

COMMON UNDERSTANDING

on

STRENGTHENING THE INSTITUTIONAL SETUP FOR STATE AID CONTROL IN ITALY

1. Introduction

This joint DPE and DG COMP non-paper puts forward a common understanding of the main principles and practices of State aid control and coordination at national level. It discusses the needs, benefits and means of ensuring an appropriate oversight over three distinct phases of State aid interventions: upstream preparation of the aid measure; implementation (including the eligibility checks of beneficiaries and compliance with the transparency provisions) and ex-post controls.

In Italy, decentralization is one of the fundamental principles of administrative organization and a constitutional principle.

The legislative and administrative power is exercised by the State and the regions in accordance with their respective fields of competence, constitutionally provided. It is, therefore, a quasi-federal system, under which the economic decisions on the allocation of public resources can respond to assessments related to the territory where such choices are made.

This institutional framework makes the different administrative bodies responsible for the compliance of State aid measures with European rules.

The Central State aid unit within the Department for European Policies (DPE) has the general coordination on State aid matters.

To take into account the national institutional settings, this common understanding has been discussed, shared and agreed with the responsible public authorities so as to implement activities of coordination, control and monitoring ensuring their best contribution to full State aid legality at a minimum and manageable cost.

2. State of play and recent improvements of the institutional and legislative framework for State aid control in Italy

The current Italian State aid control system is characterized by: (i) a number of public authorities entitled to grant public subsidies, namely the various ministries, the regional/local authorities, and public bodies/undertakings; and (ii) a State aid general

central coordination, carried out by the DPE also drawing on inputs by national authorities entrusted by law with specific functions in the field of State aid.

While the DPE is not currently entrusted with the coordination of the submissions of notifications to the Commission and does not have the obligation to issue opinions on State aid measures, it can be consulted by granting authorities as regards the setup of aid measures they plan to implement. The same applies to single Ministries.

At regional level the Committee for International and European Affairs within the Conference of Regions is responsible for State aid issues. It draws on the technical preparatory work of a permanent network of contact points handling State aid cases in the respective regional administrations.

Other Member States' past experience shows that efficient coordination, coupled with high levels of expertise in State aid matters in central or local administrations prevent mistakes or delays in the submission of the information necessary to reach a decision on cases, significantly shorten the procedures, and avoid prolonged legal disputes and infringement proceedings. To these positive results chiefly contribute efficient coordination systems ensuring sufficient preparation and consideration for State aid rules from an early phase of policy design.

With regards to the systems to ensure comprehensive ex-ante eligibility checks, Italy has taken a number of steps. The national State aid Registry, provided for by Law N° 234 of 24 December 2012, is established and managed within the Ministry of economic development. In the context of the Partnership Agreement on European Structural and Investment (ESI) Funds, Italy has committed to build a State aid Registry by end 2016, by reengineering the various existing State aid databases. Coupled with the legal requirement that no aid shall be lawful unless recorded in that database, this should allow better and wider control of all State aid measures, including cumulation under the *de minimis* Regulation and compliance with the Deggendorf principle, which will be required to be checked prior to the granting of aid. The database will be publicly available and several workshops at central and regional level will be organized to explain the functionality of the new National Aid Registry and to disseminate the knowledge necessary for its use.

Moreover, in order to fulfil the ex-ante conditionality to ensure arrangements for training and dissemination of information for staff involved in structural funds, Italy committed to organize, in partnership with DG COMP, a series of training sessions in the field of State aid. Consequently, Italy organized a State aid training program that involved about 300 participants (both from the regional administrations and from the

central government). Besides, in October 2014 the DPE published a list of persons in Ministries and regions that can be contacted for State aid matters.

As regards recovery, Italy currently has a number of pending recovery cases, many of which are rather old. To address this issue, following the enactment of Law N° 234/2012, the DPE has been entrusted with the coordination of all exchanges of correspondence with the European Commission concerning the implementation of recovery decisions. Moreover, the grantor of illegal and incompatible aid is entrusted with the actual recovery, while the tax-collection agent handles the executive process: the new proceeding, adopted for central and local levels, ensures a more efficient and quick recovery. Finally, that Law provided for the exclusive jurisdiction of the administrative courts to rule on challenges against national recovery orders issued in compliance with a Commission's negative decision.

3. Areas that may require further review and improvement

In the context of the enhanced bilateral partnership on State aid, building on the important efforts that Italy is deploying to strengthen its State aid control and coordination system, DPE and DG COMP have identified a few areas that could benefit from further review and improvement, while fully respecting the constitutional features of the Italian system and the institutional framework of the administrative bodies responsible for State aid measures. The following proposals are intended to build on the legislative prerogatives enshrined in Law 234/2012 and other legislative provisions such as the national "European laws", as well as administrative practices.

3.1 Improving the system of coordination and consultation

A key feature of an effective institutional setup for State aid control is to submit to a preliminary, mandatory distinct scrutiny the measures which could lead to the granting of State aid. Although, as defined in the Italian system, legal and political responsibility of the aid lies with the granting administration as well as the monitoring of aid following its delivery, there is a strong need to integrate the current system with a structured advisory role.

This could be achieved by:

- a) Identifying distinct bodies within the central and regional granting authorities with the task of contributing to the preparation of their decisions by assessing the proposed measures providing for granting of public resources and their possible

State aid nature. In case of doubts on the presence of aid, the granting authorities shall request the advice of the distinct bodies at the appropriate level;

- b) Accompanying governmental draft bills and amendments and granting authorities' acts by a document (such as a fiche or check-list) apt to identify the possible presence of aid;
- c) Entrusting the granting authorities to send the notification form to the DPE for a check of completeness, together with the assessment of the proposed measure provided by the relevant distinct body, with the view to ensuring that the notification form has been adequately filled-in. The granting authorities will be requested to inform the DPE in case of pre-notification. The DPE, at its own initiative or upon request and in relation to its administrative capacity, can advise the responsible authority prior to the notification to the Commission;
- d) Allowing-the DPE to perform, upon request from the granting authorities and in relation to its administrative capacity, a preliminary light examination of the measures granted under the General block exemption regulation, with a budget exceeding a threshold to be defined.
- e) Entrusting the CE to guarantee to DPE a role in SANI2 that makes possible the check of completeness of the draft notification inside the SANI2
- f) Entrusting the DPE to promote State aid policy coordination, to provide advice and support on the compliance with State aid law and share best practices across administrations;
- g) Ensuring that the DPE will hold meetings with the granting authorities to discuss those measures considered of a certain relevance.

3.2 Strengthening of the State aid competencies, at different levels

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

The DPE can recommend best practices and upon request of the competent authorities, provide advice on ex-post controls .

The DPE has offered training to the administrations dealing with State aid, often in collaboration with the Commission, and is improving the diffusion of information for a better knowledge and correct interpretation of State aid rules. Further improvements could be considered, for instance, organizing regular periodic workshops through which ensure the update of the operators based on the decisions taken by the Commission.

With a view to assisting the building up of appropriate competencies, the Commission offers an IT platform to which the Italian authorities could address interpretation questions with a view to receiving rapid feedback, in particular for measures falling under the GBER. The Commission is also available to send own resources to the offices of the Italian administrations responsible for State aid to train national bodies and to host Italian administrators in the Commission's premises to further develop their expertise.

3.3 Ensuring adequate systems for transparency, monitoring and compliance

Significant progress is currently under way in this area, as Italy has committed to implement, by end 2016, a comprehensive State aid Registry which will be instrumental to facilitate compliance and monitoring. The registry will allow for automatic checks on State aid compliance such as cumulation rules (including *de minimis*) and the respect of the Deggendorf principle. The Registry will be managed by the Ministry of economic development and fed in by granting authorities, under their own responsibility. It will be made accessible to the public and will interact with the database on aid managed by the Ministry of agricultural food and forestry policies.

3.4 Strengthening the ability for quick implementation of recovery decisions

Law No 234/2012 provided for a procedure for recovery, which applies to all recovery cases, independently of the form of the aid granted and irrespective of which authority granted the aid.

Italy could:

- provide that, in certain cases, the Government could entrust an independent body (i.e. “Commissario”) to carry out the recovery;
- promote wide dissemination of State aid rules knowledge to all relevant parties.

3.5 Cooperation in the treatment of cases

With a view to strengthening the bilateral partnership for a more effective implementation of the State aid modernization in specific cases:

- a) If one or more cases present a highly strategic and political dimension, the Italian authorities and the Commission endeavour to develop a common work-plan to better identify scope and process which would be suitable to lead to

their efficient and effective treatment, corresponding to their strategic importance. Such work-plans, to be set up on an ad hoc basis in relation to the specificity of each case, may comprise the possible creation on both sides of task-forces led by high-rank officials, dedicated timelines with milestones and mutually agreed commitments for the exchange of all relevant information to be able to conduct a rapid and thorough assessment. In all such cases, the DPE should remain involved in all exchanges of communication with the Commission and facilitate coordination;

- b) The Commission endeavours to treat priority cases and warrant them a fast track treatment in order to reach a decision under Article 4 of Council Regulation 2015/1589 within the deadline provided for 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 remains involved in all exchanges of communication with the Commission and coordinates the national actors involved in the case;
 - (iv) a timetable is drawn up jointly after a summary evaluation of the case and the deadlines set therein, taking into account the broader picture of national priorities, are strictly respected by both parties.