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„Developing Regional State Aid Rules 2014-2020 in the EU“

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Table of abbreviations

DG COMP – Directorate-General for Competition

EEA – European Economic Area

EU – European Union

GBER – General Block Exemption Regulation

GDP – Gross domestic product

RAG – Regional Aid Guidelines

SAM – State Aid Modernisation

SME – Small and Medium Enterprises

TFEU – Treaty on the Functioning of the European Union

Introduction

Recently the European Commission agreed new rules on Regional state aid for the next years. Measures that were harmful for competition and internal market were reviewed and assessed from the blank, which allows the Commission and Member State concentrate on important cases. The main objective of regional State aid is to support and develop the economy and market in disadvantage areas within the Europe. In order not to distort the competition, aid must be granted only to the regions that need it most, and it must provide a long term economic growth for these regions. Regional aid consists of investment aid at large companies and SMEs, or operating aid. Certainly, it should be granted under multi-sectoral aid scheme that is a part of regional development strategy.

So the main purpose of such reform was to decrease a huge gap in development between regions that led to the financial crisis in Greece, Spain and Portugal. In result the crisis affected national budgets. Also cases show that granting SMEs is more efficient and important than providing to large enterprises, so that new guidelines have restrictions towards aid to large enterprises and large investment projects. Maximum regional aid intensity was lowered in favour of less but more efficient aid. But it does not concern poorest regions. Other changes in rules were made in order to avoid shifting investments from one place to another. The Commission can prohibit regional aid connected with relocation of activity within the EEA. Then aid schemes are needed to be evaluated by independent experts. In addition Member State has to publish aid details online. It will increase transparency and accountability of aid.

Not only regional aid rules changed, but the new general block exemption regulation is now extended as well as measure and aid amounts are increased. It was made because some Member States prefer to use only block exempted measures to provide regional aid. About 40% of regional aid was spent under the general block exemption regulation during last years.

Main questions of this research are how new rules affect economy and employment in poor regions, what enterprises are granted and how they improve competition.

The aim of the master thesis is to create clear cut and structural analysis of changes and its effectiveness of new rules on the basis of new Regional Aid Guidelines and General Block Exemption Regulations. The subsidiary aim is to discover structure of new Regional Aid Guidelines and General Block Exemption Regulations.[1]

[1] European Commission, Competition policy brief, Guidelines on Regional Statet Aid 2014-2020, Issue 14 (September 2014) 1.

1. Definition of regional aid

In 2014 the European Commission has adopted new guidelines for Member States on granting investment aid to companies for not only supporting unfavourable regions in Europe, but also to develop state aid control and increase growth of Single Market in terms of effective competition.

But before getting deep into details with the new rules, the main purpose of regional aid is to support and develop economic well-being as well as solve unemployment issues in Member States. But in order not to distort the competition caused by aid the guidelines were created. Regional State Aid is an instrument that EU uses to develop disadvantage regions in some Member States. Regional Aid itself is sufficient part of the total amount of aid granted by Member States, because a lot of infrastructure investment schemes were provided by the Regional Aid Guidelines. According to State Aid data 2007-2012, approximately EUR 75 billion was spent on Regional Aid, this is 18% of total State Aid. The only Aid that was 20% of total State Aid was Environmental Aid. There are two main principles that help Member States to provide economic and social development without the distortion of trade and competition within the common market: Regional Aid must be effective and focused on regions that need it most; it must be long term.[2]

The new Regional Aid Guidelines for 2014-2020 is a general framework which provides conditions for the granting of Regional Aid, and the new General Block Exemption Regulation provides the criteria that are sufficient for getting an approval from the Commission for Regional Aid.[3]

According to Article 107 TFEU, aid can be granted to regions, where the economic situation is extremely unfavourable compared to the Community as a whole, and regions which are disadvantaged in relation to the national average.[4] Regional Aid is mostly aimed on large companies and SMEs which are granted under multi-sectoral schemes. For example, Investment Aid can be granted for investment in tangible or

[2] European Commission (n1) 2.
[3] European Commission (n 1) 3.
[4] Consolidated Version of the Treaty on the Functioning of the European Union [2012] OJ C326/01 art 107.

intangible assets in order to make a new establishment or to make important changes into production process. New establishments can create direct jobs and long term increase of GDP in the region. Operating Aid is awarded to reduce companies' expenses, for example taxes, but such Aid must be strongly justified that it really contributes to society.[5]

The main reasons of the developing Regional Aid Rules were inequality in some regions, financial crisis affected national budgets in Aid target companies, and large companies did not consider Aid as significant factor (it is just free money that can lead to distortion of competition). The main task of the reform is to bring Regional Aid to the poorest and undeveloped regions and create favourable and attractive field for investors in the regions that need it most of all. In case of granting Aid to large companies, authorities must be sure that it will make a huge difference in certain region. And, also in terms of transparency Member States and their authorities must publish data about the granted Aid online, which will be publicly available.[6]

The difference in development in EU between States is huge, so the main objective of the EU is to reduce inconsistency and increase GDP in less successful regions. According to GDP data from 2004, the GDP in Eastern Europe 15 times lower than in Central and Western Europe. Rich regions are usually surrounded by other wealthy regions and individuals, when poor regions are concentrated on the East. Also there is spatial auto-correlation and density of wealthy regions.[7] Usually, regions with a high market potential and high density are likely to become richer in terms of GDP per capita and total GDP. Regions with high density can be considered as large markets for goods and labour markets, which improve productivity and develop technology innovations. Another important thing is an access to other areas and a distance between regions that also have an effect on the cost of export and import. Richer regions are attractive for big companies and investments, because they have perfect economic conditions and profitable enough for running business. The development of rich and attractive regions will lead to density increase.[8]

[5] European Commission (n 1) 3-4.
[6] European Commission (n 1) 5.
[7] European Commission, The role and effectiveness of regional investment aid (April 2012) 14.
[8] European Commission (n 7) 16.

Regional Aid should also be seen from the perspective of supporting industry that will apply tax discounts for companies. But it should be compatible within the Common Market and do not infringe Article 107 TFEU and the only way it is compatible, if it promotes the development of less rich regions without the distortion of the market and competition.[9]

On the basis of experience, regional aid should be targeted and attract investors in less developed regions, it must justify investment and expectations (value for money), and it obviously must be well designed to avoid negative surprises. The important requirements that have to be taken into account during planning regional aid consist of labour costs, market situation, proximity and financial expectations. Region development, new jobs, market development, economic development, and improvement of public infrastructure are those expectations that must be reached after granting aid. Undesirable consequences as distortion of competition and other regions markets have to be avoided in order to comply with the Article 107 TFEU.[10]

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[9] European Commission, Ex-post evaluation of regional aid guidelines 2007-2013 (December 2012) 1.
[10] European Commission (n 9) 2.

2. Notifiable regional aid

2.1 Individual investment aid

Regional policy factious to reduce differences in economic activity levels between regions within the Internal Market in European Union. Obviously such policy must be made in particular regions and to certain companies.

Continuing disclosing the nature of Regional State Aid, the clearance between existing and new aid has to be made. Existing Aid are Aid Schemes and Individual Aid that existed before the Treaty entered into force. Authorized Aid, is also Aid Scheme and Individual Scheme that were approved by the Council or by the Commission. New Aid is completely opposite and includes changes to Existing Aid. Aid Scheme, in short, means the basis on which Individual Aid may be awarded to undertaking. Also Aid can be unlawful if it goes against the Treaty.[11] Individual Aid can be awarded to individual beneficiaries on the basis of scheme or ad hoc.[12]

Due to Article 107 TFEU, individual aids and aid schemes that are granted under aid scheme or ad hoc are compatible with the internal market and can be exempted from notifying, that are obligatory in Article 108 TFEU. Important thing is that Member States have to ensure that the information on sate or regional aid is published if the individual award exceeds EUR 500 000.[13] Also Member States have to measure out that individual aid granted under block-exempt regulated schemes and compatible with Regulation.[14]

The process of awarding aid actually is not so sophisticated. It consists of different steps that allow public authorities to reach the most effective, from economic development prospective, results in certain region without destroying competition and local market. The first step is to decide on Aid Scheme, like labour and other costs, and an instrument that public bodies will use (tax discount, direct award or easy loan). The project assessment process is a subject that can differ, depending on the authority that granting an award. There are also exist qualitative criteria, that public authorities has to

[11] Council Regulation (EC) 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty [2003] OJ L83/1 Art 1.
[12] European Commission, Guidelines on regional State aid for 2014-2020 (23 July 2013).
[13] Commission Regulation (EU) 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty [2014] OJ L187/1 art 9.
[14] Commission Regulation (n 13) art 10.

comply, like policy priorities depending on region and sector. Public authorities should also take into account potential benefit for the region (created jobs, technologies that are involved, level of research that is done, and cooperation with the locals).[15]

Study shows that most of the Member States (Ireland, Slovak, Poland) that were granting aid during previous years were relying on benefits that will exceed investments. Certainly public authorities had a negotiation with potential recipient of the grant and discussed possible options with the mutual benefits for both parties. Also the aid was paid gradually within the accomplishing of the task (number of jobs that are created). On the other hand, in case with Germany, Spain and Portugal, the grant was paid fully without waiting for objective to be done.[16]

After the investment project was analyzed, the granting decision is discussed with the awarded companies. In the process of investment decision the investment project set up by parent company, when subsidiary proposes an investment project. The location decision is very important too, it obviously concerns investing company, but it can be even more decentralized and refer on outer advisor. Investors evaluate location in which they are going to invest relying on lend price, labour costs, goods and transport. The casual factor of making the decision on investment can be characterised by efficiency, market and production. For some governments efficiency is the main objective, and it can be reached by cutting investment costs and increasing productivity. Such way was chosen by Poland and Spain. Another factor that affect on decision making is a demand on particular market. For example we can take Germany, where the policy of renewable energy was highly supported by public authorities. The market search factor is highly connected with innovations that need a construction of the new assembly. Also the factor of improving production and searching skilled human resources remain.[17]

The most sufficient fact that will determine the location can be pre-existing production. It can concern Greenfield investments including expansions. When the investment directly connected with a big industry (energy or pharmaceuticals) the location is definitely decisive factor. The location determinants are usually connected

[15] European Commission, Ex-post evaluation of regional aid guidelines 2007-2013 (December 2012) 3.
[16] European Commission (n 15) 4.
[17] European Commission (n 15) 4.

with the skilled labour force. Transport accessibility, energy supply, communication networks are, as an decisive factor, was not so relevant. On the other hand accessibility to raw materials is more important and significant factor in location issue, because it may radically transportation costs. Availability of land is also decisive for creating new manufactures or plants, like green energy industry or car manufacture. Favourable economical and political situation always play a huge role when it comes to choosing the alternative location outside the EU. Support of local governments, soft taxation, friendly property law, and business friendly surrounding are those factors that make the location decision is the most important element when it comes to making a decision on investing in some huge industry like solar power plant (Germany) or paper plant (Spain and Portugal). It can be sum up that the most important factor in global industrial investments is location.[18]

Regional aid gives a motivational factor for big companies to invest in less developed regions, in particular Central and Eastern Europe (car manufactures in Slovakia and Hungary). The main advantage of the regional aid is a creation of the new direct jobs and increased demand, and cooperation with local higher educational institutions. In terms of distortion of competition, there was no evidence of harmful effect on competitors, but it can increase competition on the local job market and labour costs rise, and there is usually no direct effect on other regions.[19]

To conclude, it can be said that, regional aid is not the main objective to for investment, but it has an incentive effect on location selection, there are a lot of advantages (new jobs, increasing demand and stimulating competition), and no negative effects were proven. [20]

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[18] European Commission (n 15) 5.
[19] European Commission (n 15) 7.
[20] European Commission (n 15) 8.

2.2 Investment aid schemes

Continuing analyzing individual investment aid, the new GBER sufficiently expand the right of Member State to award companies without European Commission's approval, it provides a simple and prompt process of granting beneficiaries. It also gives new requirements for MS for assessing big aid schemes to guarantee strong transparency on granted aid.[21]

In order to evaluate the threshold of the aid in loans, in guarantees and tax schemes, Article 5 GBER is applicable to aid that can be calculated with the 'gross grant equivalent of the aid ex ante' without any risk evaluation. Concerning calculation aid in loans, Article 5(2)(b) says that it can be calculated 'on the basis of the reference rate prevailing at the time of the grant'.[22] Speaking about aid kept in guarantees, Article 5(2)(c) tells that it may be 'calculated on the basis of safe-harbour premiums laid down in a Commission notice'.[23] In case of tax advantages, it must be ensured that 'the applicable threshold is not exceeded'.[24][25]

There is also has to be mentioned the freedom of establishment, that legal persons have a right to establish and run their business from different Member State, and any restrictions to establish activity in another Member State will be against the Treaty. But in case if aid scheme 'is only available for undertakings having their headquarters in a certain M ember State', then the GBER will not be applied. So a branch must be registered in particular Member State to receive an aid.[26]

A big step forward is that large aid schemes can be implemented straightaway by the Member State (however it will expire in 6 months from their entry into force). Member State has to notify Commission in 20 days about the evaluation of aid and all necessary information. The 6 months period begins when the aid scheme was

[21] European Commission, GBER, Frequently Asked Questions (March 2016) 2.
[22] Commission Regulation (n 13) art 5(2)(b).
[23] Commission Regulation (n 13) art 5(2)(c).
[24] Commission Regulation (n 13) art 5(2)(d).
[25] European Commission (n 21) 4.
[26] European Commission (n 21) 6.

implemented. State aid is considered as a scheme, group of beneficiaries must be determined and under which conditions they may benefit.[27]

Incentive effect is very important for aid schemes and it is compatible with SMEs and large undertakings.[28] Interesting thing is that the transport sector was excluded from the regional aid application framework. It was made to prevent from applying regional aid rules instead of more suitable sector-specific rules.[29]

Because of the high risk of distortion of trade and competition, investment aid schemes for special economic activity and certain form of operating aid scheme, according to Article 108 (3) TFEU, has to be notified to Commission. There are two categories of aid that still has to be notified: aid awarded on the basis of existing aid or aid that exceeds notification threshold and investment aid with the same activity in the EEA. Investment aid has to be granted under multi-sectoral schemes that have to be a part of a regional development strategy and determine clear goal. If the aid aimed on specific economic activity (manufacturing or services), Member State has to notify it. Aid schemes that are targeted on tourism or agriculture do not consider as a specific sector of an economic activity. However, shipbuilding sector schemes have to be notified.[30]

Regional development policy has to include aid schemes with clear targets. Member State has to show that the aid scheme promotes a development strategy in particular region. In such cases Member State can use an assessment of previous aid schemes, evaluations made by public authorities before, and expert opinions. To make the process of assessing aid schemes more efficient and transparent, public authorities have to use a scoring system based on scheme objectives. The public authority has to confirm that the project will make a sufficient involvement in public and social development of certain region. It is important that an investment has to remain for, at

[27] European Commission (n 21) 7.
[28] Commission Regulation (n 13) Art 6 (2).
[29] European Commission (n 21) 22.
[30] European Commission, Paper of the services of DG competition containing draft guidelines on regional State aid for 2014-2020 (Brussels 2012) 9.

least, 5 years (3 years for SMEs). What is really important is that the created job has to be saved for the same period (5 years), in case of SMEs State can hold it for 3 years.[31]

Beneficiary also has to contribute at least 25% of investment costs within its own funds. It is also important that the aid will not conduct an environmental harm.[32] But regional investment aid is not the only way to involve investments and to create new jobs. Member States can also use infrastructure development to reinforce training and education methods or develop business environment. The financial instrument is the right way to perform tasks and objectives of operational programs.[33]

Study shows that investment aid schemes do not lead to distortion of competition. But State, in any case, should prove that aid will not lead to distortion of economy, and has to limit negative effect to zero. To make it easier for the Commission Member State has also evaluated a possible negative impact of the aid on regional economy. The Commission also must be sure that the aid will not go anywhere from the target region.[34]

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[31] European Commission (n 30) 12.
[32] European Commission (n 30) 13.
[33] European Commission (n 30) 15.
[34] European Commission (n 30) 22.

2.3 Operating aid scheme

Specific forms of operating aid schemes are also have to be notified to Commission because of the high risk distortion trade and competition.[35] Normally, regional operating schemes are not allowed. But this aid, as an exception, can be awarded to the regions that are very far from centre and regions that have very low population. Although this aid schemes are aimed on development of the region, they should be notified in order not to distort a competition, to prevent depopulation in small regions, compensate additional costs, and reduce difficulties for SMEs.[36] If the aid scheme contains all the necessary features mentioned above it will be compatible with the internal market and the Commission consider it as an important for development of the particular region. But the Member State should prove the importance of such aid.[37]

The Member State has also to prove that the aid is able to reach the tasks of the scheme. It also has to have an incentive effect on the economic activity, create new jobs and reduce problems that exist in particular region. To make such aid legal Member State should demonstrate that problems in economic activity of certain region do exist.[38] Usually, negative effects of the aid (if there are such) are overweighed by positive. However, study shows that aid can change the market structure or distort competition in some sectors of the industry, change the rules of entry and exit, or displace trade flows. The Commission can demand the Member State to limit the duration of some schemes to 4 years or less not to distort the competition and not to harm regional market.[39]

The new rules have to show a positive effect on economic and social conditions of the region, and improve the existing mechanism of aid schemes and investment aid justification.[40]

There are different types of operating aid for far regions and poor populated areas, and some of schemes can be exempted from notification. Aid schemes that compensate additional costs that are aimed on improvement of economic activity in outermost region and aid schemes that compensate additional transport costs of goods in poor populated regions, that are set in aid map approved for the period 2014-2020.

[35] European Commission (n 30) 9.
[36] European Commission (n 30) 10.
[37] European Commission (n 30) 14.
[38] European Commission (n 30) 17.
[39] European Commission (n 30) 24.
[40] European Commission (n 30) 32.

Let’s take for example the Commission’s decision in July 2014 concerning car manufactures investments. Germany, Spain and Hungary wanted to award a regional aid to Volkswagen (Audi and Porsche), BMW and Ford. The Commission approved EUR 44 million to Volkswagen and only EUR 17 million that were based in Leipzig. There was a formal investigation concerning regional aid that Hungary wanted to award Volkswagen (Audi) and Spain that wanted to grant Ford with EUR 25 million. But the Commission closed the investigation when Spain agreed to grant only EUR 11 million. Later all the decisions were published in the Official Journal.[41]

In this case the investment project aimed to promote a regional development with the direct grant for the production of Porsche Macan in Porsche Leipzig. It was the extension of the existing plant, which involved investments in equipment, buildings, machinery and intangible assets exclusively for Macan. Germany had to grant EUR 44 million, when the total nominal value of the project was EUR 550 million, when the aid intensity was 8.37%.[42]

The Commission had to start a formal investigation because they were not sure if the large investment projects are actually compatible with the RAG. But Germany insisted that this investment was compatible it would create 1040 new jobs, 30 trainee positions and 2700 indirect jobs. Another important argument was that unemployment level in Saxony was almost more 50% higher than the average level in Germany. The location decision also was a hard multi-stage process and required specific calculations. The decision had to be made between Leipzig and another locations or just Leipzig. Although Leipzig was in a cost disadvantage, it had some positive sides: less risk during transportation of almost completed cars, more effective production process, and production fails could be eliminated faster. After the consideration of all incentive effects and distortional effects on trade and competition, Leipzig was chosen.[43]

To ensure that investment had an incentive effect, the Commission first had to check that the investment project only after the verification and approval by the Commission. And also, that fact that advantages mentioned above cover the location disadvantage proved that investment had an incentive effect. Another important thing

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[41] Official Journal of the European Union [2015] L287 31.10.2015 68-86.

[42] Commission decision (EU) 2015/1966 of July 2014 on the State Aid SA. 3418 which Germany is planning to implement in favour of Porsche Leipzig GmbH and Dr. Ing. H.c.F. Porsche Aktiengesellschaft.

[43] Phedon Nicolaides, *State Aid Uncovered* (2015) 241-243.

was the proportionality of the aid. It means that aid has to be limited to the minimum amount of what is necessary for the region. In case with Leipzig it didn’t make any difference in costs in comparison to other alternative locations that were considered. It also means that if the aid is limited to minimum, the negative effect on competition or trade does not exist. For the Commission it was enough to consider investment in Porsche Leipzig as that that has no distortive effects on competition and trade.[44]

This example clearly shows the importance of the process of in-depth assessment of the granted aid. Location, incentive effect, proportionality of the aid, and negative effects on competition and trade are the key issues that influence on formal investigation, especially in the case of investing in EUR 550 million plant to produce a luxury sport utility vehicle.

[44] *State Aid Uncovered* (n 43) 244-245.

3. The effects and transparency of regional aid

3.1 Incentive effect

If aid has an incentive effect – it is already compatible with the rules. Incentive effect has to change the behaviour of the company and engage an additional activity to contribute to the development of certain region. If the aid doesn't have an incentive effect in achieving objectives it is considered as incompatible with the internal market and cannot be approved by the Commission. Public authority that grants aid has to approve the project, another it will not be started. Large undertakings have to prove that aid has an incentive effect on economic life of the target region.[45]

The choice of location and aid itself has an important connection and may have a sufficient effect on region concerned. But Member State has also to provide a description of the scenario and full information about the project. There are two scenarios: company provides documents that demonstrate that the investment will not bring much profit without the aid, and second is when company provides the comparison between the costs and profits in concerned region and alternative region (like in the case with Porsche). And if the aid does not change the behaviour of the company by stimulating additional investment – it has no positive effect for the concerned region.[46]

According to GBER, in order to qualify for the exemption aid has to have incentive effect and beneficiary has to submit an application before the start of the project.[47] When aid is granted in the form of an interest rate subsidy, an incentive effect may have place, if the application is made before the signature of a loan contract that allows to finance the part of the project.[48]

As it was already found out, the main principles for an effective and working are: aid must contribute to a common interest with the well-defined objectives, it is targeted on the market, aid must be a right instrument to accomplish certain objectives,

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[45] European Commission (n 30) 16.
[46] European Commission (n 30) 17.
[47] European Commission, General Block Exemption Regulation (GBER) Frequently Asked Questions (July 2015) 14.
[48] European Commission (n 47) 16.

aid must be limited to a minimum amount that is necessary, negative effects must be limited, aid must be transparent, and obviously, it has to have an incentive effect.[49]

Speaking about effectiveness of regional aid and economic development, the aid is aimed to increase employment and output of the firms by using productive investment. So basically the main question for a formal investigation, in case it appears: does aid has an incentive effect? There are some criteria to assess an incentive effect of the aid: it gives the recipient a motivation to take upon an investment that in other case would be not profitable for an undertaking anywhere in Europe and it makes the recipient to invest in more disadvantage regions that leads to development of poor regions. State aid sometimes may change investment behaviour undertakings in target areas.[50]

Like in the case with the Porsche factory, the location of the target area certain production factors are less expensive and more efficient. Sometime companies prefer to locate the production in such areas even without aid because of low production costs and to undertake new markets. The effectiveness of regional state aid is directly connected and characterized by incentive effect on target region including an increase of the employment level first of all. The incentive effect is crucial for target regions, especially a proper regulating of the aid by granting authorities.[51]

Incentive effect of the aid is also is pointed on minimizing of distortion effect on trade and competition. Regions also can compete for investors, which will lead to benefits for other players like suppliers, employs and customers. It will also bring an economic efficiency in certain region. The race between regions to attract investors can bring an efficient outcome.[52]

As a good example of incentive effect is the investment in Leipzig for the production of electric cars BMW i3 and i8. The nominal value of the project was EUR 392 Million and the proposed aid was EUR 48 million. This project had a positive effect and would create 800 new jobs. There were a several location for production, including Munich and some locations outside the EU. Munich was less expensive by EUR 17

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[49] European Commission, Impact Assessment Report, Guidelines on regional state aid 2014-2020 (2013) 20.
[50] European Commission (n 49)22.
[51] European Commission (n 49)23.
[52] OECD, ‘The magnitude and economic cost of subsidy races’ of the background paper of the proceedings of the OECD Global Forum on Competition Roundtable on Competition, State Aids and Subsidies (2010) Section 2.2

million. Germany was arguing that EUR 48 million was necessary because of low profitability of the project. The Commission approver only EUR 17 million, saying that any aid that excess EUR 17 million will be disproportional, unnecessary and would cause the distortion of competition. Since the Commission grounded its decision on the RAG 2007-13, which main principles remain in RAG 2014-20, it means that the Commission had a relevant approach according to the RAG 2014-20.[53]

To conclude, it must be said, that without strict rules and precise regulation that control granting of the aid money will go to large companies without performing to the development of the region's economy. Even though if the investment has a large positive effect on region development it still has to be limited to attract investments of a small companies. The incentive effect is crucial to consider aid as compatible with the rules and GBER. Aid has to contribute to the development of target region with the minimal negative effects on trade and competition in nearby regions. If the aid doesn't have incentive effect – the Commission will not approve such aid.

[53] *State Aid Uncovered* (n 43) 246-248.

3.2 Negative effect

The main objective of State aid control is to ensure that regional aid is actually aimed on the development of the target region, does not lead to subsidy races and does not affect trade and competition. When granting an aid Member State should provide evidence that it will not harm competition and trade in the region, another way, the Commission will not approve such aid.[54]

The aid become compatible with the internal market, the distortive effect on competition and trade between Member States must be brought to minimum. Negative effects on the trade can be outweighed by positive contribution in regional economy and employment market. If the negative effects outweigh positive effects, such aid is not compatible with the market and competition. Regional aid can be cause of two main distortions of trade and competition: location effects and product market distortion. It may negatively affect on the economic activity of the regional market. State aid can prevent efficient outcome by granting more efficient producers and putting less efficient producers in the situation when they have to leave the market. The capacity expansion on the underperforming market can actually lead to the distortion of competition and can lead to reduction of competitor's investments.[55]

Aid can also be harmful for competition and trade by maintaining or increasing market power of the beneficiary. The market power of the beneficiary can harm competitors indirectly by limiting the expansion of competitors or preventing the entry of new ones.

Regional aid also can negatively affect the actual location of economic activity. It means, when one region attracts investors, another one losses the opportunity. It may lead to weak economic activity, which affects job market in disadvantage region.

It can be explained by the regional characteristic itself. Regional aid can be distinguished from other forms of horizontal aid by its geographical character. A choice of location for the project is very important for investors and can be decisive for an investment. To avoid disproportional and negative location effects of regional aid, regional aid maps provide the exhaustive information on regions where aid can be granted showing the maximum aid intensities.

[54] European Commission (n 12) 1.
[55] European Commission (n 12) 20.

The Commission has a number of situations when the negative effects outweigh positive effects, so it cannot be compatible with the internal market. The Commission provides basic requirements of maximum aid intensities. It should prevent the usage of regional aid in projects where the ratio between eligible costs and aid amount is very high, that can lead to the distortion of competition in this region.

There are two situations when the Commission consider negative effect outweigh positive effect. First, is when the creation of capacity in the place where the market is very weak, and will not be compensated by the positive effects (investment decision). And second, when investment is located in the region where aid intensity is higher or the same as in the target region.[56]

As it was already mentioned, investment aid schemes should not distort trade and competition. But nevertheless, some individual aid may lead to distortion. The distortion can be considered as an overcapacity or creating a strong market power of aid recipients. Investment aid schemes may ruin economic activities in other regions. The risk of distortion is even higher if a scheme focuses on particular sector. Member State has to show that negative effects are limited to minimum, submitting an impact assessment and ex-post evaluations from similar schemes. Granting authority has to verify that aid does not affect negatively on competition. Such verification is based on the evidence provided by beneficiary during the application.[57]

The aid has some distortive characteristics that can increase a harmful effect on competition and trade:

- Selectivity
- The size of the aid
- The repetition of the aid
- The duration of the aid
- The effect of the aid on company’s costs

According to Phedon Nicolaides, the effect on trade doesn’t have to be direct, it can be indirect. It has to be proved by evidence that trade can be reasonably affected. Trade can be affected directly at the level providing gods or services to customers. But

[56] European Commission (n 12) 21.
[57] European Commission (n 12) 22.

it can be also affected through investments, establishment or through other cross-border operations.[58]

There are also some cases when a distortion of competition can be excluded when it is a public service:

- Service is a subject to a legal monopoly and established under EU law;
- The legal monopoly excludes competition on the market;
- The service is not in the competition with other services;
- If the service provider has an activity in another market, cross-subsidisation has to be excluded.[59]

In addition it must be mentioned, that a small amount of aid or a small size of the undertaking does not exclude the possibility of trade distortion. Also a negative effect on trade can occur when the recipient of the aid exports its production outside the EU.[60]

[58] *State Aid Undercover* (n 43) 150-151.
[59] European Commission, Communication from the Commission, Commission Notice on the notion of State aid as referred to in Article 107(1) TFEU (Brussels 2016) 55.
[60] European Commission (n 59) 57.

3.3 Transparency of regional aid

Transparency is an essential factor for better compliance, accountability and more effective spending. It is a key issue and the most important principle, when it comes to granting aid. Commission should be sure that the aid is granted clearly and according to aid schemes.[61]

Transparency of aid means that the Commission, Member States, economic operators, and the public, must have easy access to all information regarding granted aid.[62] Member State must publish the following information on the central or regional website: the text of the notified aid scheme, granting authority, individual beneficiaries, aid amount, and aid intensity. Such requirements apply to individual aid under notified scheme as well as for ad hoc aid. This information has to be published after the awarding decision and should be kept for 10 years for public availability without any restrictions.[63]

According to Commission Regulation of 6 August 2008, aid can be considered as transparent if:

- Aid comprised in grants and interest;
- Aid comprised in loans;
- Aid comprised in guarantee schemes;
- Aid comprised in fiscal measures;
- Aid for regional urban development;
- Aid comprised in risk finance measures;
- Aid for start-ups;
- Aid for energy efficiency projects;[64]

Aid cannot be considered as transparent if:

- Aid comprised in capital injections;
- Aid comprised in risk capital measures;[65]

[61] Commission Regulation (n 13).
[62] European Commission (n 12) 9.
[63] European Commission (n 12) 24.
[64] European Commission (n 13) art 5.

To make an aid granting process as more transparent as possible, Member State has to send the Commission a summary of the aid measures. This summary has to be published by the Commission in the Official Journal of the European Union and the Commission’s website. Member State also has to publish the full text of aid scheme according to national law and has to ensure that the text of aid measure is available for public during the period of aid measure.[66]

In order to obey principles of transparency, equal treatment and the correct application of the *de minimis*, all Member States have to apply the same method of calculation. It means that aid that is not in the form of cash has to be converted into gross grant equivalent. Such calculation requires the use of market interest rates on the time of granting aid.[67] Also, to ensure that aid is transparent and can be effectively monitored, Commission has to provide special requirements for the annual reports that are submitted by Member States.[68] As it was already mentioned, Member State has to provide summary of aid implementation. Such publication is necessary for ensuring for the benefit of interested parties. The process of the control includes factual, legal and economic factors.[69] The most effective approach to control awarding of aid is to ensure that all aid is granted in transparent manner regardless of the aid amount.[70]

The new GBER gave more possibilities for Member States to grant aid, simplifying the process of awarding and reducing the duration of process. But it also gave a better transparency on granting aid.[71] It means that Member States have to comply with the transparency provisions. In particular Member State has to publish

[65] Commission Regulation (EC) 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty [2008] OJ L214/3 art 5.
[66]European Commission (n 64) art 9.
[67] Commission Regulation (EU) 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid [2013] OJ L352/1 para 15.
[68] Commission Regulation (n 64) para 34.
[69]Council Regulation (EU) 2015/1588 of 13 July 2015 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to certain categories of horizontal State [2015] OJ L248/1 4.
[70] European Commission, Commission stuff working document impact assessment, Accompanying the document Communication from the Commission, Guidelines on regional state aid for 2014 – 2020 (Brussels 2013) 39.
[71] European Commission, General Block Exemption Regulation (GBER) Frequently Asked Questions (March 2016) 2.

information about individual aid above EUR 500.000 on the national or regional transparency website.[72]

To conclude, it must be said that one of the main objectives of the new rules was to simplify transparency and improve reporting process for Member States. The Commission obliged Member States to publish all information concerning aid on national and regional websites making it totally available for the public. Member States also have to send the Commission annual summery on granted aid, which will be freely available for a public in the Official Journal of the European Union. Also a big step forward was made in the notification process. [73]

New rules make it possible to release Member States from notification obligation if aid is not exceeding EUR 500,000. The overall level of transparency increased and became more efficient. However, there are still some problems concerning annual reports by Member States that has to be solved in the nearest future.

[72] European Commission (n 71)18.
[73] European Commission (n 54) 24.

4. Regional aid in scope of Article 107 TFEU

The Commission may consider State aid compatible, on the basis of Article 107 TFEU, with the internal market if it promoted the economic development in certain areas. Such aid is called regional aid. Guidelines on the regional State aid for 2014-2020 set out conditions under which regional aid can fulfil the requirements of Article 107 TFEU and will be compatible with the internal market. The key characteristic that distinguishes regional aid among others is geographical development.[74]

Obviously, regional aid can only be effective if it is used proportionately and is concentrated on the most disadvantage regions of the EU. And to comply with Article 107, advantages of the regional aid must overweight possible distortion of competition and local market.[75]

To start with, it must be mentioned that any aid given by EU Member State to undertaking is prohibited as incompatible with the Internal Market. But this prohibition is not absolutely. A special framework is designed to regulate State aid control and ensure that it is compatible with the Internal Market and competition.

Article 107 of the Treaty contains a definition of State aid as well as elements that characterize State aid: term of undertaking, importability of the measure, financing through state resources, granting of an advantage, effect on competition and trade between Member States.[76]

As it was said many times before, Member State has to notify the Commission. According to Art 108 TFEU, the Commission has to be notified in advance to be able to submit its comments in case of granting or alter aid.[77]

Also State aid rules can only be applied to an undertaking as a beneficiary. Undertaking can be defined as an entity engaged in an economic activity, regardless of their legal status and the way they are financed. There are three important things that should be counted while defining undertaking. First, status of the entity is not really relevant - the only important thing is economic activity. Second, the profitability of an

[74] European Commission (n 12) 1.
[75] European Commission (n 30) 3.
[76] TFEU (n 4) Art 107
[77] TFEU (n 4) Art 108

undertaking also is not relevant. Third, the classification of the company is always related to a particular activity. However, it is not easy to define an economic activity. The Court of Justice stated that economic activity can be characterized as an offer of goods and services on a particular market.

There are two important conditions concerning advantage: imputability and state resources. Imputability means that public undertaking has to be integrated into the public administration. The legal status of the undertaking and the supervision of the public authorities are also play a major role in imputability.

The state resources can take a form of direct grants, loans guarantees and direct investments in the companies. The source of the resources is not relevant, the most important part is that it was granted under public control.

One of the key elements of the aid is an advantage. According to the Art 107 TFEU, advantage means any economic benefit which an undertaking would never obtained under normal market conditions. The advantage is based on the financial situation of the undertaking and the form of the measures is irrelevant.

Another important factor according to Art 107 TFEU is an effect on trade and competition. Distortion of competition means that the State grants financial advantage in a sector with the competition. State aid may also effect on trade between Member States. But if the activity is purely local – there is no effect on trade.[78]

And the procedure of granting is pretty simple. The project must involve an economic activity, than it must fulfil criteria in Art 107 TFEU (State resources/imputability, selective advantage, impact on competition and trade). GBER, SGEI Decision and de minimis Regulation have to be checked on application possibility. If not, according to Art 108 TFEU, Member State has to notify the Commission. If it is compatible – no need to notify.[79][80]

Regional State aid in the form operational aid or investment provides compensation of disadvantages in the less-favoured regions and aimed to solve the

[78] Consolidated Version of the Treaty on the Functioning of the European Union (n 4) art 107.
[79] Consolidated Version of the Treaty on the Functioning of the European Union [2012] OJ C326/01 art 108
[80] Johann Sollgruber, *State Aid* (2016)

territorial, social and economic problems. According to Article 107(3) lit TFEU, less-favoured areas are eligible regions. It means that regional aid is only allowed in these disadvantage regions and targeted on the development by creating new employment and promoting investments.[81]

Under Article 107 TFEU, eligible areas also called a)-regions. The main elements that can determine a)-regions are serious underemployment and abnormally low. It means that the situation in such regions is extremely unfavourable.[82]

Another type of regions under Article 107 TFEU are called assisted areas and known as c)-regions. So-called c)-regions can only include a part of a Member State.[83]

[81] Säcker, Montag, *European State Aid Law* (2016) 555.
[82] *European State Aid Law* (n 81) 557.
[83] *European State Aid Law* (n 81) 561.

5. Regional aid procedure and consultations

The main objective of State aid control is to ensure that regional aid is aimed on regional development, meanwhile preventing subsidy races in disadvantaged areas and limiting effects of the aid on trade and competition. Geographical development is a main characteristic that distinguishes regional aid among others.[84]

Regional aid must play an effective role in disadvantage regions. It only can be effective in promoting the economic development only if it includes additional investments or economic activity in such regions.[85]

Notifiable regional aid means that the Member State has to notify according to Article 107 TFEU, excepting the measures in a block exemption regulation. To ensure that aid is compatible with the internal market, the Commission has to assure that positive impact of the aid exceeds its possible negative effects on trade and competition. The Commission can only consider state aid compatible with the Treaty if it covers next criteria:

- State aid has to contribute to a common interest defined in Article 107 TFEU;
- The aid must bring a material improvement;
- The aid must be an appropriate instrument for achieving common interest objectives;
- The aid must change the behaviour of the undertaking – incentive effect.
- The aid amount has to be limited to minimum needed – proportionality of the aid;
- The negative effects must be maximum limited;
- All the acts and relevant information regarding granted aid has to be easily accessible – transparency of the aid.[86]

The main objective of the regional aid is to reduce the gap between regions in the EU. Regional aid schemes play a big role in European regional development strategy and clearly define objectives of the aid. Member state has to show that the

[84] European Commission (n 12) 1.
[85] European Commission (n 12) 2.
[86] European Commission (n 12) 8-9.

measures contribute to the development strategy. When granting aid to individual investment projects based on schemes, the granting authority must ensure that the project will contribute in development of the region. The investment has to be maintained for 5 years or 3 years for SMEs. Also, every created job must be maintained for the next 5 years in the particular region. The beneficiary has to provide a financial contribution of at least 25%. Member State must also ensure that aid will not lead to any environmental harm.[87]

The sign that shows a contribution can be indicated direct or indirect:

- The number of created direct jobs;
- The number of indirect jobs;
- Training activities to improve workforce skills;
- Clustering effect – leads to better efficiency;
- Sufficient transfer of technology;
- Cooperation with local higher education institutions;
- Long term of the investment;[88]

As an alternative to regional investment aid, Member State can use infrastructure development or sectoral aid scheme. When using ad hoc, Member State has to show that development is better than by aid under the scheme. Member State has also to show why regional aid is a good instrument to achieve the common objectives in development policy.

[87] European Commission (n 12) 9-10.
[88] European Commission (n 12) 11.

6. Effectiveness and efficiency of regional aid rules

The main idea of the new rules was to improve regional aid framework through effective public spending and a better contribution of State aid to the objectives of common interest and incentive effect by limiting negative effect on competition and trade.[89]

Another interesting thing is clustering effect. It means that benefits from a regional development can be a result of proximity. For example, clustering of undertakings in the same industry it gives an opportunity for individual plants to specialize more, which increases efficiency.[90]

The main characteristic that can be defined as an effective tool is economic regional development. A proper control of the incentive effect is very important for the regional aid private investments. Wrong control of the incentive effect would lead to the distortion of competition and common market.[91]

The efficiency of regional State aid consists of control by the Commission and Member States on competition and trade. The thing is that Member Sate implements regional aid rules differently and it can be harmful for the common market. Another problem occurs when it comes to administrative formalities and simplifying rules.[92]

Effectiveness and efficiency of the regional aid can be characterized by following objectives:

- Regional aid has to be focused on the most disadvantage areas;
- Regional aid is aimed on undertakings and sectors that really need it;
- Regional aid has to be as low as possible to obtain development benefits;
- The Commissions control has to be focused on trade and competition distortion;
- Negative and positive effects have to be assessed.[93]

[89] European Commission (n 12) para 8.
[90] European Commission (n 12) para 40(d).
[91] European Commission (n 70) para 1.2(1).
[92] European Commission (n 70) para 1.2(2).
[93] European Commission (n 70) para 3(1).

As it was already said, regional State aid is aimed to promote economic development in certain disadvantage regions in European Economic Area. Regional aid as a form of horizontal aid is designed to support disadvantage areas by attracting investments and creating new jobs in disadvantage areas. Certainly, such actions have to be compatible with the internal market and Article 107 TFEU. It is essential for the efficient and effective use of aid.[94]

There are two ways that can be considered that can justify regional Sate aid. First is compensation for regional handicaps, which means compensation for the disadvantage regions. The aid must have a minimum effect on internal market and competition, but it has to compensate for handicaps. But it only works if an undertaking has a free choice of setting up its business. A free choice of location is extremely important, when it comes to disadvantage areas.[95]

Another approach that can justify effectiveness and efficiency of the regional State aid is incentive effect. It means that an undertaking will make an investment, if it will be financially supported.[96]

[94] *European State Aid Law* (n 81) 447.
[95] *European State Aid Law* (n 81) 448.
[96] *European State Aid Law* (n 81) 449.

7. General and specific objectives

One of the most important objectives of the State aid control in the regional aid sector is to provide aid for regional development by attracting businesses in disadvantage areas while avoiding subsidy races and limiting the effects on competition and trade.[97]

The main objective of regional State aid is to minimize the gap in development between the different regions in EU.[98] Geographical development as an objective distinguishes from other types of aid.[99] It is also important, that regional aid schemes, as an essential part of regional development strategy, have to define objectives very clear.[100]

During the modernization of the regional State aid rules, the Commission was pursuing tree main objectives:

- Growth of the competitive internal market;
- *Ex ante* control on cases with the largest impact on internal market;
- To make easier rules and decision making process.[101]

According to RAG there are two main objectives:

- The *cohesion objective* means that aid is aimed on economic development of disadvantage areas and does not distort the competition or trade;
- The competition objective – assessment of the notified aid compatibility.[102]

Objectives can be split into three groups: effectiveness and efficiency, administrative simplification, and consistency.

As it was already mentioned, for the effectiveness and efficiency the main objectives are:

- Regional aid has to be focused on disadvantage regions;

[97] European Commission (n 12) para 3.
[98] European Commission (n 12) para 30.
[99] European Commission (n 12) para 4.
[100] European Commission (n 12) para 31.
[101] European Commission (n 12) para 7.
[102] European Commission (n 70) para 3.

- Regional aid is aimed on regions and undertakings that really need it;
- The level of aid has to be on minimum level;
- The commission has implement measures against distortion of competition and trade;
- Positive and negative effects have to be assessed.[103]

One of the most sufficient changes of the new rules is administrative simplification. There were two main administrative objectives:

- To minimize the level of administrative load on undertakings and national administrations;
- To make simple and clear the reporting requirements for Member States.[104]

The third pillar of the objectives is consistency:

- To apply the principles and aims of the SAM;
- To promote objectives of EU Cohesion and avoid restrictions of EU Funds;
- To support Member Sates' effort in more effective and efficient use of public funds.[105]

There are two very important objectives, which also distinguish regional aid among others: objective of common interest and absence of market delivery of the equity objective. The objective of common interest is to reduce the gap between the rich and poor regions. The absence of market delivery means that approved regional aid maps have to show regions that are eligible for aid under the Article 107 TFEU.[106]

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[103] European Commission (n 70) para 3(1).
[104] European Commission (n 70) para 3(2).
[105] European Commission (n 70) para 3(3).
[106] European Commission, Paper of the services of DG Competition containing draft guidelines on regional State aid for 2014-2020 (Brussels 2012) para 28(a,b).

8. Impact

8.1 Environmental impact

The impact can not only be on trade, competition or internal market. Regional State aid can also have an environmental and socioeconomic effect.

The environmental impact is a sufficient element of the RAG sectoral scope and forum shopping.[107]

One of the most dangerous investment sectors for the environment is energy. Regional aid for the coal sector will have a sufficient negative environmental effect. Although, it is very difficult to qualify the quantity of negative impact on environment, it is clear that granting regional aid to uncompetitive coal mines will increase the amount of pollutant emissions and greenhouse gases. Coal, as an energy source, has very high level of CO2 emissions. But if regional aid, for example, was given for district heating and only for high energy-efficient equipment – negative effect on the environment can be limited.[108]

It is interesting that the big majority of stakeholders in the steel industry supported the prohibition of regional aid in steel sector. But it also can affect the Commission's industrial policy.[109]

To avoid negative effect on environment, Member State has to assess and evaluate an environmental impact according to national or EU law.[110]

While speaking about environmental impact, it has to be mentioned that the right way to avoid affect on environment is granting aid for environmental protection. Investment aid that is aimed on environmental protection will be compatible with the internal market and Article 107 TFEU and it is does not require notification according to the Article 108 TFEU.[111]

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[107] European Commission (n 70) para 6.
[108] European Commission (n 107) para 6.2.2.
[109] European Commission (n 107) para 6.2.3.
[110] European Commission (n 106) para 41.
[111] Commission Regulation (n 13) art 36(1).

Investment aid for energy efficiency measures is also will be compatible with the internal market and Article 107 TFEU and does not need to have the notification to the Commission requested by the Article 107 TFEU.[112]

Investment aid for energy efficiency projects in buildings,[113] investment aid for high-efficiency cogeneration,[114] investment aid for the promotion of energy from renewable sources[115], operating aid for the promotion of electricity from renewable sources[116], operating aid for the promotion of energy from renewable sources in small scale installations[117], aid in the form of reductions in environmental taxes under Directive 2003/96/EC[118], investment aid for remediation of contaminated sites[119], investment aid for energy efficient district heating and cooling[120], investment aid for waste recycling and re-utilisation[121], investment aid for energy infrastructure[122], aid for environmental studies[123] - are the main instruments that can be used to improve the environment and reduce harmful effect without infringing Article 107 TFEU and without notifying the Commission.

[112] Commission Regulation (n 13) art 38(1).
[113] Commission Regulation (n 13) art 39(1).
[114] Commission Regulation (n 13) art 40(1).
[115] Commission Regulation (n 13) art 41(1).
[116] Commission Regulation (n 13) art 42(1).
[117] Commission Regulation (n 13) art 43(1).
[118] Commission Regulation (n 13) art 44(1).
[119] Commission Regulation (n 13) art 45(1).
[120] Commission Regulation (n 13) art 46(1).
[121] Commission Regulation (n 13) art 47(1).
[122] Commission Regulation (n 13) art 48(1).
[123] Commission Regulation (n 13) art 49(1).

8.2 Regional and socioeconomic impact

SAM was a great way to change regional and socioeconomic impact as well as improve efficiency of the regional state aid. A big step forward was a Procedural Regulation 2015/1598, which gives a right the Commission to reject complains without any preliminary investigation.[124]

Depending on sectoral and regional scope, there can be different effects on the regional development. In some cases aid can be granted to failing industries and it would a have a negative effect on region development. It is very important to assess regional and socioeconomic impact on regional investments in order to avoid investment losses. There is an option when regional aid can be allowed to the ship building industry. The shipbuilding industry has two segments: shipyards, which are used for building and repairing and the marine equipment industry.[125]

For example gas and electricity sectors, waste and water management, improving distribution, production energy from renewable resources does not lead to some serious effects on beneficiaries or budget.[126]

There also exist a risk of relocating car, paper, solar and semiconductor sectors outside the EU. Mobile investments can face the risk of relocation not only because of state aid restriction, but also because of the globalization of economy. Global companies usually invest in European market and outside market.[127]

Speaking about energy and coal sector, the Commission brings effort in accelerating and liberalizing national markets to international energy markets. But it affect on the application of State aid law. Liberalization can make existing costs economically pointless. It will also lead to some environmental protection aspects. Undertakings can obtain State support for environmental protection through fiscal or parafiscal instruments. State aid also can guarantee minimum tariffs or compensation

[124] Herwig, Hofmann, *State Aid Law of the European Union* (Oxford 2016) 584.
[125] European Commission (n 107) para 6.2.1.1.
[126] European Commission (n 107) para 6.3.
[127] European Commission (n 107) para 6.4.1.

for stranded costs. Energy providers can award aid themselves by granting specific tariffs to some customers. [128]

To assess an impact of the State aid on trade, it is not enough to check if the company sells most of its energy on the national market. It is very important to evaluate commercial and economic context of the affected energy generator. But more important factor that can affect on trade is the regional position of company. The best part of the liberalization of the energy market is that energy generators can be allowed in geographically isolated regions.

To conclude it has to be said that there are two scenarios when regional State aid can have negative effects. First is when the project is aimed on the market, which is in absolute decline and it cannot be compensated by any positive effect (investment decision). The second scenario, when the investment without aid could be located in a region with aid intensity higher or the same as the target region (location decision).[129]

However, there can be a distortion of local market competition caused by illegal tax benefits. The recent case shows that some parafiscal instruments may be distortive for local economy and competition. Ireland granted illegal tax benefits to Apple up to €13 billion. These tax benefits were illegal, because Apple was able to pay less tax than other undertakings, Member State also cannot give tax benefits to selected companies. An in-depth investigation showed that Ireland lowered tax rate for Apple since 1991. Such selective treatment is illegal, because it gives advantages to Apple over other companies that obey the same national taxation rules. This illegal treatment helped Apple to avoid taxation on almost all profits from the year 2003 to 2014 within the entire Single Market. A tax ruling granted by Ireland in 1991 was a main document that enabled taxable profits for Apple Sales International and Apple Operations Europe – two companies that belong to the Apple group. The investigation showed that that these tax rulings had no economic or factual justification.[130]

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[128] *European State Aid Law* (n 81) 1238.
[129] European Commission (n 12) para 3.7.2.
[130] European Commission, Press Release IP/16/2923 (2016).

Obviously, under the Article 107(1) TFEU such favouring treatment is incompatible with the internal market.[131] Moreover, since 2014 all Member States were obliged to provide information concerning tax rulings and certain legal framework. They had to give a list of rulings from 2010 to 2013. This has lead to several formal State aid investigations, including Apple case: Fiat in Luxemburg and Starbucks in Netherlands. Later the Commission opened investigation on tax ruling in Luxemburg to Amazon and Luxemburg, and Excess Profit scheme in Belgium.[132]

In conclusion, it is very important to evaluate regional and socioeconomic impact of aid in order to avoid investment losses and negative effect on internal market and infringement of competition. A big issue for a local market competition is a selective treatment and tax favouring. Illegal tax benefits can cause a sufficient distortive effect on competition within the internal market, favouring certain companies over other undertakings within the same tax system. It can be said, that the investigation on tax advantages for certain companies is also the Commission's competence in State aid control, aimed to prevent distortion of competition and Common Market.[133]

[131] Consolidated Version of the Treaty on the Functioning of the European Union (n 4) art 107.
[132] European Commission, DG Competition Working Paper on State Aid and Tax Rulings (2016) 2.
[133] European Commission (n 132) 6.

9. Evaluation and monitoring

With the new regional aid rules and State Aid Modernisation Member States received more responsibility for the implementations of the aid measures. The new Block Exemption Regulation obliges Member States to adopt and implement more monitoring measures concerning granting aid. The process of formal notification is faster and easier, but more ex post control takes place. It means that they still have to justify measures they apply. Using the new GBER, the Commission also promotes decentralisation, which is accompanied with safeguards in the form of ex post monitoring.[134]

There are three main actions that improve ex post control:

- Increased transparency;
- Broader monitoring of implemented measure;
- Evaluation of measures.

Evaluation and monitoring measures are directly connected with the decentralisation. Decentralisation will improve State aid control and functioning of internal market. It means that Member States can adopt and implement measures without notifying the Commission. Also the publication of awarded aid and the names of beneficiaries will make easier to monitor incompatible aid.[135]

First it needs to be defined what is monitoring. There are two types of monitoring: monitoring of outputs and monitoring of the changes in the result indicators. Monitoring of outputs means to control if implementation is in force. Monitoring of the changes in the result indicators means a policy monitoring. It shows whether or not the indicators move in the right direction.[136]

Evaluation can show the difference between the situation before the public intervention and after. Evaluation will show a change in result indicator, which is a

[134] *State Aid Uncovered* (n 43) 262.
[135] *State Aid Uncovered* (n 43) 294.
[136] European Commission, Guidance document on monitoring and evaluation, European cohesion fund, European regional development fund, concepts and recommendations (March 2014) para 1.2.1.

combination of intervention and other factors. It will also how an effect of intervention, another words impact.[137]

According to the Article 108 TFEU, the Commission and Member States shall keep under constant review all systems of existing aid.[138] Member States also have to submit to the Commission annual reports on existing aid schemes.

There are two types of monitoring indicators: State aid scoreboard and annual monitoring of selected state aid cases.

The State Aid Scoreboard gives general information on State aid in every Member State and the Commissions State aid evaluation activity. The State Aid Scoreboard is based on the annual reports of the Member State. Scoreboard gives information on State aid expenditure, State aid measures, trends and patterns.

Annual monitoring of selected state aid cases is provided by DG COMP. It includes of monitoring of existing aid schemes (notified and block-exempted schemes). The ex-post monitoring includes a check of the list of beneficiaries and the legal basis. It helps to find and correct mistakes the implementations of the aid schemes by Member States in accordance with the RAG.[139]

There are also specific monitoring indicators, which are used for the RAG 2014-2020. This *ad hoc* monitoring system is based on transparency obligations of Member State and database of cases.[140]

When it comes to obligatory evaluation of certain notified schemes, monitoring has a focus on legal provisions, while ex-post evaluation has an objective provide analysis on the efficiency and effectiveness of the State aid measures and gives suggestions to improve it. Evaluation can improve schemes, increase effectiveness and efficiency. It can change a project design, like selection criteria, or more sufficient options, for example, change objectives, beneficiaries or different aid instrument. Evaluation is especially important where the level of potential competition is relatively high. Member State can be asked to limit the duration of the scheme and in some cases

[137] European Commission (n 136) para 1.2.2.
[138] European Commission (n 70) para 8.1.
[139] European Commission (n 70) para 8.1.1.
[140] European Commission (n 70) para 8.1.2.

schemes will require re-notification. The evaluation has to be made by independent experts and based on general methodology. These evaluation reports have to be published and be available. [141]

To conclude it can be said, that on the one hand, the process of notification for Member States became easier and faster, but on the other hand, they still have to justify measures they apply. A big role in simplifying notification process plays decentralisation and it gives more freedom to Member States. But it is still obliges Member States to provide the Commission with the annual report, while DG COMP has to monitor and evaluate existing aid schemes. Monitoring of outputs and monitoring of the changes are two main mechanisms that can be used, as well as evaluation that shows final result.

[141] European Commission (n 70) para 8.2.1.

Conclusions

Regional aid is one of the most important types of horizontal aid that promotes development of disadvantage regions of the European Union. Regional aid distinguishes itself from other horizontal aids and characterised by its geographical means.

In 2013 the Commission presented a new block exemption Regulation and new regional aid guidelines that are applicable till the 2020. The main aim of the SAM was to boost the development of the disadvantage region after economic crisis in the same time preventing subsidy races between Member States that try to attract investments. New rules make a great contribution to the development of disadvantage regions without distorting competition and internal market. [142]

To make regional aid compatible with the accordance to Article 107 TFEU, positive effects have to overweight negative. The positive effects are obviously can be characterised as the economic development of certain region and the most sufficient result of regional aid is a creation of new jobs.

The main documents that assess the compatibility of regional aid are RAG 2014 and the new GBER. Of course there are sector-specific provisions concerning other sectors like energy, environment, agriculture, fisheries and transport. New rules are also stricter in the way of control implementation over Member States and measures they take. But on the other hand the process of notification to the Commission became much faster and less complicated. So Member State can chose between the sector-specific rules or regional aid rules.[143]

Regional urban development now is a part of regional aid and can be exempted from the notification requirements of Article 107 TFEU.[144]

The economic activities of transport of passenger and energy sector were excluded from the scope of the regional aid rules. However energy efficiency investments as well as environmental investments can be granted on the basis of GBER

[142]*State Aid Law of the European Union* (n 124)451.
[143] *State Aid Law of the European Union* (n 124) 452.
[144] Commission Regulation (n 13) art 16.

or RAG 2014. Shipbuilding sector is now a part of new regional aid rules. RAG also does not exclude coal sector from its scope.[145]

There are two types of regional aid: investment and operating aid. Regional aid can be granted to set up a new establishment, extend existing establishment or fundamentally change the production process. Operating aid is aimed to reduce the additional costs of maintaining company's activity in the assisted region.[146]

The new rules restrict the possibility for large enterprises to receive regional aid in 'c' and 'a' areas. It was made because, as an experience shows, large enterprises do not consider regional aid as sufficient help. Large enterprises can receive regional aid only if it creates new economic activities in concerned regions. They will receive an investment aid for Greenfield investments.[147]

In order to contribute most to the objectives, regional aid has to be concentrated on the most disadvantage regions. There are two types of regions: 'a' and 'c' areas. RAG 2014 saves GDP per capita as the indicator to measure the living standard in the region. GDP per capita below 75 per cent will fulfil the conditions of Article 107(3)(a) TFEU. 'C' areas can be predefined or non-predefined.[148]

Regional aid maps are very important in the process of control. Every Member State has to notify to the Commission a regional aid map to show the regions where they want to grant regional aid. This is a step before Member State can grant aid on the basis of Article 107(3)(a) TFEU.[149]

Maximum level of aid intensity must fulfil three criteria: the socio-economic situation, the size of the beneficiary, and the size of the investment. Compare to the previous rules, RAG 2014 reduced aid intensities in both 'a' and 'c' areas.[150]

Subsidized investment has to be maintained for five years in the concerned region after its completion. It has to be done to ensure that regional aid contributes to

[145] *State Aid Law of the European Union* (n 124) 453.
[146] *State Aid Law of the European Union* (n 124) 455.
[147] *State Aid Law of the European Union* (n 124) 456.
[148] *State Aid Law of the European Union* (n 124) 459.
[149] *State Aid Law of the European Union* (n 124) 461.
[150]*State Aid Law of the European Union* (n 124) 462.

the region. The beneficiary has to contribute at least 25 per cent of its own investment free of public support.[151]

To conclude it must be said that a big step forward is transparency of the aid. It means that every notified aid above 500,000 has to be published on a central or regional website and be openly available for public.[152]

The new rules perform better in terms of efficiency and effectiveness. They are stricter for large enterprises and focused on the prevention of the subsidy races between member States. GBER excludes the relocation situations from its scope and requires individual notification regardless of the aid amount. It was made to ensure that regional aid has an incentive effect.[153]

[151] *State Aid Law of the European Union* (n 124) 466.
[152] *State Aid Law of the European Union* (n 124) 478.
[153] *State Aid Law of the European Union* (n 124) 479.

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Annexes

Regional State aid is one of the most efficient methods to develop poor region's economy and create new jobs. Regional aid is aimed to support disadvantaged regions and to promote economic development within the European Economic Area and as long as it focused on reducing the gap between developed and disadvantaged areas – it is compatible with the internal market. The main characteristic that distinguishes regional State aid from other types of horizontal aid is a territorial scope of aid. Regional aid promotes territorial and economic cohesion between Member States. Usually, regional State aid is granted as an investment aid to small and medium-sized enterprises (SME). Regional aid can be justified by compensation for the disadvantaged areas and by incentive effect which can be an investment itself.

SAM rules were focused on fostering the development of disadvantaged regions after the economic crisis. SAM was also aimed on attracting new investors avoiding subsidy races.

One of the major factors that lead to SAM development was that big enterprises did not consider regional aid as the sufficient help. Cases show that small and medium enterprises were using regional aid more effective and efficient. That is way new Guidelines have restrictions on granting investment aid to large enterprises. Big enterprises can receive regional aid if they only create new economic activity. But recent cases show that Member States sometimes give an illegal tax benefits to big enterprises, allowing them to pay substantially less tax than other companies (Apple case).

Big improvement was made forward the notification process. Member States are obliged to notify regional aid maps to the Commission before allowing aid but t became faster and easier for Member States, and they can now choose between regional aid rules and sector-specific.

Great changes were made to improve a transparency of regional aid. Now every regional aid above 500,000 has to be notified and published and investor has to contribute at least 25% of its own investment.

Positive effects of regional aid are extremely important and have to overweight negatives. Regional aid has to contribute to the local economy and create new jobs in order to be compatible with the internal market and Article 107 TFEU. It is also important not to infringe competition on the local market and avoid selective treatment by favouring certain corporations.

Annektieren

Regionale Beihilfen sind eine der effizientesten Methoden, um die Wirtschaft der armen Region zu erschließen und neue Arbeitsplätze zu schaffen. Die Regionalbeihilfen zielen darauf ab, benachteiligte Regionen zu unterstützen und die wirtschaftliche Entwicklung im Europäischen Wirtschaftsraum zu fördern, und solange sie sich auf die Verringerung der Kluft zwischen den entwickelten und benachteiligten Gebieten konzentriert - sie ist mit dem Binnenmarkt vereinbar. Das Hauptmerkmal, das die regionale staatliche Beihilfe von anderen horizontalen Beihilfen unterscheidet, ist ein territorialer Anwendungsbereich. Regionalbeihilfen fördern territorialen und wirtschaftlichen Zusammenhalt zwischen den Mitgliedstaaten. In der Regel werden regionale Beihilfen als Investitionsbeihilfe für kleine und mittlere Unternehmen (KMU) gewährt. Regionalbeihilfen können durch Ausgleich für benachteiligte Gebiete und durch Anreizeffekte gerechtfertigt werden, die eine Investition selbst sein können.

Die SAM-Regeln konzentrierten sich auf die Förderung der Entwicklung benachteiligter Regionen nach der Wirtschaftskrise. SAM zielte auch darauf ab, neue Investoren zu gewinnen, Subventionsrennen vermieden.

Einer der Hauptfaktoren, die zur SAM-Entwicklung führten, war, dass Großunternehmen die Regionalbeihilfen nicht als ausreichende Hilfe betrachteten. Die Fälle zeigen, dass kleine und mittlere Unternehmen die Regionalbeihilfen effektiver und effizienter nutzen. Das bedeutet, dass neue Richtlinien Beschränkungen für die Gewährung von Investitionsbeihilfen für Großunternehmen enthalten. Große Unternehmen können Regionalbeihilfen erhalten, wenn sie nur neue Wirtschaftsaktivitäten schaffen. Aber die jüngsten Fälle zeigen, dass die Mitgliedsstaaten den Großunternehmen manchmal illegale Steuervergünstigungen gewähren, so dass sie deutlich weniger Steuern zahlen als andere Unternehmen (Apple-Gehäuse).

Große Verbesserung wurde die Benachrichtigung weitergegeben. Die Mitgliedstaaten müssen der Kommission Regionalbeihlfekarten mitteilen, bevor sie eine Beihilfe gewähren. Es wurde für die Mitgliedstaaten schneller und einfacher, und sie können nun zwischen Regionalbeihilferegeln und sektorspezifischen Regeln wählen.

Es wurde große Änderungen vorgenommen, um die Transparenz der Regionalbeihilfen zu verbessern. Jede Regionalbeihilfe über 500,000 ist zu notifizieren und zu veröffentlichen. Auch Investor muss mindestens 25% seiner eigenen Investition beitragen.

Positive Effekte von Regionalbeihilfen sind äußerst wichtig und müssen Negative überladen. Die Regionalbeihilfen müssen zur lokalen Wirtschaft beitragen und neue Arbeitsplätze schaffen, um mit dem Binnenmarkt und Artikel 107 AEUV vereinbar zu sein. Es ist auch wichtig, den Wettbewerb auf dem lokalen Markt nicht zu verletzten und eine selektive Behandlung durch Begünstigung bestimmter Unternehmen zu vermieden.