

EU State aid control and public funding of hospitals

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CONOR QUIGLEY QC

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EU State aid control

Elements of State aid in Art. 107(1) TFEU

- Aid granted by Member States
- Favouring certain undertakings
- Distortion of competition
- Effect on trade between Member States

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Aid granted by Member States

- Aid in any form whatsoever
- Direct financial grant
- Tax relief for healthcare providers
- Sale or purchase of goods other than at market value
- Guarantee of liability
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Aid granted by Member States

■ Purpose of the aid

- State aid defined by its effects
- Social objective caught by Article 107(1)
 - Case C-173/73, Italy v Commission
- Differential tax schemes
 - Case 143/99, Adria Wien

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Aid granted by Member States

■ Public health – Article 168 TFEU

- High level of human health protection in definition and implementation of all Union policies
- Case C-126/01, *Gemo*, AG Jacobs: grounds for assessing aid as compatible with the internal market
- Swedish scheme for reducing allergenic substances in buildings: 30th Competition Report
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Favouring certain undertakings

- Selective treatment
 - General measures
 - Disguised selectivity
 - Discretionary general measures

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Favouring certain undertakings

■ Hospitals as undertakings

- Economic activity on the market
 - Case C-205/03P, Fenin
- Public undertakings
 - Directive 2006/116/EC - transparency
- Hospitals as general infrastructure

■ Services of General Economic Interest serle court

Distortions of competition

- Competitive position in the market
- Relevant market
 - local, regional, specialist
- Presumption of distortion of competition
 - Liberalised activity
- *De minimis* effect

Effect on trade between Member States

- Jurisdictional criterion
- Evidence of effect on trade
 - Commission decision on hospitals in Ireland
- Local services

Permissible aid

- Aid to facilitate the development of economic activity
 - Regional aid
 - Aid for SME
 - Commission decision on INTACT
 - R&D&I
 - Public health

Assessment of permissible aid

- Block exemption regulation
 - Compatibility of aid presumed
- Commission guidelines
 - Limited Commission discretion
- Measures subject to detailed assessment
 - Balancing of positive and negative effects of aid
 - Economic assessment

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 - 6 NEW SQUARE
 - LINCOLN'S INN
 - LONDON WC2A 3QS

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