



State aid: Commission clarifies scope of EU State aid rules to facilitate public investment

Brussels, 19 May 2016

The Commission has published guidance on when public spending falls within, and outside, the scope of EU State aid control. This guidance will help public authorities and companies to identify when public support measures can be granted without needing approval under EU State aid rules.

The Notion of Aid Notice is the last part of the Commission's [State Aid Modernisation](#) initiative, launched in 2012. As part of its State Aid Modernisation, the Commission has already updated all major State aid guidelines and simplified the rules so that unproblematic aid measures can be implemented without prior Commission scrutiny. The overall purpose is to provide legal certainty and cut red tape for public authorities and companies, and focus the Commission's resources on enforcing State aid rules in cases with the biggest impact on the Single Market.

The Notice will in particular facilitate public investment in the European Union by helping Member States and companies to design public funding in ways which do not distort competition. It gives clear guidance on when public investments do not involve State aid, notably because they do not risk distorting the level playing field in the Single Market or risk crowding out private investment. This will help maximise the effect of investments on economic growth and jobs, in line with the Commission's [Investment Plan for Europe](#) to mobilise at least €315 billion over three years in private and public investment across the EU.

Besides providing clarifications on a number of points particularly important for public investment, the Notice gives general guidance on all aspects of the definition of State aid. It does so by systematically summarising the case law of the EU courts and the Commission's decision-making practice.

The Notion of Aid Notice includes key clarifications on the following:

- **Public investment for the construction or upgrade of infrastructure is free of State aid, if it does not directly compete with other infrastructure of the same kind.** The Notice clarifies that such projects can, therefore, be implemented by the Member State without needing to be checked under EU State aid rules. This is typically the case for roads, railway infrastructure, inland waterways and water supply and waste water networks. In contrast, infrastructure in fields such as energy, broadband, airports or ports is often in competition with similar infrastructure. In these sectors, if one project is financed with public money while competing projects have to operate without public support, this can give the subsidised project a selective economic advantage over its rivals. Therefore such financing **is** subject to prior Commission scrutiny under EU State aid rules.
- **Even if infrastructure is built with the help of State aid, there is no aid to its operator and users if they pay a market price.** When infrastructure is built with public financing that involves State aid in line with EU rules, public authorities need to make sure that such aid is not passed on to the operator or users of this infrastructure. The Notice clarifies that this is the case, if an operator or user pays a market price to use the infrastructure in question, for instance as a result of a competitive, transparent, non-discriminatory and unconditional tender.

Example: A Member State builds an airport with public money. The investment complies with the Commission's [Guidelines on State aid to airports and airlines](#). The airport manager is chosen through a competitive selection procedure to select the most economically advantageous offer. In this situation, the operator of the airport does not receive any State aid.

- **EU state aid control focuses on public investments that have effect cross-border.** Funding provided to local infrastructures or local services which are unlikely to attract customers from other Member States, and which only has a marginal effect on cross-border investment, does not fall under EU State aid rules.

Examples: The Commission in April 2015 concluded in relation to seven measures granting public support to purely local operations that they do not involve State aid, because they are unlikely to have a significant effect on trade between Member States – see details [here](#).

- Public financing of certain cultural activities which are not commercial but provided for free or

against a minimal fee, will not be covered by State aid rules.

Example: As part of its cultural policy a Member State wants all citizens to have affordable access to art, theatre and classical music. Some museums, theatres and opera houses therefore sell entry tickets at low prices and do not earn enough money to cover their costs. The State provides funding to those cultural institutions to balance their finances. In this situation, the public support is not subject to State aid control.

- If **public authorities buy goods or services through tenders, which respect [EU rules on public procurement](#)**, this is in principle **sufficient to ensure that the transaction is free of State aid.**

The text of the Notice is available at:

http://www.ec.europa.eu/competition/state_aid/modernisation/notice_aid_en.html.

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