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The simplification package and beyond

Experiences of the Simplification Package - Simplified procedure,
Best Practices, Recovery. Plans for Procedural Reform

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Outline

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- A first response: the simplification package
 - Purpose and content
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- Recovery: state of play and main trends
- Plans for procedural reform?
 - Challenges of the current procedural set-up
 - Opening the debate

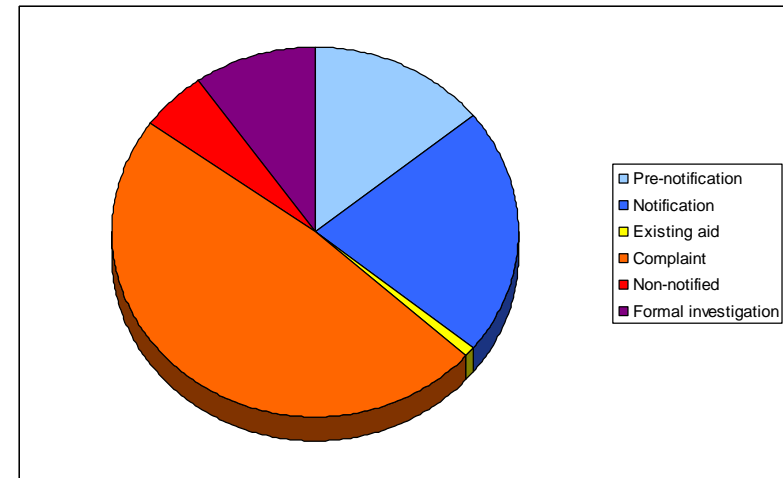
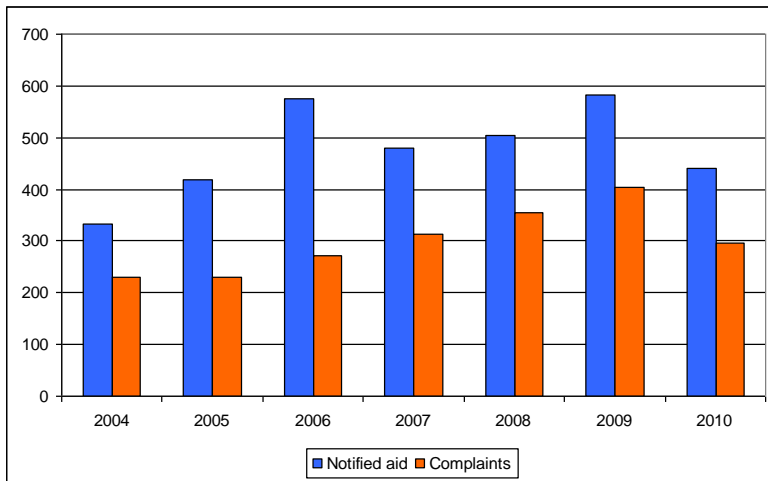


State aid procedures: background (I)

- Art. 107 TFEU: prior notification (stand-still obligation)
- State aid procedure codified in Regulation 659/1999 (« procedural regulation):
 - Notified aid: bilateral preliminary investigation: approval or opening decision within two months (may be prolonged)
 - Complaints, ex-officio: Commission to examine ‘any information from whatever source’ and take a decision thereon without delay (may lead to an opening decision)
 - Formal investigation: within 18 months (not binding), approval, conditional decision, or negative decision - with recovery if not notified (illegal)



State aid procedures: background (II)



- Incoming cases: increasing number of complaints (*except 2010*)

- Pending cases: almost half complaints (*but still more decisions on notifications*)



State aid procedures: issues

- Bilateral nature of the procedure:
 - MS responsible for the quality of the notification (impact on duration)
 - No binding deadline, no sanction (on both sides)
 - No third party to the procedure, lack of market information
- Lack of knowledge of the rules (hence the high number of complaints):
 - Complaints of various quality and relevance,
 - Very limited possibility to prioritise
- Duration as the main identified issue



A first response: the simplification package

- State Aid Action Plan 2005
- Objectives:
 - improve procedures within the existing legal framework
 - increase transparency, predictability and efficiency
- Structure:
 - Block-exemption (GBER) – no need to notify (but **monitoring**)
 - Simplified Procedure – swifter approval
 - Best Practices Code – for all procedures



The simplification package

- Best Practices Code
 - efficiency: enhancing pre-notification contacts, streamlining information exchange, meeting deadlines (by enforcing existing procedural means)
 - predictability: mutually agreed planning, staged procedure for complaints (depending on priority), agreed suspension of the procedure
 - transparency: state of play meetings, better information of complainants
- Simplified Procedure
 - simplification: swift approval of straightforward cases
 - predictability: pre-notification contacts, 1-month timeline
 - transparency: publication of notification summaries and detailed steps



Implementation – Simplified procedure

- Main results
 - 27 cases registered as 'simplified procedure' since 9/2009
 - Member States: Spain (7), UK (7), Poland (4), Germany (2), France (2), only one case in Hungary
 - Sectors: mostly energy/environment, culture, regional
 - Average duration: 25,5 days
- A mitigated success...
 - transparency issue?
 - Still not fast enough?



Implementation – Best practices (I)

- Pre-notification:
 - Increasingly popular (in 2011: so far 83 PN vs. 117 N =>70%!)
 - Contacts within the deadline, preliminary assessment sent
 - But duration issue: above the 2-month deadline (average duration 5.2 months)
- Notification:
 - Duration decreasing (from 7 months in 2008 to 4.8 in 2011), almost 2/3 of decisions without request for information (quality of notifications and use of prenotifications?)
 - Innovative features of the BPC rarely used N and NN: no agreed suspension, mutually agreed planning (MAP), state of play meeting, possibility to deem a notification withdrawn



Implementation – Best practices (II)

- Complaints treatment:
 - Improvements in complaints handling, complainants more and more informed within two months ($\frac{2}{3}$ of CP)
 - Stock of complaints is still an issue + duration (age 21.8 months)
 - Limited priority-setting in complaints, and therefore no differentiated treatment + Strict jurisprudence (Athinaïki, Stockholm Hotel)
- Overall:
 - Positive impact of the Best Practices Code, in particular on COMP's discipline (complaints, requests for information, etc.)
 - But all the shortcomings of the current system could not be addressed by the Best practices



Recovery: state of play

- In principle same issues as elsewhere (duration, cooperation)
- But since 2007, enforcement of recovery decisions has improved:
 - better/more precise drafting of recovery decisions
 - systematic follow-up / MS learning curve
 - Court action in case of non-implementation
- Main results:
 - 56 pending cases (stable), in 13 MS (no pending case in Hungary)
 - € 10 728 million of illegal and incompatible aid recovered since 2000 (88.9%)



Recovery: main trends

- Average age of cases increases (> 4 years):
 - stock of old unresolved pending cases (in Court)
 - but (most) new cases treated within reasonable delays
- Litigation under art. 108(2) or 260 increases:
 - 26 cases under art. 108(2) / 6 cases under art. 260
 - specific issue of national courts (despite case-law)
- Better enforcement also through enhanced cooperation:
 - Cooperation also through informal contacts & meetings (IT)
 - Training to be proposed, recovery presentation on website



Challenges of the current procedural set-up

- Duration still an issue:
 - incomplete notifications, cooperation with/by MS
 - lack of information from third parties
 - lack of clear steps/disciplining tools
- Very diverse MS behaviour
 - Eg. Requests for delay extension between 0% and 60% of cases!
- Information gathering may be problematic (detailed economic assessment)
- High number of incoming and pending complaints
 - some serious, some rather minor: should they all be investigated?



Procedural reform: opening the debate

- Any reflection on procedural reform should tackle the following questions:
 - Would a better implementation of the BPC be sufficient?
 - How to reduce duration while maintaining quality of decisions?
 - How to gather market information?
 - How to react to complaints inflow? How can the Commission prioritise its complaints?
 - How to improve transparency for third parties?