

# **Basic Principles of European State Aid Law**

## **Structure of presentation**

### **Part I:**

Basic framework of European rules on state aid

#### A. Substantive Law

- Structure of Art. 87
- What is state aid (definition and examples)
- Specifying the rules of state aid

#### B. Procedural Law

- Existing state aid, constant review
- Notification procedure, Reg. 994/98
- Reg. 659/1999

### **Part II:**

Means and methods of gathering relevant information

#### A. Internet fundamentals

#### B. Sources for European state aid-law

#### C. Exercises

## Article 87

1. Save as otherwise provided in this Treaty, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the common market.
2. The following shall be compatible with the common market:
  - (a) aid having a social character, granted to individual consumers, provided that such aid is granted without discrimination related to the origin of the products concerned;
  - (b) aid to make good the damage caused by natural disasters or exceptional occurrences;
  - (c) aid granted to the economy of certain areas of the Federal Republic of Germany affected by the division of Germany, in so far as such aid is required in order to compensate for the economic disadvantages caused by that division.
3. The following may be considered to be compatible with the common market:
  - (a) aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment;
  - (b) aid to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State;
  - (c) aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest;
  - (d) aid to promote culture and heritage conservation where such aid does not affect trading conditions and competition in the Community to an extent that is contrary to the common interest
  - (e) such other categories of aid as may be specified by a decision of the Council acting by a qualified majority on a proposal from the Commission.

## Article 88

1. The Commission shall, in co-operation with Member States, keep under constant review all systems of aid existing in those States. It shall propose to the latter any appropriate measures required by the progressive development or by the functioning of the common market.
2. If, after giving notice to the parties concerned to submit their comments, the Commission finds that aid granted by a State or through State resources, is not compatible with the common market having regard to Article 92, 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 with this decision within the prescribed time, the Commission or any other interested State may, in derogation from the provisions of Articles 169 and 170, refer the matter to the Court of Justice direct. On application by a Member State, the Council may, acting unanimously, decide that aid which that State is granting or intends to grant shall be considered to be compatible with the common market, in derogation from the provisions of Article 92 or from the regulations provided for in Article 94, if such a decision is justified by exceptional circumstances. If, as regards the aid in question, the Commission has already initiated the procedure provided for in the first subparagraph of this paragraph, the fact that the State concerned has made its application to the Council shall have the effect of suspending that procedure until the Council has made its attitude known. If, however, the Council has not made its attitude known within three months of the said application being made, the Commission shall give its decision on the case.

3. The Commission shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid. If it considers that any such plan is not compatible with the common market having regard to Article 92, it shall without delay initiate the procedure provided for in paragraph 2. The Member State concerned shall not put its proposed measures into effect until this procedure has resulted in a final decision.

## Structure of Art. 87

### - Substantive Law -

Paragraph (1):

**Principle:** State aid is “forbidden”

**Basic idea:** Fair, undistorted competition, no discrimination

**Problem:** How can state aid be defined?

Paragraph (2):

**Principle:** In some *exceptions* state aid may be granted

The commissions is *without discretion*

**Categories:** (a) Aid to consumers (with a social character)

(b) Natural disasters etc.

(c) ...

Paragraph (3):

**Principle:** In some *exceptions* state aid may be granted

The commission can exercise *discretionary power*

**Categories:** (a) Regional aid (“3A areas”):

- abnormally low living standards

- serious underemployment

(c) Regional aid (national “problem regions” – “3C areas”):

- development of certain economic areas or activities

- ...

(e) Categories as specified by Council decision

## **Defining State Aid (1)**

### **Transfer of State resources:**

- state resources
  - aid has to be financed out of State resources (according to the ECJ)
  - “state” to be understood in the broadest possible sense
  - including central government and all levels of regional and local government
  
- “in any form whatsoever”
  - the form, which the advantage takes as well as the objective which the State is pursuing are completely irrelevant
  - it is the effect that matters
  - directly or indirectly (via a private or public intermediate)

### **Economic advantage**

- advantage that the undertaking would not have received in the normal course of business
- for examples see below

## **Defining State Aid (2)**

### **Selectivity**

- “favouring”
- affecting the balance between certain firms and their competitors
- has to be distinguished from “general measures” (measures applying across the board to all firms in all sectors of economic activity in a Member State)
- aids for certain regions are also selective

### **Potential effect on competition and trade:**

- most important: “de minimis-rules”

### **“undertakings or the production of certain goods”**

- includes production, services or distribution
- commercial, cultural or activities of other kind
- public enterprises and other activities are as well included

## **Examples (1)**

### **Types of aid**

Subsidies

Interest-free loans; Low-interest loans; Interest rate subsidies

Guarantees on preferential terms

Relief from taxes or parafiscal charges

Supply of goods or services on preferential terms

Capital injections on preferential terms

For example:

- paying less or getting more than market price
- free or cheap access to state services (infrastructure etc.)

### **Categorisation by purpose**

*Particular sectors (sectoral rules)*

- Shipbuilding
- Steel
- Coal and steel sectors
- Synthetic fibres
- Motor vehicles
- Agriculture
- Other sectors

## Examples (2)

### *Horizontal objectives*

Cross-industry or “horizontal” rules set out the Commission’s position on particular categories of aid which are aimed at tackling problems which may arise in any industry and region.

- Research and Development
- Environment
- Small and medium-sized enterprises
- Trade
- Energy saving
- Other objectives (mainly rescue and restructuring)
- Aid for the rescue and restructuring of firms in difficulty
- Aid to employment
- Aid for undertakings in deprived urban areas
- Training aid

### *Regional objectives*

- Regions falling under Article 87(3)a
- Regions falling under Article 87(3)c

## Specifying the rules of State Aid

- Problem:** Art. 87 contains general clauses and discretionary powers (paragraph 3)  
These have to be specified for practical use
- Commission's approach:** "Decision *practice*": Various documents, laying down rules for the application of Art. 87/88 ("guidelines", "public notices", "annexes", "communications", "guidance notes", "letters" ...)
- Role of the ECJ:** All documents issued by the Commission must be covered by (within) Art. 87, 88. This is controlled by the European Court of Justice. The ECJ lays down rules for the application of Art. 87, 88.
- Conclusion:** European state aid law was "developed" by an interaction of ECJ-judgements and the Commission's practise. Until recently, the only written law was – slightly simplified– Art. 87/88.
- Practical consequences:** High complexity of the current legal situation  
Very dynamic, continuously changing legal situation  
Necessity to carefully watch current changes (esp. new rules and judgements)  
→ part II of this presentation

## Procedure

### - Existing systems of state aid -

Art. 88 (1):

**Content:** Constant review of *existing* state aid rules and practices  
Commission may take up any scheme and demand its notification and authorisation  
System of retrospective (*ex post-supervision*)

#### “Existing systems of state aid”:

These are:

- rules introduced before the treaty entered into force
- previously notified and approved state aid measures

#### Annual reports:

The member states have to deliver *annual reports* on existing aid schemes.

These reports enable the commission to pursue the constant review

## **Procedure**

- **Figure: constant review** -

## Procedure

### - Prior notification for all other measures-

Art. 88 (3):

**Content:**                    **Principle of advance vetting**  
 Necessity of *prior* notification  
*The commission decides* (controlled by the ECJ),  
 not the member state  
*Prohibition* from putting plan into effect  
 Otherwise *unlawful*, has to be *repaid*  
 immediately (irrespective of Art. 87 (2), (3))  
 The duty of notification has *direct effect*

**Reg. 994/98:**            **Group exemptions**

- designed for certain groups of horizontal aids
- ex-post supervision
- national measures for the control of state aid become possible (Reg. is *directly applicable*)
- allows the commission to concentrate on really crucial cases

## **Procedure**

**- Figure: notification -**

## **Procedure**

### **- Reg. 659/1999 -**

#### **General aspects:**

- modernises the current procedures of state aid supervision
- secures more legal clarity, transparency and efficiency
- is legally binding, not just a commission's opinion or practice
- concretises Art. 88

#### **Content (examples):**

- rules on the notification of state aid (Art. 2-9)
  - covering aspects such as dead lines, the process of communication, supply of documents etc.
- rules on unlawful state aids (Art. 10-15)
  - Art. 10: examination, request for information and information injunction
  - Art. 11: injunction to suspend or provisionally recover aid
- rules on existing state aid systems (Art. 17-19)
  - Art. 17: obtaining all necessary information from member states
  - see also Art. 21: annual reports
  - see also Art. 22: on-site monitoring
- rights of interested parties (Art. 20)

## Internet fundamentals

### The information problem:

- knowing what to look for
- knowing where to search
- quality of information
  - which sources are trustworthy
  - up to date
  - costs
  - how easy to find
- thinking in structures and hierarchies

### Necessary knowledge:

- basic computer skills
- using a browser
- additional software (e.g. word, acrobat reader etc.)
  - acrobat reader: <http://www.adobe.com/products/acrobat/readstep2.html>

### Using a browser - most important skills

- entering an “address”
- “clicking your way through”
- bookmarks – how to use them
- saving and printing

### The best way:

- learning by doing

## Internet-sources for state aid law

- EU-starting point: <http://europa.eu.int/>
- EU-index: <http://europa.eu.int/index-en.htm>
- EU-institutions: <http://europa.eu.int/inst-en.htm>
- Commission: [http://europa.eu.int/comm/index\\_en.htm](http://europa.eu.int/comm/index_en.htm)
- Directorates: [http://europa.eu.int/comm/dgs\\_en.htm](http://europa.eu.int/comm/dgs_en.htm)
- DG-Competition: [http://europa.eu.int/comm/dg04/index\\_en.htm](http://europa.eu.int/comm/dg04/index_en.htm)
- State aid-legislation: <http://europa.eu.int/comm/dg04/lawaid/aid.htm>
- Detailed version: <http://europa.eu.int/comm/dg04/lawaid/aid3.htm>
- European Court (ECJ): <http://europa.eu.int/cj/index.htm>
- ECJ-index: <http://europa.eu.int/cj/en/index.htm>
- CELEX-database: [http://europa.eu.int/celex/htm/celex\\_en.htm](http://europa.eu.int/celex/htm/celex_en.htm)
- Eur-lex: <http://europa.eu.int/eur-lex/en/index.html>
- legislation: <http://europa.eu.int/eur-lex/en/lif/index.html>
- state-aid: [http://europa.eu.int/eur-lex/en/lif/reg/en\\_register\\_0860.html](http://europa.eu.int/eur-lex/en/lif/reg/en_register_0860.html)
- late deliveries: [http://europa.eu.int/eur-lex/en/lif/new/en\\_whatsnew\\_08.html](http://europa.eu.int/eur-lex/en/lif/new/en_whatsnew_08.html)
- Competition sites world wide: <http://europa.eu.int/comm/dg04/interna/othersit.htm>

### Information on private companies:

- usually every big company has got its own page, which offers at least basic information

## Exercises

A. Existing drafts concerning state aid law:

<http://europa.eu.int/comm/dg04/lawaid/aid3.htm>

B. Regional map Germany, concerning Art. 87 (3) a/c

[http://europa.eu.int/comm/dg04/regaid/1999/en/html/de\\_page1.htm](http://europa.eu.int/comm/dg04/regaid/1999/en/html/de_page1.htm)

- zoomed version

[http://europa.eu.int/comm/dg04/regaid/1999/en/html/de\\_page2.htm](http://europa.eu.int/comm/dg04/regaid/1999/en/html/de_page2.htm)

D. How do I make my annual reports

<http://europa.eu.int/comm/dg04/lawaid/aid3.htm>

E. What is the content of decision C-31/98 (Luksch/Hauptzollamt Weiden)

<http://europa.eu.int/jurisp/cgi->

[bin/form.pl?lang=en&Submit=Submit&docrequire=alldocs&numaff=C-](http://europa.eu.int/jurisp/cgi-bin/form.pl?lang=en&Submit=Submit&docrequire=alldocs&numaff=C-)

[31%2F98+&datefs=&datefe=&nomusuel=&domaine=&mots=&resmax=100](http://europa.eu.int/jurisp/cgi-bin/form.pl?lang=en&Submit=Submit&docrequire=alldocs&numaff=C-31%2F98+&datefs=&datefe=&nomusuel=&domaine=&mots=&resmax=100)

F. Where do I find a collection of all EU-state aid law (yellow book); an introduction to state aid law (vademeccum, guidelines?)