



State aid procedure – experiences from a lawyer's point of view

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Simplification Package 2009



- **Notice on simplified procedure and Best practice code**
- Not a radical departure, no profound reform
- Less (or more) “red tape”?



Notice on simplified procedure

- “Soft law”
- Commission can adopt short form decision within 20 working days
 - “standard assessment” under existing frameworks
 - measures corresponding to well-established decision-making practice (e.g. cultural heritage, infrastructure)
 - prolongation/extension of existing schemes
- Commission can always go back to standard procedure
- Summary of notification published

Best practice code

- Equally “soft law” with general commitment to streamline the procedure ...
- ... in the first place: tight deadlines for Member States and third parties (aid recipient, complainant)
- Member States are encouraged to increase pre-notification contacts (not really new)
- “Mutually agreed planning” (i.e. more arrangements necessary)

Simplification Package 2009 – “effet utile”?

- Best practice code is helpful “instruction manual” on how Commission handles its cases
- More or less “red tape”? (“mutually agreed planning”, discussions on applicability of simplified procedure, ...)
- Deadlines under Reg. 659/1999 are not really binding anyway – does introduction of even more non-binding deadlines speed things up?
- “Simplification package states what should be obvious”

Simplification Package 2009 – “effet utile”?

- Pre-notification contacts already requested in the past (same in merger control)
- Introduction of an additional step (which is not foreseen in Reg. 659/1999)
- Reality is: new economic approach makes assessment more complex
- Practical impact remains to be seen ...

A more comprehensive reform on third party rights?

- Currently very limited role of third parties (right to lodge a complaint, right to submit comments in formal investigation)
- Member State is in the “driver’s seat” (*WestLB*)
- Art. 108 TFEU: no fundamental obstacles for stronger involvement of third parties
- Beneficiaries vs. complainants: fundamentally different
- In particular, no access to file (*Technische Glaswerke Ilmenau*), usually no problem for beneficiary

A more comprehensive reform on third party rights?

- Opposition from Member States against more involvement of third parties?
- Requests for information directly addressed to the beneficiary?
- Third parties are (the most) important source of information (increasing importance of economic assessment)

“Core of the problem” seems to be different

Can procedural reform tackle the core of the problem?

Many different activities are caught by state aid control

- Educational activities ranging from (private) schools and universities to zoos, museums
- Operation of leisure sport / professional sport infrastructure, event venues



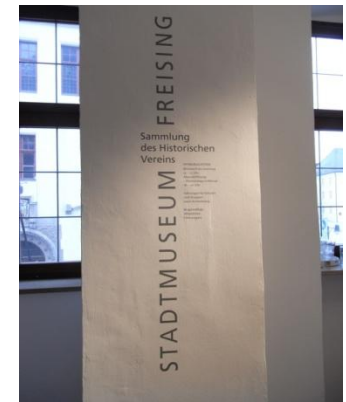
- Transport of injured or sick people by ambulance
- Operation of a town hall



Aus Liebe zum Menschen.

Can procedural reform tackle the core of the problem?

- Vagueness of concept of “undertaking” (in particular, educational activities)
- (Longer) white list of activities that are considered non-economic?
- Effect on trade between member states? Commission seems to have more leeway than they say



Almunia pledges 'fewer and clearer' state aid rules (19 April 2011)

“... I want to simplify and clarify our rules, and I want to **concentrate available resources on the aid that most hinders the functioning of the single market.**”

“...we need less and clearer rules and a stronger and more **targeted enforcement...**”.

“A considerable proportion of them relate to aid amounts which are very small but the workload they generate is disproportionate to their effect on the internal market”

“This means that our resources are so strained that little scope is left to initiate ex officio investigations in those areas that are of key importance to the single market.”

Almunia's „way forward“ on SGEI reform (2 May 2011)

“It is important to recall from the outset that SGEI do not include all public services, but only the services that are economic in nature.”

“Our scrutiny applies rather uniformly across the spectrum; from large market players that operate on an international scale, to activities organised by local authorities, such as water or waste management, sports and recreation for the young, and other social activities. It seems quite obvious to me that among these services, there are some that will have little impact on trade between Member States and little potential to distort competition ...

Therefore, I think that we need to adjust our scrutiny here and focus it on the cases that have a clear impact on the Single Market....”.

Almunia's „way forward“ on SGEI reform (2 May 2011)

“ ... our State aid rules currently apply also to local services organised by very small municipalities. Examples range from crèches, to swimming pools, to local cultural centres. For these types of services, a possibility would be to **reduce to the absolute minimum the degree of State aid scrutiny.**”

Do we need more focus?

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