



International Lessons for Interstate Progress

Day 3: Procedures

Previously on *Interstate Progress* – Day one

EU Treaty: Government support of any kind may not be selective or distort competition in the single market

State aid is prohibited, except in pursuit of EU public-policy objectives and when subsidies are granted competitively

EU countries must notify and wait for the European Commission's clearance or concerns. Exceptions apply

European Commission's guidance help EU countries fix market failures and invest on common policies

Good aid: No waste of taxpayers' money, incentive effect, no harm to competition

General Block Exemption Regulations and the 'big on big, small on small' principle



Previously on *Interstate Progress* – Day two

EU governments can use taxpayers' money to help poorer and disadvantaged regions catch up

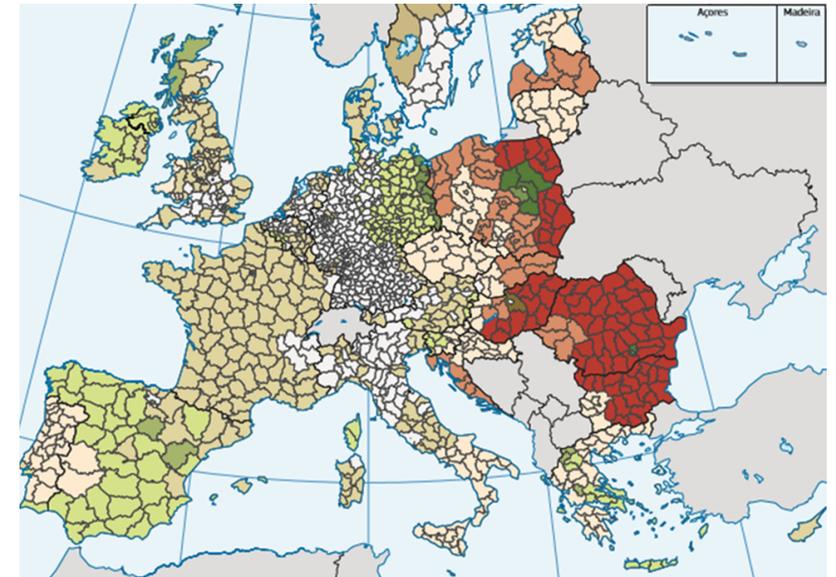
Subsidies must attract investment and must be for new plants, products or processes

Where does the money go? Commission draws up a new map of 'a' and 'c' areas every 7 years

It works! Many regions have moved up from 'a' to 'c' areas and even to non-eligible status

Most subsidies need not be notified by EU countries. Commission only checks large measures

When it does, Commission makes sure subsidies are the best option, proportionate, effective and do no harm



Procedures

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Case study: BMW

9 July 2014: The European Commission took a decision on a German subsidy to BMW designed to attract a major investment to Leipzig, an 'a' area

The planned amount was above the notification threshold, so the Commission was called to check whether the subsidy would meet Regional aid Guidelines criteria



Procedure - Legal bases

Article 108 TFEU, Procedural Regulation 2015/1589
+ Implementing Regulation

Procedural Regulation chapters:

- 1 Definitions
 - 2 Procedure **notified aid**
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Core concepts

New aid v existing aid (pre-accession aid, approved aid, prescribed aid, etc.)

Aid scheme v individual aid

Notified or exempted aid v unlawful aid – i.e. aid granted without required notification

- Not to be confused with compatible v incompatible aid

Misused aid



Notified aid

Article 108 TFEU:

- Notification obligation
- Standstill obligation

Exceptions:

- *De minimis* aid
- Block exempted aid
- Aid covered by an approved scheme



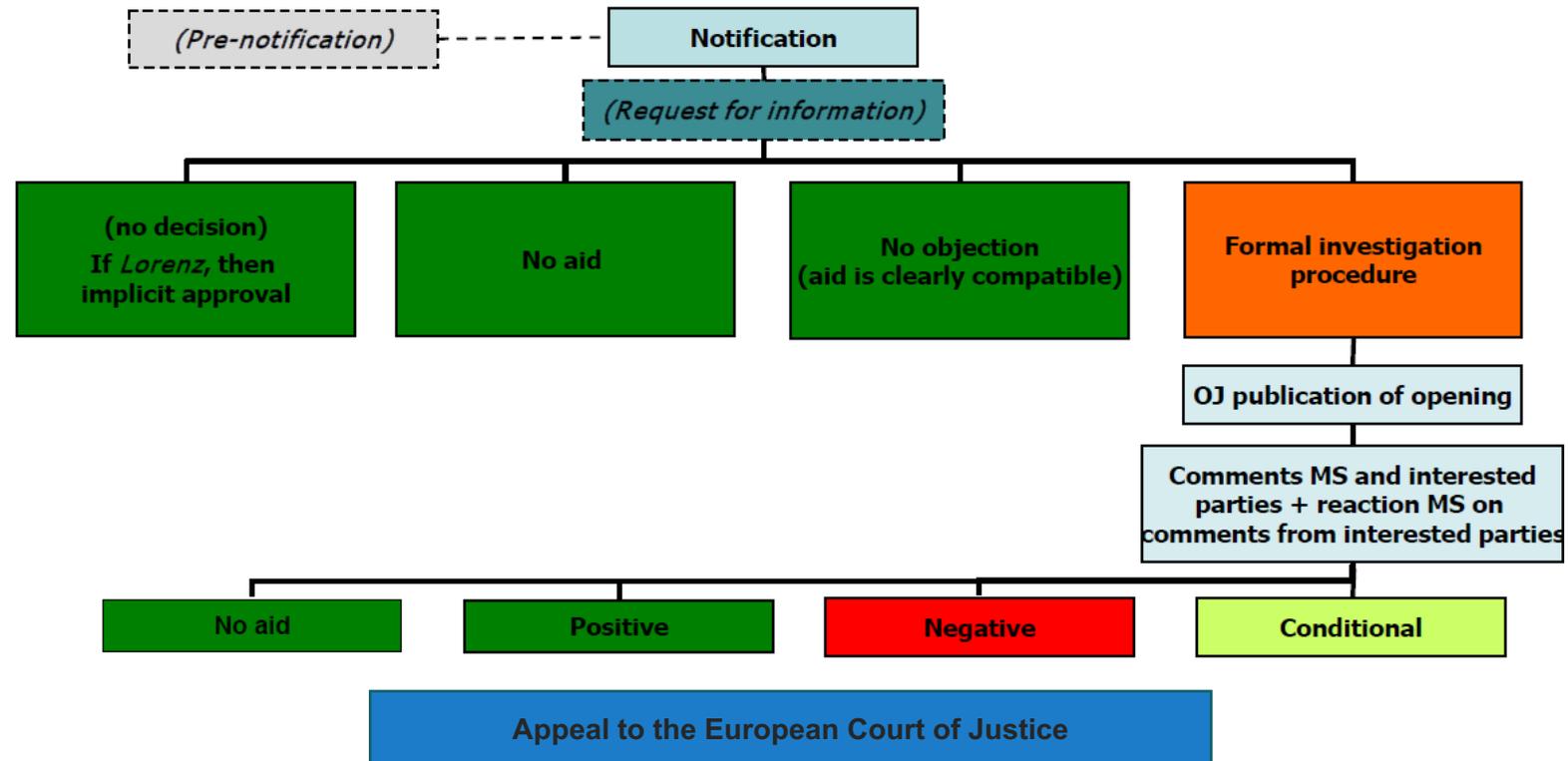
BMW case study: Questions

What can the Commission do when it doesn't agree with (the full amount of) an aid – as in the German project?

- Can the Commission informally talk to Germany?
- Does it have to open an in-depth review?
- Can it make the decision subject to conditions?
- Can it hear experts or third parties?
- What if Germany does not want to wait and grants the aid anyway? Does it have to be recovered?
- Can a competitor stop the aid from being granted?



Notified aid - Procedure



BMW: Formal investigation procedure

The Commission had Regional aid concerns, in particular:

- Actual contribution to the development of the disadvantaged region of Leipzig
- Incentive effect. Would the aid actually change the company's behavior or would it subsidise a project BMW would have carried out anyway?
- Proportionality. The investigation showed that the proposed amount was larger than the minimum required and that only €17 million of the €45 million planned were needed to create the desired incentive



Unlawful aid procedure

Similar to notified aid procedure, but:

- Start of the procedure through complaint or *ex officio*, based on market information
- No time limits
- Use of injunctions (information, suspension, recovery)
- Positive decision can lead to recovery in national court procedure if the aid is paid out before the decision



Complaints & Market Information

Only by persons with legal standing
(competitors) + compulsory complaint form

Procedural rights include:

- Preliminary assessment letter
- If complainant insists: formal decision

Market information from ordinary citizens,
political parties, etc.

- No procedural rights, "Market information letter"
- Commission may decide to investigate *ex officio*



Other provisions

Article 7: Market Investigation Tool = Requests for information to sources other than EU governments

Article 25: Sector Inquiry = Investigation of individual sectors in several EU countries

Article 30: Professional secrecy

Article 31: Addressee of decisions = Member State

Article 32: Publication of decisions



Role of national courts

Enforce standstill obligation

- Prevent payment of unlawful aid
- Seek recovery of unlawful aid with interest
- Compensation for damages

Ensure immediate and effective execution of Commission's recovery decisions, when called to:

- Judge the validity of national orders
- Suspend the enforcement of national orders
- Oversee insolvency proceedings of beneficiaries



Transparency

EU countries must publish beneficiaries and amounts for awards over €500,000. Public notices include:

- Aid instrument, granting authority, date of granting and legal basis for granting the aid
- Beneficiary location and business sector
- Size: SME or large company?



WHAT CAN WE USE IN THE UNITED STATES?

- Objective geographic targeting. EWGCC TIF reform proposal used:
 - Per capita income
 - Unemployment
 - Fiscal stress
- Aid caps:
 - Aid intensity
 - Cost per job
 - Total program cost

MORE TO LIKE

- Advance notification
- Subsidy transparency
- No subsidized relocations (“job piracy”)

HOW CAN WE DO IT?

- Federal action
- Interstate compact
- Bi-state anti-piracy agreements like Kansas-Missouri
- States can change the enabling legislation for local incentives to restrict their use