



# Documentation

## THE ROLE OF THE NATIONAL JUDGE IN THE ENFORCEMENT OF EU STATE AID RULES

**Vantaa, 15 – 16 June 2022**  
**222DV57f**



Funded by the European Union  
**Service Contract DG COMP/2017/015 - SI2.778715**

This document has been prepared for the European Commission. However, it reflects the views only of the authors, and the Commission cannot be held responsible for any use which may be made of the information contained therein.



# Table of Contents



# THE ROLE OF THE NATIONAL JUDGE IN THE ENFORCEMENT OF EU STATE AID RULES

Vantaa, 15-16 June 2022

## Table of Contents

### I. General Information

List of speakers

### II. Speakers' Contributions

- Sami Hartikainen	
	<ul style="list-style-type: none"><li>• PPT "Main objectives of EU State aid control. Overview of Articles 107-109 TFEU" and "Main elements of the notion of Aid"</li></ul>
- Anna Kuusniemi-Laine	
	<ul style="list-style-type: none"><li>• PPT "Main elements of the notion of Aid"</li><li>• PPT "Using the search tools of the online databases"</li></ul>
- Elisa Fagerström	
	<ul style="list-style-type: none"><li>• PPT "De Minimis and General Block Exemption Regulations"</li><li>• PPT "Workshop task"</li></ul>
- Matthias Keller	
	<ul style="list-style-type: none"><li>• PPT "The role of the national judge in the enforcement of EU state aid rules"</li></ul>
- Clara Saedler	
	<ul style="list-style-type: none"><li>• PPT "Recovery of unlawful and incompatible aid"</li><li>• PPT "Cooperation between National Courts and the European Commission"</li><li>• Workshop exercise – Case Study</li></ul>



# General Information

**THE ROLE OF THE NATIONAL JUDGE IN THE ENFORCEMENT OF EU STATE AID RULES:**

SEMINAR FOR THE FINNISH JUDICIARY

**KANSALLISTEN TUOMAREIDEN ROOLI EU:N VALTIONTUKISÄÄNTÖJEN  
TÄYTÄNTÖÖNPANOSSA**

SEMINAARI SUOMEN OIKEUSLAITOKSELLE

**15. - 16.6.2022, Vantaa**

**222DV57f**

**List of speakers / luettelo puhujista**

Elisa Fagerström  
Senior Specialist  
Employment and Well-Functioning Markets  
Ministry of Economic Affairs and Employment  
of Finland  
PL 32  
FI-00023 VALTIONEUVOSTO

Sami Hartikainen  
Counsel  
Waselius & Wist  
Eteläesplanadi 24 A  
FI-00130 HELSINKI

Dr Matthias Keller  
Presiding Judge  
Administrative Court  
- im Justizzentrum -  
Adalbertsteinweg 92  
DE-52070 AACHEN

Anna Kuusniemi-Laine  
Partner, Head of Sustainability  
Castrén & Snellman Attorneys Ltd  
Eteläesplanadi 14  
FI-00131 HELSINKI

Clara Saedler  
Case Handler  
Unit H/4 State Aid Enforcement and Monitoring  
DG for Competition  
European Commission  
MADO 18/64  
BE-1049 BRUSSELS



# Speakers' Contributions

**Sami Hartikainen**



Financing: The European Union

Service agreement DG COMP/2017/015 – SI2.778715

This document has been drafted for the European Commission. However, it only reflects the views of its authors, and the Commission is not regarded to be responsible for the use of the content of the document.

# The role of national judges in the enforcement of the State aid rules

**Sami Hartikainen**

15 June 2022

**WASELIUS & WIST**



1

## State aid control objectives

- Ensuring fair conditions of competition between undertakings
  - Due to the free movement of goods and services, aid easily distorts the correct functioning of the internal market.
- Preventing “the subsidy race” between the Member States
  - common rules for attracting investments
- Implementation of the market principles, “creative destruction”
  - Unprofitable business must give way to new things.
  - Ensuring a competitive economy
    - For example, no support to an unprofitable factory just to save jobs
- Competition neutrality: equal conditions for the public and private sectors
  - The need, which was identified already at the establishment of the EEC, to protect the markets of the Benelux countries from the public undertakings of the large founding Member States.
- Directing the aid to serve the transformation of the economy, for example, RDI operations and other shared goals such as the green transition

**WASELIUS & WIST**

2

## Article 107(1) – concept of State aid

*Except as otherwise provided in the Treaties, any aid granted by a Member State or through State resources in any form whatsoever that 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 internal market.*

- The main rule is the State aid prohibition: “incompatible with the internal market”
- Aid as a concept
  - received by an undertaking
  - granted by a Member State/State funds
  - benefit/advantage
  - selectivity
  - impact on competition and trade between the Member States

WASELIUS & WIST

## Article 107(2) – aid always compatible with the internal market

*The following shall be compatible with the internal market:*

- 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;*
- aid to make good the damage caused by natural disasters or exceptional occurrences;*
- 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. Five years after the entry into force of the Treaty of Lisbon, the Council, acting on a proposal from the Commission, may adopt a decision repealing this point.*

- Not directly applicable law
- Granting the aid requires a decision made by the Commission or Council

WASELIUS & WIST

## Article 107(3) – aid applicable on a discretionary basis

*The following may be considered to be compatible with the internal market:*

- a) *aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment, and of the regions referred to in Article 349, in view of their structural, economic and social situation;*
- 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 Union to an extent that is contrary to the common interest;*
- e) *such other categories of aid as may be specified by decision of the Council on a proposal from the Commission.*

WASELIUS & WIST

5

## Article 108(1) – existing aid

*The Commission shall, in cooperation 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 internal market.*

- The Commission has the power to request the aid schemes to be changed due to a change in the internal markets, economic realities and the EU's objectives
- The significance has decreased, as the aid schemes are almost always of a fixed period

WASELIUS & WIST

6

## Article 108(2) – formal investigation procedure

*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 internal market with regard to Article 107, 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 258 and 259, refer the matter to the Court of Justice of the European Union direct.*

- Article 258: infringement proceedings launched by the Commission
- Article 259: infringement proceedings launched by another Member State

WASELIUS & WIST

## Article 108(2) – aid approved by the Council

*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 internal market, in derogation from the provisions of Article 107 or from the regulations provided for in Article 109, if such a decision is justified by exceptional circumstances. If, with regard to 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.*

WASELIUS & WIST

## Article 108(3) – standstill obligation

*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 internal market with regard to Article 107, 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.***

- so-called Standstill obligation
- rule concerning the procedure, which is directly applicable law
- a key target of control exercised by national courts

WASELIUS & WIST

9

## Article 108(4) – block exemption regulations

*The Commission may adopt regulations relating to the categories of State aid that the Council has, pursuant to Article 109, determined may be exempted from the procedure provided for by paragraph 3 of this Article.*

- the general block exemption regulation (EU) 651/2014
  - aid listed in the general block exemption regulation can be granted without prior notification to the Commission
- implementing decree (EU) 794/2004
  - notification forms
  - calculating the deadlines
  - interest on the recovered aid
- De minimis regulation (de minimis aid, which is excluded from the control)

WASELIUS & WIST

10

## Article 109 – making regulations

*The Council, on a proposal from the Commission and after consulting the European Parliament, may make any appropriate regulations for the application of Articles 107 and 108 and may, in particular, determine the conditions under which Article 108(3) shall apply and the categories of aid exempted from this procedure.*

- Enabling Regulation (EU) 2015/1588
  - enables general block exemption regulations
- Procedural Regulation (EU) 2015/1589
  - guides the processing of State aid matters in the Commission

WASELIUS & WIST

Main feature of aid as a concept

## UNDERTAKING AND ECONOMIC ACTIVITY

WASELIUS & WIST



## Undertaking as a concept

- The State aid rules are applied when the beneficiary is an undertaking.
- An undertaking refers to an entity that is pursuing an economic activity.
- Any activity consisting of offering goods and services on a given market is an economic activity.
- The legal form or financing of the entity in question is not relevant.
  - For example, C-180/98, *Pavlov etc.*, 74 and 75 k.

WASELIUS & WIST

13

## Undertaking as a concept

- Typically an undertaking, but can also be a cooperative, foundation, association, etc.
- A part or institution of a state, municipality or university can also be an undertaking, although it would not be formally a separate legal person.
- If the entity carries out both economic and non-economic activities, the State aid rules apply to the part that is economic.
  - See the Competition Act (948/2011), section 30 d  
*If the municipality, joint municipality, health and social services county, wellbeing services county or state referred to in section 30 a, or an entity under their control, carries out economic activities in a situation of competition on the markets, these activities are subject to separate accounting [...]*

WASELIUS & WIST

14

## Examples of economic activities

- C-180/98, *Pavel Pavlov* and C-67/96, *Albany*: a pension fund is an undertaking, as it carried out activities that were in competition with private operators (additional pension outside the statutory pension scheme)
- C-82/01 P, *Aéroports de Paris*: the operations of the airport were economic, as
  - 1) the structures and equipment of the airport are provided to be used by airlines and separate service providers in return for a fee at a rate freely fixed by the manager; and
  - 2) the activities do not fall within the exercise of its official powers as a public authority and are separable from its activities in the exercise of such powers (e.g. ensuring flight safety).

WASELIUS & WIST

15

## Examples of economic activities

- C-49/07, *MOTOE*
  - A non-profit association that organises motorcycling competitions and enters, in that connection, into sponsorship, advertising and insurance contracts (economic activity).
  - It also has the power to give consent to applications for authorisation to organise such competitions (non-economic activity).
  - The fact that goods and services are provided on a not-for-profit basis does not prevent the entity providing these measures on the markets from being regarded as an undertaking, as this offering is in competition with the offering of other operators that are seeking profit.

WASELIUS & WIST

16

## Non-economic activity

- Exercise of official authority
- Compulsory social security schemes/general public health care
  - principle of solidarity
    - compulsory membership
    - contributions provided for by legislation
    - benefits identical regardless of the fees
    - compensation mechanism of costs and risks
- Public education organised within the national educational system funded and supervised by the State
  - including vocational education leading to a qualification and university education
- The “public interest” is not a sufficient argument for non-economic

WASELIUS & WIST

17

## Examples of non-economic activities

- C-343/95, *Diego Cali*, the anti-pollution surveillance in the oil port was assigned as a task of an entity governed by private law
  - financed through mandatory fees collected from the port users
  - Such surveillance is connected by its nature, its aim and the rules to which it is subject with the exercise of powers relating to the protection of the environment, which are typically those of a public authority.
- C-159/91 & 160/91, *Poucet & Pistre* and C-218/00, *Cisa*: sickness insurance funds/statutory pensions and sickness insurance;
  - the principles of solidarity conditions are met

WASELIUS & WIST

18

## Examples of non-economic activities

- C-262/18 P, Dôvera zdravotná poisťovňa
- Insurance companies that do not manage compulsory social security schemes are not undertakings, regardless of whether
  - there was some competition between the insurance companies in terms of associated benefits supplementing the system
  - profit-making and sharing to some extent is allowed
- Concerns a system based on the principle of solidarity
  - However, adopting a competitive factor that aims to encourage the operators to carry out activities in accordance with the principles of good administration, meaning as effectively as possible and in a way that causes as few costs as possible, in order to ensure the proper functioning of the social security scheme, is not capable of changing the nature of this scheme. (43 k.)

WASELIUS & WIST

19

## Case law of the Supreme Administrative Court

- KHO:2018:28, first aid services provided by the rescue department
  - The rescue department, unlike other first aid service providers on the markets, are not allowed to provide first aid services to parties other than the joint municipality of the hospital district in question, participate in competitive tendering concerning the provision of first aid, or market first aid services in a manner harmful to the cooperation agreement. Additional responsibilities are related to preparedness for major accidents, disruptions in normal circumstances, and exceptional circumstances.
  - The decision does not directly state that the activity would not be economic, but it was deemed that they are not comparable to private operators.
- KHO:2018:29
  - Non-urgent patient transfers of the Hospital District of Helsinki and Uusimaa (HUS) were an economic activity.

WASELIUS & WIST

20

Main feature of aid as a concept

## **STATE FUNDS AND CATEGORISATION AS A STATE MEASURE**

WASELIUS & WIST

21

### **Concept of State funds**

- From the EU's perspective, the public administration forms a single entity.
- The Member State is formed of all the public administration authorities, as well as local and regional authorities.
- Aid granted by a municipality is also "State aid".
- The form of aid does not matter
  - Grant, loan, guarantee, capital investment
  - Debt write-off
  - Reduction in taxes or fees if favourable to a certain undertaking or production sector
  - Underselling/leasing or an overpriced purchase
- Aid affects public funds: more expenditure or less income

WASELIUS & WIST

22

## A publicly-owned company as the aid intermediary

- Undertakings established expressly with a public service mission, for example,
  - Finnvera Plc
  - Municipality Finance Plc
  - Business Finland Oy
  - Municipal business undertakings (at least for the main parts)
- C-482/99, *Stardust Marine*: As the relationship between the State and public undertakings is inevitably close, there is a real risk that State aid is granted through public undertakings in a manner that is not open and is contrary to the State aid regulation specified in the Treaty (53 k.)
- C-67, 68 & 70/85, *Van der Kooy*: the decision was caused by the State, as the body in question could not take the contested decision without taking account of the requirements of the public authorities.

WASELIUS & WIST

23

## Categorisation as a State measure

- Even if the State is in a position to control a public undertaking and to exercise a dominant influence over its operations, actual exercise of that control in a particular case cannot be automatically presumed.
- A public undertaking may act with more or less independence, according to the degree of autonomy left to it by the State.
- It is necessary to examine whether the public authorities must be regarded as having been involved, in one way or another, in the adoption of those measures.
- More about the criteria, see C-482/99, *Stardust Marine*, 52–57 k.

WASELIUS & WIST

24

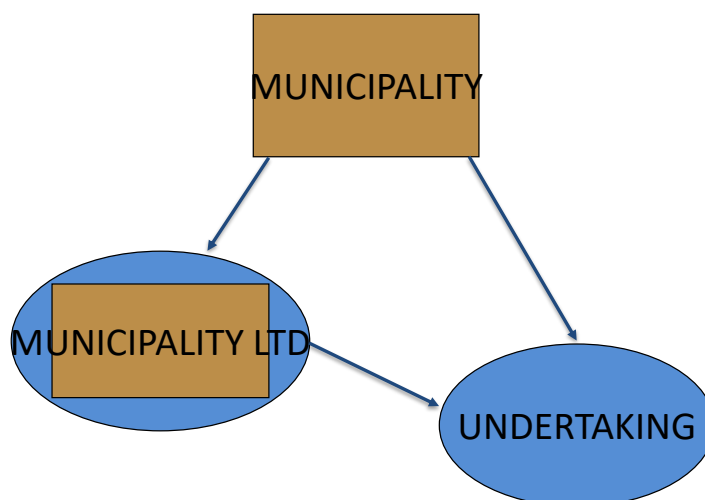
## Special questions

- “According to Posti, a price-controlled delivery obligation at prices below cost would constitute prohibited State aid for newspaper publishers” (Kauppalehti magazine, 21 April 2022)
  - Posti should deliver newspapers at controlled prices in certain areas.
  - Traficom would specify the “reasonable” price level that could, according to the law proposal, be a price that does not cover delivery costs.
- The statutory obligation of electricity transmission companies to pay a price above the market value, for example, to producers of green electricity.
  - Attributable to the State, but no impact on the budget
  - Case-by-case assessment
    - C-378/98, *PreussenElektra*: No aid
    - C-206/06, *Essent Network*: Aid

WASELIUS & WIST

25

Summary: Beneficiary – undertaking  
Grantor – public entity directly or indirectly



WASELIUS & WIST

26



# WASELIUS & WIST

Eteläesplanadi 24 A, 00130 Helsinki, Finland  
Tel. +358 9 668 9520 • [ww@ww.fi](mailto:ww@ww.fi)

[www.ww.fi](http://www.ww.fi)



**Anna Kuusniemi-Laine**

# MAIN ELEMENTS OF THE NOTION OF AID - ADVANTAGE, SELECTIVITY, EFFECT ON TRADE AND COMPETITION



Anna Kuusniemi-Laine  
15.6.2022

## THE ROLE OF NATIONAL JUDGE IN THE ENFORCEMENT OF EU STATE AID RULES

SEMINAR FOR THE FINNISH JUDICIARY,  
Organised by ERA in cooperation with the Finnish Courts  
Administration on behalf of the European Commission



Funded by the European Union  
Service Contract DG COMP/2017/015 - SI2.778715

This document has been prepared for the European Commission. However, it reflects the views only of the authors, and the Commission cannot be held responsible for any use which may be made of the information contained therein

1

## TOPICS



- art 107 TFEU
- Save as otherwise provided in the Treaties, 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 is incompatible with the internal market in so far as it affects trade between Member States.
- Advantage
- Selectivity
- Effect on trade and competition



© CASTRÉN & SNELLMAN

2

2



# ADVANTAGE

3



## SUPPORT ELEMENT - BENEFIT - ADVANTAGE

- **Advantage** - whether the measure has resulted in an economic advantage:
  - An advantage is granted whenever the financial situation of a company improves as a result of a government measure whose terms differ from normal market conditions.
  - An assessment of the financial situation of the company after the measure compared to the situation without the measure.
- Examples:
  - Donation
  - Loan below market conditions
  - Guarantee below market conditions
  - An investment that a private investor would not have made under these conditions
  - Tax exemption
  - Bankruptcy protection (operating in an unincorporated form)
  - Sale of assets at a reduced price
  - Purchases and acquisitions of assets at a premium
  - Forgiveness of debts
  - Costs borne by the company
- Commission Notice on the notion of State aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union (2016/C 262/01) and the case law referred to therein

4

## OBJECTIVE ASSESSMENT OF ADVANTAGE



- Not relevant:
  - What is the form of the measure
  - What is the objective of the measure
- Not relevant for the company:
  - Is the benefit compulsory?
  - Has the company been able to refuse the benefit?
- The absence of an advantage cannot be proved by the fact that competitors in other Member States are in a better position.



© CASTRÉN & SNELLMAN

5

5

## NO ADVANTAGE

- Reimbursement of illegally collected taxes
- The obligation for the public authority to compensate businesses for the damage it causes
- Compensation for damages due to expropriation
- Market-based measures



© CASTRÉN & SNELLMAN

6

## MARKET ECONOMY OPERATORS TEST



- The Union legal order does not interfere with property regimes (Article 345 TFEU).
- No aid is involved if the transaction is carried out under normal market conditions.
  - Market economy operator principle
- Has the general government acted as a market economy operator would have acted in a similar situation?
- The role of the general government as an economic actor is examined.
  - As an economic operator, the general government must act like a private operator.
  - No attention is paid to the role of the public sector as an exercise of public power.
    - For example, social, regional and sectoral objectives - these cannot justify action under the market economy investor principle.
- The measure must be examined on the basis of the information available at the time the measure was decided.
  - The market operator will assess the project's strategy and financial prospects in advance.
  - The general government must be able to demonstrate that the market economy operator principle is being applied.
  - For example, independent expert opinions could be used to support the credibility of the assessment.

© CASTRÉN & SNELLMAN

7

7

## DETERMINING MARKET CONFORMITY



- Cases where conformity with market conditions can be determined directly
  - *Pari passu* - public authorities and private operators carry out the transaction on an equal footing, or
  - The transaction involves the sale or purchase of assets, goods or services and is carried out through a competitive, transparent and non-discriminatory bidding process without conditions.
    - A public procurement is typically sufficient to show that no aid is granted.
- Other evaluation methods
  - Comparative analysis / benchmarking
    - The transaction is assessed in the light of the conditions under which similar transactions have been carried out by comparable private operators in a similar situation.
  - Other evaluation methods
    - Standardised methods based on objective, verifiable and reliable data.
      - Internal interest rate
      - Net current value
    - Can a normal return be expected, taking into account the risks?
    - Counterfactual analysis - taking into account e.g. previous risk as a shareholder.

© CASTRÉN & SNELLMAN

8

8

## DETERMINING MARKET CONFORMITY



- **Guarantees**

- Guarantee Notice: Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees (OJ C 155, 20.6.2008, p. 10).
  - Defines the conditions under which an individual guarantee does not contain aid:
    - The borrower is not in financial difficulty.
    - The guarantee has a fixed maximum amount and a limited duration.
    - The guarantee does not cover more than 80% of the loan amount.
    - A market-based price is paid for the guarantee.
      - A safe harbour fee for SMEs, the amount of which depends on their credit rating.

- **Loans**

- Communication on the reference rate: Commission notice on the revision of the method for setting the reference and discount rates (OJ C 14, 19.1.2008, p. 6).
- The reference rate set by the Commission + a margin based on the company's credit rating and collateral.
- The reference rate serves as the default value for a loan at market rates.

## EXAMPLE OF A MARKET CONFORMITY ASSESSMENT



- Componenta Oyj, T-455/05

- This was an arrangement in which the City of Karkkila bought 50% of the shares in Karkkila Keskustakiinteistöt Oy from Componenta.
- Did the City overpay for the shares?
- The issue of marketability of the purchase price - valuation of the real estate investment trust - land value vs. expected return based on cash flows - justification
- Procedure: Commission 25.10.2005: aid - Court of First Instance 18.12.2008 - decision insufficiently reasoned - Commission 20.3.2011, no aid



## BENEFIT FOR A SERVICE OF GENERAL ECONOMIC INTEREST



- SGEI services - services of general economic interest - service obligation
- Altmark judgment: Altmark Trans, C-280/00
- Four cumulative conditions:
  - The undertaking must actually be entrusted with the discharge of public service obligations, and these obligations must be clearly defined.
  - The parameters on the basis of which the compensation is calculated must be established in advance in an objective and transparent manner.
  - The compensation shall not exceed what is necessary to cover all or part of the costs incurred in the discharge of public service obligations, taking into account the relevant receipts and a reasonable profit for discharging those obligations.
  - Selection of the supplier in a public procurement procedure, or
  - The level of compensation shall be determined by reference to the costs which a typical undertaking, well run and adequately equipped, would have incurred in discharging those obligations, taking into account the relevant receipts and a reasonable profit for discharging the obligations.
  - Communication on compensation for the provision of services of general economic interest. OJ C 8, 11.1.2012, p. 4.

## MARKET CONFORMITY REQUIREMENT TAKEN INTO ACCOUNT AT NATIONAL LEVEL- § 130 OF THE LOCAL GOVERNMENT ACT



- Determining the marketability of the transfer or lease of municipally-owned real estate.
- The municipality may sell or lease property it owns for a minimum of ten years to a competitive and unconditional bidder in the market.
- The tender must be transparent and adequately advertised.
- When a municipality disposes of or leases real estate owned by it for a period of at least ten years without a tender pursuant to subsection 1, the market value of the real estate or the market rental rate shall be assessed by an impartial valuer.
- The municipality must also take into account Articles 107 and 108 of the Treaty on the Functioning of the European Union.

## EXAMPLE OF NATIONAL PRACTICE



- KHO:2018:29
- *"The Supreme Administrative Court held that the contested decisions of the HUS/Hyvinkää Hospital District Board did not sufficiently explain the market orientation of the compensation for time charter transport and the cost-based nature of the pricing in the manner required by the Union's State aid rules. Consequently, on the basis of the above criteria, it could not be ruled out that HUS-Logistik -liikelaitiko HUS, indirectly through the HUS-Kuntayhtymä, would have received overcompensation from the member municipalities of the hospital district for the provision of time charter transport and thus an economic advantage within the meaning of Article 107(1) TFEU."*



© CASTRÉN & SNELLMAN

13

13

## SELECTIVITY



© CASTRÉN & SNELLMAN

14

14



## SELECTIVITY - GENERAL PRINCIPLES



- **Selectivity:** the aid favours a particular firm or sector of production
  - Identified firms or sectors of production
  - E.g. : *"The measure under assessment was granted to Karjaport, a specific company. The Commission therefore considers that the measure confers a selective advantage on the beneficiary."*
    - Commission Decision on the measures in favour of the cooperative Karjaport SA.27420 (C 12/2009)
  - The aid is subject to objective conditions which, if met, may be granted to an indefinite number of beneficiaries within the limits of the overall budget.
- **Cf. a general economic policy measure from which all sectors of the economy can benefit**
  - General measures that are equally available to all companies operating in the EU are not considered selective. However, for measures to be considered general in nature, their scope must not be narrowed by factors that limit their practical effect.
- **Material selectivity**
  - The measure only applies to certain companies or certain sectors in a particular Member State.
- **Regional selectivity**

## MATERIAL AND REGIONAL SELECTIVITY



- **Material selectivity**
  - The measure only applies to certain companies (groups of companies) or certain sectors of activity in a given Member State.
  - Can be proven in law or in fact.
  - Administrative discretion can lead to selectivity.
  - Interpretively tricky situations include broad measures that apply to all companies meeting certain criteria, and which mitigate the charges that companies would normally have to pay.
    - Reference system to be clarified (e.g. VAT system)
    - Find out whether the measure in question is different from this system.
    - Can the derogation be justified by the nature or general scheme of the reference system?
      - If yes - not selective
    - It must also be assessed whether the reference system is designed in a consistent or manifestly arbitrary or biased and discriminatory manner.
- **Regional selectivity**
  - Measures whose scope covers the whole territory of a Member State are not covered by the territorial selectivity criterion.
  - On the other hand, not all measures that apply only to certain parts of a Member State are automatically selective (e.g. decentralisation of tax powers - regionally differentiated tax rates).

## TAX SUBSIDIES



- Member States decide on economic policy and the distribution of the tax burden.
- The Communication gives numerous examples of possibilities for e.g. tax reductions.
  - Cooperatives
  - Collective investment undertakings - abolition of double taxation
  - Tax breaks
- Criteria for selectivity of tax rulings
- Tax agreements between the taxpayer and the tax authority
- Depreciation/amortisation rules
- Anti-abuse rules
- Excise duties
  - E.g. confectionery tax



© CASTRÉN & SNELLMAN

17

17

## EFFECT ON TRADE AND COMPETITION



© CASTRÉN & SNELLMAN

18

18

## EFFECT ON TRADE AND COMPETITION



- Effect on trade and competition - whether the economic activity distorts or threatens to distort competition by favouring a particular firm or industry - insofar as it affects trade between EU countries:
  - A State measure is deemed to distort or threaten to distort competition if it is *likely to improve the* competitive position of the beneficiary compared with other undertakings with which it competes.
  - It is not necessary to establish that the aid actually affects trade between EU countries, only that it is likely to do so.
- These two criteria are generally considered together.
- Distortion of competition: the aid is likely to improve the competitive position of the beneficiary compared with other firms with which it competes.
- This usually occurs when a public authority grants an economic advantage to an undertaking in a sector that is or could be open to competition.

## DISTORTION OF COMPETITION



- Effect on trade:
  - "Distorts or threatens to distort"
  - It is sufficient that the aid enables the company to maintain a stronger competitive position than it would have had without the aid.
- No requirement that the distortion of competition be significant or substantial.
  - A small amount of aid is not exempt (except for De Minimis aid).
  - Aid to small businesses may also be prohibited.
  - However, only a hypothetical impact on competition is not enough.
- De Minimis aid:
  - Commission Regulation 1407/2013
  - Transparent forms of support
  - The main rule: Maximum of €200,000 per group of companies per 3 tax years.

## EFFECT ON TRADE BETWEEN MEMBER STATES



- Impact on competition:
- Aid is *likely* to affect trade
  - No need to study detailed impacts.
  - The aid strengthens the firm's position compared with other competing firms in trade between Member States.
- The effect on trade criterion can be met even if the beneficiary does not itself directly engage in cross-border trade.
  - It is often a question of whether there is cross-border trade in the market concerned.
- There is no need to define the market or to examine in detail the impact of the measure on the competitive position of the beneficiary and its competitors.

## EXAMPLES



- *"Meat products are traded between Member States, i.e. within the territory in which the beneficiary operates. According to Finland, Karjaportti exports its products mainly to Russia, but also to Member States. The Commission therefore considers that the measure is liable to distort competition and affect trade between Member States."*
  - Commission Decision, *Osuuskunta Karjaportti* SA.27420 (C 12/2009)
- *"Furthermore, taking into account the economic importance of the arrangement, the competitive nature of the patient transplantation sector and the fact that the appellant companies belong to the international Falck group, the so-called competition and trade effect condition under the State aid rules cannot be excluded either."*
  - KHO:2018:29

## HANDOUT EXAMPLES - NO TRADE IMPACT



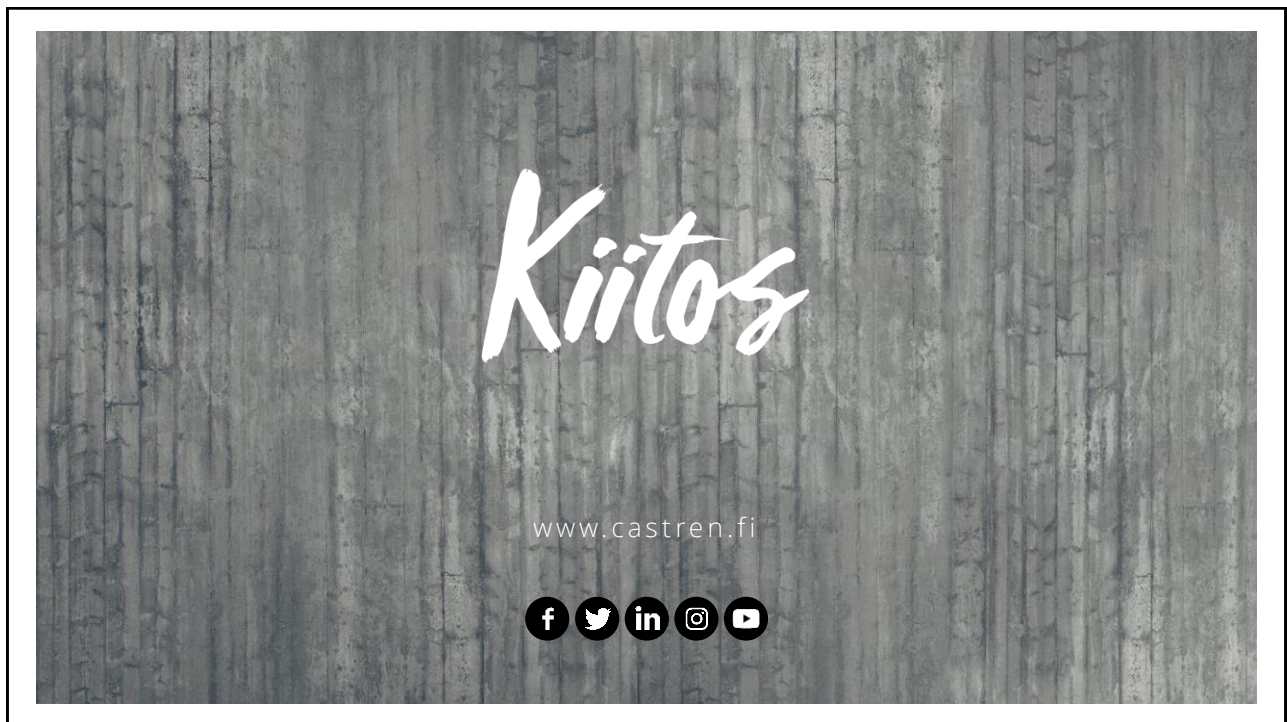
- Sports and leisure facilities that primarily serve local residents.
  - Swimming pool vs. spa to attract tourists?
- Local cultural events
  - Cf. large, widely marketed events
- Media and/or cultural products with a linguistically and geographically limited local audience.
- Local conference centres.
- Small airports or ports that primarily serve local users.

## INTERNAL SERVICE PROVIDERS



- Outsourcing the provision of a public service may also distort competition, except in the case of a statutory monopoly.
- In practice, questions arise, for example, in the case of a divestiture of an affiliated entity under the Public Procurement Act if the affiliated entity receives state aid.
  - For example, non-arm's length contracts between a municipality and an affiliated entity for support services.
  - Distortion of competition, especially in the competitive part of the market.





25



Rahoitus: Euroopan Unioni

Palvelusopimus DG COMP/2017/015 - SI2.778715

Tämä asiakirja on laadittu Euroopan komissiolle. Se heijastaa kuitenkin ainoastaan laatijoidensa näkemyksiä, eikä komission voida katsoa olevan vastuussa sen sisällön käytöstä.

© CASTRÉN & SNELLMAN

26

26





# USING THE SEARCH FEATURES OF ONLINE DATABASES



Anna Kuusniemi-Laine  
15.6.2022

**THE ROLE OF NATIONAL JUDGE IN THE ENFORCEMENT OF  
EU STATE AID RULES**

**SEMINAR FOR THE FINNISH JUDICIARY**

Organised by ERA in cooperation with the Finnish Courts  
Administration on behalf of the European Commission



Funded by the European Union

Service Contract DG COMP/2017/015 - 512.778715

This document has been prepared for the European Commission. However, it reflects the views only of the authors, and the Commission cannot be held responsible for any use which may be made of the information contained therein

1

## TOPICS



- The aim of the session is to provide useful practical training for judges on the use and features of online databases
  - Curia
  - The Directorate-General for Competition (DG COMP)
  - EUR-Lex
- Commission study on the enforcement of state aid rules and national court decisions
  - Finland's land report
  - Database of national case law



2





# CURIA

© CASTRÉN & SNELLMAN

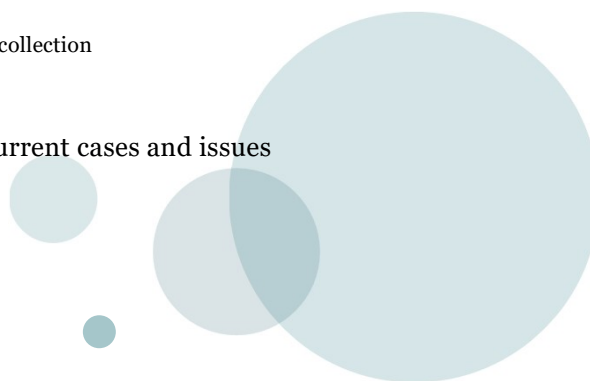
3

3



## CURIA

- Includes information on the Court of Justice (CJEU), the General Court (CJEU) and the Civil Service Tribunal
- Contains a wealth of EU case law:
  - Resolved cases
  - Cases decided but not published in the case law collection
  - Opinions of Advocates General
  - Pending cases
- Also includes press releases and news on current cases and issues

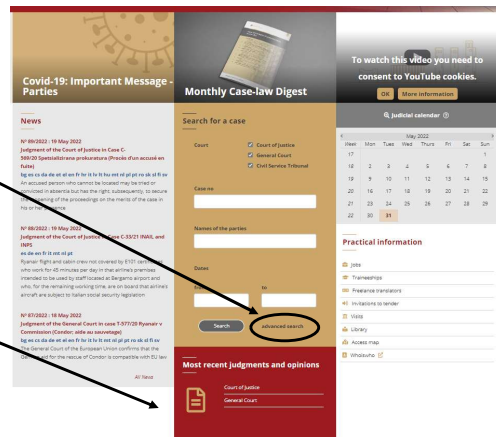


4

# CURIA HOMEPAGE



- Curia:
- Latest press releases and news on the left on the front page
- In the middle of the case law search and access to the advanced case law search
- Court calendar and other useful information on the right
- Access to the latest judgments of the CJEU and the CJEU and the Advocate General's proposed solutions below



5

## ADVANCED CASE LAW SEARCH

- Advanced case law search allows you to search for decisions of courts, the Advocate General and pending cases using different features
- You can search for judgments and pending cases by, among other things:
  - According to the court
  - Case number
  - In the names of the parties
  - On the basis of national law
  - Based on a specific time frame or date
  - Based on the topic
  - Type of treatment
  - By reference to previous case law or EU legislation (e.g. treaty, regulation, directive, decision)
    - E.g. Articles 107 and 108 and certain points in those articles
  - With optional text search

Case status	<input checked="" type="radio"/> All cases <input type="radio"/> Cases closed <input type="radio"/> Cases pending
Court	<input checked="" type="checkbox"/> All <input type="checkbox"/> Court of Justice <input type="checkbox"/> General Court <input type="checkbox"/> Civil Service Tribunal
Case number	<input type="text"/> (e.g. C-17/05; 17/05)
Name of the parties	<input type="text"/>
Documents	<input type="text"/> All
Provisions of national law referred to	<input type="text"/>
Provisions of international law referred to	<input type="text"/>
ECLI	<input type="text"/> ECLI:EU:
Text	<input type="text"/>
Period or date	Date of delivery <input type="text"/> <input checked="" type="radio"/> from <input type="text"/> to <input type="text"/> (dd/mm/yyyy) <input type="radio"/> last 8 days <input type="radio"/> last month <input type="radio"/> last year <input type="radio"/> last 5 years <input type="radio"/> on <input type="text"/> (dd/mm/yyyy)
Subject-matter	<input type="text"/>
Procedure and result	<input type="text"/>
References to case-law or legislation	Search in <input checked="" type="checkbox"/> Grounds of judgment <input type="checkbox"/> Operative part <input type="checkbox"/> Opinion Category <input type="text"/> Number <input type="text"/> Year <input type="text"/> Annex <input type="text"/> Article <input type="text"/> Paragraph <input type="text"/> Subparagraph <input type="text"/> Letter <input type="text"/>
Systematic classification scheme	<input type="text"/> <input checked="" type="checkbox"/> Include earlier/new scheme
Formation of the Court	<input type="text"/>
Judge-Rapporteur	<input type="text"/>
Advocate General	<input type="text"/>
Source of a question referred for a preliminary ruling	<input type="text"/>
Authentic language	<input checked="" type="checkbox"/> Language of the case <input type="checkbox"/> Language of the Opinion

6

©

?

- 7

Ⓢ

**Judgment:**

The search results list contains the case number, document number, date of issue, names of the parties, subject area of the case and a link to the document on Curia or EUR-Lex.



# DG COMP

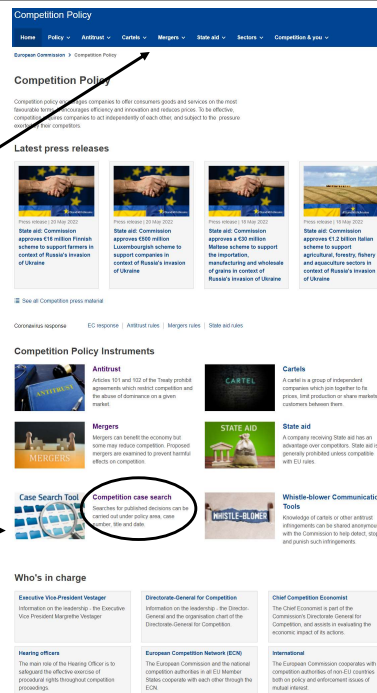


## DG COMP

- The Commission's Directorate-General for Competition, which is responsible for EU competition policy and, together with the national competition authorities of the Member States, monitors compliance with EU competition rules.
- In addition, DG Competition is primarily responsible for enforcing competition rules.
- Issues press releases on topical competition policy issues and decisions
- Also includes sector-specific information on EU competition policy (e.g. energy, environment, agriculture, financial services, postal services, transport, etc.)
- Includes case law search:
  - Competition
  - Mergers and acquisitions control
  - Cartels
  - State aid

## DG COMP HOMEPAGE

- DG Comp:
- The drop-down menu on the front page takes you to detailed pages on the topic of your choice, including:
  - EU competition policy
  - Competition
  - Cartels
  - Mergers and acquisitions control
  - State aid
  - Sectoral information
- Latest press releases from DG Competition
- Access to case law search, among other things, at the bottom
- Also below for more information on the organisation of DG COMP



11

## CASE SEARCH

- Case search for Commission decisions on antitrust, cartels, merger control and state aid
- Decisions can be searched by, among others:
  - Case number
  - Names of the parties
  - Based on the date of the decision
  - Based on the classification of economic activities (NACE code)

12

- The left column of the search results list indicates whether the decision concerns competition, cartel, merger control or state aid.
- The search results list also shows, among other things:
  - Decision number
  - In the case of State aid decisions, the Member State concerned
  - Date of adoption of the decision
  - Title of the decision
- The Show details section in the right-hand column of the search results list provides more detailed information about the decision, including:
  - Press release on the decision
  - Decision

Mergers

M.10666

25.04.2022

BROOKFIELD / TELIA COMPANY / TELIA TOWERS SWEDEN

View details

Mergers

M.10676

01.04.2022

CDPQ / TRANSGRAN / AUSTRALLANGERS / CPP INVESTMENTS / ADIA / WICK

View details

Mergers

M.10676

21.04.2022

NEXT / WP / PRNK

View details

Mergers

M.10678

07.04.2022

ADP / MACQUARIE / ABERDEEN / ONDVA

View details

M.10678 ADP / MACQUARIE / ABERDEEN / ONDVA

Simplified procedure

Notification on:

16.03.2022

Provisional deadline:

23.04.2022

Prior publication in Official Journal:

C132 of 25.03.2022

Concerns economic activity (NACE):

J.61 - Telecommunications

Regulation:

Council Regulation 139/2004

Decision(s):

07.04.2022

Art. 61(1)(b)

Publication

21.04.2022

C132

Press release

PR-2022-008

Decision text

11.04.2022

C132

PR-2022-008

Relation with other case(s):

M.10174

Other case related information:

Section 12 of the MCO on 21.03.2022

PR-2022-008 issued on 21.03.2022

Related link(s):

Mergers

M.10678

19.04.2022

TELEFONICA / PORTUGALADA / TELXUS

View details

Mergers

M.10669

21.04.2022

CDP GROUP / KOCH INDUSTRIES / JOSEF FERTILIZER COMPANY

View details

Mergers

M.10668

21.04.2022

MORCIC CAPITAL / ELLIS GROUP

View details

Mergers

M.10700

08.04.2022

SEGRO / SPGSI / TARGET ASSET HOLDING PARIS

View details

Mergers

M.10702

29.04.2022

MACQUARIE / BCI / REED HOLDING AND REEDEN HOLDING 2020

View details

Mergers

M.9938

21.04.2022

KINGSGRIP GROUP / TREND

View details

State Aid

SA.100076

Italy

05.04.2022

Reintroduction of the Integrated Transport Scheme in the Province of Trento

View details

State Aid

SA.100031

Romania

01.04.2022

COVID-19 - Air aid scheme to airlines operating in Arad Airport

View details

State Aid

SA.100057

Italy

25.04.2022

RRI - Italian SOE plan

View details

State Aid

SA.100048

Spain

29.04.2022

SA100058 - TETEL - RRI - Eup-incentives to promote maritime freight transport

View details

State Aid

SA.101182

Belgium

19.05.2022

Belgium - Digital transformation of media

View details

State Aid

SA.101193

Cyprus

12.04.2022

Notification du cadre national envisagé pour l'accès d'aides d'Etat destinées à compenser les pertes subies dans le secteur agricole au cours de la période 2014-2020 (régime d'aides d'Etat SA.100000) (notifié en vertu du règlement (UE) 2015/2020)

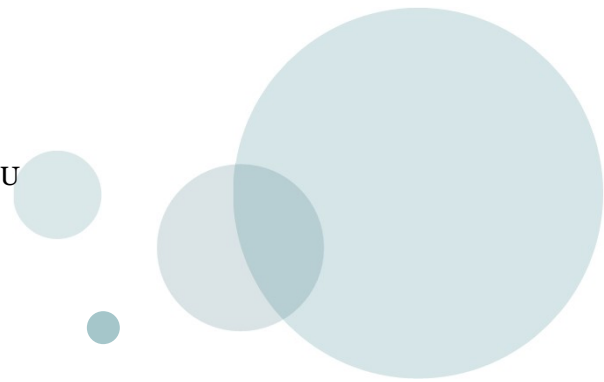
View details

⑧

# EUR-LEX



- Official website for EU legislation and other public documents
- The EU legal portal, including:
  - Official Journal of the EU
  - EU treaties
  - Legislation in force
  - Legislation in preparation
  - Legislative procedures
  - Summaries of EU legislation
- Published in the official languages of the EU
- Free of charge

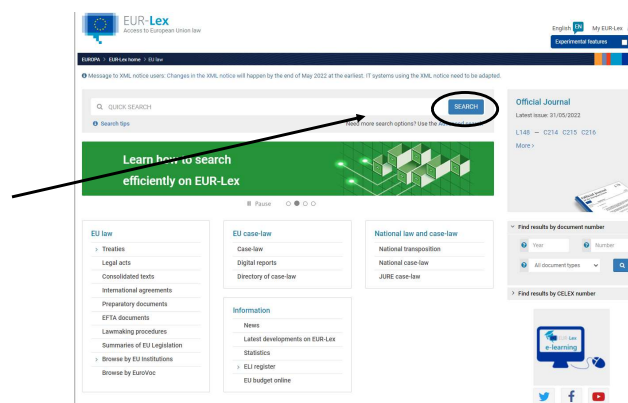


15

# EUR-LEX HOMEPAGE



- EUR-Lex:
- At the top of the front page, you will find a quick search tool that allows you to search for, among other things:
  - EU legislation
  - EU case law
  - Other public documents
- In addition, access to the advanced search
- More information on EU law, EU case law, national law and case law, and current publications



16

## ADVANCED SEARCH

- Advanced search allows you to search EU legislation, EU case law and other public documents using different features
- Documents can be requested from, among others:
  - With optional text
  - On the basis of a documentary reference
  - According to the author of the document
  - By date type and single date or specific time interval
  - By subject area and sector

17

## OPTIONAL TEXT SEARCH



- It is recommended that you use the free text search to search for documents
  - The search engine finds all documents containing the keywords used in the text search
- When using the free text search, remember the Boolean operators included in the EUR-Lex advanced search:
  - Boolean operators are the abbreviations AND, OR and NOT, which are used to combine search words
- You can also use an asterisk after the search term:
  - An asterisk is used to cut off a word at a certain point, so that the search engine finds all documents containing all forms of the search word.
- You can also use wildcards around the search term:
  - The search engine will then find all documents containing the search word between the hyphens in its exact spelling.
- For example, in the example above, the search engine will find all documents containing the words *state aid* and *anticompetitive* in their various forms.
  - E.g. *state aid*, *state support*, *state aid*, *anti-competitive*, *anti-competitive*, *anti-competitive*, etc.

18



# SEARCH RESULTS

- It is still possible to filter the search results after the search
- The search results can be filtered by, among other things:
  - Document by year
  - By type of act
  - According to the author of the document
  - By type of procedure

The screenshot shows the search results interface of the European Union's legal database. On the left, there are several filter categories: 'By keyword' (In title, In text), 'By year of document' (2023, 2022, 2021, 2020, 2019), 'By collection' (EU law and case-law, Legal acts, Consolidated texts, Treaties, International agreements, Preparatory documents, Parliamentary questions, Case-law, BFTA documents, National law and case-law, National transposition, JURE case-law), 'By type of act' (National transposition measures, Regulation, Provisional data, Judicial information), 'By author' (European Commission, European Parliament, Council of the European Union, Court of Justice, General Court), and 'By type of procedure' (Ordinary legislative procedure, Consultation procedure, Non-legislative procedure, Co-decision procedure, Agreement). On the right, the search results are displayed, showing a list of decisions with their titles, OJ numbers, and dates. Arrows from the text on the left point to the filter categories on the right.

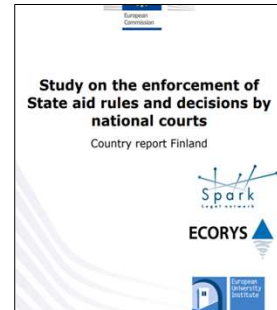
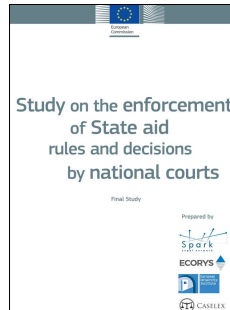
## STUDY ON THE ENFORCEMENT OF STATE AID RULES AND NATIONAL COURT DECISIONS



## STUDY ON THE ENFORCEMENT OF STATE AID RULES AND NATIONAL COURT DECISIONS



- Commission published a study of national cases on EU state aid rules in August 2019 (COMP/2018/001)
  - The study was carried out by Spark Legal Network, the European University Institute, Ecorys and Caselex in cooperation with Member States' state aid experts and the Commission's Directorate-General for Competition.
- The study provides a comprehensive overview of how EU courts have applied state aid rules between 2007 and 2018.
  - The study is complemented by a selection of key judgments for 2018
- Castrén & Snellman contributed to the investigation by preparing a country report on Finland and explaining to the Commission the Finnish case law on state aid.
- The study can be found on the website of the Publications Office of the European Union and on the study's homepage
- The country reports of the Member States can be found on the survey's website

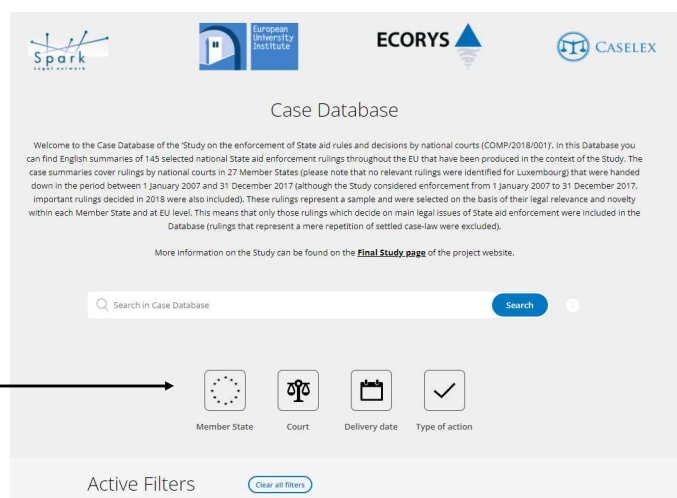


21

## A DATABASE OF NATIONAL CASE LAW



- The study's website also contains a database of national case law.
  - The database contains summaries in English of 145 national state aid decisions in EU Member States included in the survey (e.g. 5 KHO decisions for Finland).
- Decisions can be searched for by, among others:
  - Based on the keyword
  - By Member State
  - According to the court
  - By date of issue
  - On the basis of the procedure



22



23



24

**Elisa Fagerström**



# The de minimis regulation and the general block exemption regulation



Rahoitus: Euroopan Unioni

Palvelusopimus DG COMP/2017/015 - SI2.778715

Tämä asiakirja on laadittu Euroopan komissiolle. Se heijastaa kuitenkin ainoastaan laatijoidensa näkemyksiä, eikä komission voida katsoa olevan vastuussa sen sisällön käytöstä.

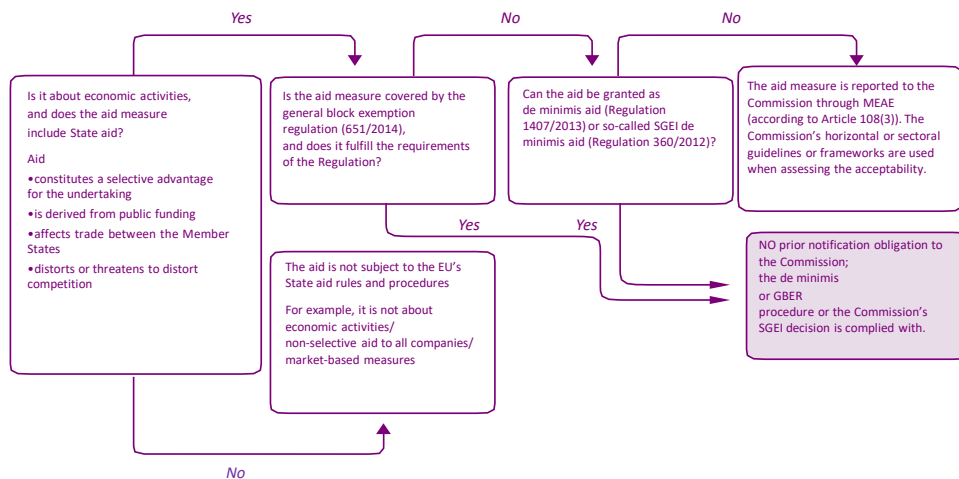


Työ- ja elinkeinoministeriö  
Arbets- och näringsministeriet

## Criteria of acceptability for State aid

- If the State aid criteria are met, it is not allowed to grant aid without the Commission's approval (TFEU, Article 108(3)).
- Significant **deviations** from the prior notification obligation:
  - 1) De minimis aid, i.e. aid **below a certain threshold** (1407/2013)
  - 2) **The general block exemption regulation** (651/2014, "GBER")
  - 3) Services of general economic interest, **SGEIs** (TFEU, Article 106(2))

## Should the aid be reported to the Commission?



The Ministry of Economic Affairs and Employment of Finland (MEAE) is the coordinating authority of the State aid rules in Finland. The State aid notifications of all the authorities (excluding the Ministry of Agriculture and Forestry of Finland (MAF)) concerning aid schemes or individual aid are delivered to the Commission through MEAE.

## The de minimis regulation 1407/2013

Senior Specialist Elisa Fagerström  
Ministry of Economic Affairs and Employment of Finland

# The de minimis regulation 1407/2013



## General (1)

- De minimis aid:
  - does not affect trade or competition between the Member States.
  - no notification or reporting obligation towards the Commission.
- The **maximum amount** of de minimis aid
  - a maximum of EUR 200,000 to one undertaking over three tax years. The authority investigates before granting the aid.
  - all the de minimis aid granted by different authorities is included in the aforementioned maximum amount.
  - the maximum amount is monitored at the “single undertaking” level, the total aid for the **Group** is aggregated.
- The document material must be retained for 10 years.

## General (2)



- Scope limitation, which must be clarified before granting the aid.
- Aid can be granted to an undertaking in difficulty (excluding loans and guarantees).
- Aid **cumulation**: if other State aid is also granted for the same project (e.g. pursuant to the general block exemption regulation), the aid authority must ensure that the maximum aid levels are obeyed.

## Which industries cannot be granted de minimis aid:




1. companies operating in the fishery and aquaculture sector;
2. companies active in the production of primary agricultural products;
3. companies engaged in the processing and marketing of agriculture products;
4. export-related activities towards third countries or Member States, namely aid directly linked to the quantities exported, to the establishment and operation of a distribution network, or to other current expenditure linked to the export activity;
5. aid contingent upon the use of domestic over imported goods.

## The maximum amount is monitored at the “single undertaking” level



- Companies are regarded as a “single undertaking” and the de minimis aid received by them is aggregated if there is at least one of the following relations between the companies:
  1. the undertaking has a majority of the shareholders' or members' voting rights in another undertaking;
  2. the undertaking has the right to appoint or remove a majority of the members of the administrative, management or supervisory body of the other undertaking;
  3. the undertaking has the right to exercise a dominant influence over another undertaking pursuant to a contract entered into with that undertaking or to a provision in its memorandum, articles of association or constitution;
  4. the undertaking, which is a shareholder in or member of another undertaking, controls alone, pursuant to an agreement with other shareholders in or members of that undertaking, a majority of shareholders' or members' voting rights in that undertaking.



- As a rule, an undertaking connected to another undertaking, for example, through majority ownership or another control relationship, is considered as a “single undertaking”.
  - For example, the parent company and subsidiary are considered at Group level as a single undertaking in terms of the de minimis aid, and the aid received by them is aggregated.
- Correspondingly, different locations of the undertaking are regarded as a single undertaking when granting the de minimis aid.
  - On the other hand, so-called franchise companies are regarded as independent aid recipients for which de minimis aid can be separately granted.
- If the recipient of the aid is an intermediary organisation that only transfers the received aid forward without gaining any economic advantage, the amount of the de minimis aid is calculated separately for each final recipient of the aid. Depending on the situation, the final recipient of the aid may be either an intermediary organisation or the supported undertakings.

## An example of the single undertaking definition



**Person H owns 100% of the shares in undertakings A and B and 39% of the shares in undertaking C. There are no ownership links between the undertakings.**

→ **According to the de minimis regulation, undertakings A and B are a single undertaking.**

→ **For undertaking C, it must be assessed whether H is using the control in the undertaking. If not, undertaking C is not part of the single undertaking formed by undertakings A and B.**

## What does the three-year period mean?




- When granting the de minimis aid, the granting authority must specify the amount of the de minimis aid granted to the undertaking over a three-year period in order to ensure that the aid does not exceed EUR 200,000.
- **The three-year period practically means the undertaking's current tax year and two previous tax years.**
  - ➡ The tax year consists of the financial year or financial years that end during the calendar year.
- **The three-year period starts in the tax year when the authority has granted the aid for the first time; the aid payment date is not relevant.**
  - As the definition of the de minimis aid has a mobile character, more de minimis aid may become available annually, depending on the granting time of the aid.

## The level and category of aid



- The de minimis regulation applies only to aid in respect of which it is possible to calculate precisely the gross grant equivalent of the aid ex ante without the need to undertake a risk assessment **transparent aid**
- Transparent categories of aid are, for example, direct aid, loans and guarantees under certain conditions.
- Conversely, aid comprising capital injections or risk capital measures is primarily not regarded as transparent aid, unless the risk capital scheme concerned only provides capital up to the de minimis ceiling.
  - This is the case as it is not possible to reliably assess at the time of the granting of the aid whether the investment will yield profit or whether it will be totally lost.

- When viewing the de minimis threshold, the amount of the aid is stated in gross figures (before taxes). At its simplest, the amount of aid paid in one instalment is the same as the gross aid amount. 
- Conversely, if the aid is paid in several instalments or it is granted as loans or guarantees, the amount of the aid is discounted back to the date when the aid was granted at the reference rate set by the Commission.
- At the end of October 2020, a judgment concerning the application of the de minimis regulation (the Judgment of the Court [Eighth Chamber] of 28 October 2020, case C 608/19) was issued. The judgment states that national administrative procedural rules can be applied alongside the de minimis regulation to the extent that the regulation does not provide for the matter concerned:
  - The Court deemed that the undertaking that had applied for the de minimis aid may opt, until such aid is granted, to reduce the funding required or to forgo, in full or in part, previous financial assistance already received, so as not to exceed that ceiling of EUR 200,000.

## Commission Regulation (EU) No 651/2014 (the general block exemption regulation)

Senior Specialist Elisa Fagerström  
Ministry of Economic Affairs and Employment of Finland



## INTRODUCTION



- Commission Regulation (EU) No 651/2014 (the general block exemption regulation) constitutes a significant deviation from the general rule according to which Member States must report plans concerning the granting of new aid to the Commission before their implementation, provided that certain pre-determined conditions are met.
- However, it must be taken into account that the authority granting the aid must publish a notice of the aid scheme through the Commission's electronic system.
- The general block exemption regulation consists of general conditions that concern all aid, as well as of aid-specific special conditions.



- The scope of the general block exemption regulation is extensive:
  - aid for SMEs, pay subsidies
  - RDI aid, training aid, promotion to culture and heritage conservation
  - environmental protection and energy
  - regional aid, social aid for transport, broadband infrastructure
  - airports and ports, sports infrastructure, local infrastructure
- Aid pursuant to SGEI includes, for example, all RDI aid of Business Finland, business subsidies from the ELY centres and rural business subsidies, most of the aid granted to the energy sector, energy tax subsidies

# The general block exemption regulation in a nutshell



## The general block exemption regulation in a nutshell

The general conditions for the application	Articles 1–12
<u>Scope limitations</u> -Agriculture, fisheries and aquaculture -Export aid -Undertakings in difficulty -Deggendorf Principle -Large amounts of aid and aid schemes	- Article 1(3) -Article 1(2) -Article 1(4)(c) - Article 1(4)(a) - Article 1(2) and Article 4
Aid transparency	Article 5
Incentive effect of the aid	Article 6
Eligible expenditure and the rates of aid	Article 7
Aid accumulation	Article 8
Publication obligation of large amounts of aid and providing information to the Commission within 20 days of the introduction of the aid	Article 9, Article 11
<b>Aid category-specific Articles</b>	Articles 13–56

17

## General conditions (1/3):



### Scope (Article 1):

1. Regional aid;
2. investment aid granted to SMEs, operating aid and support in SMEs' access to finance;
3. aid for environmental protection;
4. aid for research and development and innovation;
5. training aid;
6. aid for the recruitment or employment of disadvantaged or disabled workers;
7. aid to make good damage caused by natural disasters;
8. social aid for transport to the benefit of inhabitants of remote areas;
9. aid for broadband infrastructure;
10. aid to promote culture and heritage conservation;
11. aid for sports infrastructure and multi-use free-time infrastructure;
12. aid for local infrastructure;
13. aid for local airports;
14. aid for ports;
15. aid for the European territorial cooperation projects; and
16. aid for financial products supported by the InvestEU Fund.

18

## General conditions (2/3):



- Outside the scope:
  - certain industries (e.g. primary production of agricultural products, export aid)
  - **undertakings in difficulty with certain exceptions (with the COVID-19 exception as the most significant one)**
  - undertakings subject to instruction to recover the aid (Deggendorf Principle)
  - measures in which the aid is conditional upon the recipient being mainly located in a Member State
  - **large amounts of aid:** Article 4 of the Regulation includes the threshold values after which the Regulation no longer applies to the aid, but a prior notification of the aid must be submitted to the Commission.
- The regulation applies only to aid in respect of which it is possible to calculate precisely the gross grant equivalent of the aid ex ante without need to undertake a risk assessment ("transparent aid").

## General conditions (3/3):



- The aid must have an incentive effect: The aid is considered to have an incentive effect if the recipient of the aid has submitted a written aid application before the commencement of the work concerning the project or operations.
- Aid cumulation: if different amounts of aid are targeted at the same expenses, the maximum aid rates may not be exceeded.
- Aid transparency: Member States must publish information about the granting of each individual amount of aid that exceeds EUR 500,000 (special rules in taxation). The information is published here:  
<https://webgate.ec.europa.eu/competition/transparency/public/search/home/>
- Reporting and monitoring: the authority granting the aid must submit an ex-post notification for the Commission within 20 working days after the entry into force of the aid scheme/granting of the aid, and must submit annual aid expense reports to the Commission (via MEAE).
- The document material must be retained for 10 years.

# Aid category-specific Articles

## Aid granted for research and development projects (Article 25) as an example



1. Aid granted for research and development projects, including research and development projects with a top expert status in Horizon 2020 or Horizon Europe, co-financed research and development projects, and team building efforts co-financed on a case-by-case basis, that is compatible with the internal market within the meaning of Article 107(3) of the Treaty and that is exempted from the notification requirement of Article 108(3) of the Treaty provided that the conditions laid down in this Article and in Chapter I are fulfilled.

2. The part of the research and development project receiving aid must completely fall within one or more of the following categories:

- a) fundamental research;
- b) industrial research;
- c) experimental development;
- d) feasibility studies.

3. The eligible costs of research and development projects are allocated to a specific category of research and development and are the following:

- a) personnel costs: researchers, technicians and other supporting staff to the extent employed on the project;
- b) costs of instruments and equipment to the extent and for the period used for the project. Where such instruments and equipment are not used for their full life for the project, only the depreciation costs corresponding to the life of the project, as calculated on the basis of generally accepted accounting principles, are considered as eligible;
- c) costs of buildings and land, to the extent and for the duration period used for the project. With regard to buildings, only the depreciation costs corresponding to the life of the project, as calculated on the basis of generally accepted accounting principles, are considered as eligible. For land, costs of commercial transfer or actually incurred capital costs are eligible.
- d) costs of contractual research, knowledge and patents bought or licensed from outside sources at arm's length conditions, as well as costs of consultancy and equivalent services used exclusively for the project;
- e) additional overheads and other operating expenses, including costs of materials, supplies and similar products, incurred directly as a result of the project.

4. The eligible costs for feasibility studies are the costs of the study.
5. The aid intensity for each beneficiary must not exceed:
- 100% of the eligible costs for fundamental research;
  - 50% of the eligible costs for industrial research;
  - 25% of the eligible costs for experimental development;
  - 50% of the eligible costs for feasibility studies.
6. The aid intensity for industrial research and experimental development may be increased up to a maximum aid intensity of 80% of the eligible costs as follows:
- by 10 percentage points for medium-sized enterprises and by 20 percentage points for small enterprises;
  - by 15 percentage points if one of the following conditions is fulfilled:
    - the project involves effective collaboration: between undertakings among which at least one is an SME, or is carried out in at least two Member States, or in a Member State and in a Contracting Party of the EEA Agreement, and no single undertaking bears more than 70% of the eligible costs, or between an undertaking and one or more research and knowledge-dissemination organisations, where the latter bear at least 10% of the eligible costs and have the right to publish their own research results;
    - the results of the project are widely disseminated through conferences, publication, open access repositories, or free or open source software.
7. The aid intensity for feasibility studies may be increased by 10 percentage points for medium-sized enterprises and by 20 percentage points for small enterprises.



## RDI operations as an example (Article 25)



### I. How the aid is targeted:

- Must completely fall within one or more of the following categories (category definitions are provided in Article 2 of the Regulation)
  - fundamental research;
  - industrial research;
  - experimental development;
  - feasibility studies.
- eligible expenditure: Listed in section 3 of the Article

### II. What is the maximum aid rate?

- Section 5. Can be increased in accordance with section 6. (For example, the maximum aid granted for industrial research of a small undertaking is 70%).



## Aid for environmental protection as an example (Article 36)



1. Investment aid enabling undertakings to go beyond Union standards for environmental protection or to increase the level of environmental protection in the absence of Union standards is compatible with the internal market within the meaning of Article 107(3) of the Treaty and is exempted from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I are fulfilled.
2. The investment must fulfil one of the following conditions:
  1. it must enable the beneficiary to increase the level of environmental protection resulting from its activities by going beyond the applicable Union standards, irrespective of the presence of mandatory national standards that are more stringent than the Union standards;
  2. it must enable the beneficiary to increase the level of environmental protection resulting from its activities in the absence of Union standards.
3. Aid must not be granted where investments are undertaken to ensure that undertakings comply with Union standards already adopted and not yet in force.
4. By way of derogation from paragraph 3, aid may be granted for
  - the acquisition of new transport vehicles for road, railway, inland waterway and maritime transport complying with adopted Union standards, provided that the acquisition occurs before those standards enter into force and that, once mandatory, they do not apply to vehicles already purchased before that date;
  - retrofitting of existing transport vehicles for road, railway, inland waterway and maritime transport, provided that the Union standards were not yet in force at the date of entry into operation of those vehicles and that, once mandatory, they do not apply retroactively to those vehicles.

5. The eligible costs are the extra investment costs necessary to go beyond the applicable Union standards or to increase the level of environmental protection in the absence of Union standards. They are determined as follows:



- where the costs of investing in environmental protection can be identified in the total investment cost as a separate investment, this environmental protection-related cost constitutes the eligible costs;
  - in all other cases, the costs of investing in environmental protection are identified by reference to a similar, less environmentally friendly investment that would have been credibly carried out without the aid. The difference between the costs of both investments identifies the environmental protection-related cost and constitutes the eligible costs.
  - Costs not directly linked to the achievement of a higher level of environmental protection are not eligible.
6. The aid intensity shall not exceed 40% of the eligible costs.
  7. The aid intensity may be increased by 10 percentage points for aid granted to medium-sized undertakings and by 20 percentage points for aid granted to small undertakings.
  8. The aid intensity may be increased by 15 percentage points for investments located in assisted areas fulfilling the conditions of Article 107(3)(a) of the Treaty and by 5 percentage points for investments located in assisted areas fulfilling the conditions of Article 107(3)(c) of the Treaty.

## II. Aid category-specific Articles: General reading instructions: Aid for environmental protection as an example (Article 36)



### I. How the aid is targeted (investment aid):

- it must enable the beneficiary to increase the level of environmental protection resulting from its activities by going beyond the applicable Union standards, irrespective of the presence of mandatory national standards that are more stringent than the Union standards;
- it must enable the beneficiary to increase the level of environmental protection resulting from its activities in the absence of Union standards.
- Eligible expenditure, section 5

### II. What is the maximum aid rate?

- Generally 40%, increases: Small undertakings: 60% of eligible expenses, medium-sized undertakings: 50%.

### III. What is an SME?

- A medium-sized undertaking: fewer than 250 employees and an annual turnover of less than MEUR 50 and/or an annual balance sheet total not exceeding MEUR 43.
- A small undertaking: fewer than 50 employees and an annual turnover and/or an annual balance sheet total not exceeding MEUR 10.

## Summary (1)



### 1. De minimis regulation

- Flexible: aid for any expenses of the undertaking and at any aid level
- No ex-post notification or reporting to the Commission
- All the de minimis aid granted by the authorities must be considered (the authorities must clarify this from the beneficiary before granting the aid)

### 2. General block exemption regulation

- Eligible expenditure and aid levels specified in detail in the regulation's general and special conditions
- Applies also to aid exceeding EUR 200,000
- Ex-post notification and annual reporting of aid expenses to the Commission. Ex-post control of the Commission on the basis of an appropriate sample.

## Summary (2)



- Risky situations when granting State aid include:
  - ✓ aid for undertakings in difficulty;
  - ✓ lack of incentive effort;
  - ✓ control and monitoring of aid cumulation;
  - ✓ granting operating aid (this is very exceptional in the State aid rules)
  - ✓ Being aware of the notification and reporting obligation.

**More information**  
**<https://tem.fi/en/eu-rules-on-state-aid>**



# Workshop assignment



Rahoitus: Euroopan Unioni

Palvelusopimus DG COMP/2017/015 - SI2.778715

Tämä asiakirja on laadittu Euroopan komissiolle. Se heijastaa kuitenkin ainoastaan laatijoidensa näkemyksiä, eikä komission voida katsoa olevan vastuussa sen sisällön käytöstä.



Työ- ja elinkeinoministeriö  
Arbets- och näringsministeriet

1

## Review I: Concept of State aid



### Four cumulative criteria for State aid:

1. Channelling **public funds** into **undertakings** (to economic operators)
2. **The economic advantage is selective** (the aid is targeted at and favours certain undertakings/industries/regions)
3. **Distorts or threatens to distort competition** (a potential threat is sufficient)
4. **Affects trade between the Member States** (low threshold)

2

## Review I: Concept of State aid



### The Commission notices concerning the concept of State aid:

- Commission Notice on the notion of State aid (2016/C 262/01): [https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52016XC0719\(05\)](https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52016XC0719(05))
- In addition,
  - State aid in the form of guarantees notice (EUVL 2008/C155/10)
  - Setting the reference and discount rates notice (EUVL 2008/C14/02)
  - SGEI notice (2012/C8/02)
- The website of the Commission's Directorate-General for

Ministry of Economic Affairs and Employment of Finland  
(MEAE) • <https://tem.fi/en/frontpage>

[http://ec.europa.eu/competition/state\\_aid/overview/index](http://ec.europa.eu/competition/state_aid/overview/index)

3

3

## Review II: Criteria of acceptability for State aid

- If the four State aid criteria are met, it is not allowed to grant aid without the Commission's approval (TFEU, Article 108, section 3).
- Significant **deviations** from the prior notification obligation:
  - De minimis aid, i.e. aid **below a certain threshold** (1407/2013)
  - **The general block exemption regulation** (651/2014, "GBER")
  - Services of general economic interest, **SGEIs** (TFEU, Article 106(2))

Ministry of Economic Affairs and Employment of Finland  
(MEAE) • <https://tem.fi/en/frontpage>

4

4

## Workshop assignment



- The workshop consists of three assignments; A, B and C.
- Let's divide into smaller groups, and each group will appoint one secretary to take notes.
- We will go through each example case at the end of the assignment.

## Identifying State aid: case A



- **A municipality has taken the following measures concerning an undertaking fully owned by the municipality:**
  - Granted a 100% suretyship to the undertaking. The suretyship was granted without a guarantee fee.
  - The municipality has granted capitalisation of one million euros to the undertaking on the basis of a calculation carried out by three different external parties. On the basis of the different calculations, the expected return for the investment in the long run is 3–7%.
- Do you think that the 100% suretyship is State aid in accordance with Article 107(1) of the Treaty on the Functioning of the European Union (TFEU), as rendered more specific by the Commission Notice on the State aid concept? Provide reasoning for your answer and refer to the Commission Notice EUVL 2008/C155/10 (State aid in the form of guarantees notice).
- Do you think that not collecting the guarantee fee is a market-based practice? Provide reasoning. Refer to Commission Notice EUVL 2008/C155/10 (State aid in the form of guarantees notice).
- Assess whether the capital granted to the undertaking is in line with market conditions. In your answer, refer to the Commission Notice on the notion of State aid (2016/C 262/01).

## Identifying State aid: case B



- A municipality acquired services from undertaking A through direct award. The municipality paid EUR 20 million for the services without preparing a feasibility study on the market price of the service or implementing any safeguards to ensure effective competition.
- When considering Article 107(1) of the Treaty on the Functioning of the European Union (TFEU), as rendered more specific by section 93 of the Commission Notice on the State aid concept, is the public funding received by undertaking A in return for the services under the contract likely to be State aid?

## Rules of procedure: case C



**A) Municipality A grants aid pursuant to Article 25 of GBER to a medium-sized undertaking for a development project aiming to modify existing scientific information so that a new service will be developed for the markets.**

- Is it possible to grant aid at the 70% aid level?

**B) Municipality A is about to grant aid to a study by the local university, which aims to develop new kinds of online communication activities together with undertakings and to sell the developed product forward on the markets. Is the granted funding State aid? If yes, which rules of procedure could be applied to the granting of the aid?**



**More information**  
**<https://tem.fi/en/eu-rules-on-state-aid>**

Ministry of Economic Affairs and Employment of Finland  
(MEAE) • <https://tem.fi/en/frontpage>



**Matthias Keller**

## The role of the national judge in the enforcement of EU state aid rules

- The direct effect of Article 108 (3) TFEU
- The role of the Commission and of national courts
- Claims for damages and interim measures

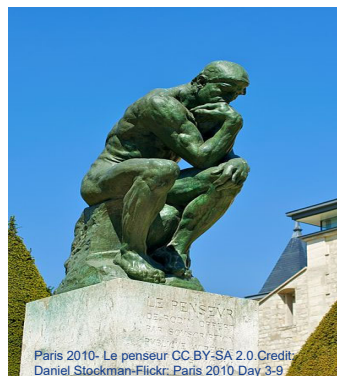
Dr Matthias Keller  
Presiding Judge / Administrative Court Aachen



Gefördert von der Europäischen Union Dienstleistungsauftrag DG  
COMP/2017/015-SI2.778715  
Dieses Dokument wurde für die Europäische Kommission erstellt.  
Es spiegelt jedoch nur die Ansichten der Autoren wider und die  
Kommission kann nicht für die Verwendung der darin enthaltenen  
Informationen verantwortlich gemacht werden.



## The domestic judge is (mostly the one and only) European Union judge !



Paris 2010- Le penseur CC-BY-SA 2.0 Credit:  
Daniel Stockman-Flickr; Paris 2010 Day 3-9

## Why?



## EU legal order: relies on the cooperation of domestic und „Luxemburg judges“

### Art. 19 (1) TEU



**Court of Justice:** (authority only in cases conferred)

(...) guarantees that the law is observed when the Treaties are interpreted and applicated.

▪ **Member States Courts :** (authority in all other cases)

(...) guarantee effective legal protection in all other areas of EU law.



## Access to justice / effective remedy

Charter of Fundamental Rights/ Chapter VI / Justice

### Article 47: Right to an effective remedy and fair trial

“Everyone

whose rights and freedoms

guaranteed by the law of the Union are violated

has the right to an effective remedy ...“



## Ubi ius – ibi remedium est

My translation in the given context:

Where there is a right under EU law,  
there has to be a remedy or recourse!

( ... at least to a domestic court ...)



(Qualis est actio?)

### Types of domestic remedies in the context of EU State Aid Law

- a) **Prevent the payment** of unlawful aid (stand still obligation)
- b) **Recovery** of unlawful aid
- c) Recovery of „**illegality interest**“
- d) **Damage claims** by third persons (competitor)

Last but not least:

- e) **Interim measures** against unlawful aid



## Challenges in the multi level system of law



## Which provisions?



## The principle of compulsory prior notification

---

Art 108 (3) **sentence 1** TFEU

The Commission shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid.



## Procedure by the Commission

---

Art 108 (3) **sentence 2** TFEU

If it considers that any such plan is not compatible with the internal market having regard to Article 107, it shall without delay initiate the procedure provided for in paragraph 2.



## Standstill obligation

---

### Art 108 (3) **sentence 3** TFEU

The Member State concerned **shall not put its proposed measures into effect** until this procedure has resulted in a final decision.

## Art 108 (3) TFEU in the context of EU Law:

---

- **suprimacy**
- **direct applicability**
- **legal relationship**

## EU law: supremacy and direct applicability (La primauté et l'effet direct)



## The Court's judgment of 15 July 1964 in the Costa/Enel case defined







German Bundesverfassungsgericht contemplates on the “non applicability” of EU law in “extreme situations of denial of justice”:



**[Good News:]**

- *Human Rights standard*
- *Ultra vires acts*
- *Core of Constitution*

„Cooperation“:

*Before setting aside EU law the German BVerfG launches a preliminary reference on the validity under Art 267 TFEU.*

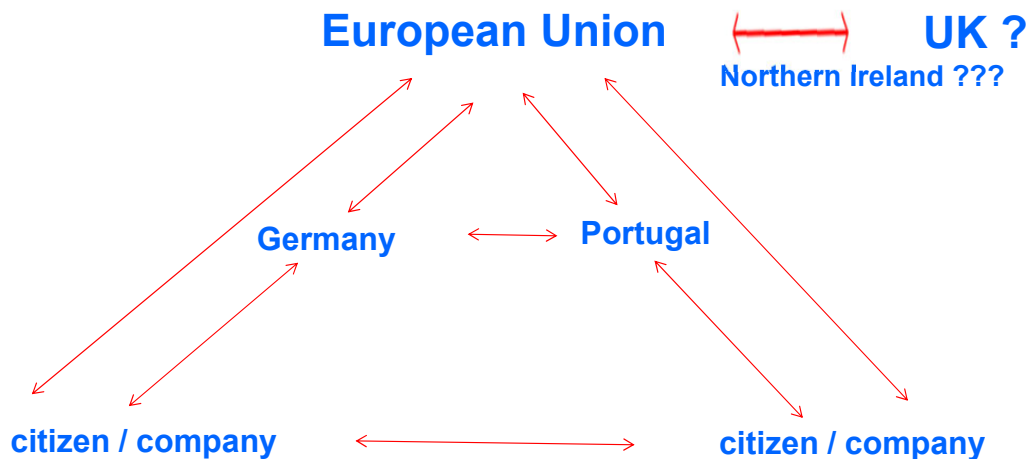


The 1st Senate of the BVerfG will apply the **EU-Ch]arta of Fundamental Rights as standard of constitutional review** (Beschluss vom 6. November 2019 - 1 BvR 276/17 - Recht auf Vergessen II)

**PSPP by ECB:** “It is ‘incomprehensible’ for the 2nd Senate of the German Federal Constitutional Court **how the European Court of Justice examines and affirms proportionality** when it comes to making a legal assessment as to whether the European Central Bank exceeded the limits of its monetary policy mandate by purchasing government bonds. (Beschluss vom 5. Mai 2020 2 BvR 859/15 u.a. - PSPP)

Legal relationships

in state aid cases



## Allocation of tasks in state aid law

- Commission and national courts play **complementary roles**:
- As the "guardian of the treaties" **the Commission** is responsible for compliance with state aid law and for deciding on the admissibility of aid
- **National courts** can force the effective enforcement of state aid law by granting legal protection to aggrieved competitors



## Application of law by the national judge: **Q & A**

The „answers“ can be found in:

**Commission Notice on the enforcement  
of State aid law by national courts,  
OJ 2009 C 85/01.**

See now:

Commission Notice on the recovery of unlawful and incompatible  
State aid, OJ 2019/C 247/01





May the national judge apply the concept of “state aid” autonomously?



Yes! However: General principles and the preliminary ruling procedure have to be observed, cf. Art 267 TFEU.

**More on the relevant jurisprudence:**  
**Commission Notice on the Enforcement of State aid law by national courts, OJ 2009 C 85 p. 2 footnote 8.**



May the national judge obtain the Commission's opinion (by telephone or in writing) if he or she is unsure of the existence of State aid?

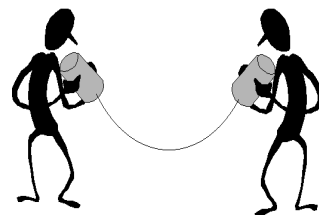


**Yes, indeed (!), there is a „Hotline“:**

**Cf. Art 29 Reg. Nr. 1589/2015**

European Commission  
Secretariat General  
B-1049 Brussels  
BELGIUM

Telephone: +32 229-76271  
Fax: +32 229-98330  
E-Mail: [ec-amicus-state-aid@ec.europa.eu](mailto:ec-amicus-state-aid@ec.europa.eu)  
Cf. Commission Notice OJ 2009 C 85 p. 22 para 97.



## May the national judge request the files of the EU Commission?



**Yes, it is possible.**

Art 29 (1) Council Regulation Nr. 1589/2015:

„For the application of Article 107(1) and Article 108 TFEU, the courts of the Member States may ask the Commission to transmit to them information in its possession or its opinion on questions concerning the application of State aid rules.“



### I. „Pre-formulated questions“ to the Commission

Commission's notice (OJ 2009 C 85) p. 19 para 83



A national court may, inter alia, ask the Commission for the following types of information:

(a) Information concerning a pending Commission procedure:

- whether a procedure regarding a particular aid measure is pending Commission,
- whether a certain aid measure has been duly notified,
- whether the Commission has initiated a formal investigation,
- whether the Commission has already taken a decision.

In the absence of a decision, the national court may ask the Commission to clarify when this is likely to be adopted.

(b) In addition, national courts may ask the Commission to transmit documents in its possession. This can include copies of existing Commission decisions to the extent that these decisions are not already published on the Commission's website, factual data, statistics, market studies and economic analysis.

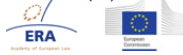


## II. „Pre-formulated questions“ to the Commission

Commission's notice (OJ 2009 C 85) p. 19 para 91



- (a) Whether a certain measure qualifies as State aid within the meaning of Article 87 of the Treaty and, if so, how the exact aid amount is to be calculated. Such opinions can relate to each of the criteria under Article 87 of the Treaty (namely, the existence of an advantage, granted by a Member State or through State resources, possible distortion of competition and effect on trade between Member States).
- (b) Whether a certain aid measure meets a certain requirement of a Block Exemption Regulation so that no individual notification is necessary and the standstill obligation under Article 88(3) of the Treaty does not apply.
- (c) Whether a certain aid measure falls under a specific aid scheme which has been notified and approved by the Commission or otherwise qualifies as existing aid. Also in such cases, the standstill obligation under Article 88(3) of the Treaty does not apply.



## III. „Pre-formulated questions“ to the Commission

Commission's notice (OJ 2009 C 85) p. 19 para 91

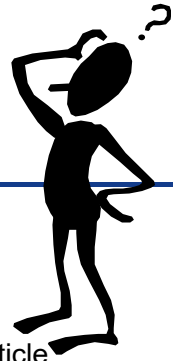


- (d) Whether exceptional circumstances (as referred to in the 'SFEI' judgment exist which would prevent the national court from ordering full recovery under Community law.
- (e) Where the national court is required to order the recovery of interest, it can ask the Commission for assistance as regards the interest calculation and the interest rate to be applied.
- (f) The legal prerequisites for damages claims under Community law and issues concerning the calculation of the damage incurred.



## EU Commission as „amicus curiae“?

In the context of the German Administrative Court Procedure  
I see no problems („Beiladung“)



### Verwaltungsgericht Aachen



#### Art 29 (2) Council Regulation Nr. 1589/2015 on Procedure

„Where the coherent application of Article 107(1) or Article 108 TFEU so requires, the Commission, acting on its own initiative, may submit written observations to the courts of the Member States that are responsible for applying the State aid rules.

**It may, with the permission of the court in question, also make oral observations.“**



May the national court give a final decision on the compatibility of a relevant aid measure with the internal market?


No, national courts are not competent insofar!

#### The Commission is competent !


Jurisprudence : Commission Notice, OJ. 2009 C 85 p. 5 para 16 und 20, Footnote 36.

Decisions are binding with their respective content, Art. 288 UAbs.4 S. 1 AEUV), cf. ECJ from November 21, 2013, C-284/12 („Lufthansa“).

But: German BVerwG (10 C 3.15) + German BGH (I ZR 91/15)

Binding effect of a Commission's decision? 

Does this even apply for decisions to start a procedure ? 

Can it then be correct that German courts are bound by the assessment of a (horrible dictu) mere administrative authority - even if it exists at EU level - should be bound, i.e. become mere "enforcement bodies"? 

Je suis vraiment désolé, j'ai du mal à comprendre cette question.

(„Kletterhalle“ / „Flughafen Lübeck“)

Mais oui!

Mais, pourquoi pas?





## „Private enforcement“ by the competitor ...



Read: Commission Notice (OJ. 2009 C 85 p. 14) para. 43 ff.

- Damage claims against the public entity
- Damage claims against the beneficiary



## Damage claims possible: for example

**Lufthansa AG ./ Frankfurt Hahn GmbH (beneficiary: Ryanair)**  
**German Bundesgerichtshof, Judgment from February 10, 2011 - I ZR 213/08 – : Art 108 Abs. 3 Satz 3 AEUV can be invoked in tort cases under § 823 Abs. 2 German BGB and competition cases under § 4 Nr. 11 German UWG.**





## Typical procedural situations before the national judge ...

A national authority grants aid in breach of the standstill obligation because it has not notified the aid or because it implements the aid before the Commission approves it.

The national court must protect the rights of the individual who has been harmed by the unlawful implementation of the aid measure.

Actions against on order for repayment (recovery order)



## What kind of interim court order? (France : „référé provision!)

### Commission: „Blocked Account“

„Where, based on the case law of the Community courts and the practice of the Commission, the national judge has reached a reasonable *prima facie* conviction that the measure at stake involves unlawful State aid, the most expedient remedy will, in the Commission's view and subject to national procedural law, be to order the unlawful aid *and* the illegality interest to be put on a blocked account until the substance of the matter is resolved.

In its final judgment, the national court would then either order the funds on the blocked account to be returned to the State aid granting authority, if the unlawfulness is confirmed, or order the funds to be released to the beneficiary.”

Cf. OJ. 2009 C 85 p. 14 para. 61.





**Administrative Court Trier,**  
interim order of March 8, 2013 - 1 L 83/13.TR -,



**“Blocked Account / Sperrkonto“**

“By the way of a temporary injunction until a final decision is made in the main proceedings (...)  
the defendant (public entity receiving illegal state aid)

**is ordered to provide security by depositing  
an amount of 762.232,51 Euro plus interest,**

**in a blocked account** within  
the meaning of the Commission notice  
whereby the interest is calculated in accordance with Article 11 of  
Commission Regulation (EC) 794/2004 of 21 April 2004 implementing  
Council Regulation (EC) No 659/1999 laying down detailed rules for  
the application of Article 93 of the EC Treaty.



**Obergerverwaltungsgericht Rheinland-Pfalz**  
(Higher Administrative Court Rhineland-Palatinate)  
in ist decision from June 10, 2013 - 6 B 10351/13 -:



A **“red light decision”** (my own wording) by the Commission necessitates an interim order by the national judge which is a temporary order for **repayment to a blocked account.**

The national judge may reject such an interim order only under very strict conditions. These conditions can be found in the “Zuckerfabrik” and “Atlanta” jurisprudence of the Court of Justice.

**“Protection of legitimate expectations”**

- **can only be triggered by actions of the Union institutions**
- not even by a decision of the (German) Federal Administrative Court that issued a **“green light decision”** (my own wording) in favor of the aid recipient!



Thank you very much for your kind attention!



**Clara Saedler**



# Recovery of unlawful and incompatible State Aid

**Clara SÄDLER, Case Handler**  
**DG COMP Unit H4 - Enforcement and Monitoring**

*The role of the national judge in the enforcement of EU State aid rules – ERA Seminar for the Finnish Judiciary - 16 June 2020*



Funded by the European Union

Service Contract DG COMP/2017/015 - SI2.778715

This document has been prepared for the European Commission. However, it reflects the views only of the authors, and the Commission cannot be held responsible for any use which may be made of the information contained therein

*The views expressed in this presentation are purely those of the speaker and may not in any circumstances be regarded as stating an official position of the European Commission*

1

## Outline of the first session

- A. Recovery of unlawful and incompatible aid in general (first session)**
  - 1. Legal bases and the 2019 Recovery Notice**
  - 2. Purpose of recovery and obligation to recover the aid**
  - 3. Amount to be recovered**
  - 4. Identification of the aid beneficiaries**
  - 5. Inability to recover and particularities in insolvency proceedings**



2



2

## Outline of the second session

### **B. Procedure and role of national courts (second session)**

- 1. Procedure and effects of the decision**
- 2. Example of the operative part of a recovery decision**
- 3. Deggendorf case law**
- 4. Limits to recovery**
- 5. Res Judicata**
- 6. Role of national courts in the context of recovery**



3



3

## Legal bases

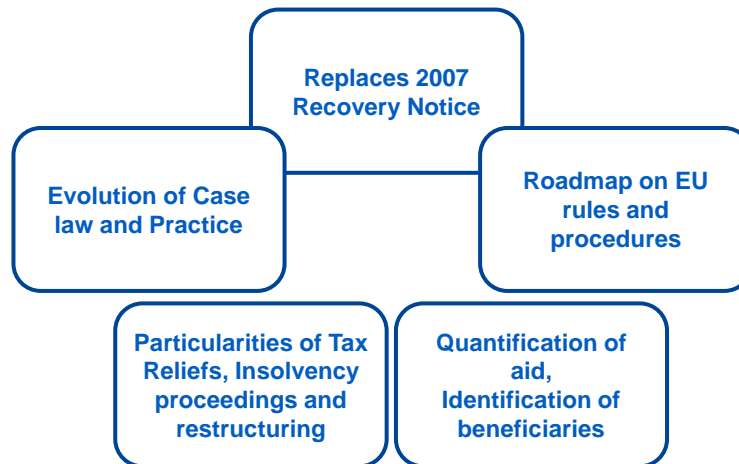
- Article 108 TFEU
- Procedural Regulation 2015/1589
- Implementing Regulation 294/2004, as amended
- New Notice on the cooperation with national judges (OJ C 305, 30.7.2021, p. 1–28)
- Recovery Notice (OJ C 247, 23.7.2019, p. 1–23)

4



4

## The 2019 Recovery Notice



5



5

## Purpose of recovery

- Not a penalty
- Re-establishing the situation that existed in the market prior to granting the aid

*Tubemeuse C-142/87, para. 66;*  
*Belgium v Commission C-75/97, paras. 64-66;*  
*SMI C-277/00, para. 74;*  
*New interline C-454/09, paras 30, 35 and 37*

- Amount to be recovered: aid principal + recovery interest

*Greece v Commission T-415/05, T-416/05 and T-423/05, paras 415 and 416;*  
*WAM T-303/10, para. 203*



6

## Obligation to recover the aid

- While investigating, the Commission has the **power to suspend the payment of unlawful aid**
- Commission has exclusive jurisdiction to determine compatibility of the aid
- Member States have the **obligation to recover incompatible aid**, following the negative decision of the Commission
- Recovery must be immediate and effective

*Boussac C-301/87, paras 19-20*



7

## Amount to be recovered

- Quantified by the Commission, on the basis of information available
- If not quantified in the negative decision, the Member State concerned must **quantify the aid to be recovered from each of the beneficiaries**, based on the **methodology** set out in the recovery decision

*Mediaset, C-69/13, para. 21*

- To consider:
  - partial compatibility of the aid
  - *de minimis* requirements



8

## Identification of the beneficiaries

- The **Commission**'s recovery decision usually identifies the aid beneficiaries
- **Schemes**: case-by-case assessment by Member States:
  - the notion of State aid and compatibility,
  - in close cooperation with the **Commission**
- **Specific beneficiaries**
  - Principle of economic unit
  - Extension of the recovery obligation due to economic continuity

The notion of undertaking:  
*Cassa di Risparmio di Firenze SpA,*  
C-222/04, para. 107



9

## Principle of Economic Unit

- Undertakings belonging to a group may form one economic unit that has benefitted from the aid
- Recovery may be ordered from the whole group
- Joint and severable liability



10



## Economic Continuity

- Assessed during the implementation stage of a recovery decision or already at the stage of the investigation
- To preserve the ***effet utile*** of the Decision and **avoid its circumvention**
- The original beneficiary identified in the opening or closing decision may have conducted or be involved in:
  - Asset deal
  - Share deal
  - Mergers and other business reorganisations



11

## Economic Continuity: Asset Deal

- Beneficiary of incompatible aid creates a new company or transfers its assets to another undertaking to continue some or all of its activities
- Non-cumulative criteria to assess economic continuity:
  - Scope of the transfer
  - Price of the transfer
  - The time at which the transfer takes place
  - The economic logic of the operation
  - The identity of the owners of the seller and buyer



**Advantage retained?**

**The newly created company  
or the buyer of the assets may  
be required to pay back the  
aid in question.**



12

## Economic Continuity: Share Deal

- The **sale** to a third party of **shares** in a beneficiary of incompatible aid does not affect the obligation of the beneficiary to reimburse such aid
- If the undertaking **retains its legal personality** and continues to carry out the activities subsidised by the State aid
- This undertaking maintains an **advantage** over its competitors



The Member State must recover the aid from the beneficiary



13

## Economic Continuity: Mergers

- A Member State may be called upon to determine from which undertaking the aid must be recovered following a merger or another form of business reorganisation



The Member State concerned must identify the legal successor of the original aid beneficiary and recover the aid from the surviving entity



14

## Inability to pay back



## Insolvency: practical implications 1/2

- If the aid beneficiary cannot repay the aid, the Member State has to **seize the beneficiary's assets** and **cause its liquidation** leading to:
  - Recovery of the **full recovery** amount
  - In case not achieved, the definitive **cessation** of the activities of the undertaking and its **erasure** from the trade register
- Interest accrues as provided for by national law for insolvency proceedings until aid is paid back, or in case it stops accruing earlier for all creditors under national law
- The State must **register the State aid claim** including the recovery interest in the schedule of liabilities in due time with the same ranking and as set by national law

## Insolvency: practical implications 2/2

- Recovery can be considered **provisionally implemented** when the State aid claim is registered in the schedule of liabilities within the recovery deadline
- The State must **challenge** any refusal to register its claim until the national Court of last instance and, if necessary, ask that Court to lodge a request for **preliminary ruling** at the Court of Justice
- Avoiding **intractable** situations: the Member State can no longer recover the aid under national law, but this is due to its own inactions or mistakes so it does not fit with the case law on absolute impossibility



17

## Restructuring or Temporary Continuation proceedings

- Where **a restructuring or voluntary liquidation** providing for the continuation of the activities of the aid beneficiary is proposed to the creditors' committee, the **Member State can support that plan only if it ensures full recovery within the recovery deadline**
- **Otherwise national provisions** must be left **unapplied** insofar as, in absence of timely recovery of the full recovery amount, **they prevent the winding up and cessation of activities of the aid beneficiary**
- A Member State **cannot waive** part of its recovery claim (principal and interest) if the aid beneficiary continues its activities



18

# any questions?

After the coffee break, we will continue with the second session on procedure and the role of national courts in the context of recovery



19

## Outline of the second session

### **B. Procedure and role of national courts (second session)**

- 1. Procedure and effects of the decision**
- 2. Example of the operative part of a recovery decision**
- 3. Deggendorf case law**
- 4. Limits to recovery**
- 5. Res Judicata**
- 6. Role of national courts in the context of recovery**



20



20

## The effects of the Commission decision

**Binding in its entirety**

Article 288 TFEU)

**Binding for all State bodies, including national courts**

*Albako v BALM* 249/85, para. 17

**Duty of sincere cooperation between Commission and Member States**

Article 4(3) TEU

*Zwartfeld C-2/88*, para. 18

**Sincere cooperation particularly important between the Commission and national courts**

*Eesti Pagar C-349/17*, para. 89-92 and 94



21

## Operative part of a Recovery Decision

### Article 1

The State aid amounting to EUR <amount> unlawfully granted by <Member State>, in breach of Article 108(3) of the TFEU, in favour of <identity of the beneficiary> is incompatible with the internal market.

### Article 2

1. <Member State> shall **recover** the aid referred to in Article 1 from the beneficiary.
2. The sums to be recovered shall bear **interest** from the date on which they were put at the disposal of the beneficiary until their actual recovery.
3. The interest shall be calculated on a **compound basis** in accordance with Chapter V of Regulation (EC) No 794/2004.
4. <Member State> shall **cancel all outstanding payments** of the aid referred to in Article 1 with effect from the date of notification of this decision.

### Article 3

1. Recovery of the aid referred to in Article 1 shall be **immediate and effective**.
2. <Member State> shall ensure that this decision is implemented within **four months** following the date of notification of this Decision.

### Article 4

1. Within **two months** following notification of this Decision, <Member State> shall submit the following information to the Commission:
  - (a) the total amount (principal and recovery interests) to be recovered from the beneficiary;
  - (b) a detailed description of the measures already taken and planned to comply with this Decision;
  - (c) documents demonstrating that the beneficiary has been ordered to repay the aid.
2. <Member State> shall keep the Commission informed of the progress of the national measures taken to implement this Decision until recovery of the aid referred to in Article 1 has been completed. It shall immediately submit, on simple request by the Commission, information on the measures already taken and planned to comply with this Decision. It shall also provide detailed information concerning the amounts of aid and recovery interest already recovered from the beneficiary.

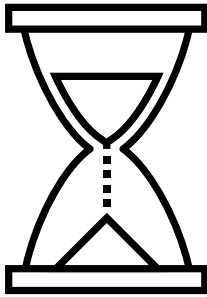
### Article 5

This Decision is addressed to <Member State>.



22

## The Recovery Procedure



- Article 16(3) Procedural Reg.: governed by national law
- Recovery must be immediate and effective
- National rules preventing effective and immediate execution should be left unapplied
- **Deadlines:**
  - **2 months:** measures planned or taken (quantify aid and interest, identify the beneficiaries, etc.)
  - **4 months:** completion of recovery

*Olympic Airways*  
C-415/03, paras 42-44

*Scott*  
C-232/05, paras 49-52



23

## The *Deggendorf* Case Law

- **Obligation to suspend payment of new aid where earlier unlawful and incompatible aid has not yet been repaid**
- **Possibility of conditional approval by the Commission** (i.e., granting of new aid suspended until previous aid is reimbursed)
- **Commitment not to grant new aid until full recovery of the aid granted to any of the companies of the group for which recovery has been ordered in any of the Member States**

*Deggendorf case law, TWD v Commission, C-355/95 P*

*FagorBrandt T-115/09, paras 70 and 71*



24

## Limits to Recovery

- Proc. Reg., Article 17: limitation period (10 years)
- General Principles of EU Law:
  - e.g. legitimate expectations
  - e.g. absolute impossibility
  - *Res judicata* cannot undermine the primacy and effectiveness of EU Law

*RSV v Commission* C-223/85, paras 14-17

*Belgium v Commission* C-75/97, para. 88 *Ferracci v Commission* T-219/13, paras 84-86;  
*Montessori school v Commission* T-220/13, paras 81-83

*Lucchini* C-119/05, paras 61-63;  
*Commission v Slovakia* C-507/08, paras 59-65;  
*Klausner Holz* C-505/14, para. 45



25

## The Principle of *res judicata*

- Judgements which have become final cannot be called into question anymore
- This principle is enshrined in the **European and national legal orders**
- In case of **conflict of laws**, **EU State aid rules** prevail over conflicting national laws
- **National judges should in that case interpret the provisions of national law in such a way that they can be applied in a manner which contributes to the implementation of EU law**



26



## Res judicata and EU Law

- The national courts are under a duty to give full effect to the provisions of EU law
- Two different scenarios arising from case law:
  - *Lucchini*: the principle of res judicata in State aid matters should be left unapplied
    - prevents the recovery of incompatible State aid, granted in breach of EU law
  - *Klausner Holz*: judges are called to leave this principle unapplied or to find alternative solutions by interpreting national law in conformity with EU law

*Lucchini* C-119/05, paras 61-63;  
*Commission v Slovakia* C-507/08, paras 59-65;  
*Klausner Holz* C-505/14, para. 45



27

## The Role of National Courts

- Competent for the review of the national recovery orders
- Residual competence on recovery where it is not possible for the applicant to challenge the decision before EU Courts
- Interim measures to safeguard the interests of third parties
- Suspending the implementation or ordering the recovery of the measure
- If a national judgment breaches EU law, the Member States must challenge it

*CELF* C-1/09  
paras 27-31

*Deutsche Lufthansa* C-284/12, paras 42-44

*Commission v Slovakia* C-507/08



28

any questions?



# Cooperation between National Courts and the European Commission

## The role of the national judge in the enforcement of EU State aid rules – ERA Seminar for the Finnish Judiciary 16 June 2022

Clara SÄDLER, Case Handler  
DG COMP Unit H4 - Enforcement and Monitoring



Funded by the European Union

Service Contract DG COMP/2017/015 - SI2.778715

This document has been prepared for the European Commission. However, it reflects the views only of the authors, and the Commission cannot be held responsible for any use which may be made of the information contained therein

*The views expressed in this presentation are purely those of the speaker and may not in any circumstances be regarded as stating an official position of the European Commission*

1

## Before we start...

(Section 4 of the Enforcement Notice)

An effective tool for third parties to whom damage was caused by unlawful State aid (*SNCM*, French Council of State, September 2021)...



In exchange for operating the ferry service between Marseille and Corsica, the regional authorities granted shipping operator *SNCM* aid that was found unlawful and incompatible by the Commission.

Competitor *Corsica Ferries* filed a claim for damages, submitting an economic expert report that quantified the loss of profit caused by the aid received by *SNCM*.

Quantum of damages to be paid to *Corsica Ferries* amounted to approx. €86 million.

→ Need for economic and financial evidence translating the theory of harm into a credible quantitative assessment.

### ... with limitations

When ruling on the compensation to third parties for the costs incurred as a direct result of an unlawful aid, NCs must be careful not to adopt decisions having the effect of granting an aid or enlarging the circle of beneficiaries (C-106 to 120/87, *Asteris*, C-164/15 P and C-165/15 P, *Aer Lingus*).

No legitimate expectations for the beneficiary vis à vis the Member State (C-672/13 *OTP Bank*).



In general, NCs should be careful not to breach the standstill obligation (Art. 108(3) TFEU) by granting aid without prior approval (for instance by extending an aid, *DEI* C-590/14 P).



2

## Background

2009

Notice on the enforcement of State aid rules by national courts

- 12 years of EU case law developments

2012

State aid Modernisation

- Significant extension of the scope of the block exemption regulation (GBER): 96% of State aid is now exempt from notification
- The role of national courts has become even more prominent, as they must detect all potential breaches of exemption conditions

2015

New Procedural Regulation 2015/1589

- Article 29 codified the cooperation tools between national courts and the Commission from 2009 Notice and added the *amicus curiae* intervention

2019

Study on the Enforcement of State aid rules by national courts

- Findings on the application of State aid rules by national courts in 750 cases: limited award of remedies
- Cooperation tools under-used

2021

**New notice on the enforcement of State aid rules by national courts**

3



3

## Purpose and Scope of the new 2021 Notice

Concrete guidance on the enforcement of State aid rules at national level focusing on cases where private parties seek remedies for the unlawful implementation of aid ("private enforcement")

Clarifications on general principles applicable based on updated case law

Clarifications on the respective roles of the Commission and of the national courts (NCs)



Reinforce the cooperation between NCs and the Commission - mutual assistance

4



4

# The System of State aid Enforcement

Competences	National Courts 	Commission 
107(1) TFEU Objective notion of aid	✓	✓
108(3) TFEU Breach of the standstill obligation (no aid shall be granted until its compatibility with the internal market was assessed): for new aid, block-exempted aid and existing aid	✓	✓
Compatibility / review of existing aid	X	✓
Remedies	Recovery, suspension, termination, interim relief, damages	Incompatible new aid: Recovery decision/injunction Incompatible existing aid: Appropriate measures

5

5

## The Role of National Courts

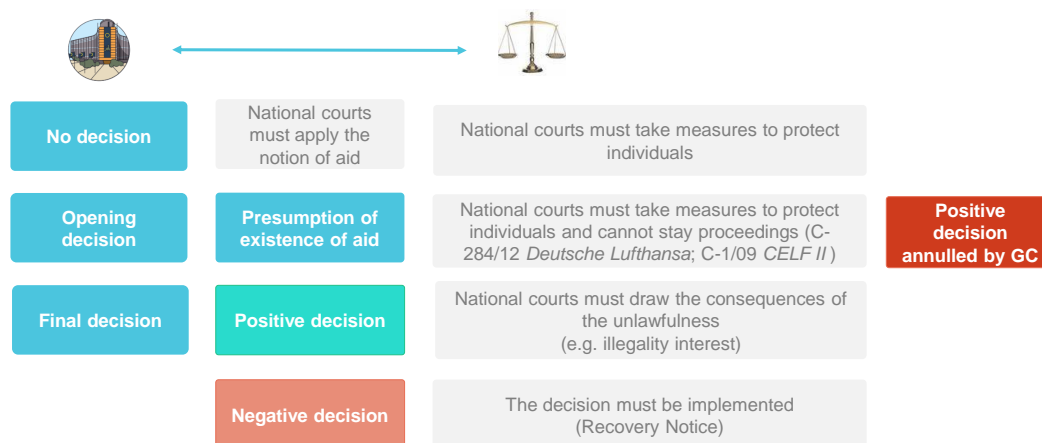
Assessing a potential breach of the standstill obligation (Section 4 of the Notice)

<b>Existence of aid</b>	Objective notion of aid Reference to Commission guidance (2016 Notice on the notion of State aid)
<b>Existing Aid</b>	An existing aid is not subject to the standstill obligation Definitions of Existing Aid under the Procedural Regulation do not bind NCs (C-387/17 <i>Fallimento Traghetti Mediterraneo</i> )
<b>Block exemptions</b>	Duty to verify compliance with all GBER conditions (strictly interpreted) No legitimate expectations (C-349/17 <i>Eesti Pagar</i> , C-654/17 P <i>BMW</i> ) (see next slide)
<b>New Unlawful Aid</b>	Remedies

6

6

## Parallel NC/Commission procedures (Section 4)



7



7

## Cooperation Tools - EU Framework

- Article 4(3) of the Treaty on the European Union
- Article 29 of the Procedural Regulation (EU) n° 2015/1589
- New Notice on the cooperation with national judges (OJ C 305, 30.7.2021, p. 1–28)



8

## Principle of sincere cooperation

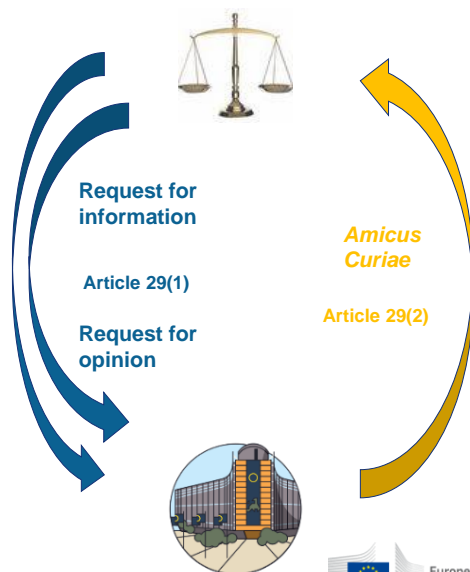
- Article 4(3) of the Treaty on the European Union
- The European Commission and the national authorities have an obligation to cooperate in good faith
- The duty of cooperation also includes national courts
- Contact for national judges
  - [comp-amicus-state-aid@ec.europa.eu](mailto:comp-amicus-state-aid@ec.europa.eu)



9

## Cooperation Tools

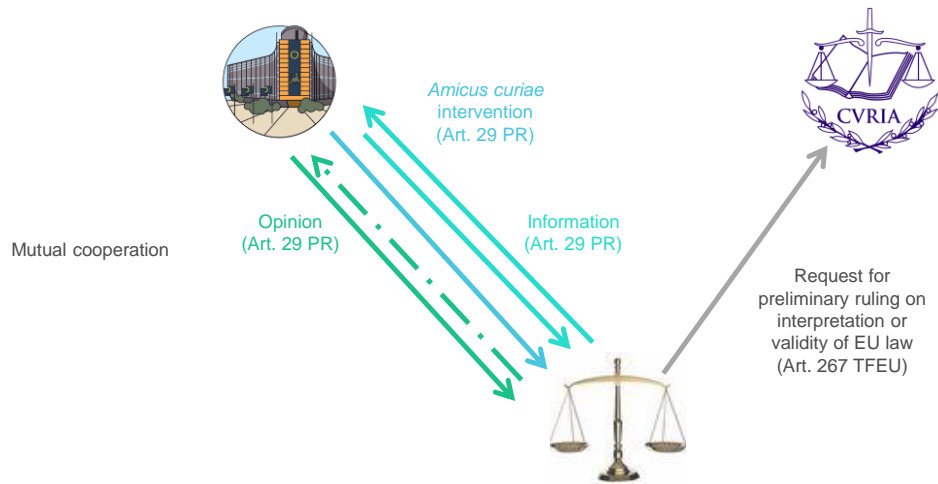
- **The request for information and the request for opinion**
  - Created by the Enforcement Notice
  - Codified in the Procedural Regulation
    - Article 29(1)
- **Amicus curiae observations**
  - Created and codified in the Procedural Regulation
    - Article 29(2)



10

# Cooperation with the Commission

(Section 5 of the Enforcement Notice)

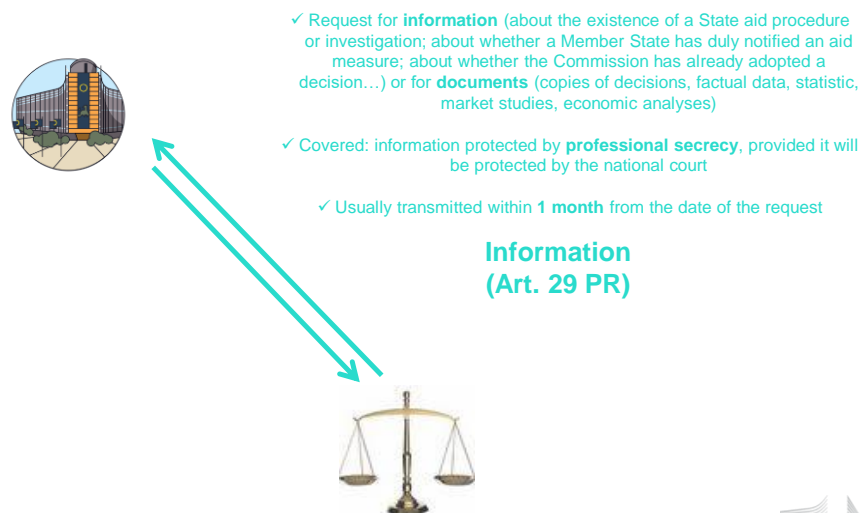


11

11

# Cooperation with the Commission

(Section 5 of the Enforcement Notice)



12

12



# Cooperation with the Commission

(Section 5 of the Enforcement Notice)



## Opinion (Art. 29 PR)

- ✓ When **not enough guidance** provided by case law and Commission notices and guidelines
- ✓ About: quantification and calculation of **aid amount** and recovery interest; application of **GBER** conditions; application of **scheme** to individual measure; **exceptional circumstances** preventing recovery...
- ✓ Usually transmitted within **4 months** from the date of the request

13

✓ Not binding on NCs



13

## Example – Request for Opinion

A request from the Finnish Administrative Court of Kuopio from 2012 concerning the application of *de minimis* in case of a merger and on economic continuity\*:

1. *In case of a merger, how is the aid ceiling determined and is previously received aid counted for the new undertaking?*

Reply: All *de minimis* measures granted to either of the previously two separate undertakings have to be taken into account while assessing the *de minimis* threshold over the three fiscal years for the new undertaking.

2. *Can the interpretation vary in different situations, for example depending on whether the undertaking continues exactly the same business operations as the merged undertakings?*

Reply: *De minimis* concept applies to the undertaking concerned irrespective of the activities it carries out (however, note the different applicable *de minimis* ceiling for e.g. road transport sector)

3. *Is the notion of undertaking to be examined on the formal basis of company law or more broadly according to the actual situation applying the single economic entity principle?*

Reply: Undertaking in the sense of EU law: entities which are controlled on a legal or on a de facto basis by the same entity are one single recipient undertaking regardless of their legal status

\* Link to the published opinion: [https://ec.europa.eu/competition-policy/state-aid/national-courts/application-state-aid-law/requests-opinions/opinions-issued\\_en](https://ec.europa.eu/competition-policy/state-aid/national-courts/application-state-aid-law/requests-opinions/opinions-issued_en)



14

# Cooperation with the Commission

(Section 5 of the Enforcement Notice)



**Amicus curiae  
intervention  
(Art. 29 PR)**

- ✓ Written or oral **observations** to NCs applying State aid rules
- ✓ Decision to intervene as *amicus curiae* is the **Commission's exclusive prerogative**, depending on **case's significance**, contribution to the **effectiveness of the enforcement of State aid rules**, existence of a **novel question of substance**
- ✓ **Not binding on NCs**



15



15

# Cooperation with the Commission

(Section 5 of the Enforcement Notice)



Mutual cooperation



## National courts' assistance to the Commission

- ✓ Communication by NCs of a copy of any written judgment issued following the provision by the Commission of information, opinion or *amicus curiae* observations
- ✓ Member States can set up coordination points for national judges dealing with State aid issues, for a more effective and consistent application of State aid rules



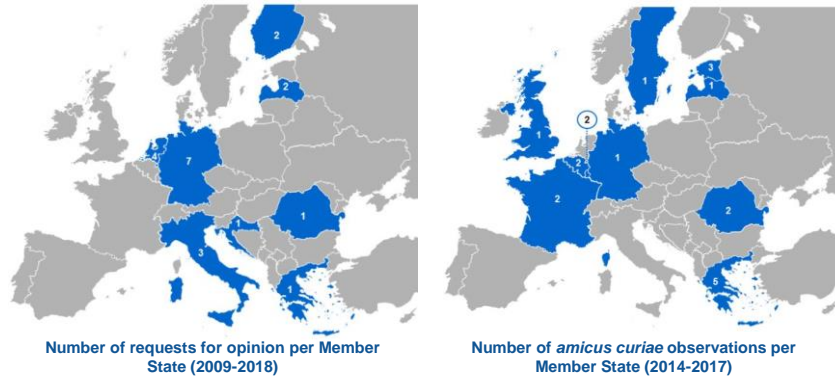
16



16

## Use of the Cooperation Tools

- The 2009 Notice increased the amount of requests received but the use of the cooperation tools is still limited \*

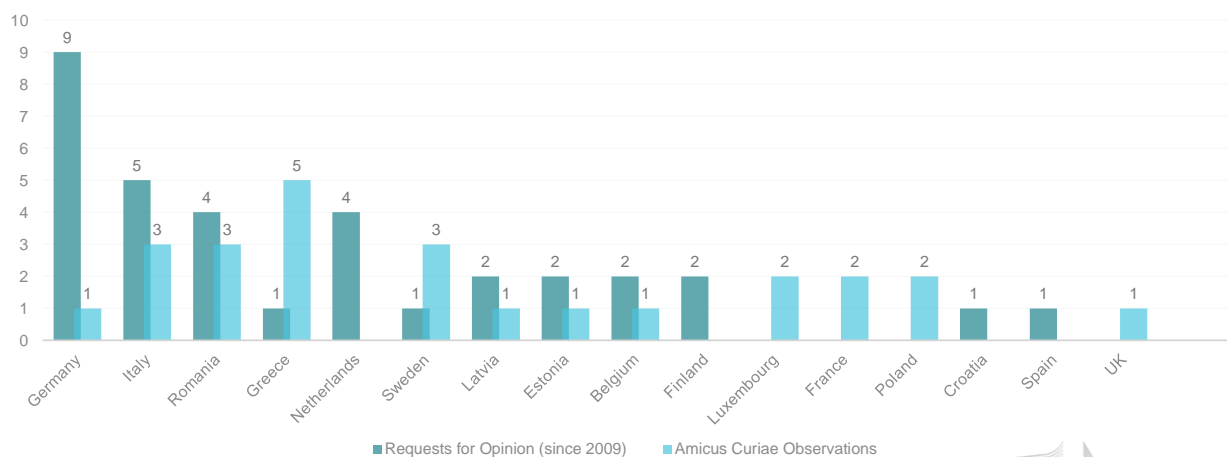


\* Source: Study on the Enforcement of State aid rules by National Courts



17

## Overview: Use of Cooperation Tools

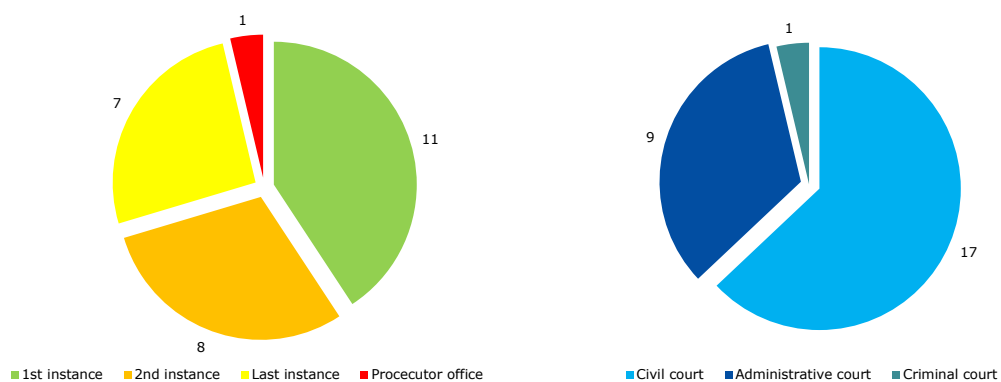


18



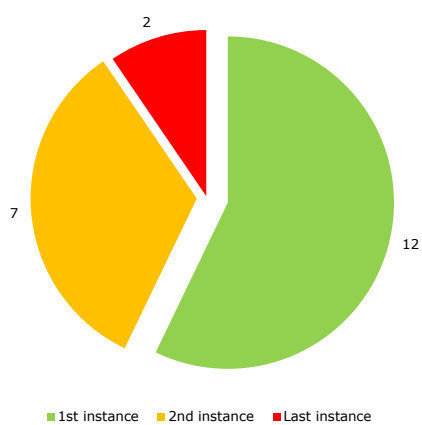
18

## Requests by National Courts



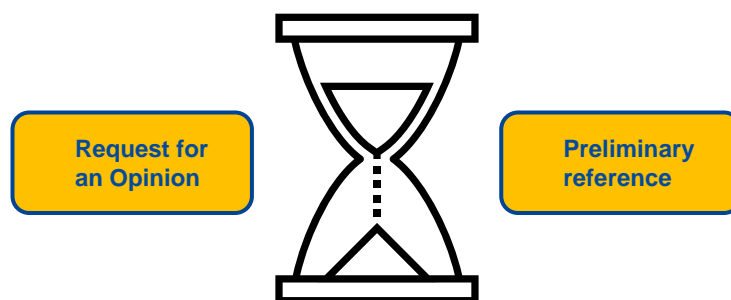
19

## *Amicus curiae* Interventions



20

## Wrapping up...



## Any questions?

# Thank you very much!

[comp-recovery-state-aid@ec.europa.eu](mailto:comp-recovery-state-aid@ec.europa.eu)

[comp-amicus-state-aid@ec.europa.eu](mailto:comp-amicus-state-aid@ec.europa.eu)

© European Union 2022

Unless otherwise noted the reuse of this presentation is authorised under the [CC BY 4.0](https://creativecommons.org/licenses/by/4.0/) license. For any use or reproduction of elements that are not owned by the EU, permission may need to be sought directly from the respective right holders.



23



24



EUROPEAN COMMISSION  
COMPETITION DG

State aid: General Scrutiny and Enforcement  
Enforcement and Monitoring

ERA SEMINAR - **THE ROLE OF THE NATIONAL JUDGE IN THE ENFORCEMENT OF EU  
STATE AID RULES – SEMINAR FOR THE FINNISH JUDICIARY**

**CASE STUDY – 16 JUNE 2022**

**Clara Sädler (DG COMP, Unit H.4)**

**SOLUTION / REMARKS FOR DISCUSSION**

[Total time: 60 minutes]

➤ The background: the 2015 Contract and the subsequent litigation

[Allocated time: 15 minutes]

1. On 15 February 2015 the company Wood Corporation (**Wood**) and the Forest Management Board of Region A (**FMB**) concluded a timber supply contract. Under that contract, FMB committed to supply Wood specific quantities of wood for a fixed price for the period from 15 February 2015 to 31 December 2020. In addition, FMB made a commitment not to sell to other buyers for less than the price fixed in the contract.
2. In 2015 and 2016, FMB supplied Wood with timber, but did not deliver the agreed quantities of it. In 2016, Wood faced financial difficulties that lead to delayed payments to FMB. In August 2017, FMB terminated the supply contract of 15 February 2015, and from the second half of the year ceased to supply timber to Wood under the terms of the contract.
3. After FMB's alleged termination of the contract, the financial difficulties of Wood increased, and as a result, it was unable to satisfy its creditors. In September 2019, the company Wood was subject to a judicial decision in a resolution procedure to settle its debts.
4. Meanwhile, Wood had brought FMB before the competent civil court, seeking a declaratory decision ascertaining that, despite its termination by FMB, the contract of 15 February 2015 remained in force (**1<sup>st</sup> Case**). The court of first instance deemed well-founded Wood's claim and, by judgment of 24 April 2019, declared that the contract at issue was still in force.
5. On the other hand, following a complaint by a competitor of Wood that was damaged by FMB's commitment not to charge to other clients less than the price charged to Wood, by decision of 5 July 2019, the Commission expressed doubts as to the compatibility of the preferential tariff charged by FMB to Wood with State aid rules and opened a formal investigation into the contract of 15 February 2015.
6. The judgment at first instance that had found that the contract at issue had not been validly terminated by FMB was upheld also by the appellate court, by means of a final declaratory judgment of 3 December 2020.

7. Consequently, in January 2021, Wood brought a second action against FMB before the competent civil court, seeking, on the basis of the final declaratory judgment in the 1<sup>st</sup> Case, firstly, the award of damages amounting to approximately EUR 14 million due to FMB's failure to supply timber in 2012, and, secondly, the order for FMB to supply around 1,5 million cubic metres of wood in execution of the disputed contract between 2017 and December 2020 (2<sup>nd</sup> Case).
8. In the context of that second action, FMB defended itself by arguing that the execution of the contract in question was contrary to the law of the European Union. It argued that that contract constituted State aid within the meaning of Article 107(1) TFEU and that it had been carried out in breach of the third subparagraph of Article 108(3) TFEU.
9. In its reply, Wood argued that FMB allegation had not been raised in the proceedings concerning the 1<sup>st</sup> Case and, thus, the legality of the contract could not be called into question anymore, as *res judicata* had formed.
10. The trial in the 2<sup>nd</sup> Case has not been completed.

Topics for discussion:

[Allocated time: 20 minutes]

A. In principle, which elements of EU State aid law can be interpreted and applied by the national court?

- In general, the Commission has exclusive competence to review compatibility of aid, but national judges retain powers to rule on (i) the existence of aid under Article 107(1) TFEU, and (ii) the breach of the standstill obligation under Article 108(3) TFEU. In particular, in the absence of a Commission decision regarding the same measure, national courts are bound only by the objective notion of State aid when exercising their competence to assess the existence of State aid.

B. What does the fact that the Commission had opened a formal investigation entail for the national court?

- Following a Commission decision opening an investigation pursuant to Article 108(2) TFEU on an aid measure that is also being called into question before a national court, in accordance with Article 4(3) TEU, the national court must take into account the legal situation resulting from the ongoing procedures before the Commission, even if it is provisional in nature.
  - This means that, while the investigation is ongoing, the opening decision has, in itself, legal consequences that the national courts must draw. Following an opening decision, a national court cannot hold that this measure does not constitute aid within the meaning of Article 107(1) TFEU, otherwise the effectiveness of Article 108(3) TFEU would be compromised.



C. If the contract did entail illegal State aid, what consequences would the national court need to draw in relation to the 2<sup>nd</sup> Case?

- If follows that, in the context of the 2<sup>nd</sup> Case, in order for the effectiveness of Article 108(3) TFEU not to be compromised, the national court hearing that case should not be prevented from reviewing the legality of the aid measure due to the fact that *res judicata* has formed in the 1<sup>st</sup> Case.
  - *Lucchini* (C-119/05) → owing to the *Simmenthal* doctrine, the *res judicata* principle might be left unapplied in the case at hand if it hinders effectiveness of Union law ...
  - ... However it is debatable whether an opening decision affects the jurisdiction of national courts the way a final decision does !
- The National court may decide to suspend proceedings and order the recovery of payments already made. It may also decide to order other *interim* measures to safeguard both the interests of the parties concerned and the effectiveness of the Commission opening decision.
  - However, national courts cannot simply stay their proceedings until the Commission has reached a final decision, as this would amount to maintaining the advantage on the market, in spite of the potential breach of the standstill obligation under Article 108(3) TFEU.
  - If the national court has doubts about the consequences to draw from the Commission opening decision, it may seek clarification from the Commission by means of the cooperation tools envisaged in the Enforcement Notice. In the alternative, if that court has doubts about the interpretation or the validity of the Commission opening decision, depending on the circumstances, it may or must also refer a question to the Court of Justice for a preliminary ruling under Article 267 TFEU.

D. Does the assessment change if, in the meantime, the Commission had closed the formal investigation finding that the Member State A had unlawfully granted incompatible State aid to Wood through the contract with FMB of 15 February 2015?

- The national courts must refrain from taking decisions running counter to the Commission decision and must therefore abide by its assessment on the existence of State aid and on incompatibility.
  - In particular, if there are parallel procedures before a national court and before the Commission, and, following a formal investigation, the Commission declares the aid

incompatible, the national court has to draw the appropriate consequences from it, according to national rules governing the execution of recovery decisions → If the applicable national law enables it, that Court should order full recovery of the incompatible aid and, in any case, not adopt a ruling that jeopardise recovery.

- National courts also have no jurisdiction to declare Commission decisions invalid, as the Union Courts alone have that jurisdiction under Article 263 TFEU.
- Once again, the national court may ask the Commission for an opinion under the Enforcement Notice or, if it has doubts about the interpretation or the validity of the Commission final decision, that court may or must refer a question to the Court of Justice under Article 267 TFEU.

➤ The Commission's negative decision and the obligation to recover for Member State A

[Allocated time: 10 minutes]

11. By decision of 20 December 2020 closing the investigation procedure, the Commission considered that the Member State A had unlawfully granted incompatible State aid amounting to EUR 8 million to Wood through the application of a preferential tariff for the period from 15 February 2015 to 31 December 2017 and obliged A to recover it from the beneficiary within 4 months.
12. At the time of the Commission's decision, the company Wood entered into insolvency. The private creditors agreed to limit their claims at a rate of 60 %. Member State A did not agree and registered within the deadline, under national insolvency law, the full State Aid claim including recovery interest in the insolvency register.
13. In June 2021 the insolvency procedure of Wood was closed, with the payment of all creditors in respect of 60 % of their claims.
14. Member State A informed the European Commission that it believes it has complied with its obligation to implement the recovery decision.

Topics for discussion:

[Allocated time: 15 minutes]

Can the Member State A claim that the partial recovery of 60 % of the total amount to be recovered constitutes the full and effective implementation of the Commission's decision?

Discussion by group of arguments in favour of and against the immediate and effective implementation by Member State A of the recovery obligation under EU law.

- The rationale behind this question is to highlight the contrast between insolvency law and recovery:
  - While insolvency law tries to protect the interest of creditors, and, in some procedures (the non-liquidatory ones) also some third party interests (employees, strategic nature of the assets involved, etc.)...
  - ... Recovery, on the contrary, has the purpose of removing a distortion of competition and re-establishing the pre-existing conditions in the internal market, even if that results on the beneficiary's exit from the market.
- Paragraph 12 is written in a (purposely) vague way in order to allow a dual debate:
  - On the one hand, Member State A, contrary to the majority of the other creditors, did not agree to receiving back 60% of the claim, as it intends to recover 100% of the aid principal and the corresponding recovery interest. In that case, the Member State's assertion in paragraph 14 would prove itself wrong.
  - On the other hand, recovery may be considered provisionally implemented when the full amount of the State aid claim (aid principal and recovery interest) is registered in the schedule of liabilities within the recovery deadline. If only 60% of the State aid is recovered materially recovered and, as a consequence of the insolvency procedure, the beneficiary in any case exits the market, recovery could be as well considered as implemented, notwithstanding the remaining 40% of the claim not recovered.



# *Knowledge Check on State aid*

**Clara SÄDLER, Case Handler**  
**DG COMP Unit H4 - Enforcement and Monitoring**

*The role of the national judge in the enforcement of EU State aid rules – ERA Seminar for the Finnish Judiciary - 16 June 2020*



Funded by the European Union

Service Contract DG COMP/2017/015 - SI2.778715

This document has been prepared for the European Commission. However, it reflects the views only of the authors, and the Commission cannot be held responsible for any use which may be made of the information contained therein

*The views expressed in this presentation are purely those of the speaker and may not in any circumstances be regarded as stating an official position of the European Commission*

# *Ready?*

#### Question 1

What is the purpose of recovery?

- A: To impose a penalty on the beneficiaries of incompatible aid
- B: To re-establish the situation that existed in the market prior to the granting of the aid
- C: To ensure additional revenues for Member States, thereby allowing a reduction in taxes or an increase in spending
- D: To liquidate the company which benefitted from incompatible aid

#### Kysymys 1

Mikä on takaisinperinnän tarkoitus?

- A: Määrittää seuraamuksia yhteismarkkinoille soveltumattoman tuen saajille
- B: Palauttaa ennen tuen myöntämistä sisämarkkinoilla vallinnut tilanne
- C: Varmistaa, että jäsenvaltiot saavat lisätuloja, jotta veroja voidaan alentaa tai menoja lisätä
- D: Asettaa sisämarkkinoille soveltumatonta tukea saanut yritys selvitystilaan

#### Question 1

What is the purpose of recovery?

- A: To impose a penalty on the beneficiaries of incompatible aid
- B: To re-establish the situation that existed in the market prior to the granting of the aid**
- C: To ensure additional revenues for Member States, thereby allowing a reduction in taxes or an increase in spending
- D: To liquidate the company which benefitted from incompatible aid

#### Kysymys 1

Mikä on takaisinperinnän tarkoitus?

- A: Määrittää seuraamuksia yhteismarkkinoille soveltumattoman tuen saajille
- B: Palauttaa ennen tuen myöntämistä sisämarkkinoilla vallinnut tilanne**
- C: Varmistaa, että jäsenvaltiot saavat lisätuloja, jotta veroja voidaan alentaa tai menoja lisätä
- D: Asettaa sisämarkkinoille soveltumatonta tukea saanut yritys selvitystilaan

**Question 2**

**Which procedures govern the recovery of State aid?**

- A: EU procedures, namely the 2007 Regulation on recovery procedures
- B: National and EU procedures
- C: National procedures
- D: National procedures, provided they ensure immediate and effective recovery

**Kysymys 2**

**Mitkä menettelyt koskevat valtiontuen takaisinperintää?**

- A: EU:n menettelyt eli vuonna 2007 annettu asetus takaisinperintämenettelyistä
- B: Kansalliset ja EU:n tasoiset menettelyt
- C: Kansalliset menettelyt
- D: Kansalliset menettelyt edellyttäen, että niillä varmistetaan välitön ja tehokas takaisinperintä

**Question 2**

**Which procedures govern the recovery of State aid?**

- A: EU procedures, namely the 2007 Regulation on recovery procedures
- B: National and EU procedures
- C: National procedures
- D: National procedures, provided they ensure immediate and effective recovery**

**Kysymys 2**

**Mitkä menettelyt koskevat valtiontuen takaisinperintää?**

- A: EU:n menettelyt eli vuonna 2007 annettu asetus takaisinperintämenettelyistä
- B: Kansalliset ja EU:n tasoiset menettelyt
- C: Kansalliset menettelyt
- D: Kansalliset menettelyt edellyttäen, että niillä varmistetaan välitön ja tehokas takaisinperintä**

**Question 3**

**When the Commission orders a Member State to recover, what should actually be recovered?**

- A: The aid amount
- B: The aid amount and recovery interest
- C: The aid amount, recovery interest and a lump sum
- D: The recovery interest

**Kysymys 3**

**Kun komissio määrää jäsenvaltion perimään tuen takaisin, mitä summia takaisinperintä koskee?**

- A: Tuen määrää
- B: Tuen määrää ja takaisinperintäkorkoa
- C: Tuen määrää, takaisinperintäkorkoa ja kiinteää summaa
- D: Takaisinperintäkorkoa

**Question 3**

**When the Commission orders a Member State to recover, what should actually be recovered?**

- A: The aid amount
- B: The aid amount and recovery interest**
- C: The aid amount, recovery interest and a lump sum
- D: The recovery interest

**Kysymys 3**

**Kun komissio määrää jäsenvaltion perimään tuen takaisin, mitä summia takaisinperintä koskee?**

- A: Tuen määrää
- B: Tuen määrää ja takaisinperintäkorkoa**
- C: Tuen määrää, takaisinperintäkorkoa ja kiinteää summaa
- D: Takaisinperintäkorkoa

#### Question 4

What are the limits to recovery?

- A: There are no limits, recovery must take place in any case
- B: Those established by the applicable national law
- C: Limitation period
- D: Limitation period and general principles of EU law

#### Kysymys 4

Mitkä ovat takaisinperintää koskevat rajoitukset?

- A: Mitään rajoituksia ei ole, vaan takaisinperintä toteutetaan joka tapauksessa
- B: Sovellettavassa kansallisessa lainsäädännössä vahvistetut rajoitukset
- C: Vanhentumisaika
- D: Vanhentumisaika ja EU:n oikeuden yleiset periaatteet

#### Question 4

What are the limits to recovery?

- A: There are no limits, recovery must take place in any case
- B: Those established by the applicable national law
- C: Limitation period
- D: Limitation period and general principles of EU law**

#### Kysymys 4

Mitkä ovat takaisinperintää koskevat rajoitukset?

- A: Mitään rajoituksia ei ole, vaan takaisinperintä toteutetaan joka tapauksessa
- B: Sovellettavassa kansallisessa lainsäädännössä vahvistetut rajoitukset
- C: Vanhentumisaika
- D: Vanhentumisaika ja EU:n oikeuden yleiset periaatteet**



**Question 5**

**In justified cases, can a Commission recovery decision be implemented provisionally, while litigation is pending?**

- A: Yes, through the payment of the amount to be recovered into an escrow account
- B: Yes, through the establishment of bank guarantees or payment in escrow accounts
- C: No, there can be no provisional implementation
- D: The matter is governed by the applicable national law

**Kysymys 5**

**Voidaanko komission takaisinperintäpäätös perustelluissa tapauksissa panna täytäntöön väliaikaisesti riita-asian ollessa vireillä?**

- A: Kyllä, siten, että takaisinperittävä summa maksetaan sulkutilille
- B: Kyllä, antamalla pankkitakauksia tai maksamalla sulkutileille
- C: Ei, väliaikaista täytäntöönpanoa ei voi olla
- D: Asia kuuluu sovellettavan kansallisen lainsäädännön piiriin

**Question 5**

**In justified cases, can a Commission recovery decision be implemented provisionally, while litigation is pending?**

- A: Yes, through the payment of the amount to be recovered into an escrow account**
- B: Yes, through the establishment of bank guarantees or payment in escrow accounts
- C: No, there can be no provisional implementation
- D: The matter is governed by the applicable national law

**Kysymys 5**

**Voidaanko komission takaisinperintäpäätös perustelluissa tapauksissa panna täytäntöön väliaikaisesti riita-asian ollessa vireillä?**

- A: Kyllä, siten, että takaisinperittävä summa maksetaan sulkutilille**
- B: Kyllä, antamalla pankkitakauksia tai maksamalla sulkutileille
- C: Ei, väliaikaista täytäntöönpanoa ei voi olla
- D: Asia kuuluu sovellettavan kansallisen lainsäädännön piiriin

#### Question 6

What happens to recovery when the aid recipient is insolvent?

- A: Recovery cannot be implemented
- B: Recovery cannot be implemented, if it can be proved that the aid recipient is insolvent due to an unforeseen market development
- C: Insolvency does not affect the recovery obligation. Liquidation can be an alternative means to achieve recovery
- D: The Commission and the Member State concerned negotiate on a case-by-case basis

#### Kysymys 6

Miten takaisinperinnän käy, jos tuensaaja on maksukyvytön?

- A: Takaisinperintää ei voida panna täytäntöön
- B: Takaisinperintää ei voida panna täytäntöön, jos voidaan osoittaa, että tuensaaja on maksukyvytön markkinoiden ennalta arvaamattoman kehityksen vuoksi
- C: Maksukyvyttömyys ei vaikuta takaisinperintävelvollisuuteen. Selvitystilaan asettaminen voi olla vaihtoehtoinen keino takaisinperintään toteuttamiseksi
- D: Komissio ja asianomainen jäsenvaltio neuvottelevat asiasta tapauskohtaisesti

#### Question 6

What happens to recovery when the aid recipient is insolvent?

- A: Recovery cannot be implemented
- B: Recovery cannot be implemented, if it can be proved that the aid recipient is insolvent due to an unforeseen market development
- C: Insolvency does not affect the recovery obligation. Liquidation can be an alternative means to achieve recovery**
- D: The Commission and the Member State concerned negotiate on a case-by-case basis

#### Kysymys 6

Miten takaisinperinnän käy, jos tuensaaja on maksukyvytön?

- A: Takaisinperintää ei voida panna täytäntöön
- B: Takaisinperintää ei voida panna täytäntöön, jos voidaan osoittaa, että tuensaaja on maksukyvytön markkinoiden ennalta arvaamattoman kehityksen vuoksi
- C: Maksukyvyttömyys ei vaikuta takaisinperintävelvollisuuteen. Selvitystilaan asettaminen voi olla vaihtoehtoinen keino takaisinperintään toteuttamiseksi**
- D: Komissio ja asianomainen jäsenvaltio neuvottelevat asiasta tapauskohtaisesti

#### Question 7

##### Deggendorf is:

- A: EU courts case law setting conditions to be met by national courts when granting interim relief
- B: A former German judge of the Court of Justice, who effectively set up the recovery doctrine
- C: A judgment establishing that new aid can be granted to the same beneficiary only after recovery of earlier incompatible aid (excluding recovery interest)
- D: A judgment establishing that new aid can be granted to the same beneficiary only after recovery of earlier incompatible aid

#### Kysymys 7

##### Deggendorf on

- A: EU:n tuomioistuinten oikeuskäytäntö, jossa asetut edellytykset kansallisten tuomioistuinten on täytettävä välitoimia määrätessään
- B: Yhteisöjen tuomioistuimen entinen saksalaistuomari, joka on laatinut perintädoktriinin
- C: Tuomio, jonka mukaan uutta tukea voidaan myöntää samalle tuensaajalle vasta sen jälkeen, kun aikaisempi yhteismarkkinoille soveltumaton tuki on maksettu takaisin (pois lukien takaisinperintäkorko)
- D: Tuomio, jonka mukaan uutta tukea voidaan myöntää samalle tuensaajalle vasta sen jälkeen, kun aikaisempi yhteismarkkinoille soveltumaton tuki on maksettu takaisin

#### Question 7

##### Deggendorf is:

- A: EU courts case law setting conditions to be met by national courts when granting interim relief
- B: A former German judge of the Court of Justice, who effectively set up the recovery doctrine
- C: A judgment establishing that new aid can be granted to the same beneficiary only after recovery of earlier incompatible aid (excluding recovery interest)
- D: A judgment establishing that new aid can be granted to the same beneficiary only after recovery of earlier incompatible aid**

#### Kysymys 7

##### Deggendorf on

- A: EU:n tuomioistuinten oikeuskäytäntö, jossa asetut edellytykset kansallisten tuomioistuinten on täytettävä välitoimia määrätessään
- B: Yhteisöjen tuomioistuimen entinen saksalaistuomari, joka on laatinut perintädoktriinin
- C: Tuomio, jonka mukaan uutta tukea voidaan myöntää samalle tuensaajalle vasta sen jälkeen, kun aikaisempi yhteismarkkinoille soveltumaton tuki on maksettu takaisin (pois lukien takaisinperintäkorko)
- D: Tuomio, jonka mukaan uutta tukea voidaan myöntää samalle tuensaajalle vasta sen jälkeen, kun aikaisempi yhteismarkkinoille soveltumaton tuki on maksettu takaisin**

#### Question 8

##### Following a request for information, the European Commission:

- A: Provides all the requested information or documents to the national court, except information covered by professional secrecy
- B: Provides all the requested information or documents to the national court, including information covered by professional secrecy
- C: Provides information or documents covered by professional secrecy, provided that the national court can guarantee the protection of this confidential information
- D: Provides all the requested information or documents to the national court, except information covered by professional secrecy and information whose transmission would interfere with the functioning of the Union

#### Kysymys 8

##### Tietopyynnön saatuaan Euroopan komissio

- A: Toimittaa kaikki pyydetty tiedot tai asiakirjat kansalliselle tuomioistuimelle, lukuun ottamatta salassapitovelvollisuuden piiriin kuuluvia tietoja
- B: Toimittaa kaikki pyydetty tiedot tai asiakirjat kansalliselle tuomioistuimelle, myös salassapitovelvollisuuden piiriin kuuluvat tiedot
- C: Toimittaa salassapitovelvollisuuden piiriin kuuluvat tiedot tai asiakirjat edellyttäen, että kansallinen tuomioistuin voi taata näiden luottamuksellisten tietojen suojan
- D: Toimittaa kaikki pyydetty tiedot tai asiakirjat kansalliselle tuomioistuimelle, lukuun ottamatta tietoja, jotka kuuluvat salassapitovelvollisuuden piiriin ja joiden siirtäminen voisi vaarantaa unionin toimintakyvyn

#### Question 8

##### Following a request for information, the European Commission:

- A: Provides all the requested information or documents to the national court, except information covered by professional secrecy
- B: Provides all the requested information or documents to the national court, including information covered by professional secrecy
- C: Provides information or documents covered by professional secrecy, provided that the national court can guarantee the protection of this confidential information**
- D: Provides all the requested information or documents to the national court, except information covered by professional secrecy and information whose transmission would interfere with the functioning of the Union**

#### Kysymys 8

##### Tietopyynnön saatuaan Euroopan komissio

- A: Toimittaa kaikki pyydetty tiedot tai asiakirjat kansalliselle tuomioistuimelle, lukuun ottamatta salassapitovelvollisuuden piiriin kuuluvia tietoja
- B: Toimittaa kaikki pyydetty tiedot tai asiakirjat kansalliselle tuomioistuimelle, myös salassapitovelvollisuuden piiriin kuuluvat tiedot
- C: Toimittaa salassapitovelvollisuuden piiriin kuuluvat tiedot tai asiakirjat edellyttäen, että kansallinen tuomioistuin voi taata näiden luottamuksellisten tietojen suojan**
- D: Toimittaa kaikki pyydetty tiedot tai asiakirjat kansalliselle tuomioistuimelle, lukuun ottamatta tietoja, jotka kuuluvat salassapitovelvollisuuden piiriin ja joiden siirtäminen voisi vaarantaa unionin toimintakyvyn**

#### Question 9

**What are the main differences between preliminary rulings to the CJEU and requests for opinion to the Commission?**

- A: The request for opinion concerns economic, factual and legal matters while preliminary rulings concern the interpretation of the law of the European Union and the validity of acts of secondary legislation
- B: Commission opinions are not binding for national judges in contrast with the authoritative interpretation of EU law by the Court
- C: Requests for opinion are usually dealt with faster than preliminary rulings
- D: All of the above

#### Kysymys 9

**Mitkä ovat tärkeimmät erot Euroopan unionin tuomioistuimelle annettujen ennakkoratkaisujen ja komissiolle esitettyjen lausuntopyyntöjen välillä?**

- A: Lausuntopyyntö koskee taloudellisia, tosiasioihin liittyviä ja oikeudellisia seikkoja, kun taas ennakkoratkaisut koskevat Euroopan unionin oikeuden tulkintaa ja johdetun oikeuden säädösten pätevyyttä.
- B: Komission lausunnot eivät sido kansallisia tuomareita, kun taas unionin tuomioistuimella on lopullinen toimivalta tulkita EU:n lainsäädäntöä.
- C: Lausuntopyynnöt käsitellään yleensä ennakkoratkaisuja nopeammin.
- D: Kaikki edellä olevat vaihtoehdot

#### Question 9

**What are the main differences between preliminary rulings to the CJEU and requests for opinion to the Commission?**

- A: The request for opinion concerns economic, factual and legal matters while preliminary rulings concern the interpretation of the law of the European Union and the validity of acts of secondary legislation
- B: Commission opinions are not binding for national judges in contrast with the authoritative interpretation of EU law by the Court
- C: Requests for opinion are usually dealt with faster than preliminary rulings

**D: All of the above**

#### Kysymys 9

**Mitkä ovat tärkeimmät erot Euroopan unionin tuomioistuimelle annettujen ennakkoratkaisujen ja komissiolle esitettyjen lausuntopyyntöjen välillä?**

- A: Lausuntopyyntö koskee taloudellisia, tosiasioihin liittyviä ja oikeudellisia seikkoja, kun taas ennakkoratkaisut koskevat Euroopan unionin oikeuden tulkintaa ja johdetun oikeuden säädösten pätevyyttä.
- B: Komission lausunnot eivät sido kansallisia tuomareita, kun taas unionin tuomioistuimella on lopullinen toimivalta tulkita EU:n lainsäädäntöä.
- C: Lausuntopyynnöt käsitellään yleensä ennakkoratkaisuja nopeammin.

**D: Kaikki edellä olevat vaihtoehdot**

#### Question 10

##### When supporting national courts, the European Commission:

- A: Will not hear any of the parties involved in the national proceedings as part of its duty to defend public interest
- B: Will remain neutral and objective when hearing the parties involved in the national proceedings
- C: Will consider the merits of the case and hear the parties involved only when providing a national judge with an Amicus Curia observation
- D: Will consider the merits of the case and hear the parties involved only when providing an opinion following a request from a national court

#### Kysymys 10

##### Tukiessaan kansallisia tuomioistuimia Euroopan komissio

- A: ei kuule kansalliseen menettelyyn osallistuvia osapuolia yleisen edun puolustamista koskevan velvoitteensa mukaisesti
- B: pysyy puolueettomana ja objektiivisena kuullessaan kansalliseen menettelyyn osallistuvia osapuolia
- C: tarkastelee tapauksen asiasisältöä ja kuulee asianosaisia ainoastaan toimittaessaan kansalliselle tuomarille Amicus Curia -huomautuksen
- D: tarkastelee tapauksen asiasisältöä ja kuulee asianosaisia ainoastaan toimittaessaan lausunnon kansallisen tuomioistuimen pyynnöstä.

#### Question 10

##### When supporting national courts, the European Commission:

- A: Will not hear any of the parties involved in the national proceedings as part of its duty to defend public interest**
- B: Will remain neutral and objective when hearing the parties involved in the national proceedings
- C: Will consider the merits of the case and hear the parties involved only when providing a national judge with an Amicus Curia observation
- D: Will consider the merits of the case and hear the parties involved only when providing an opinion following a request from a national court

#### Kysymys 10

##### Tukiessaan kansallisia tuomioistuimia Euroopan komissio

- A: ei kuule kansalliseen menettelyyn osallistuvia osapuolia yleisen edun puolustamista koskevan velvoitteensa mukaisesti**
- B: pysyy puolueettomana ja objektiivisena kuullessaan kansalliseen menettelyyn osallistuvia osapuolia
- C: tarkastelee tapauksen asiasisältöä ja kuulee asianosaisia ainoastaan toimittaessaan kansalliselle tuomarille Amicus Curia -huomautuksen
- D: tarkastelee tapauksen asiasisältöä ja kuulee asianosaisia ainoastaan toimittaessaan lausunnon kansallisen tuomioistuimen pyynnöstä.

*Thank you very much  
for your attention*

[comp-recovery-state-aid@ec.europa.eu](mailto:comp-recovery-state-aid@ec.europa.eu)



© European Union 2022

Unless otherwise noted the reuse of this presentation is authorised under the [CC BY 4.0](https://creativecommons.org/licenses/by/4.0/) license. For any use or reproduction of elements that are not owned by the EU, permission may need to be sought directly from the respective right holders.

# Background Documentation



# THE ROLE OF THE NATIONAL JUDGE IN THE ENFORCEMENT OF EU STATE AID RULES



Vantaa, 15 - 16 June 2022

01	CONSOLIDATED VERSION OF THE TREATY ON THE FUNCTIONING OF THE EUROPEAN UNION Article: <a href="#">107</a> , <a href="#">108</a> und <a href="#">109</a>
02	<a href="#">Commission Notice on the notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union (2016/C 262/01)</a>
03	<a href="#">COUNCIL REGULATION (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (codification)</a>
04	<a href="#">COMMISSION REGULATION (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EU) 2015/1589 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (consolidated version)</a>
05	<a href="#">Notice from the Commission on a simplified procedure for treatment of certain types of State Aid (2009/C 136/03)</a>
06	<a href="#">Code of Best Practices for the conduct of State aid control procedures (2018/C 253/05)</a>

07	<a href="#"><u>COMMUNICATION FROM THE COMMISSION Commission Notice on the enforcement of State aid rules by national courts (2021/C 305/01)</u></a>
08	<a href="#"><u>COMMUNICATION FROM THE COMMISSION Commission Notice on the recovery of unlawful and incompatible State aid (2019/C 247/01)</u></a>
09	<a href="#"><u>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 aid (codification)</u></a>
10	<a href="#"><u>COMMISSION REGULATION (EU) No 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 (consolidated version)</u></a>
11	<a href="#"><u>COMMISSION REGULATION (EU) No 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 (consolidated version)</u></a>
12	<a href="#"><u>COMMISSION REGULATION (EU) No 702/2014 of 25 June 2014 declaring certain categories of aid in the agricultural and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union (consolidated version)</u></a>
13	<a href="#"><u>Communication from the Commission on the application of the European Union State aid rules to compensation granted for the provision of services of general economic interest (2012/C 8/02)</u></a>
14	<a href="#"><u>COMMISSION DECISION of 20 December 2011 on the application of Article 106(2) of the Treaty on the Functioning of the European Union to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest (2012/21/EU)</u></a>

15	<a href="#"><u>COMMUNICATION FROM THE COMMISSION European Union framework for State aid in the form of public service compensation (2012/C 8/03)</u></a>
16	<a href="#"><u>COMMISSION REGULATION (EU) No 360/2012 of 25 April 2012 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid granted to undertakings providing services of general economic interest (consolidated version)</u></a>
17	<a href="#"><u>COMMISSION REGULATION (EU) No 1388/2014 of 16 December 2014 declaring certain categories of aid to undertakings active in the production, processing and marketing of fishery and aquaculture products compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union (consolidated version)</u></a>
18	<a href="#"><u>COMMISSION REGULATION (EU) No 717/2014 of 27 June 2014 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the fishery and aquaculture sector</u></a>
19	<a href="#"><u>Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees (2008/C 155/02)</u></a>
20	<a href="#"><u>Communication from the Commission on the revision of the method for setting the reference and discount rates (2008/C 14/02)</u></a>
21	<a href="#"><u>Study on the enforcement of State aid rules and decisions by national courts (EN)</u></a>
	Jurisprudence

1.	<a href="#">C-51/19 P</a> World Duty Free Group and Kingdom of Spain v European Commission
2.	<a href="#">C-274/14</a> Banco de Santander SA
3.	<a href="#">C-622/16 P</a> Scuola Elementare Maria Montessori Srl v European Commission, European Commission v Scuola Elementare Maria Montessori Srl and European Commission v Pietro Ferracci
4.	<a href="#">C-127/16 P</a> SNCF Mobilités, formerly Société nationale des chemins de fer français (SNCF) v European Commission
5.	<a href="#">C-579/16 P</a> European Commission v FIH Holding A/S and FIH Erhvervsbank A/S
6.	<a href="#">C-300/16 P</a> European Commission v Frucona Košice a.s.
7.	<a href="#">C-228/16 P</a> Dimosia Epicheirisi Ilektrismou AE (DEI) v European Commission
8.	<a href="#">T-219/14</a> Regione autonoma della Sardegna v European Commission

9.	<a href="#"><u>C-415/15 P</u></a> Stichting Woonpunt and Others v European Commission
10.	<a href="#"><u>C-414/15 P</u></a> Stichting Woonlinie and Others v European Commission
11.	<a href="#"><u>C-100/16 P</u></a> Ellinikos Chrysos AE Metalleion kai Viomichanias Chrysou v European Commission
12.	<a href="#"><u>C-526/14</u></a> Tadej Kotnik and Others v Državni zbor Republike Slovenije
13.	<a href="#"><u>C-63/14</u></a> European Commission v French Republic
14.	<a href="#"><u>C-527/12</u></a> European Commission v Federal Republic of Germany
15.	<a href="#"><u>C-284/12</u></a> Deutsche Lufthansa AG v Flughafen Frankfurt-Hahn GmbH
16.	<a href="#"><u>C-287/12 P</u></a> Ryanair Ltd v European Commission

17.	<a href="#">C-677/11</a> Doux Élevage SNC and Coopérative agricole UKL-ARREE v Ministère de l'Agriculture, de l'Alimentation, de la Pêche, de la Ruralité et de l'Aménagement du territoire and Comité interprofessionnel de la dinde française (CIDEF)
18.	<a href="#">C-615/11 P</a> European Commission v Ryanair Ltd
19.	<a href="#">C-610/10</a> European Commission v Kingdom of Spain
20.	<a href="#">C-507/08</a> European Commission v Slovak Republic
21.	<a href="#">C-369/07</a> Commission of the European Communities v Hellenic Republic.
22.	<a href="#">C-199/06</a> Centre d'exportation du livre français (CELF) and Ministre de la Culture et de la Communication v Société internationale de diffusion et d'édition (SIDE).
23.	<a href="#">C-379/98</a> PreussenElektra AG v Schleswig AG, in the presence of Windpark Reußenköge III GmbH and Land Schleswig-Holstein.
24.	<a href="#">C-72/91</a> Firma Sloman Neptun Schiffahrts AG v Seebetriebsrat Bodo Ziesemer der Sloman Neptun Schiffahrts AG.

25.	<a href="#">C-78/76</a> Steinike & Weinlig v Federal Republic of Germany.
-----	---

