

23rd EU-China Competition Week

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EU State Aid and the Block Exemption Process

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What is State Aid

- Notion of aid
 - Undertaking and economic activity;
 - State origin;
 - Selectivity;
 - Advantage;
 - Effects on competition;
 - Aid that affects trade between Member States - De minimis aid (*general and SGEI de minimis*)

Rationale of State Aid control

- General prohibition of State Aid;
 - Internal market – founding principle since 1957 ("level playing field")
 - Stand still obligation and possible approval by the Commission subject to prior notification;
 - Non notified aid is by definition unlawful and should be recovered by Member States;
 - Control of appropriateness, necessity and proportionality;
 - Avoiding overcompensation;
 - Transparency and investigation procedures;
 - Importance of State Aid Guidelines and clarity of rules on block exemptions (e.g. GBER);
 - Complementarity with other obligations under EU law – CJEU Hinkley Point C judgment.

Block Exemptions

- Main features of the functioning of Block Exemptions
 - Based on case practice, after an extensive legal process (enabling regulation/ block exemption)
 - 95% of notifications, 50% of expenditure;
 - Clear rules and a system of interpretative questions;
 - No need of prior approval by the Commission;
 - Member States to verify compliance with all rules;
 - Obligation to submit and publish a summary of the aid as well as the full text of the aid measure - transparency;
 - Monitoring by the Commission, which can be followed by a recovery decision. Also independent legal obligation for national authorities to ensure compliance and recover if the rules have not been followed

General Block Exemption Regulation

- Structure and functioning
 - General rules in Chapter I;
 - Additional sector specific rules in Chapter III;
 - Monitoring requirements in Chapter II
- Reliance on regular adaptations
 - e.g. current Green Deal GBER revision

General Block Exemption Regulation

- General compatibility conditions
 - Scope: positive and negative selection of sectors;
 - Definitions, including per sector;
 - Notification thresholds;
 - Transparency;
 - Incentive effect;
 - Aid intensities;
 - Cumulation;
 - Publication;

General Block Exemption Regulation

- Sector specific requirements: practical example on designing aid for renewable energy projects under Articles 41 or 43 GBER
 - Choice between investment aid (Article 41) or operating aid for small scale installations (Article 43);
 - Compliance with general conditions in Chapter I;
 - Compliance with specific conditions – e.g. tenders, eligible costs determination, aid intensities etc.;
 - Compliance with the transparency and publication requirements;

Thank you



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