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EU/EEA State aid law and the energy sector

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EU/EEA State aid law (1)

- Part of Competition law in a broader sense
- **Competition law** → **undertakings** (e.g. agreements between undertakings that restrict competition, misuse of dominant position)
- **State aid law → the state (subsidies/aid – that distort competition)**

EU/EEA State aid law (2)

THE AIM OF STATE AID LAW

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to safeguard that

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the state does not grant subsidies that distort competition

all undertakings may compete on equal terms and conditions in the market

a "level playing field"

("konkurranse på like vilkår")

EU/EEA State aid law (3)

- **Norway is a member of the EEA, not the EU, BUT**
- **EEA State aid** rules based on **EU State aid rules** (**agriculture + fisheries outside the EEA**)
- **EU Member States → the European Commission**
- **EEA Member States → EFTA Surveillance Authority (ESA)**

Why supranational rules on State aid control?

- Aid may **distort competition** and the **internal market**
- **«beggar-thy-neighbour»** policies
- The **«prisoner's dilemma»** and **«subsidy races»**
- Keeping inefficient undertakings afloat («national champions») and allocating **resources** amongst **inefficient sectors**
- Driving out **private investors**
- **Political gains**
- **Liberalisation** (opening market for more competition)
- **Transparency and predictability**
- **«Market failures» and «good aid»**

The notion of State aid

Public support provided to commercial activities

1. **Granted by the state or through state resources** (including the municipality or regional authorities, public undertakings)
2. **Economic advantage**
3. **Selectivity** (favours certain undertakings or the production of certain goods)
4. **Distorts or threatens to distort competition**
5. **Affects trade between EU/EEA Member States**

- **Cumulative conditions**
- Only **undertakings** may receive aid! (**not private persons** or **entities that do not perform economic activities**)

State aid: examples of measures

- **AID = SUBSIDIES (positive benefits) + COST RELIEFS (negative benefits)**
- direct grants
- capital injections
- loans or guarantees on preferential terms or without security
- tax waivers, reduced tax, reduced or zero rate of VAT
- late payment facilities
- exemptions from the obligation to pay fees or taxes
- the provision of goods or services on terms more favourable than market terms
- sale of public property under market price
- overcompensation for the provision of public services

Granting aid is prohibited, but…

- **Prohibition is neither absolute, nor unconditional**

- Aid must be **notified** (the Commission or ESA) and approved (**declared compatible**)

- **Incompatible aid** must be **repaid** with **interest**

- Only the Commission/**ESA** can assess **compatibility**

- **COMPATIBLE AID – "GOOD AID" - AID TO CORRECT "MARKET FAILURES" – MAY BE GRANTED**

Compatibility assessment (1)

The overall balance of granting aid must be positive:

benefits generated by aid > negative effects such as competition distortions

7 common principles of compatibility assessment

1. contribution to **well-defined objective of common interest**
2. **need** for state intervention
3. **appropriateness** of state aid as policy instrument
4. existence of **incentive effect**
5. **proportionality** of the aid amount
6. avoidance of **undue negative effects** on competition and trade
7. **transparency**

1. Objective of common interest

- Depends on Guidelines applicable in a given case

For example, public support for **environmental protection and energy**:

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reaching the Member States' 2020 climate targets

2. Need for State Intervention

Aid must be targeted towards a situation where **aid can bring about a material improvement** that the **market cannot deliver itself**

(due to e.g. a financing gap)

3. Appropriateness

- Aid must be **appropriate policy instrument** in a given case

- One must choose the **least distortive tool**

- **Potential alternatives** to be considered:

❖ other policy instruments (e.g. regulation)

❖ other forms of aid (e.g. direct grant v loan)

4. Incentive Effect

- Aid must **induce the beneficiary** undertaking to **change its behaviour** in line with the **common objective**

- One must ensure that, in absence of aid, same objective would not have been reached

- **Counterfactual analysis**: what would the beneficiary do with and without aid?

5. Proportionality

- Aid must be **proportionate = limited to minimum needed** to induce the additional investment or activity

- Limits are expressed as **caps on aid** amount and/or **aid intensity**:

❖ aid amount: e.g. net extra cost to achieve objective
❖ aid intensity: proportion of eligible costs

6. Negative effects on competition and trade

- Aid must avoid **undue negative effects** on **competition** and **trade**

- **Positive effects** must **outweigh negative effects**

7. Transparency

- **Information on aid award must be public**
- System for publishing the relevant information on regional or national **websites**
- Full text of aid measures (the aid instrument, date of granting, amount, legal basis), details of beneficiaries (name, type, location, sector concerned)
- Individual aid awards above certain sizes - all state aid grants above **€500,000**
- The information will be published on national or regional websites within 6 months from the granting of the aid. Full and timely publication is a **condition for the validity of the aid**

State aid and energy: what can the state do?

- Limited aid amount (**below EUR 200,000** per beneficiary over three fiscal years, according to the ***de minimis* aid** Regulation) – no notification
- **Limited aid intensity** - **General Block Exemption Regulation**
- Beyond those thresholds:

❖ Guidelines on State aid for **environmental protection** and energy 2014-2020

❖ Guidelines on certain State aid measures in the context of the **greenhouse gas emission allowance trading scheme post 2012**

❖ Council Decision on State aid to facilitate the **closure of uncompetitive coal mines**

General Block Exemption Regulation: GBER

- compliance with the provided conditions excludes the notification obligation, **aid is compatible**
- **Investment aid for**:

1. energy efficiency projects in buildings
2. high-efficiency cogeneration
3. the promotion of energy from renewable source
4. for remediation of contaminated sites
5. energy efficient district heating and cooling
6. energy infrastructure

- **Operating aid for**:

1. the promotion of electricity from renewable sources
2. the promotion of energy from renewable sources in small scale installations

- Aid in the form of **reductions in environmental taxes**
- Aid for **environmental studies**

Why should we (you) care about State aid law?

2016 State Aid Scoreboard (for the EU Member States)

- In **2015**, Member States spent **€98.2 billion**, i.e. **0.67% of EU GDP,** on state aid
- About **46% of total aid** spending in the EU was granted in support of the **environment and energy saving measures (2nd after regional aid)**
- In **15 Member States**, **most state aid** spending was used for these purposes, to help them meet in particular their **renewable energy targets**

State Aid Scoreboard 2015 – EEA EFTA States
(state aid expenditure in the period 2008 to 2014)

- EEA EFTA States: **Norway**, Iceland and Liechtenstein
- In **2014**, aid amounted to **€2,947.46 million**
- In **2014**, aid for environmental and energy-saving purposes accounted for **31% of the total spending** in **EEA EFTA States** (2nd after regional aid)
- In **2014, Norway increased** its spendig for those purposes - **32% of the total - €823.68 million** (2nd after regional aid)

Example: Enova's Demo and Eco-Inn schemes, and the alternative fuels infrastructure programme

- The aid schemes will run from 1 January 2017 until the end of 2022
- A continuation – with modifications – of previously approved schemes
- **Demo scheme**: incentivise the demonstration of new technologies, products or processes, within the fields of renewable energy production, energy efficiency and reduced greenhouse gas emissions; increase the number of new energy and climate technologies available for adoption in the market
- **Eco-Inn scheme**: promote innovative projects that aim at significantly improving environmental protection beyond the framework of EU standards, or improve environmental protection in the absence of standards.
- **The alternative fuels infrastructure programme**: five different aid schemes for the deployment of recharging infrastructure for electric vehicles, shore-side electricity supply, refuelling infrastructure for hydrogen and biofuels, as well as LNG supply to ships
- **Enova's Demo and Eco-Inn schemes**: financed by the Norwegian Energy Fund, which for **2017** has a total budget of **NOK 2.5 billion**

Electric vehicles support

- **2014: the zero VAT rating for electric vehicles in Norway (supply and import of vehicles, leasing, supply and import of batteries)**
- 2017: **German green cars infrastructure** (installation of new standard and high-speed charging stations for electric vehicles and the extension of the existing infrastructure)

BUT

- **Norway**: in 2014, 141.5 TWh of electricity was produced in Norway. Of this, 96% came from hydro, 2.4% from thermal (gas-fired plants) and 1.6% from wind
- **Germany**: in 2016, the Bundesrat called for Germany to go 100% electric by 2030. **Will there be enough green energy? A paradox?**
- Merkel wants to slow the expansion of wind farms (unstable grid), Fukushima and retirement of nuclear reactor fleet by 2022, electricity produced by burning coal an gas then?