

State aid : hot topics

EU Competition Law Briefing

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Agenda

- 1 State aid Policy : State of Play
- 2 The Clean Industrial Deal State Aid Framework: a real boost for a fair and just transition?
- 3 The funding of public service obligations under State aid : the new SGEI Decision and recent European Commission's practice
- 4 Latest developments in State aid jurisprudence of the Court of Justice of the EU
- 5 Three years of the UK subsidy control regime: lessons to be drawn



1. State aid Policy: State of Play



Annabelle Lepière

New Commission, new approach, new State aid policy

New State aid framework for Clean Industrial Deal

Simplification of State aid

Coherence with European Competitiveness Fund

Proposals for IPCEI for the most strategic sectors and technologies

Revision of State aid rules for housing support measures

New State aid rules

- Clean Industrial Deal State aid Framework (June 2025)
- Reform of State aid rules for access to environmental justice matters (Aarhus Convention)
- SGEI Decision (December 2025)

De minimis Regulation

- 01/01/2026 : Obligation for MS to register *de minimis* aid in their central registers

Revision of State aid rules

- New Land and Multimodal Transport Guidelines
- New Transport Block Exemption Regulation
- State aid rules for public service broadcasting
- Rescue & restructuring Guidelines
- Aviation Guidelines
- State aid rules on public guarantees
- Revision of the State aid framework for agriculture, forestry and fisheries

Notifications by Member States

Focus on :

- CISAF
- Multimodal/ freight rail transport
- Postal sector
- Rescue and restructuring aid schemes for SME in difficulty
- Press/Cinema/Gaming

Commission's investigations

- Regional investment aid
- Public transport
- Arbitration award
- Energy

Simplification

- Simpler conditions for small amounts of aid (R&D, environmental protection, investment aid to SME)
- More flexible risk financing instrument for SME
- Simpler and extended operating aid for renewable energy
- Simplified costs options
- Removal of evaluation of aid schemes for large budget

Adaptation to changes in public policy, social context, market and technology

- Revised RDI aid
- Access to affordable housing
- Stronger incentives for worker upskilling and reskilling
- Operating aid to airports up to 500,000 passengers
- Investment aid to airport : catchment area extended to 150-200 km ?
- More possibilities for undertakings in difficulty

Rationalisation and clarification

- Revision of the structure
- Compatibility conditions for aid to infrastructure : period of 10 years as from the last payment of aid
- Removal of illustrative elements to be included in guidance

Timing

- Public consultation until 23/04/2026
- Adoption at the end 2026
- Entry into force 01/01/2027
- Retroactive application

2. The Clean Industrial Deal State Aid Framework: a real boost for a fair and just transition?



Marlene Wimmer-Nistelberger



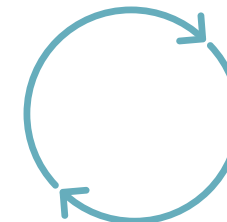
Framework for “green” State Aid measures



**Supporting the
Clean Industrial Deal**



Several categories of aid





**Replacing the former
TCTF**


European industry shall maintain its **competitiveness** in an increasingly **globalised** and **subsidy-intensive** environment



 Geopolitical crises 


  Technological competition

CISAF

EU's transition to a **climate-neutral economy** shall succeed 

 Slow economic growth



 High energy prices 

Temporal scope



CISAF is not primarily aimed at short-term crisis management, but at **long-term structural transformation**

Predictability



Longer planning horizon

State Aid Measures for:

1

Expansion of **renewable energies** and **low-carbon fuels**



- Simplified procedures to enable the quick roll-out / transition
- Flexible support for investments

2

Temporary **electricity price relief** for energy-intensive users



In return for receiving price support from the Member States, companies will be required to invest in decarbonisation

3

Decarbonisation of the industry

State Aid Measures for:

4

Building manufacturing capacity for clean technologies



- for all technologies covered by the Net-Zero Industry Act,
- Aid for net-zero manufacturing projects to prevent relocation outside Europe
- Also covers production and processing of critical materials

5

Supporting specific innovation fund projects

6

Reducing private investment risks through government instruments



Support may take the form of equity, loans and/or guarantees provided to a dedicated fund or SPV that will hold the portfolio of eligible projects



Conditions **are restrictive** – usually requires scheme and notification

Tight national budgets – risk for success of CISAF?



Environmental organisations warn:
CISAF still contains loopholes that allow Member State governments to finance fossil gas and costly, underdeveloped technologies

3. The funding of public service obligations under State aid : the new SGEI Decision and recent European Commission's practice



Eleni Moraitou



SGEI
An economic activity
that also serves a
public mission

It would not be supplied (or supplied under different conditions) by the market without public intervention

Broad margin for Member States in defining a SGEI

Not unlimited discretion

Compensation granted for public service obligations

SGEI Communication

Key concepts

SGEI Decision

Exemption of certain public service compensation from the obligation to be notified to the Commission

SGEI de minimis Regulation

Compensation below 750,000 euros over three fiscal years falls outside the scope of State aid control

SGEI Framework

Rules for assessing SGEI compensation that constitutes State aid but is not exempted from notification



Public consultation in the context of the European Affordable Housing Plan



Significant changes in economic conditions and policy priorities



→ The Commission's main objective: to facilitate public intervention in the housing sector

2

Scope of the notification exemption

- The decision now explicitly covers affordable housing, in addition to social housing SGEIs

1

Increase in several thresholds to determine whether a compensation must be notified

- The general threshold for SGEI compensation has been increased from 15 to 20 million euros
- The thresholds have been increased in the transport sector
 - For airports, from 200,000 to 500,000 passengers
 - For ports, from 300,000 to 400,000 passengers

3

Clarification of reasonable profit

- Introduction of a new article to provide more guidance on reasonable profit calculation

4

Stronger transparency obligations

- Obligation to record in a central register any aid exceeding 1 million euros per undertaking and per SGEI

5

Social housing vs affordable housing

- Social housing: for disadvantaged households or socially vulnerable groups
- Affordable housing: for households facing difficulties accessing reasonable prices due to market failures
- Both types must meet similar requirements:
 - Quality, environmental, accessibility standards
 - Transparent pricing levels
 - Commitment to the public service objective for at least 20 years

Postal services

Commission closely monitors

- Scope of the SGEI – to avoid oversized services
- No overcompensation – subsidies should only cover net cost of public service obligations

Recent notable decisions

- Czech Post (C(2025) 5004, July 2025) – includes postal money orders
 - Poste Italiane (C(2025) 4447, July 2025)
 - Poczta Polska (C(2024) 7997, Nov 2024)
- ➔ Compensation for SGEIs can be State aid, but was found compatible with the internal market when criteria are met

Focus on some recent Commission decisions

Airports



Strict criteria for qualifying airport activities as SGEIs



Overall airport management may be an SGEI only in well-justified cases



Public Service Obligations (PSOs) include:

- Maintaining operational infrastructure
- Ensuring safety and security
- Being open to all users
- Providing essential services: mail, patient transport, defence needs
- Infrastructure maintenance and future capacity

Key examples

- Angoulême Airport (2014) – SGEI confirmed, aid compatible
- La Rochelle Airport (2022) – SGEI classification rejected
- Bornholm Airport (2024) – extension of entrustment approved, justified by isolation, passenger volume, tourism & economic impact

4. Latest developments in State aid jurisprudence of the Court of Justice of the EU



Clemens Kerle



The jurisprudence on state aid law is incredibly voluminous, in particular also compared to other areas of EU Competition law

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Ca. 130 judgements and orders of the CJEU in the period January 2025 – February 2026

Constant evolution (ebb and flow?) to central legal notions, procedural rules and obligations

Inherently challenging (and subjective) to “pick winners” and identify trends, but recent jurisprudence points towards

- A somewhat more restrictive interpretation of the notion of aid
- Higher standards as regards the reasoning in the Commission’s decisions
- More interlinkages between State aid and other areas of EU law

C-401/24, *Sjöfartsverket v Stockholms Hamn AB*

- Free-of-charge lock service provided by Stockholms Hamn
- Notion of undertaking – para 32: *an activity cannot, in principle, be regarded as economic if it does not generate, at least in the long term, revenue capable of turning a profit or at least covers costs*

C-453/23, *Company E v Prezydent Miasta Mielca*

- Exemption of rail infrastructure from property tax
- Selectivity – para 56: *a general and abstract exemption to which a direct tax is subject, such as the exemption at issue in the main proceedings, is normally not to be classified as State aid*

T-639/14 RENV II (et al) *Dimosia Epicheirisi Ilektrismou v Commission*

- Arbitration to settle long-standing dispute about electricity tariff
- Advantage/MEOP - decision to submit a dispute to arbitration normally not an advantage, outcome irrelevant

C-490/23 P, Neos v Ryanair and Commission

- Covid-19 compensation to airlines contingent on complying with minimum remuneration requirement for employees
- Indissolubly linked (other) EU law – para 59: *given the extremely large number of provisions and principles of EU law that may be infringed by the grant of aid, the Commission cannot be required [...] to provide specific reasoning concerning each one of them, and, in the present case, as far as concerns Article 56*

C-59/23 P, Austria v Commission

- Aid for nuclear power plant in Hungary, directly awarded construction contract; Commission had closed infringement procedure concerning potentially illegal procurement
- Indissolubly linked procurement law – para 64: *construction forms an integral part of the aid measure*”; para 76: *An analysis of the conformity of the direct award [...] was all the more necessary since the organisation of an open, impartial and unconditional tender procedure for the award of a contract for the construction of infrastructure is, [...] likely to have an impact, inter alia, on the cost of the investment required for that construction and on the properties of that infrastructure and, accordingly, on the extent of any advantage*”

5. Three years of the UK subsidy control regime: lessons to be drawn



Graeme Young

The UK regime does not include any general prohibition equivalent to TFEU article. 107

It's largely a self-assessment regime, though certain subsidies are prohibited

Key sources:

- Subsidy Control Act 2022
- The Subsidy Control (Gross Cash Amount and Gross Cash Equivalent) Regulations 2022
- Statutory Guidance for the United Kingdom Subsidy Control Regime



Subsidy

In the Act, “subsidy” means financial assistance which –

- a) is given, directly or indirectly, from public resources by a public authority
- b) confers an economic advantage on one or more enterprises
- c) is specific, that is, is such that it benefits one or more enterprises over one or more other enterprises with respect to the production of goods or the provision of services, and
- d) has, or is capable of having, an effect on –
 - i. competition or investment within the United Kingdom,
 - ii. trade between the United Kingdom and a country or territory outside the United Kingdom, or
 - iii. investment as between the United Kingdom and a country or territory outside the United Kingdom

Distortion no longer has to be between Member States but can be intra-UK.

Key aspects of the UK regime | 3 “subsidy control principles”?

- Based on **article.366 of the TCA**, State aid and UK subsidy control are both to be “*an effective system of subsidy control that ensures that the granting of a subsidy respects the following principles*”
- The **SCA22 adds Principle F** – again, a focus on “*competition or investment within the United Kingdom*”

In the UK, this is done by **self-assessment via article.12**:

A public authority –

- a) must consider the subsidy control principles before deciding to give a subsidy; and
- b) must not give the subsidy unless it is of the view that the subsidy is consistent with those principles

Key aspects of the UK regime | 4 “subsidy schemes”?

1.

Closest equivalent to
EU exemption
regulations

2.

Principles assessment
carried out at level of
scheme, and
subsidies can be
awarded “under the
scheme” without
further reference to
principles

3.

UK Government
provides “streamlined
schemes”, but
authorities can also
create their own
schemes

Mandatory referral

- subsidies of particular interest – generally over £25m

Voluntary referral

- subsidies of interest – generally over £5m

“Principles assessment” submitted to Subsidy Advice Unit

- SAU produces a non-binding, advisory report

There have been **110 reports** to date:

- 60 schemes, 50 individual subsidies
- Most represented sectors are:
- Energy: 35 reports
- Transport:/public infrastructure: 32 reports
- Real estate/housing: 21 reports

R (British Gas Trading and E.ON) v Secretary of State for Energy Security and Net Zero [2025]
EWCA Civ 209

1

This case was before the SCA22 came into force, so the claim was based on the subsidy control principles under the TCA

2

Key principle is that the appropriate **standard of review** is conventional domestic judicial review principles – legality and rationality – not EU law principles such as proportionality

1577/12/13/23 The Durham Company Limited v Durham County Council

1

Allegation that the Council was cross-subsidising its commercial waste collection by using economies of scale with domestic waste collection

2

Decision was that a public authority cannot give a subsidy to itself, even where it is acting as an enterprise – subsidy is not “given” if there is no transfer from one entity to another

Two other CAT decisions to date, both on the CMO principle – MEOP in State aid:

- **1642/12/13/24 Mr Aubrey Weis v Greater Manchester Combined Authority**
- **1730/12/13/25 The New Lottery Company Ltd and Others v The Gambling Commission**

Three further live cases:

- **1740/12/13/25 Bristol Airport v Welsh Ministers**
 - This case is of note because it is the only case to date challenging a subsidy which the authority has treated as a subsidy. This will therefore be the first judicial consideration of the subsidy control principles under the SCA22.
- **1754/12/13/25 Zenobē Energy Limited v Gas and Electricity Markets Authority**
- **1760/12/13/25 BEK Developments Ltd and Others v Durham County Council**



EU Statement at the 1st Trade Policy Review of the United Kingdom

28 October 2025 ([link](#))

“the EU considers that it is vital to enhance the effectiveness of the United Kingdom’s subsidy control system to ensure a level playing field in particular with the EU, given our close and important trading relationship.”



Ongoing CMA review of subsidy control regime ([link](#))

UK Govt. response to consultation ([link](#)) led to:

- Increasing the threshold for mandatory referral from £10m to £25m;
- Two new streamlined routes - arts and culture and community regeneration

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