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Lesson 3 (1-4). State Aid

State aid is an **advantage** in any form whatsoever conferred on a **selective basis to undertakings/business by national public authorities**. Thus, this excludes subsidies granted to individuals or general measures open to all enterprises (for example, taxation measures or employment legislation applicable to all business).

Features of State Aid:

- **intervention by the State or through State resources** which can take a variety of forms (e.g. grants, interest and tax reliefs, guarantees, government holdings of all or part of a company, or providing goods and services on preferential terms, etc.);
- it gives **the recipient an advantage on a selective basis**, for example to specific companies or industry sectors, or to companies located in specific regions
- **competition has been or may be distorted;**
- the intervention is likely to **affect trade between the Member States**.

Despite the prohibition, some **State Aid is compatible or maybe admissible in accordance with the Treaties (TFUE) and in accordance with secondary legislation** (in particular Regulations, Decisions).

A) TREATIES (Treaty on the Functioning of the EU)

- **Automatic compatibility:** 107, paragraph 2 allows for compatibility with the internal market (as it has been repeatedly declared by the case-law of the TJUE) of:
 - State Aid of a social nature granted to individual consumers provided that it is granted without discrimination as to the origin of the products;
 - State Aid to make good the damage caused by natural disasters or exceptional occurrences;
 - State Aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious unemployment;
- **Compatible if declared by the EU Commission.** Article 107, paragraph 3 adds that some other types of State Aid *may* be considered compatible with the internal market (following a procedure of application to the Commission as explained hereinafter). :
 - State Aid **to implement an important project of common European interest,**

- State Aid **to facilitate the development of certain economic activities or of certain economic areas**, where such aid does not adversely affect trading conditions and competition in the Community to an extent contrary to the common interest
- State Aid to promote **culture and heritage conservation** where such aid does not adversely affect trading conditions and competition in the Community to an extent contrary to the common interest

B) SECONDARY LEGISLATION.

B.1 Under various EU existing Regulations, State Aid «EXCEPTIONS BY CATEGORIES» has been allowed in areas such as

- Aid for training
- De minimis aid
- Aid for small and medium-sized enterprises

The procedure for exemptions by categories include Council Regulations that declare some categories exempted; and Commission Regulations developing the categories of State aid that the Council has already determined may be exempted

B.2 Under Commission Regulation 800/2008 a wide number of categories of aid were declared compatible. It consolidated previous Regulations and added categories of permitted State aid which, being included in it, are *not subject to the obligation of prior notification to the Commission.*

This Regulation exempts aids (in the simplified procedure that it introduced) are related to:

- Investment and employment aid for SMEs
- Aid for business start-ups by women entrepreneurs
- Environmental aid
- Aid in favour of consultancy for SMEs and their participation in trade fairs
- Aid in the form of risk capital
- Aid for research, development and innovation
- Aid for training
- Aid for disadvantaged or disabled workers

In order to be exempted from the notification requirement, the State resolutions granting aid must always refer to R 800/2008, comply with the maximum aid

intensities laid down in that Regulation for each category, and subsidise only the «eligible» costs in the Regulation. In addition, such aid must have an «incentive» effect, i.e. serve as an incentive to develop certain activities or projects.

The 2013 revision of the State aid Procedural Regulation introduced the possibility of conducting State aid sector inquiries by the EU Commission, (before it was only possible as part of Antitrust and Merger control). State aid sector inquiries can be launched when State aid measures may distort competition in more than one Member States, or where existing aid measures are no longer compatible with the regulatory framework.

(C) INDIVIDUAL EXCEPTION TO THE GENERAL PROHIBITION OF STATE AID. States wishing to grant State aid which is not among those declared compatible by the Treaties or by Regulation can issue an application to the EU Commission. On application by a Member State, the Council may act unanimously, decide that aid which that State is granting or intends to grant shall be considered to be compatible with the internal market

SUPERVISION AND CONTROL OF STATE AIDS.

- Articles 108 and 109 establish that the Commission shall, in cooperation with the Member States, keep under constant review all systems of aid existing in those States, and the Commission shall propose to the MS appropriate measures.
- The EU Commission has strong investigative and decision-making powers. Central to it is the **notification** procedure which MS have to follow:
 - The Commission shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid.
 - The Member State concerned shall not put its proposed measures into effect until this procedure has resulted in a final decision. However, if State Aid is granted and the Commission finds that *aid already granted* by a State or through State resources is not compatible with the internal market or that such aid is being misused, it shall decide that the State concerned shall **abolish or alter such aid within a period of time to be determined by the Commission.**
 - If the State concerned does not comply in time, the Commission or any other interested State may refer the matter to the Court of Justice of the European Union direct. (CJEU)/TJUE.