Case study on the existence, notification and compatibility with the internal market of State aid: The example of an Energy Efficiency project in Buildings

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Brussels, 23 October 2015
2. Applicable rules

3. Options

4. Chosen solution

5. Conclusions and recommendations
1. Project description

- **Aim of the project:** Deep renovation of public, residential and commercial buildings. Integrated energy renovation of buildings leading to ≥50% savings in final energy consumption for heating, hot water and energy system operation. [No legal definition]

**Specific measures:** refurbishment of the building envelope, replacement of windows (frames and glazing) and doors, lighting system revitalization/upgrade and HVAC refurbishment (boiler, thermostats, heat recovery, solar thermal, heat pump etc.)…

- **Type of buildings:**
  1. Public buildings (except cultural heritage buildings)
  2. Single-family houses: buildings with ≤ 2 housing units in private ownership
  3. Multi-apartment buildings: privately-owned buildings with ≥3 building units
  4. Commercial non-residential buildings: offices (financial institutions, liberal professions and other), hotels and restaurants, wholesale and retail trade.

- **Aim of the programmes:**
  1. Public buildings: 3% renovation/year
  2. Single-family houses: buildings with ≤ 2 housing units in private ownership
  3. Multi-apartment buildings: privately-owned buildings with ≥3 building units
  4. Commercial non-residential buildings: offices (financial institutions, liberal professions and other), hotels and restaurants, wholesale and retail trade.
1. Project description

- **Financing of the project:** 1. ERDF Grants,
  2. potentially national top-ups also in form of grants,
  3. Remaining financing: own funds by beneficiaries

- Renovation package is not financially viable on its own

- Average and maximum expected ERDF grants and of potential top-ups for potential beneficiaries, according to renovation needs of buildings:

<table>
<thead>
<tr>
<th>Building Type</th>
<th>Expected average and maximum grants expected</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public buildings</td>
<td>EUR 300 000/building/owner</td>
</tr>
<tr>
<td>Commercial buildings</td>
<td>EUR 400 000/building/owner</td>
</tr>
<tr>
<td>Single family houses</td>
<td>EUR 100 000/building/owner</td>
</tr>
<tr>
<td>Multi-apartment buildings</td>
<td>EUR 80 000/building/owner</td>
</tr>
</tbody>
</table>
Structure

1. Project description

3. Options

4. Chosen solution

5. Conclusions and recommendations
2. Applicable rules

1. **Art. 107.1 TFEU:** Save as otherwise provided in the Treaties, any aid granted by a MS or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between MS, be incompatible with the internal market.

2. **De minimis aid Regulation** (Commission Regulation No 1407/2013): De minimis aid, being aid granted to a single undertaking over a given period of time that does not exceed a certain fixed amount, is deemed not to meet all the criteria laid down in Article 107(1) of the Treaty and is therefore not subject to the notification procedure.

3. **General Block Exemption Regulaton** (Commission Regulation No 651/2014): Aid that fulfils all the conditions laid down in this Regulation both general and specific to the relevant categories of aid should be exempted from the notification obligation laid down in Article 108(3) of the Treaty. Chapters I, II (general provisions) Arts.38 and 39 (Investment aid for EE projects)

1. Project description

2. Applicable rules

4. Chosen solution

5. Conclusions and recommendations
3. Options

1. In which situations would the aid constitute State aid?

   a) aid granted by a Member State or through State resources
      Funds qualifying as State resources: ERDF + national grants
   b) advantage granted to an undertaking

<table>
<thead>
<tr>
<th>Owner 1</th>
<th>Owner 2</th>
<th>Owner 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public building</td>
<td>Comm. building</td>
<td>Residential building</td>
</tr>
</tbody>
</table>

**Undertaking?**

Regardless of ownership, legal status and the way it is financed.

Depends of activity:
1. Merely administrative: NO
2. Commercial: YES

**Undertaking?**

Commercial activity (offer goods/servs for price) in competitive market
→ undertaking

**Undertaking?**

Non-Commercial activity → no undertaking
Renting apartment: Comm. activity in residential building → undertaking
1. If apartment rented out: YES
2. If owner living: NO
3. Options

1. In which situations would the aid constitute State aid?

c) *Distort competition at EU level*

   A distortion of competition is presumed if the beneficiary is an undertaking active in a liberalised sector where there is actual/potential competition.

   Commercial use other than residential: unless eco. activity in non-liberalised market, the funding will distort competition.

   Residential use: if rented out, real estate market has EU dimension and is liberalised, therefore, the funding will distort competition.

d) *Affect trade between Member States*

   *When State aid strengthens the position of an undertaking compared with other undertakings competing in intra-community trade, the latter must be regarded as affected by that aid*.

   • **ECJ**, 17 September 1980, Case 730/79 *Philip Morris*
3. Options

Finance energy efficiency projects which comprise measures which:

1. do not constitute SA
   - EE renovation of buildings where no economic activity is performed.
     Rental out of apartments/houses, even if by individuals/public entities=eco. activity

   - EE renovation of buildings where economic activity performed but no effect on trade at EU level [potential or actual]. Real estate market: EU dimension

2. do not constitute SA (De minimis regulation)
   - Option 1 + buildings where eco. activities performed but advantage obtained covered by de minimis regulation

3. do not constitute SA or no notification needed (GBER)
   - Option 2 + buildings where eco. activities performed and trade at EU level affected but advantage obtained covered by GBER

4. comply with the EEAG
   Notification needed + compliance with EEAG
3. Options

1. Only measures which do not constitute SA

2. No aid + de minimis Regulation

3. No aid + de minimis + GBER

4. Notification (EEAG)
3. Options

**Aim**: Find most optimal State aid approach which allows to finance sufficient buildings with as few restrictions as possible and as little administrative burden as possible → Where possible:

1. finance only buildings where **no SA implications**
   - If that is too restrictive for a particular programme/want to include buildings where eco. activity performed that has EU dimension → Include buildings where undertakings perform their eco. activity

2. Finance renovation which complies with **De minimis aid Regulation**
   - De minimis aid: max. EUR 200 000/3 years period per undertaking → if too restrictive:

3. Allow for compliance with **GBER** [max. EUR 10 mill.]
   - If still too low threshold/not all conditions of GBER can be met:

4. Notification and compliance with **EEAG**
1. Project description

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1. Public buildings

- Only renovation of public buildings where no economic activities are carried out

- Def. of undertaking: Any entity performing an economic activity (offering goods or services in a competitive market)
  Public entity qualifies as undertaking if active in competitive market
  → rather financing buildings where only administrative tasks performed

- If canteen within the building, does it have to finance part of the renovation to avoid advantage (State aid)? No.
  Public financing of renovation works might grant advantage + affect trade, but concept of ancillary activity allows to consider it non-economic:

  Def.: activity directly related to + necessary for the operation of the infrastructure, or intrinsically linked to main non-economic use
4. Chosen solution

2. Single-family houses

- Only renovation of SFH where **no economic activity** is carried out or compliance with **De minimis regulation**

- How to ensure that no eco.activity performed?

  Eligibility criterion: owner/close relative have permanent residence
  
  But still possible that owner/close relative could perform eco.activity that would affect trade and competition at EU level → In eligibility criteria:

- If eco.activity performed, it shall comply with De minimis Regulation
  
  a) Advantage <EUR 200 000/3 years, cumulation:
     other de minimis aid (even if different eligible costs): <EUR 200 000/3 y.;
     other aid for same eligible costs: up to max. allowed under decision/GBER
  
  b) Monitoring: Central de minimis aid register/declaration of the beneficiary
4. Chosen solution

3. Multi-apartment buildings

- Only renovation of MAB where aid is compliant with De minimis regulation

1. MAB has to be serve for residential purposes but certain degree of eco., non resid. activity → eligibility criterion: use for residential purposes for example ≥60%

2. Residential use ≠ non economic use: rental out = economic activity If, e.g. by real estate company, can actually/potentially affect trade at EU level Also possible that undertakings use part of the building for other eco. activities → Risk of SA. Tackle it by application of de minimis regulation. If no compliance with de minimis regulation → whole building ineligible

Other option: undertakings shall pay part of renovation costs, equivalent to advantage they would obtain/part of building not renovated
4. Chosen solution

4. Commercial, non-residential buildings

- **Per definition:** eco. activities → SA risk

De minimis Regulation: insufficient
→ apply **GER** to allow sufficient buildings to benefit from renovation

- **GER** Para.59: MS should have the possibility to support EE investments in buildings granting aid in form of direct grants to building owners/tenants

1. Maximum amount: EUR 10 mln. (If exceeded: notification)
   Cumulation: Take into account any aid for same eligible costs.

2. Maximum grant: **Eligible costs** = separate investment in EE improvements/
counterfactual scenario [project viable w/out aid]

   Maximum aid intensity:

3. Incentive effect

4. Publication duty

<table>
<thead>
<tr>
<th>Enterprise type</th>
<th>intensity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Small enterprises</td>
<td>50%</td>
</tr>
<tr>
<td>Medium-sized enterprises</td>
<td>40%</td>
</tr>
<tr>
<td>Large enterprises</td>
<td>30%</td>
</tr>
<tr>
<td>Bonus (Art.107.3 (a)/(c) area)</td>
<td>+15%/-5%</td>
</tr>
</tbody>
</table>

Note: EC Practical Guide (no EE yet)
Structure

1. Project description

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1. Carefully consider needs of the project before addressing SA (Type and amount of buildings, financing needs, type of financing) Administrative burden shouldn’t be a decisive factor

2. Consider all possible options for seeking SA compliance:
   - SA or non SA?
   - notification or non-notification?
   - De minimis/GER/Guidelines(EEAG)?
   - Take into account also relevant decision practice [Ex. SA.34889, Scheme for the promotion of energy-efficiency and the use of renewable energy in the sectors of commerce and industry, Bremen (REN-Richtlinie)]

3. If several options, try to find the most simple way to comply with SA rules, without going unnecessarily far:
   Ex. Maybe not worth leaving out economic activities which could fall under the de minimis regulation.
Thank you very much!
For info or further questions on the activities of the JASPERS Networking Platform, please contact:

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