State Aid and energy efficiency

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State Aid

Is it State Aid? -> Art 107 TFEU

✓ Any aid
✓ granted by a Member State or through State resources in any form whatsoever
✓ which distorts or threatens to distort competition
✓ by favoring
✓ certain undertakings or the production of certain goods
✓ shall, in so far as it affects trade between MS
✓ be incompatible with the internal market.

Can State Aid be granted? -> Art 107 TFEU
State Aid

Existence of State aid

- State resources
- Selectivity
- Advantage
- Undertaking / economic activity
- Distortions of competition
- Effects on trade

Commission Notice on the notion of State aid as referred to in Article 107(1) TFEU
Examples

Public Buildings
Commercial spaces
Single Household Houses
Commercial Buildings
Multi Apartment buildings
Why and Who

Why is State Aid Control Important?

To avoid distortions of competition
Provides rules for all market participants.

Who controls State Aid?

The EU Commission
‘energy-efficiency’ means an amount of saved energy determined by measuring and/or estimating consumption before and after implementation of an energy-efficiency improvement measure, whilst ensuring normalisation for external conditions that affect energy consumption;

Source GBER, EEAG
What are the most common EE Interventions?

- Insulation
- Changing of Window frames
- Mechanical and Heating Parts
- Lighting
- Others?
How to design an energy efficiency measure?

1. Question: “Aid” or “No Aid”?
2. Strictly public buildings?
3. Open to any undertaking? Tender?
4. Investor Risks (No aid decision?)
How to design a state aid compliant measure?

A. Limited amount of Aid. This is quite common for Energy Efficiency interventions!
B. What is the effect on trade? Limited?
C. De minimis regulation. It covers grants, loans and guarantees.
D. Prerequisite: Idealy De minimis Registry!

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.

Max. 200,000EUR / 3 years period per undertaking
How to design a state aid compliant measure?

General Block Exemption Regulation

Specific provisions:

Article 38  Investment aid for energy efficiency measures
Article 39  Investment aid for energy efficiency projects in buildings
Article 40  Investment aid for high-efficiency cogeneration
Article 46  Investment aid for energy efficient district heating and cooling
Article 38  Investment aid for energy efficiency measures

General Article. Covers all forms of aid! (Grants, loans guarantees)

Eligible costs either clearly identified investment costs for the part that leads to a higher energy efficiency or determined in comparison with a reference scenario of a less energy efficient investment.

Reference Scenarios?
• Insulation in Buildings – Do Nothing
• Boiler - Depreciation

Most of the measures implemented under this Article! To be considered: Same conditions before and after investment! No increase in production capacities.... If increase then Art. 17 for SMEs

Aid Intensity: 30% +20% +15% = 65% for SMEs in assisted areas
Note: Art. 36: 40% +20% +15% = 75% for SMEs in assisted areas
Article 39 – Investment aid for EE projects in buildings

1. Only Loans and Guarantees! No Grants!

2. The total project cost are eligible!

3. Aid provided via financial intermediaries or energy efficiency funds

4. Aid in the intermediary stages to be excluded... on the basis of tendering procedures and market conform practices...

5. Private investors provide at min. 30 % of the total financing.

6. Difficult to be implemented.

7. Experience? Gross grant equivalent calculated and then aid granted under article 38!
Article 46 Investment aid for energy efficient district heating and cooling

• ‘Efficient district heating and cooling’ means a district heating or cooling system using at least 50 % renewable energy, 50 % waste heat, 75 % cogenerated heat or 50 % of a combination of such energy and heat;

• Primary energy savings compared to business as usual scenario.

• Eligible costs = Total costs

• GBER Threshold 20.000.000Euro

• Aid Intensity: 45% +20% +15% = 80% for SMEs in assisted areas
In Practice

• Most of the measures in energy efficiency can be put in place without a Commission Decision:
  • Most of those refer to interventions of limited amounts.
  • Can fit under the “de Minimis regulation” provided there is a registry....
  • Or can be covered by GBER provided they comply with the general provisions of GBER!

• A successful EE measure would include/combine three elements:
  • No Aid / absence of Aid
  • De minimis Regulation
  • GBER provisions
In Practice

• Granting aid to EE interventions under financial instruments?
  • Article 38 to combine aid of different forms (grants, loans guarantees)?

• How to avoid aid in the intermediate stages of financial instruments?
  • TENDER with clear, transparent, non-discriminatory rules.
  • Use market based facts for the costs of the involved intermediates.

• If total project costs are preferred in case of investments in SME’s: check if its worth to use Art. 17 provided an increase in production / employment takes place.
• If higher aid intensity than Art. 38 is necessary, check if Art. 36 Investment going above standards or in the absence of standards applies (+10% of aid intensity).

• Higher amounts than 10.000.000Euro: Section 3.4 of the EEAG applies.

• Notification procedure.
1. Is it State Aid?

2. What is the aid amount? (de minimis Regulation 200,000 Euro/3 years)

3. Is it Block exempted? (GBER)

4. Notification (EEAG)

90% of measures
For EE: Higher
• State Aid advice on the projects
• Capacity building events on State Aid
• Assistance in developing State Aid complainant measures for co-financed actions
• Assistance in notification procedure.
More Information

For info or further questions on this presentation please contact the JASPERS Networking and Competence Centre:

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