

COMMON UNDERSTANDING
ON STRENGTHENING THE INSTITUTIONAL SET-UP
FOR STATE AID CONTROL IN ITALY

1. Introduction

This joint DPE-DG COMP non-paper lays down a common understanding of the main principles and practices for State aid control and coordination at national level in Italy, setting forth the needs, benefits and means to ensure appropriate oversight over three distinct phases of State aid interventions: *i*) upstream preparation of aid measures; *ii*) implementation (including eligibility checks over beneficiaries and compliance with transparency provisions); and *iii*) ex-post controls.

Decentralisation is among Italy's constitutional principles underlying administrative organisation.

The legislative and administrative power is exercised by the State and the Regions within their respective remits, as constitutionally established. It is, therefore, a quasi-federal system, under which the economic decisions on public resources allocation can respond to place-sensitive assessments. Within such institutional framework, relevant administrative bodies are held responsible for compliance of State aid measures with European rules.

The Unit for State Aid Coordination within the Department for European Policies (DPE) is in charge of the overall coordination on State aid matters.

Consistently with national institutional settings, this Common Understanding was discussed, shared and agreed upon with relevant public authorities to implement coordination, control and monitoring activities ensuring best contribution to full legality of State aid at minimum and manageable costs.

2. Institutional and legislative framework for State aid control in Italy: state of play and recent improvements

Within Italy's current State aid control system: a number of public authorities are entitled to grant public subsidies, namely relevant ministries, regional/local authorities, public bodies and

undertakings; and the overall central coordination of State aid is entrusted to the DPE, also drawing on inputs from relevant national authorities in the field of State aid.

While the DPE is not currently in charge of coordinating the submission of notifications to the Commission and is not required to issue opinions on State aid measures, the Department may be consulted by granting authorities as to the set-up of the aid measures they plan to implement. The same applies to single ministries.

At regional level the Commission for European and International Affairs within the Conference of Regions is responsible for State aid issues. The Commission draws on the technical preparatory works by a permanent network of Contact Points handling State aid cases within their respective regional administrations.

Other Member States' past experience shows that efficient coordination coupled with high-level expertise on State aid within central and/or local administrations prevent mistakes or delays in the submission of the information necessary to reach decisions, significantly shorten the procedures applied, and avoid lengthy legal disputes and/or infringement proceedings. Such positive outcomes mainly stem from efficient coordination systems ensuring adequate preparation and consideration for State aid rules as from an early phase of policy making.

Furthermore, Italy has taken several steps to ensure comprehensive ex-ante eligibility checks. The national State Aid Register provided for by Law No. 234 of 24 December 2012 is established and managed within the Ministry of Economic Development (MiSE). In the context of the Partnership Agreement on European Structural and Investment (ESI) Funds, Italy committed itself to generating a State Aid Register by end-2016, by reengineering the existing State Aid databases. Coupled with the legal requirement that no aid shall be deemed lawful unless recorded in the above Register, this should allow for better and wider control of State aid (including cumulation under *the minimis* Regulation and compliance with the Deggendorf principle), which shall be checked prior to granting. The Register will be accessible to the public, and several workshops will be held at central and regional level to illustrate the database and disseminate adequate knowledge on its use.

Furthermore, in order to fulfill the ex-ante conditionality to ensure training and information dissemination for staffs involved in Structural Funds issues, Italy committed itself to organising, in partnership with DG COMP, some training sessions on State aid. Consequently, Italy organised an ad-hoc training programme involving approximately 300 participants (from relevant regional administrations and central government). Besides, in October 2014, the DPE published a list of Contact Persons on State aid matters within relevant Ministries and Regions.

As far as recovery is concerned, Italy is currently dealing with several pending recovery cases, many of which are longstanding. To such end, following the enactment of Law No. 234/2012, the DPE was entrusted with the coordination of all exchange of correspondence with the European Commission (EC) concerning the implementation of recovery decisions. Moreover, the grantor of illegal and incompatible aid shall also see to implementing the actual recovery, while the tax-collection agent shall handle the executive process. The new proceeding, adopted both at central and local levels, ensures more efficient and quick recovery actions. Eventually, the aforementioned Law provided for the final jurisdiction of administrative courts to rule on challenges against national recovery orders issued in compliance with negative decisions from the Commission.

3. Scope for further review and improvement

The enhanced bilateral partnership on State aid builds on the remarkable efforts Italy is deploying to strengthen its State aid coordination and control systems. In such context, the DPE and DG COMP identified a few areas that could benefit from further review and improvement, fully respecting the constitutional features of the Italian system and the institutional framework of administrative bodies in charge of State aid. The following proposals are intended to build on the legislative prerogatives enshrined in Law No. 234/2012 and other legislative provisions such as the national “European law”, as well as specific administrative practices.

3.1. Improving coordination and consultation

An effective institutional set-up for State aid control requires that the measures leading to possible granting of State aid be submitted to a preliminary, mandatory distinct scrutiny. Although the legal and political responsibility of the aid lies with the granting administration, which is also in charge of monitoring the aid following its delivery, it is essential to integrate the current system with a structured advisory role.

To such end, the following actions are recommended:

- a) Within central and regional granting authorities, identifying “distinct bodies” in charge of contributing to decision making processes: assessing the measures proposed for granting public resources and their possible State aid nature. Whereby doubts lie on the presence of State aid, the granting authorities shall request the advice of such distinct bodies at the appropriate level of competence.

- b) Complementing governmental draft bills and amendments, and granting authorities' acts, with a document (fiche or checklist) aimed at identifying possible presence of State aid.
- c) Requiring the granting authorities to transmit the notification form to the DPE to check completeness, together with the assessment issued by the relevant distinct body, to ascertain that the notification form is adequately filled in. The granting authorities will be requested to inform the DPE in case of pre-notification. Upon its own initiative or request and within its administrative capacity, the DPE may advise the granting authority prior to the notification to the Commission.
- d) Allowing the DPE to perform, upon request from the granting authorities and within its administrative capacity, a preliminary scrutiny of the measures granted under the General Block Exemption Regulation (GBER) with a budget exceeding a threshold to be defined.
- e) Entrusting the EC to assign a role within SANI2 to the DPE to check over draft notification completeness.
- f) Entrusting the DPE to promote State aid policy coordination, provide advice and support as to State aid provisions, and share best practices across administrations.
- g) Ensuring the DPE will hold meetings with granting authorities to jointly discuss relevant measures.

3.2 Strengthening State aid competencies at multiple levels

Italy is currently taking steps to strengthen State aid administrative capacity at several government levels, to ensure that State aid control is fulfilled at all levels of government.

The DPE may recommend best practices and, upon request from relevant authorities, provide advice on ex-post controls. Furthermore, the DPE provided training sessions to the administrations dealing with State aid, often in collaboration with the Commission, and is enhancing information dissemination for correct interpretation of State aid rules. Further improvements could be accomplished, for instance, by holding periodic workshops to update operators on the decisions taken by the Commission.

With a view to building up adequate capacity, the Commission devised an IT platform to which Italian authorities may address interpretation questions to receive prompt feedback,

notably for measures falling within the GBER. The Commission is also available to send own resources to the offices of Italian administrations responsible for State aid, train national bodies, and host Italian administrators at the Commission's premises to further develop their expertise.

3.3 Ensuring adequate systems for transparency, monitoring and compliance

Significant progress is currently being accomplished in this area, as Italy committed itself to implementing, by end-2016, a comprehensive State Aid Register that will be instrumental to foster compliance and monitoring. The Register will enable for automatic checks on State aid compliance such as cumulation rules (including *de minimis*) and respect for the Deggendorf principle. The Register will be managed by the Ministry of Economic Development and fed by State Aid granting authorities, under their own responsibility. The Register will be accessible to the public and interact with the State aid database managed by the Ministry for Agricultural, Food and Forestry Policies.

3.4 Enabling for quick implementation of recovery decisions

Law No. 234/2012 introduced a procedure applicable to all recovery cases, regardless of the form of aid granted and of the specific granting authority involved. Hence, Italy could:

- Provide that, in specific cases, the Government may entrust an independent body (i.e. "Commissioner") to carry out the recovery proceeding;
- Promote wide dissemination of knowledge on State aid rules among relevant parties.

3.5 Cooperative treatment of cases

With a view to strengthening bilateral partnership for more effective implementation of State aid modernisation, the following applies:

- a) If one or more cases are highly strategic and politically relevant, Italy's authorities and the European Commission undertake to develop a common work plan to better identify suitable scope and process for efficient and effective treatment of cases, as per their strategic importance. These ad-hoc work plans may establish task forces led by high-rank officials on both sides, dedicated timelines with milestones, and mutually agreed commitments for exchange of relevant information to conduct prompt and thorough

assessments. In all such cases, the DPE should remain involved in all exchange of communications with the Commission and foster coordination.

- b) The Commission undertakes to deal with priority cases and warrant them fast-track treatment to reach decisions under Article 4 of Council Regulation (EU) 2015/1589 within the deadline set by Article 4(5) of that Regulation, provided that:
- (i) the case is pre-notified;
 - (ii) the pre-notification file includes a motivated request by the DPE;
 - (iii) the DPE is involved in all exchange of communications with the Commission and coordinates relevant national actors involved in the case;
 - (iv) A timetable is drawn up jointly after a summary assessment of the case; and the deadlines set therein, taking account of the broader picture of national priorities, are strictly respected by both parties.