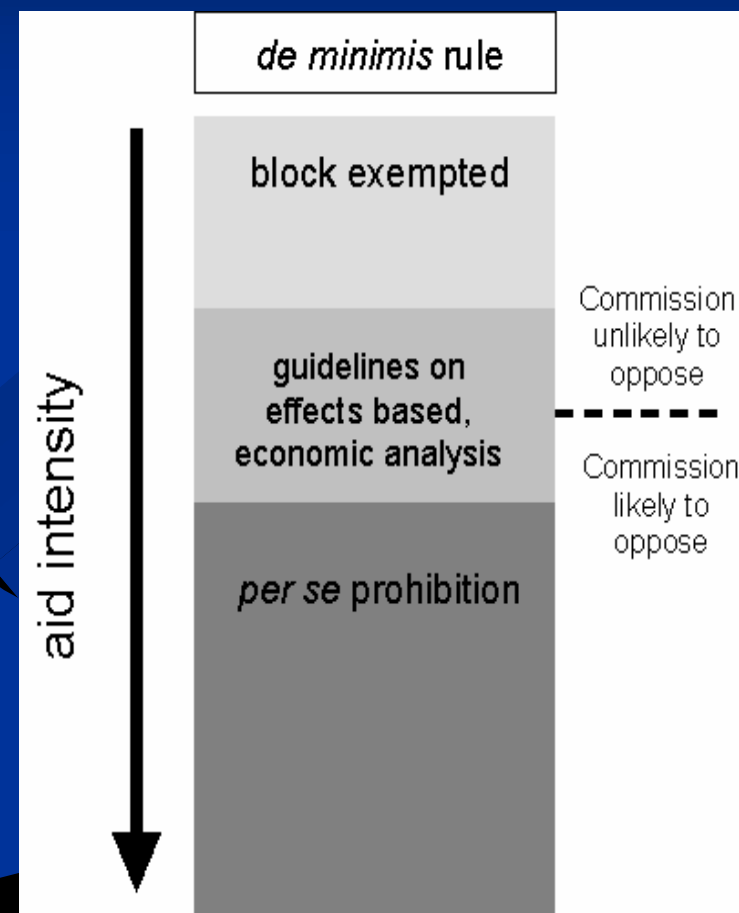
- n detailed rules: eligible costs, maximum intensities, top-ups
- n focus on categorization (form-based)
- n largely per se approach
- n predictability & simplicity



possible reform of the architecture



- n guidelines & frameworks
 - n presumptions and thresholds = soft safe harbours
 - n spell out effect-based analysis (the test)
 - n burden of production on MS
- n increase de minimis
- n consolidate block exemptions - super block exemption (priority setting)
- F provide more precision & predictability



concluding remarks



- (1) “less and better targeted aid” => redirect state aid in line with economic benefits
- (2) streamline and simplify => ex: super block exemption, de minimus, best practice, etc.
- (3) “do not re-invent the wheel” => better rules, possibly effect-based analysis in few cases
- (4) increased flexibility of an effect-based analysis must not lead to more overall flexibility
- (5) increased flexibility of an effect-based analysis must not lead to less predictable
- (6) potential for less politics and more pragmatic economic decisions
- (7) potential for more cooperation between Member States