The Role of EU State Aid Policy in Enhancing the Development of the Industrial Sector

PROFESSIONAL ARTICLE

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Abstract

This paper analyzes the role of the European Commission's state aid policy as a tool of enhancing the development of the industrial sector within the European Union and supporting investments during the crisis, especially with reference to regional aid. By analyzing the European Commission's policy, this paper highlights how state aid can have a crucial role during the financial crisis if it is used by the public sector to support private investment in research and development. The change of the European Commission's approach over recent years as well as the positions of the Member States are presented. By analyzing the most relevant recent law cases the position of the European judges is also presented. However, the Court of Justice of the European Union cannot question the Commission's decisions due to the level of discretionary power enjoyed by the central European Union authority in evaluating the compatibility of aid with the internal market.

Keywords: state aid, competition law, competition policies, European Commission
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1 Introduction

The focus of this paper is on the role of European Union (EU) state aid policy and its impact on the EU industrial sector (Cini and McGowan, 2008). The necessity of both public policy and intervention of governments in the internal market especially during the economic crisis are discussed, together with assessment of the costs and benefits of state aid.

By analyzing the initiatives of the European Commission (EC), especially during the last five years (European Commission, 2009), with respect to the Almunia package[1] it appears that with regard to state aid, the European Commission moved from a soft law approach to a more structured policy (Cini, 2001). The recent EC approach aims to stimulate private parties to go for a jurisdictional action in front of the national judges in order to improve the protection of individuals in the context of state aid. This paper illustrates how the mechanism of private enforcement can be complementary to the public control carried out by the European Commission and consequently how this mechanism is an integral part of the recent EU state aid policy (Braun, 2008; Komninos, 2006; Schepisi, 2011). The analysis takes the Italian state as an example for the economic reality of SMEs and for evaluating the jurisdictional rights in front of the national judges. Indeed, if the competitors claim damages in front of national judges there will be double-level control of Member States' behavior and, possibly, better allocation of public resources aimed to support the industrial sector in the internal market, especially during the financial crisis (Buendía Sierra and Muñoz, 2012). Enforcement of competition law in the EU can help create optimal conditions for innovations to flourish in the single market (Poli, 2010).

[1] *The Almunia package refers to: (i)* Communication from the Commission on the application of the EU State aid rules for compensation granted for the provision of the services of general economic interest (SGEI) *(EU Communications on SGEI) – published in OJ 2012 C 8/4; (ii)* Commission decision on the application of Article 106 (2) Treaty on the Functioning of the European Union (TFEU) to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of SGEI *(EU Decision on SGEI) – published in OJ 2012 L 7/3; (iii)* Communication from the Commission – EU framework for State aid in the form of public service compensation *(EU Framework on SGEI) – published in OJ 2012 C 8/15; (iv)* Draft Commission Regulation on the application of Article 107 and 108 of the TFEU to de minimis (minimal) aid granted to undertakings providing SGEI *(draft SGEI* de minimis *Regulation) – published in OJ 2012 C 8/23. Speeches available at Europa (2014).*

In particular, the financial crisis and the lack of liquidity on the market have created the opportunity for the Commission to address the State aid policy with an innovative instrument in order to change the approach of the policy itself (Smith, 1997). Moreover, the past EC approach has been quite restrictive with regard to the state intervention in the market even though during recent years the need for the Commission to intervene by correcting the market failures has been obvious.

In the State Aid Action Plan (2005) the Commission presented a roadmap for the reform of State aid policy for a five-year period (2005-2009) (European Commission, 2005). The aim of the reform was to encourage Member States to achieve the Lisbon Strategy objectives[2]: to develop information and communication technologies, to create new jobs, to make Europe the most competitive economic area, to stimulate research, to integrate financial markets in the internal market and to coordinate the macroeconomic policies. Unfortunately, during the 2005-2009 period Europe did not meet the ambitious objectives formulated by the Lisbon Strategy. However, the EU State aid policy still remains a strong tool to enhance development of the industrial sector and to strengthen the internal market (Vliet, 2008). Member States could, guided by the European Commission, target better state aid allocation towards the improvement of European industry's competitiveness and creation of sustainable jobs. The objective is to target State aid towards activities in which the financial markets are reluctant to borrow money or in which they can contribute to growth, competitiveness or the creation of sustainable jobs. However, the achievement of this objective depends on a more refined economic approach at the European level (Quigley, 2009).

State aid policy helps to reduce disparities between the regions of Europe and is therefore a factor for cohesion and stability. It could also be a driver for growth, supporting the less competitive regions as well as the small and medium enterprises (SMEs) (Bacon, 2009; Hancher, Ottervenger and Slot, 2012).

[2] *Lisbon Special European Council of March 23-24, 2000.*

If it is true that the policy established by the Council of the European Union with the political agreement of Member States and implemented by the European Commission is in the interest of the Union, then the role played by judicial control cannot be forgotten, especially at the implementation phase, both at national and European levels. Indeed, it is questionable whether the national judge, that detains the ultimate lead in applying EU law while utilizing the national law, is in compliance with the hierarchy of norms (Dony, 2009; Waelbroeck, 2009). Consequently, the national judgment with its decision will become a responsibility of the Commission in the Member State to implement the policy established in Brussels. In principle the consensus on the need to promote openness, a vibrant and competitive single market, and innovation to boost growth in the EU is very large. The European Commission translates these broad principles into policies – competition policy is one of them – and finally brings them into reality with the needed support of Member States and the implementation made by national judges.

2 Balancing Opposite Interests

Ever since the Treaty of Rome in 1957 fair competition has been a primary objective of the EU as well as an instrument to ensure the establishment of the EU internal market (Tesauro, 2013). Indeed, the central role given to the competition policy by the founding Treaty for the functioning of the EU economy is strictly connected to the complementarity of such a policy with the creation of the internal market (Waelbroeck, 2009). The norms of the Treaty on the Functioning of the European Union (TFEU), in particular articles 107-109[3], which belong to the competition policy, should be placed in the context of the establishment of the internal market and the sustainable development based on balanced economic growth (TFEU,

[3] *Signed on December 13, 2007; entered into force on December 1, 2009; the recent consolidated versions of the Treaty on the European Union (TUE) and of the Treaty on the Functioning of the European Union (TFEU) have been published in the OJEU, C 326 October 26, 2012, p. 1 ss.*

Article 3)[4]. State aid discipline is complementary to the internal market, because a subsidiary of public origin, direct or indirect, could strengthen the position of the company on the national market by making it more difficult for the competitors to access it and, on the international level, by making the exports easier. Indeed, distortion of the competition can arise from public interferences in favor of a single company. Thanks to State benefit, a company could perform with an anticompetitive behavior by altering the relations with the other undertakings in the relevant market (Roberti, 1997).

The Treaty on the Functioning of the EU expressly mentions (Article 345) its impartiality by the company ownership regime, public or private, existing in the Member States. Consequently, public intervention in the EU economy is not *per se* forbidden; however, it is incompatible with the internal market if it is undertaken in violation of the Treaty's norms. The incompatibility principle stated in Article 107(1) of TFEU is the clear mirror of the fact that the interference by the public subvention in the internal market is considered negatively *a priori*. However, this principle is not binding.[5] Normally, State aids are compulsory if notified to the European Commission in following the procedure (Reg. 659/99/CE).[6] The notification procedure should be carried out by the State before the concession of the aid and must wait for the authorization (*standstill clause*)[7]. The incompatibility principle contained in the Treaty is the preliminary legal basis for all the controls carried out by the Commission, which could lead to the authorization or modification of the request. Paragraphs 2-3 (Art. 107 of TFEU) list the derogation hypotheses, which could refer to *ipso jure* cases or to a discretionary evaluation of the Commission. Notwithstanding,

[4] *The doctrine is not consistent, however some authors consider that State aid policy should be a part of the more general competition policy. In this sense see Kleiner and Alexis (2005). Opposing doctrine of Martin and Strasse (2005) considered that competition policy aims to benefit consumers and consequently in the State aid policy this benefit does not have an immediate relevance.*

[5] *Judgment CJEU March 22, case 78/76,* Steinike *[1977] p. 595, para. 8.*

[6] *Council Regulation February 22, 1999, n. 659/99/CE application of Art. 93 (Art. 108 TFEU) TCE, in OJCE L 83 March 27, 1999, p. 1.*

[7] *Judgment CJEU December 10, case 6 and 11/69,* Commission v. France*, [1969] 523, para. 18-19.*

those paragraphs for their nature of exception to the general principle of the first paragraph are to be interpreted restrictively (Merola, 1996).

Starting from the presumption that public interference has a negative effect on competition, the presumption could be overcome by demonstrating that State aid produces benefits on the market. State aid produces anticompetitive effects with effects that are similar to protectionism, but on the positive side it should be considered as an instrument which helps in adjusting the natural failure of the market. EU norms try to balance the opposite needs: to ensure the free movement in the internal market and to recognize the positive effect of public interference under certain conditions (Bariatti, 1998; Guarino, 1997).

3 The Notion of Aid

To qualify a public measure as a State aid is a preliminary step that has to be undertaken before evaluating the compatibility and analyzing positive market effects. Article 107 of TFEU for example does not include a clear list of forbidden measures (Biondi, 2006; Orlandi, 1995; Waelbroeck, 2009); it however prohibits any public interference by stating that "any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favoring 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 State aid concept is consequently extremely broad considering that the phrase "in any form whatsoever" allows extensive interpretations (Di Bucci, 2008; Slotboom, 1995; Winter, 2004). The definition includes every advantage, economically relevant, paid for with public money. The *Altmark* case gave the opportunity to the Court of Justice to list the essential characteristics: "First, there must be an intervention by the State or through State resources. Second, the intervention must be liable to affect trade between Member States. Third, it must confer an advantage on the recipient. Fourth, it must distort or threaten to distort competition"[8].

Regarding forms and modalities of public interference, consolidated case law of the Court of Justice of the European Union evaluates that any advantage should be included.[9] The definition provided by the jurisprudence includes allocations, as well as tax reliefs, favored prices, reductions on rate and bank fees, guarantees of the State and real estate concessions.[10] It contains direct intervention by the State or every intervention, which is paid for with public resources.

A separate analysis should be devoted to the aid given in the form of a guarantee provided by the State. The problematic aspect of such a type of public interference consists in the evaluation of economic advantage for the beneficiary (Keppenne, 1999; Nicolaides and Kekelekis, 2005; Quigley and Collins, 2003; Von Quitzow, 2002). It must be considered a State aid if the beneficiary does not pay any commission or if the commission paid is below the rate offered on the market (European Commission, 2008).

The beneficiary of the aid must be an undertaking, qualified in an autonomous way by the EU jurisprudence due to the lack of definition in the EU legislation and considering the multiplicity of definitions in the internal legislation.[11] Sometimes, especially in the case of an aids regime, it could be quite complicated to characterize the beneficiaries, for example in

[8] *Judgment CJEU, July 24, case C- 280/00,* Altmark, *[2003] I-7747, para. 75. See also judgments CJEU March 3, case C- 172/03,* Heiser, *[2005] I-1627, para. 27; March 23, case C- 237/04,* Enirisorse, *[2006] I-2843, para. 39; General Court February 22, case T-34//02,* Le Levant v. Commissione, *[2006] II-267, para. 110.*

[9] *Judgments CJEU February 23, case 30/59,* Steenkolenmijnen, *[1961] 1; July 2, case 173/73,* Italia v. Commissione, *[1974] 709; March 22, case 78/76,* Steinike, *[1977] 595; March 21, case 303/88,* Alfa Romeo I, *[1991] I-1603; September 26, case C- 241/94,* Francia v. Commissione, *[1996] I-4551, para. 20; October 5, case C- 251/97,* Francia v. Commissione, *[1999] I-6639, para. 35.*

[10] *On the distinction between aid and special tax burden see judgments CJEU March 15, case C- 387/92,* Banco exterior de Espana, *[1994] I-877, para. 13; June 17, causa C- 295/97,* Piaggio, *[1999] I-3735, para. 34; December 15, case C- 66/02,* Italia v. Commissione, *[2005] I-1090, para. 77.*

[11] *Judgments CJEU April 23, case C- 41/90,* Höfner and Elser, *[1991] I-1979, para. 21; September 21, case C- 67/96,* Albany, *[1999] I-5751, para. 77; September 12, cases from C-180/98 to C-184/98,* Pavlov, *[2000] I-6451.*

the case of staff-training where the beneficiary is the worker, but the fiscal advantage is provided by the State to the company.

With respect to the economic advantage, it should be noted that every economic benefit which would have not been available on the market for the beneficiary undertaking must be qualified as a State aid measure.[12] The only instrument for the qualification of the measure is the effect caused on the market. Indeed, the qualification is irrelevant if the scope for any socio-political consideration is made by the government. However, all those considerations matter when it comes to the authorization phase and will be taken into account by the EU Commission. To define the advantage of the beneficiary on the market, the Commission developed in 1984 the so-called "market economy investor principle" frequently used by the EU Courts[13], "In order to determine whether a State measure constitutes aid, it is necessary to establish whether the recipient undertaking receives an economic advantage which it would not have obtained under normal market conditions".[14] The logic behind the principle is the economic remuneration meaning that the State applies the same criteria as the private investor looking for maximization of profit.[15] However, it should be noted that the State acts in a different way and can be driven by long-term perspectives as well as by political influences. Consequently, the test creates a virtual simulation of the reality to establish if the private investor would have acted in the same way (Khan and Borchardt, 2008). An in-depth economic analysis must be carried out by the Commission, because "the market investor approach is not a universal precondition for State aid analysis [...] some fields of activities do not easily lend themselves to its application" (Abbamonte, 1996; Crocioni, 2006; Hancher, 2005; Hildebrand and Schweinsberg, 2007; Neven and Verouden, 2008; Ross, 2000; Spector, 2006).

[12] *Judgment General Court, June 15, case T-177/07,* Mediaset v. Commissione*, not published, para. 56-68.*

[13] *The criterion was mentioned for the first time in the Commission bulletin n. 9/1984.*

[14] *Judgment Court of Justice, July 11, case C-39/94,* Syndicat français de l'Express international (SFEI) and others v. La Poste and others*, [1996] I-3547, para. 60.*

[15] *Judgments General Court March 6, cases T-288/99 and T-233/99,* WestLB*, [2003] II-435; March 3, case T-163/05,* Bundesverband deutscher banker v. Commissione*, [2010], para. 229 and 234; Judgment CJEU September 2, 2010, case C-290/07 P,* Commissione v. Scott*, para. 68-72.*

4 The Policy of the EU Commission: The State Aid Modernization Strategy

In July 2013, the European Commission issued new guidelines for regional aid that would have entered into force on July 1, 2014 for period 2014-2020[16]. This revision is part of the EU broader State aid modernization strategy. The new guidelines are an important document since, as a mirror of the Commission's policy, it represents the first concrete action to change the approach to the interference of public subsidies in the internal market (Blauberger, 2008). Up until the economic crisis the Commission was strongly against the use of State aid as a tool for industry development. Thanks to the financial crisis and the difficulties for credit access, the European Commission has been forced to review its vision and now considers State aid very much as a driver for support of recovery in the internal market (Cini and McGowan, 2008)[17]. Competition policy – and State aid policy in particular – has been absolutely "crucial to shape government responses to the financial and economic crisis and to manage its effects on EU economies".[18]

Clearly, the ultimate purpose of regional state aid is to support economic development and employment. The regional aid guidelines set out rules under which Member States can grant State aid to companies – according to Articles 107(3) (a) and (c) – to support investments in new production facilities in the less advantaged regions of Europe or to extend or modernize existing facilities. The guidelines also contain rules for Member States to draw up regional aid maps (the geographical areas where companies can receive regional state aid, and to what degree). The primary objective of State aid control in the field of regional aid is to allow aid for regional development while ensuring a level playing field between Member States, in particular by preventing subsidy races that may occur when they try to attract or retain businesses in disadvantaged areas of the Union, and to

[16] Guidelines on Regional State Aid for 2014-2020, OJEU C 209/2013.

[17] Hence Cini and McGowan's description of State aid control as "the most original of the EU's competition policies".

[18] Speech 10/301 Vice President Almunia, Brussels, June 10, 2010.

limit the negative effects of regional aid on trade and competition to the minimum necessary (European Commission, 2012).[19]

Vice President Almunia declared that the new regional aid guidelines introduced important substantive changes in the EU framework, including some that are closely linked to the use of Structural Funds under the next Multiannual Financial Framework, noting: "In the aftermath of the financial crisis, public subsidies that promote investment in Europe's less developed areas can make a real difference".[20] With the challenges posed by the financial crisis in Europe, the Commission modified its historical orientation and started modernizing its control by issuing a new operative tool. To focus government support on the less developed regions, the Commission proposed a concentration of the geographical scope of regional aid, a reduction in the maximum permissible levels of aid, and a more targeted approach with regard to the type of investments or companies that can receive regional aids.

Helping Europe's governments to spend better means ensuring that aid would not be wasted and that it will be devoted to investments that would have not manifested without the aid, and that therefore would bring a real value added to regional development. This policy could also be a good way for the Commission to rebalance the enforcement priorities: a simpler treatment for non-distortive aid and greater attention to the aid that can significantly restrict competition. In line with the simplification process, the new guidelines foresee a limited number of categories of aid, which must be notified to the Commission, whereby all others will be block-exempted. A very relevant element of the reform to be considered is a new focus on ensuring the value added for aid measures by requiring that there will be a more rigorous evaluation of their incentive effect. Regional aid could become a way to attract new business in the less developed regions. Subsidies should only be used when they can tip the balance and trigger new investment and new jobs. The economic literature suggests that regional investment aid is more effective and efficient when it is geared towards SMEs rather than

[19] *Guidelines on Regional State Aid for 2014-2020, Introduction, para. 3.*

[20] *Vice President Almunia's speech at the Committee of the Regions, plenary session, Brussels, February 1, 2013.*

large firms. Large enterprises do not need State subsidiaries to make new investments. On the contrary the SMEs, so typical in the Italian landscape, for example, desperately need to facilitate access to credit in order to develop any kind of business, especially during the current economic crisis.

5 The Role of the Commission and the Powers of the National Judge

As the Court of Justice of the European Union (CJEU) declared in the *Simmenthal* judgment, the national jurisdictions are necessary "to enforce the Commission decisions, in their area of expertise, to guarantee their full effectiveness and to protect each individual right that these laws generate".[21] The national judge enjoys precautionary duties – such as the interruption of the allocation and revocation of the measure providing the aid – and curative duties – such as the rescue from the damage and the compensation (Anestis, 2012). Even though the national judge cannot question the aid compatibility with the European internal market, he can assure that a certain aid measure is ascribable to an exemption category or to a regime already authorized by the Commission. In any case, the intervention of the national judge is to reduce the anticompetitive effect of illegal supports supplied (Anestis, 2012; Baratta, 2011). The powers of the national judge arise from the direct effect of Article 108(3) of TFEU: "It is for the national courts to uphold the rights of the persons concerned in the event of any breach by the national authorities of the prohibition on putting aid into the effect. Where such a breach is invoked by individuals entitled to rely on it and is established by the national courts, the latter must take all the consequential measures under national laws as regards both the validity of decisions giving effect to the aid measures concerned and the recovery of the financial support granted"[22]. It follows that the duty of the national judge is to make sure that the violation of preventive notification obligation has not been breached by the States.

[21] *Judgment March 9, 1978, case 106/77,* Amministrazione delle Finanze dello Stato v. Simmenthal SpA, *ECR [1978] 629, § 22.*

[22] *Judgment October 21, 2003,* Belgische Staat v. Eugène van Calster and Felix Cleeren and Openbaar Slachthuis NV, *case C-261/01 and C-262/01, ECR [2003] I-12249, § 54.*

The role of the national judge appears very large as he can decide on the suspension of the payment, the recovery of already given aids and the claim of damage condemning the Member State or the beneficiary. The decision of the national judge will also declare the invalidity of national acts constituting the aids and the eventual following acts to implement the aid.

The control of the compatibility within the internal market operated by the Commission and the formal control operated by the national judge are separated, but complementary to each other. While up to the 1990s both the Commission and the Court highlighted the distinction between the two controls, the policy of the Commission and its Communication of 2009 seem to highlight the complementary aspects (European Commission, 2009). The only risk of such complementary interpretation consists of an eventual contradiction between the Commission's valuations and the national judges. In order to avoid it, national judges must be fully aware of their role in EU law and of the EC policy's enforcement.

6 The Recovery of Illegal Aid

Approximately 85 percent of the recovery precursors have Member States as targets: Italy, Spain, Germany, France and Belgium. Because of the constant delay of the Italian state in executing the decisions of recovery, the legislator has lately utilized the instrument of community law to fulfill its international commitments.

The Italian legislative decree number 59/2008 converted in the law as number 101/2008 stipulated that the national judge could suspend the efficiency of the title of payment if the cumulative suppositions were presented: serious reasons of illegitimacy of decisions and danger of imminent and irreparable prejudice.[23] It seems though, according to the Italian norms, that the judge has valued the subsistence of the motivation of illegitimate measures and he

[23] Decreto legge *April 8, 2008, n. 59,* Disposizioni urgenti per l'attuazione di obblighi comunitari e l'esecuzione di sentenze della Corte di giustizia delle Comunità europee, *in GU n. 84, April 9, 2008. Converted into law June 6, 2008, n. 101, in GU June 7, 2008, n. 132, art. 1.*

has resolved that the motivations themselves are not so serious to consider allowing the tutelary measure. Moreover, it is questioned how the national judge could, on this basis, stipulate the suspension of the State measures when he does not have the knowledge to deeply analyze the illegitimacy of aids (Angeli, 2009; Daniele, 2001; Grandinetti and Monzani, 2008), for this is an exclusive task of the European Commission.

The Commission, in a procedure against Italy, has placed attention on the inadequacy of the procedure of reclamation of those aids declared illegitimate and not compatible with the EU internal market. The Commission has highlighted that the recovery of the Italian authorities in December 2007 corresponded to less than 50 percent of the total aid that the State paid. Hence, considering that the reclaim would not progress despite the legal intervention, the Commission has decided to sue Italy in front of the Court of Justice for infringement of EU norms. While pending the decision, the Commission highlighted that the principle of effectiveness has to be applied also to what is performed by national judges. If the beneficiary presents a possible question of suspension of the recovery measure's execution, the national judge should follow the standards of the jurisprudence of the Court of Justice to avoid the decision of recovery having beneficial effects.
Analyzing the recovery procedure, it is highlighted that the first problem that a Member State has to challenge it is to identify the State body responsible for the supply. If this is not a problem for the State with centralized power, it is different for the federal States or for the States with strong local authorities, such as for example, Spain or Germany. The Member State will answer for the procedure of recovery in front of the EU, even though the measure has been arranged via a regional federal body. The Italian choice has been particularly effective, which was introduced with the financial law of 2006 to stipulate that the State had the possibility to make up for the violations of the norms of aids over the regions.

A possible negative decision of the Commission to ascertain the incompatibility of the measure of the European market cannot be limited by being only declarative, but should be equipped by the decision of recovery aid: recovery injunction. The Commission will impose on the Member

State, an obligation to use all the necessary measures to get the aid back from the beneficiaries. The Italian jurisdiction of legitimacy has recognized that the negative decision of the Commission *ex* Article 108(2) of TFEU has a direct effect, and so the national institutive law of the measure has not to be applied even if it is formally in force in the legal order of the State. The control operated by the national judge during the recovery phase of illegal measures is guarantee of an effective jurisdictional protection.

7 Concluding Remarks

State aid policy is going through a needed reform thanks to the State aid modernization strategy launched by the Commission in May 2012. Its main goal is to align State aid control to the objectives of EU 2020 for a strategic growth and to guide Europe's governments, in the need to consolidate public finances, to do more with less money, to develop more efficient ways to support economic activities and create incentives for research and innovation. Promoting research, development and innovation is a key driver to achieve the Treaty's objective of sustainable and inclusive growth (Art. 3 par. 3 TUE).

The first real step of the EU Commission has been analyzed: the new guidelines for regional aid, which engage all levels of Member State's governments. The upcoming one will be the new Research and Development and Innovation (R&D&I) Guidelines which will include new categories of aid, such as aid for research infrastructures, and will exempt small aid measures from notification. The EU Commission nowadays believes that State aid, if well targeted, can be a positive factor for the industrial development in the internal market. Since 2007, more than 200 national schemes have been approved by the Commission under the framework of the R&D&I Guidelines which are now part of the State aid modernization process. The main objective of the new guidelines is to increase the level of R&D&I activities in the EU while limiting distortions to competition by fostering the incentive effect for both public and private actors.

The Commission is devoting its effort to provide guidance to Member States to design "good aid". The great challenge for the national governments is to design measures which can ensure the engagement of private actors. In this process of policy implementation private parties, especially competitors, can play a crucial role by claiming in front of the national judge the recovery and damages suffered due to "bad aid" provided to the beneficiaries against the EU norms.

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