

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

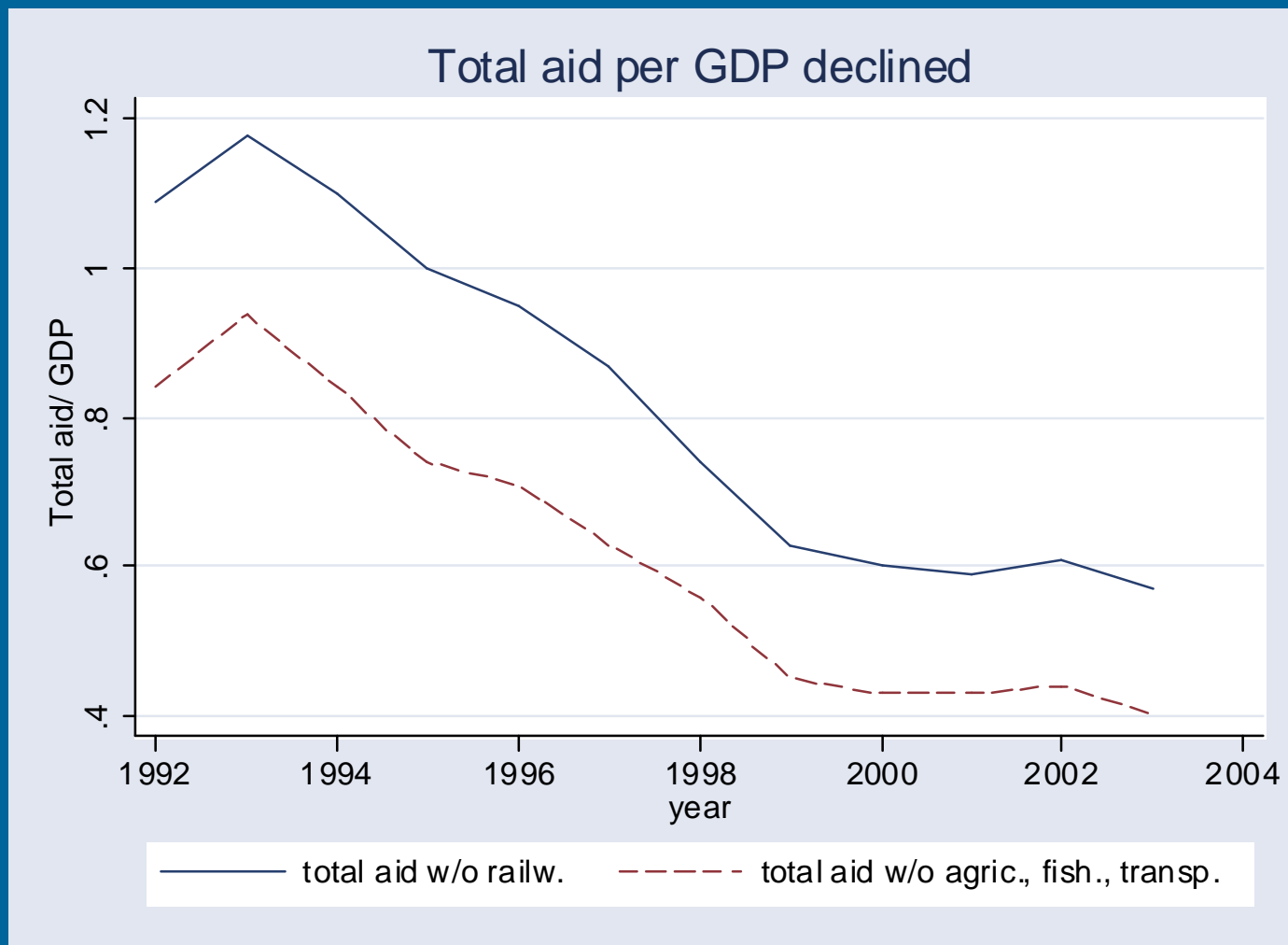
- n recent trends
- n the current framework
- n the current reform - an economic approach
- n concluding remarks

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, ...)

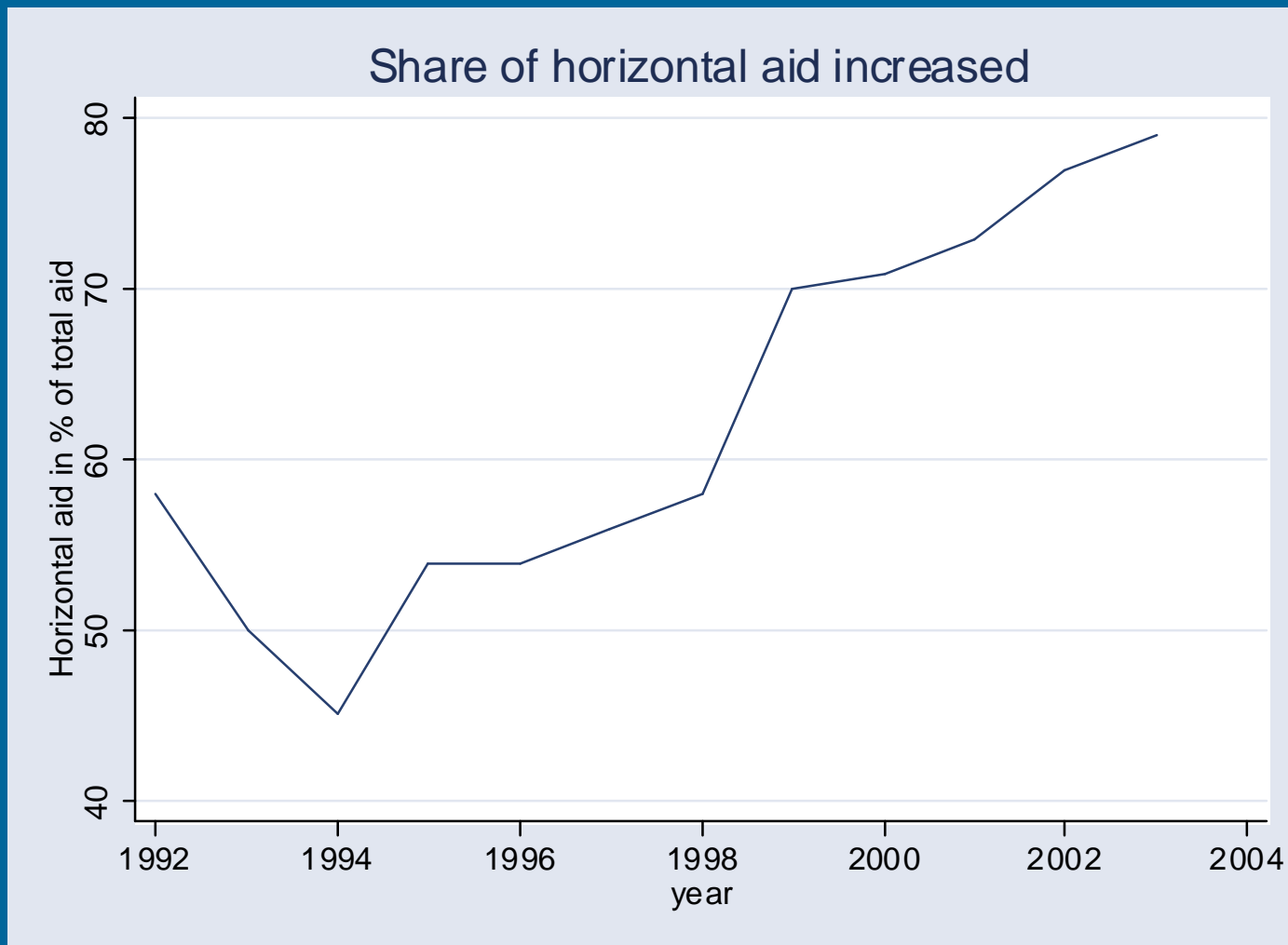
Facts.....

Trend 1 – state aid per GDP



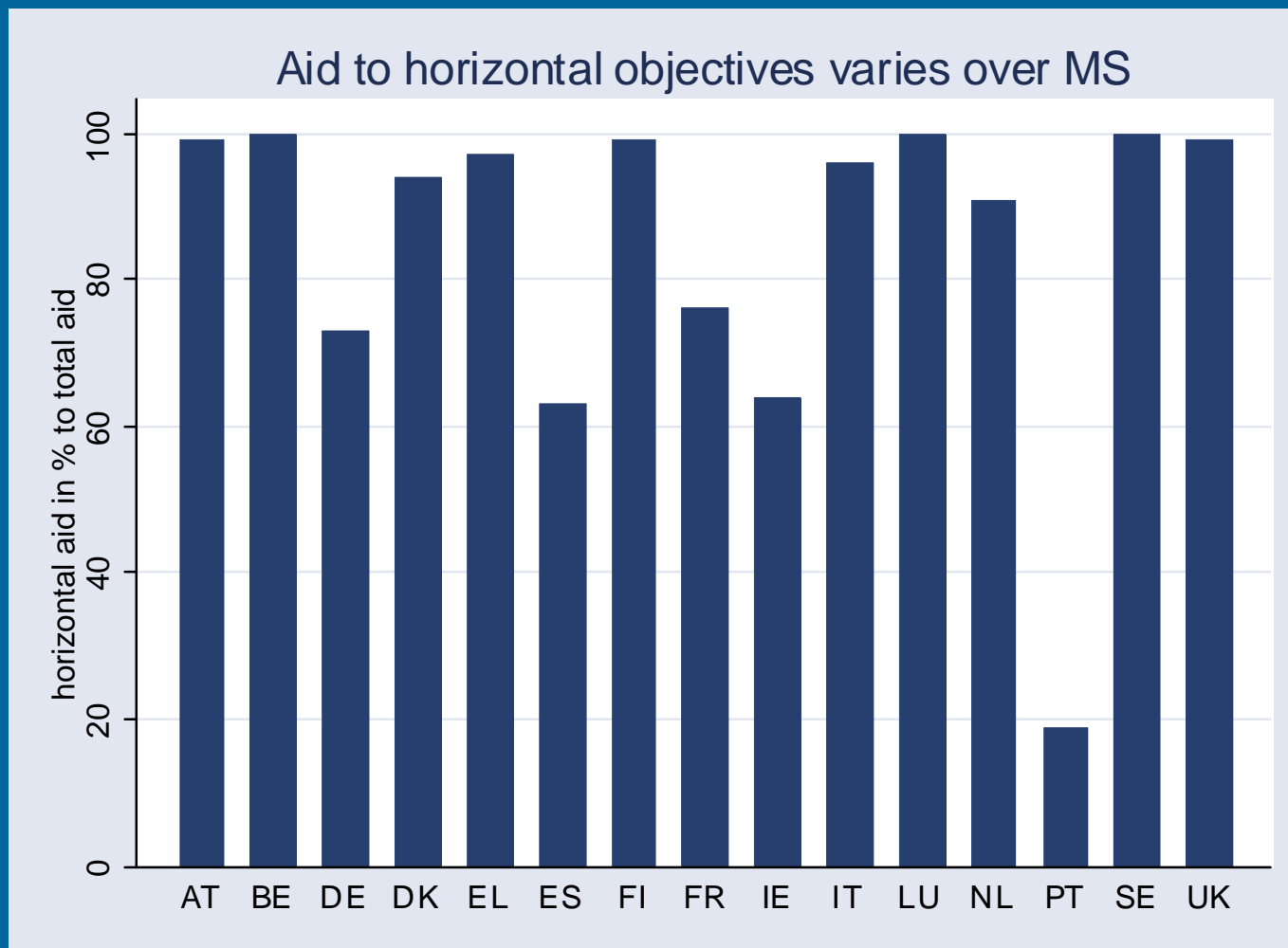
Note: Credit Lyonnais case in France excluded. Otherwise kink in 1997
EEA 26 August 2005

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

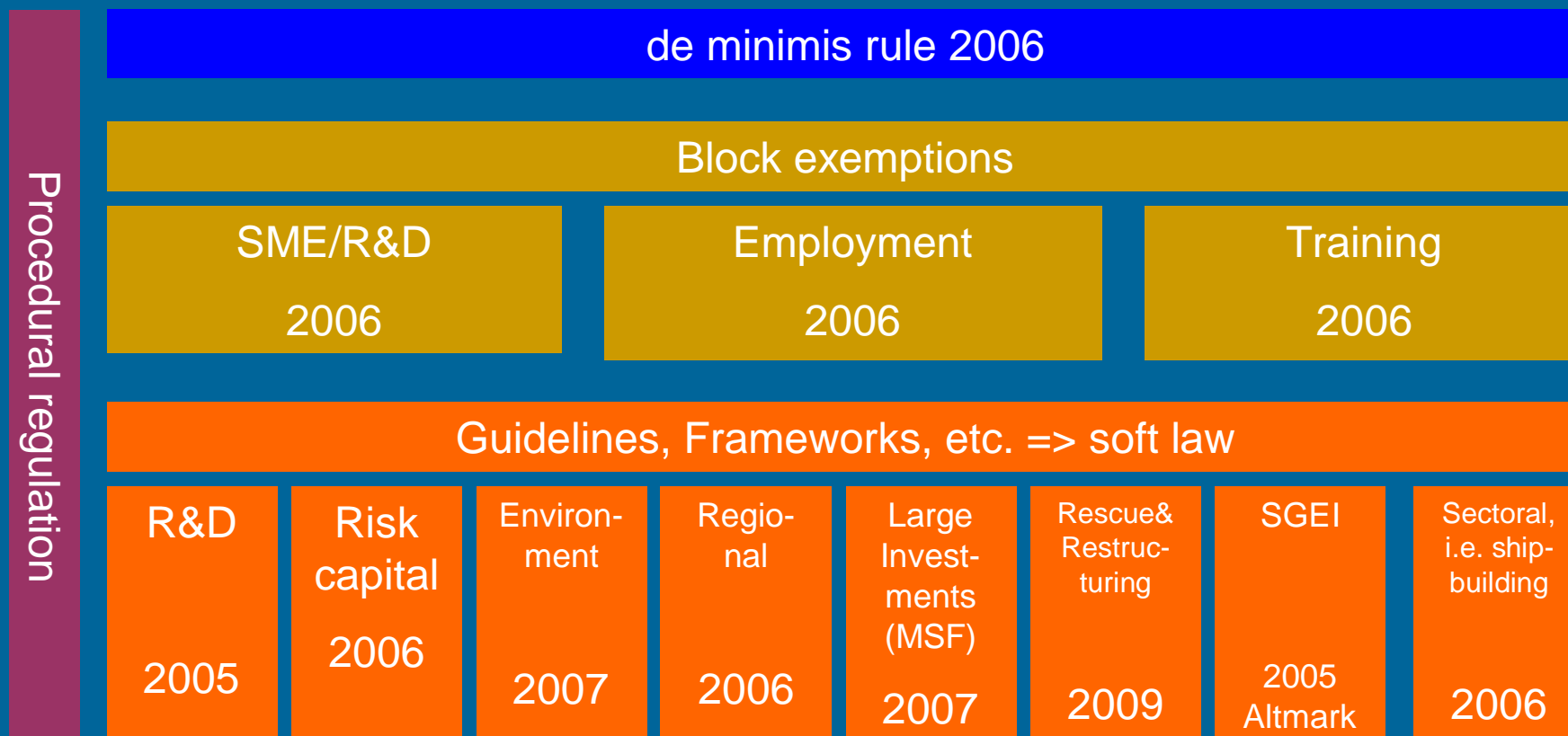
- n economic development
- n social cohesions
- n culture



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