



# Fact-finding study on the implementation of the transparency requirements under the GBER and relevant guidelines

Final Report

Prepared by



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**Fact-finding study on the  
implementation of the  
transparency requirements  
under the GBER and  
relevant guidelines**

Final report

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 <p>The logo for the European Policies Research Centre (EPRC) at Delft. It features the letters 'EPRC' in a bold, blue, sans-serif font, with a blue and yellow arc below them. To the right, the text 'Delft' is in a small black box, and 'European Policies Research Centre' is written in a smaller blue font below it.</p>	<ul style="list-style-type: none"><li>• Fiona Wishlade</li><li>• Rona Michie</li><li>• Carlos Mendez</li></ul>
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## ABSTRACT

The aims of this study were threefold:

- to provide an overview of approaches to meeting the State aid transparency requirements
- to assess the effectiveness of different approaches using available data; and
- to identify potential changes to the transparency requirements that might improve levels of compliance.

The review of reporting arrangements reveals **diverse arrangements for compliance with the transparency requirements**. Formally, the transparency requirement under the GBER flows from the direct applicability of EU law and in principle does not require further implementation. As a result, in about a third of countries there is no specific State aid legislation. The remaining countries have enacted State aid legislation, but the substance of this varies widely.

All countries have at least one State aid coordinating body, but arrangements vary. Most State aid coordinating bodies only have an advisory role, but in some countries there is mandatory oversight.

Six 'models' are identified reflecting:

- whether or not awarding bodies are responsible for encoding awards in TAM;
- whether or not there is a national State aid register; and, if so,
- whether or not the national register is used for compliance purposes instead of TAM.

To consider the **effectiveness** of different approaches to compliance with the transparency requirements, a detailed assessment of the available data was undertaken. The most robust dataset concerns reporting delays. However, *a very significant data gap concerns awards that have not been reported at all*. Analysis of the reporting delays showed that the transparency 'model' and associated regulatory stringency offered little explanatory power in accounting for the timeliness of reporting. *Variances are largely driven by the performance of individual granting authorities* - a very few bodies account for the majority of delays.

A selection of case studies was undertaken to **identify potential changes to the transparency requirements** that might improve levels of compliance. Some detailed proposals were identified, but while these might facilitate the use of TAM and address some operational frustrations, it seems unlikely that they would have a material impact on compliance. In broad terms, countries where awarding bodies are responsible for TAM encoding do not want any additional reporting burdens, and countries where national registers are in place do not want additional demands to be made that would disrupt existing systems.

On the basis of this study, three **recommendations** can be made.

First, a more accurate assessment of compliance might be gleaned from *requiring Member States to report the actual number of payments under SARI*, as well as expenditure; *the number of awards anticipated might also be made an obligatory entry under SANI2*. Neither would provide a complete solution, but over time would enhance the capacity accurately to identify likely instances of transgression.

Second, analysis of the reporting delays shows that the timeliness of reporting is essentially driven by the behaviour of a very small number of awarding bodies in each Member State. *A radical reduction in delays could be achieved by targeting and training those few organisations that report belatedly.*

Third, it may be that any awarding bodies *failing to report at all* do so due to low levels of awareness of the obligations and few qualifying instances (particularly in the case of non-GBER aid). Alongside targeted training, the *adoption of a single harmonised text on transparency* might raise the profile of the obligation and improve levels of compliance.

## EXECUTIVE SUMMARY

This study has three main objectives:

- to provide an overview of approaches to meeting the State aid transparency requirements
- to assess the effectiveness of different approaches on the basis of the data available; and
- to identify potential changes to the transparency requirements, through case studies of selected countries, that might improve levels of compliance.

## APPROACHES TO TRANSPARENCY

The review of reporting arrangements reveals **diverse arrangements for compliance with the transparency requirements**. Formally, the transparency requirement under the GBER flows from the direct applicability of EU law and in principle does not require further implementation. As a result, in about a third of countries – typically in the pre-2004 Member States - there is no specific State aid legislation. The remaining countries have enacted State aid legislation, but the substance of this varies widely, with some making scant if any reference to transparency, while in others, such as Poland, Italy, Romania and Spain, legislation provides for comprehensive national State aid registers.

The **form and timing of legislative texts are not decisive** as to the rigour with which the transparency requirements are implemented, but rather a reflection of wider domestic institutional contexts, including the timing of EU accession. Also important, the **legislative texts for GBER-based aid schemes incorporate the transparency requirement**. As a result, even in the absence of overarching legislation or specific rules on transparency, the reporting requirements are integrated into the rules for individual aid schemes.

All countries operate with **at least one State aid coordinating body**, but precise arrangements vary. For example: in Belgium, Germany and the United Kingdom, subnational coordinating bodies play a significant role, reflecting decentralised administrative arrangements. On transparency issues, **most State aid coordinating bodies have an advisory role only** and they play a central role in disseminating information to awarding bodies and often training on transparency. In seven countries there is mandatory oversight of transparency. These fall into two groups: countries which have all opted to fulfil the transparency obligations through domestic systems (Spain, Poland and Romania); and countries where the State aid coordination body checks the data before encoding it in TAM (Croatia, Cyprus, Hungary, Slovenia).

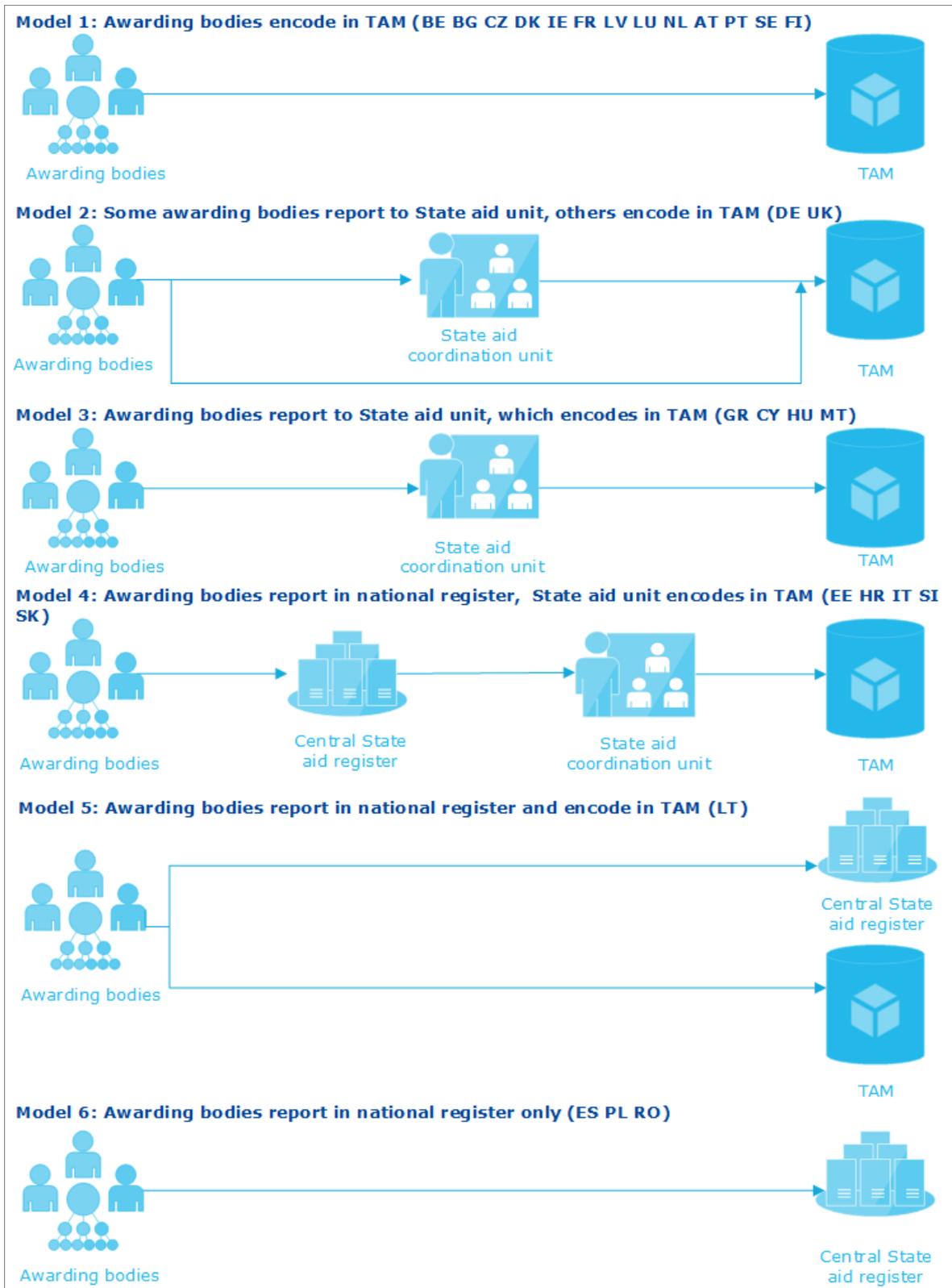
In a few countries there is provision for **sanctions for non-compliance** with the State aid rules. These may take the form of fines or financial penalties levied against awarding bodies (Bulgaria, Spain, Poland, Romania, Slovakia). In practice, it does not appear that such sanctions have ever been used.

Countries have taken a variety of approaches to meeting the transparency obligations. **In all countries, awarding bodies are responsible** for some external reporting on awards made – i.e. other than their own internal or departmental monitoring systems. Beyond this, approaches vary and six separate approaches are identified (see below), reflecting:

- whether or not awarding bodies are responsible for encoding awards in TAM;

- whether or not there is a national State aid register; and, if so
- whether or not the national register is used for compliance purposes instead of TAM.

### Reporting flows and transparency obligations



## **THE EFFECTIVENESS OF DIFFERENT APPROACHES TO COMPLIANCE**

In looking to consider the *effectiveness* of different approaches to compliance with the transparency requirements, a detailed assessment of the available data on reporting was undertaken. This comprises two datasets which were supplied by the Commission: Checks Update, the Commission assessment of whether State aid *measures* (schemes or *ad hoc* / individual awards) present direct compliance issues; and Delays Analysis, an extract from the Transparency module showing *awards* reported.

This review cast doubt on the validity of Checks Update since Delays Analysis shows that a large number of awards under ostensibly compliant measures are reported late (and therefore are not actually compliant). Delays Analysis is more robust. However, ***a very significant data gap concerns awards that have not been reported at all.*** In consequence, the study is limited to considering the timeliness of the reporting that *has* been done. **It can hardly be overemphasised that this is a major limitation to the scope to assess the effectiveness of different compliance approaches. The scale of awards that have not been reported at all is unknown and, with the data currently available, unknowable.**

Nevertheless, an analysis of the timeliness of reporting does produce some interesting insights. A narrative overview of all awards (79,534) in Delays Analysis showed that:

- since 2016, 40 percent of awards have been reported late, but that the *timeliness of reporting is improving* – 62 percent were late in 2016, compared to 34 percent in 2018;
- there are *wide differences between countries* in the number of awards reported (partly due to country size) and the proportion reported on time;
- *awards under the GBER are more likely to be reported on time* (64 percent) than those based on the Treaty or State aid guidelines (52 percent);
- most awards reported are offered under aid *schemes*, but *only 60 percent of award under aid schemes are reported on time* compared to 68 percent of *ad hoc* awards;
- most awards take the form of direct aid,<sup>1</sup> but *only 54 percent of direct aid awards are reported on time*, compared to 72 percent of financial instrument awards, and 80 percent of fiscal aid awards;
- awards co-financed with ESI Funds are more likely to be reported on time (64 percent) than purely domestic awards (49 percent); and
- in all countries a small number of granting authorities accounts for a large share of late reporting.

A regression analysis on a filtered set of awards in 2016-18 (57,145) sought to identify the ***determinants of reporting delays***. Six key predictors were used:

- size of award
- type of instrument
- legal basis
- length of EU membership

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<sup>1</sup> Such as grants.

- quality of government
- a measure of the ‘regulatory stringency’ of the national State aid reporting system based on the reporting model and other specific characteristics of the domestic approach to transparency.

Two random effects (granting authority and country) were included; the largest effect was due to ***variance among granting authorities***, which is much greater than the variance at the country level.

In terms of the ‘general’ predictors, the results confirm that:

- the higher the aid award value, the less likely it is to be delayed, but the effect is extremely small;
- aid reported under a BER/GBER legal basis is less likely to be delayed than aid with a basis in Guidelines or Treaty objectives; and
- fiscal measures are less likely to be delayed than non-fiscal measures.

Regarding the ‘country specific’ predictors, the addition of the regulatory stringency score, new/old Member State status and quality of government do not significantly improve the model fit. In sum, ***the country characteristics offer little explanatory power in accounting for timely publication of aid awards, which is largely driven by differences in the performance of individual granting authorities.***

#### ***OPTIONS FOR IMPROVING COMPLIANCE THROUGH CHANGES TO TRANSPARENCY REQUIREMENTS***

The aim of this part of the study was to identify changes to the transparency requirements which might improve levels of compliance.

The respondents interviewed did identify several options for change, but while these might facilitate the use of TAM and address some of the operational frustrations, it seems unlikely that they would have a material impact on compliance *per se*. As such, the proposals made are more incremental than radical.

The concept of cumulation and the notion of ‘project’ appear to be the most difficult challenges facing TAM users and more clarity and guidance on this is sought. The harmonisation of transparency requirements in a single document would be broadly welcomed. By contrast, the lowering or abolition of the reporting threshold would not be viewed positively, and there appears to be no appetite for investment in digitalisation at the domestic level among the case study countries.

In broad terms, countries where awarding bodies are responsible for TAM encoding do not want any additional reporting burdens; and countries where national registers are in place do not want additional demands to be made that would disrupt existing systems.

#### ***CONCLUDING POINTS AND RECOMMENDATIONS***

There are wide differences in approaches to the transparency requirements. However, the data currently available do not enable an accurate assessment of compliance with the requirements to be made. As such, it is not possible to conclude that a particular model is more effective than others.

Nevertheless, on the basis of this study, three recommendations can be made.

**The first relates to data collected.** From the data available it is possible to analyse the timeliness of reporting, but it is not possible to know the scale of awards that were not reported at all. A more accurate assessment of compliance might be gleaned from ***requiring Member States to report the actual number of awards under SARI***, as well as expenditure; ***the number of awards anticipated might also be made an obligatory entry under SANI2***. Neither of these proposals would provide a complete solution, but over time would enhance the capacity accurately to identify likely instances of transgression.

**The second concerns the compliance of awarding bodies.** Although the scale of *failure* to report is unknown, detailed data on *delayed* reporting is available. Analysis of this data shows that the timeliness or otherwise of reporting is essentially driven by the behaviour of a very small number of awarding bodies in each Member State. ***A radical improvement in the timeliness of reporting could be achieved by targeting and training those few organisations that report belatedly.***

**The third concerns failure to report and the profile of the transparency requirements.** It cannot necessarily be claimed that the same organisations that report late are also responsible for any failures to report since this is not possible to detect. It may be that any awarding bodies failing to report at all do so due to low levels of awareness of the obligations and few instances (particularly in the case of non-GBER aid). Alongside targeted training, the ***adoption of a single harmonised text on transparency*** might raise the profile of the obligation and improve levels of compliance.



## SYNTHESE

Cette étude a trois objectifs principaux:

- fournir un aperçu des approches permettant de satisfaire aux exigences de transparence en matière d'aides d'État ;
- d'évaluer l'efficacité des différentes approches sur la base des données disponibles; et
- d'identifier les changements potentiels aux exigences de transparence, par le biais d'études de cas de pays sélectionnés, qui pourraient améliorer les niveaux de conformité.

## LES APPROCHES EN MATIÈRE DE TRANSPARENCE

L'examen des modalités d'établissement des rapports révèle **diverses modalités de respect des exigences de transparence**. Formellement, l'obligation de transparence prévue par le RGEC découle de l'applicabilité directe du droit communautaire et ne nécessite en principe pas de mise en œuvre supplémentaire. Par conséquent, dans environ un tiers des pays - généralement dans les États membres d'avant 2004 - il n'existe pas de législation spécifique sur les aides d'État. Les autres pays ont adopté une législation sur les aides d'État, mais la teneur de celle-ci varie considérablement, certains ne faisant que peu ou pas de référence à la transparence, tandis que dans d'autres, comme la Pologne, l'Italie, la Roumanie et l'Espagne, la législation prévoit des registres nationaux complets des aides d'État.

La **forme et le calendrier des textes législatifs ne sont pas décisifs** quant à la rigueur avec laquelle les exigences de transparence sont mises en œuvre, mais reflètent plutôt les contextes institutionnels nationaux plus larges, y compris le calendrier de l'adhésion à l'UE. Il est également important que les **textes législatifs relatifs aux régimes d'aide fondés sur le RGEC intègrent l'exigence de transparence**. Par conséquent, même en l'absence d'une législation générale ou de règles spécifiques en matière de transparence, les exigences en matière de rapports sont intégrées dans les règles applicables aux différents régimes d'aides.

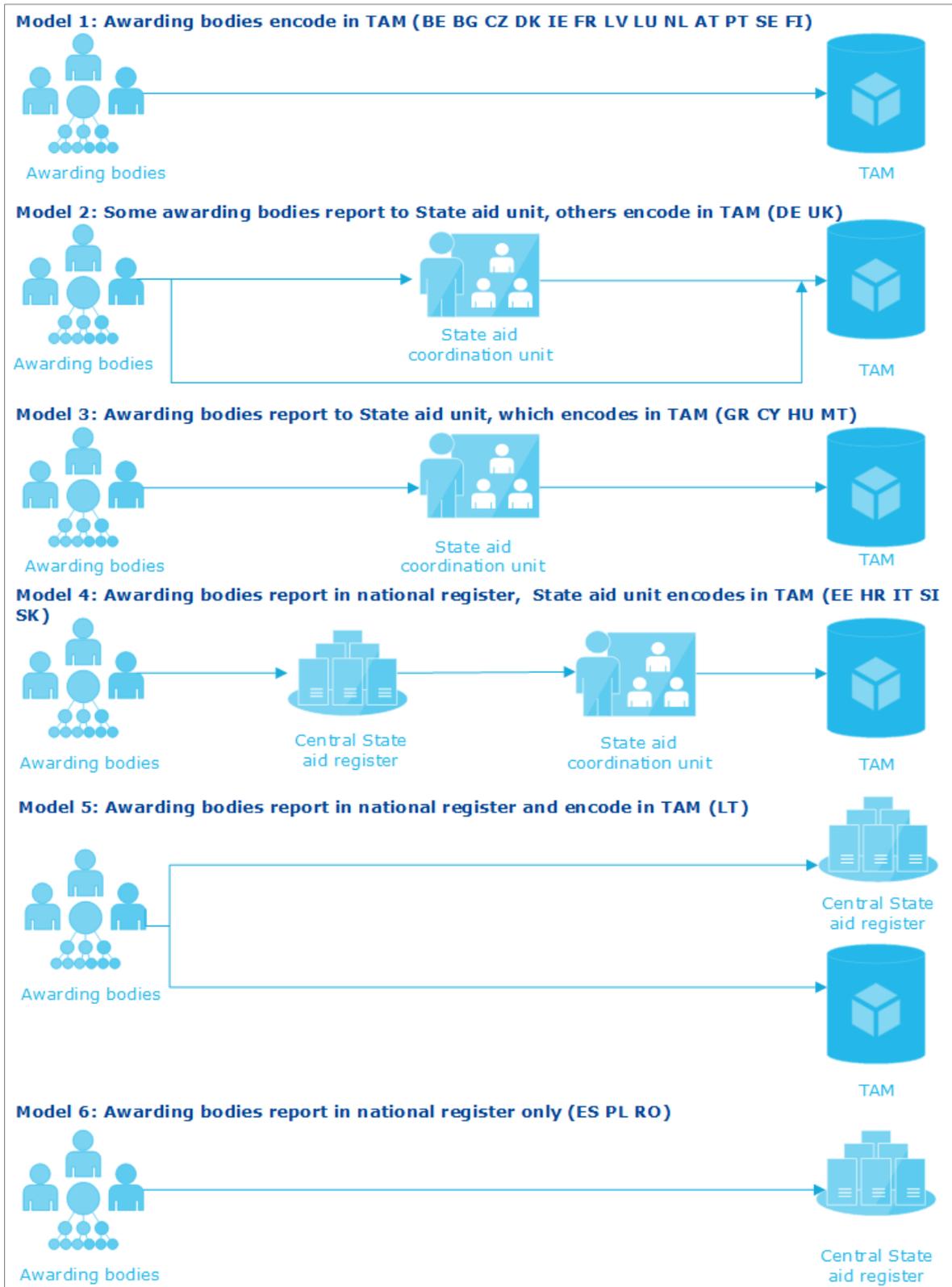
Tous les pays disposent d'**au moins un organisme de coordination des aides d'État**, mais les modalités précises varient. Par exemple : en Belgique, en Allemagne et au Royaume-Uni, les organismes de coordination infranationaux jouent un rôle important, reflétant des dispositions administratives décentralisées. En matière de transparence, la **plupart des organismes de coordination des aides d'État n'ont qu'un rôle consultatif et** jouent un rôle central dans la diffusion d'informations aux organismes chargés de l'octroi et souvent dans la formation à la transparence. Dans sept pays, il existe un contrôle obligatoire de la transparence. Ceux-ci se répartissent en deux groupes : les pays qui ont tous choisi de remplir les obligations de transparence par le biais de leurs systèmes nationaux (Espagne, Pologne et Roumanie) et les pays où l'organisme de coordination des aides d'État vérifie les données avant de les encoder dans TAM (Croatie, Chypre, Hongrie, Slovaquie).

Dans quelques pays, des **sanctions sont** prévues en cas de **non-respect des** règles relatives aux aides d'État. Celles-ci peuvent prendre la forme d'amendes ou de sanctions financières imposées aux organismes chargés de l'octroi (Bulgarie, Espagne, Pologne, Roumanie, Slovaquie). Dans la pratique, il ne semble pas que de telles sanctions aient jamais été utilisées.

Les pays ont adopté diverses approches pour satisfaire aux obligations de transparence. **Dans tous les pays, les organismes chargés de l'octroi sont responsables de** certains rapports externes sur les octrois effectués - c'est-à-dire autres que leurs propres systèmes de contrôle interne ou départemental. Au-delà, les approches varient et six approches distinctes sont identifiées (voir ci-dessous), ce qui reflète:

- si les organismes chargés de l'octroi sont responsables de l'encodage dans TAM;
- s'il existe un registre national des aides d'État; et, dans l'affirmative;
- si le registre national est utilisé à des fins de conformité au lieu du TAM.

**Flux de rapports et obligations de transparence**



Modèle 1: les organismes chargés de l'octroi sont responsables de l'encodage en TAM (BE BG CZ DK IE FR LV LU NL AT PT SE FI)

Modèle 2: Certains organismes chargés de l'octroi rendent compte à l'unité chargée des aides d'État, d'autres encodent en TAM (DE UK)

Modèle 3: les organismes chargés de l'octroi rendent compte à l'unité chargée des aides d'État, qui encode en TAM (GR CY HU MT)

Modèle 4: rapport des organismes chargés de l'octroi dans le registre national, encodage de l'unité d'aide d'État dans TAM (EE HR IT SI SK)

Modèle 5: rapport des organismes chargés de l'octroi dans le registre national et encodage dans TAM (LT)

Modèle 6: rapport des organismes chargés de l'octroi dans le registre national uniquement (ES PL RO)

### **L'EFFICACITÉ DES DIFFÉRENTES APPROCHES EN MATIÈRE DE CONFORMITÉ**

Afin d'examiner l'*efficacité* des différentes approches en matière de respect des exigences de transparence, une évaluation détaillée des données disponibles sur les rapports a été entreprise. Celle-ci comprend deux ensembles de données qui ont été fournies par la Commission : « Checks Update », l'évaluation de la Commission visant à déterminer si les mesures d'aides d'État (régimes ou aides *ad hoc*/individuelles) présentent des problèmes directs de conformité ; et « Delays Analysis », un extrait du module Transparence indiquant les aides signalées.

Cet examen jette un doute sur la validité de « Checks Update », car « Delays Analysis » montre qu'un grand nombre d'aides accordées dans le cadre de mesures apparemment conformes sont déclarées tardivement (et ne sont donc pas réellement conformes). « Delays Analysis » est plus solide. Toutefois, ***un manque de données très important concerne les aides qui n'ont pas été déclarées du tout.*** En conséquence, l'étude se limite à examiner la ponctualité de la déclaration qui a été faite. ***On ne saurait trop insister sur le fait qu'il s'agit là d'une limitation majeure de la portée de l'évaluation de l'efficacité des différentes approches en matière de conformité. L'ampleur des aides qui n'ont pas été déclarées du tout est inconnue et, avec les données actuellement disponibles, inconnaisable.***

Néanmoins, une analyse de la ponctualité des rapports produit quelques aperçus intéressants. Un aperçu narratif de tous les octrois (79 534) dans « Delays Analysis » a montré que :

- depuis 2016, 40 pour cent des octrois ont été déclarés en retard, mais la ponctualité des rapports s'améliore - 62 pour cent étaient en retard en 2016, contre 34 pour cent en 2018;
- il existe de grandes différences entre les pays en ce qui concerne le nombre d'octrois déclarés (en partie en raison de la taille du pays) et la proportion déclarée dans les délais;
- Les aides accordées au titre du RGEC ont plus de chances d'être déclarées dans les délais (64 pour cent que celles fondées sur le traité ou les lignes directrices relatives aux aides d'État (52 pour cent);
- la plupart des aides signalées sont offertes dans le cadre de régimes d'aide, mais seulement 60 pour cent des aides accordées dans le cadre de ces régimes sont signalées dans les délais, contre 68 pour cent des aides *ad hoc*;

- La plupart des aides prennent la forme d'aides directes,<sup>2</sup> mais seulement 54 pour cent des aides directes sont déclarées dans les délais, contre 72 pour cent des aides sous forme d'instruments financiers et 80 pour cent des aides fiscales;
- les aides cofinancées par les fonds ESI sont plus susceptibles d'être déclarées dans les délais (64 pour cent) que les aides purement au niveau national (49 pour cent);
- dans tous les pays, un petit nombre des organismes chargés de l'octroi est à l'origine d'une grande partie des retards de déclaration.

Une analyse de régression sur un ensemble filtré d'octrois en 2016-18 (57 145) a cherché à identifier les **déterminants des retards de déclaration**. Six prédicteurs clés ont été utilisés :

- le montant octroyé
- type d'instrument
- base juridique
- durée de l'adhésion à l'UE
- qualité du gouvernement
- une mesure de la "rigueur réglementaire" du système national de déclaration des aides d'État, fondée sur le modèle de déclaration et d'autres caractéristiques spécifiques de l'approche nationale en matière de transparence.

Deux effets aléatoires (l'organisme chargé de l'octroi et le pays) ont été inclus ; l'effet le plus important était dû à la **variance entre les organismes chargés de l'octroi**, qui est beaucoup plus importante que la variance au niveau des pays.

En ce qui concerne les prédicteurs "généraux", les résultats confirment que :

- plus le montant de l'aide est élevé, moins il y a de chances qu'elle soit retardée, mais l'effet est extrêmement faible;
- les aides déclarées en vertu d'une base juridique du REAF/RGEC sont moins susceptibles d'être retardées que les aides ayant pour base des lignes directrices ou des objectifs du traité;
- Les mesures fiscales ont moins de chances d'être retardées que les mesures non fiscales.

En ce qui concerne les prédicteurs « spécifiques aux pays », l'ajout du score de rigueur réglementaire, du statut de nouvel/ancien État membre et de la qualité du gouvernement n'améliore pas de manière significative la concordance du modèle. En résumé, **les caractéristiques des pays offrent peu de pouvoir explicatif pour expliquer la publication en temps requis des aides accordées, qui est largement déterminée par les différences de performance des différents organismes chargés de l'octroi.**

#### **LES OPTIONS PERMETTANT D'AMÉLIORER LE RESPECT DES RÈGLES EN MODIFIANT LES EXIGENCES DE TRANSPARENCE**

L'objectif de cette partie de l'étude était d'identifier les modifications des exigences de transparence qui pourraient améliorer les niveaux de conformité.

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<sup>2</sup> Comme les subventions.

Les personnes interrogées ont identifié plusieurs options de changement, mais bien que celles-ci puissent faciliter l'utilisation de la TAM et résoudre certaines des frustrations opérationnelles, il semble peu probable qu'elles aient un impact significatif sur la conformité en soi. En tant que telles, les propositions faites sont plus progressives que radicales.

Le concept de cumul et la notion de « projet » semblent être les défis les plus difficiles à relever pour les utilisateurs de la TAM, et une clarification et des explications supplémentaires sont souhaitées à ce sujet. L'harmonisation des exigences de transparence dans un document unique serait largement saluée. En revanche, l'abaissement ou la suppression du seuil de déclaration ne serait pas considéré comme positif, et il ne semble pas y avoir de désir d'investissement dans la numérisation au niveau national parmi les pays ayant fait l'objet d'une étude de cas.

De manière générale, les pays où les organismes chargés de l'octroi sont responsables de l'encodage TAM ne veulent pas de charges supplémentaires en matière de rapports ; et les pays où des registres nationaux sont en place, ne veulent pas que des demandes supplémentaires soient faites qui perturberaient les systèmes existants.

### ***POINTS DE CONCLUSION ET RECOMMANDATIONS***

Il existe de grandes différences dans les approches des exigences de transparence. Toutefois, les données actuellement disponibles ne permettent pas d'évaluer avec précision le respect des exigences. Il n'est donc pas possible de conclure qu'un modèle particulier est plus efficace que d'autres.

Néanmoins, sur la base de cette étude, trois recommandations peuvent être formulées.

**La première concerne les données collectées.** À partir des données disponibles, il est possible d'analyser la ponctualité des rapports, mais il n'est pas possible de connaître l'ampleur des octrois qui n'ont pas été déclarés du tout. Une évaluation plus précise de la conformité pourrait être obtenue en ***demandant aux États membres de communiquer le nombre réel d'octrois dans le cadre du SARI***, ainsi que les dépenses ; ***le nombre d'octrois prévues pourrait également être inscrit obligatoirement dans le SANI2***. Aucune de ces propositions n'apporterait une solution complète, mais, avec le temps, elles renforceraient la capacité à identifier avec précision les cas probables de transgression.

**Le second concerne la conformité des organismes chargés de l'octroi.** Bien que l'ampleur des manquements à l'obligation de déclaration soit inconnue, des données détaillées sur les retards de déclaration sont disponibles. L'analyse de ces données montre que la ponctualité des rapports est essentiellement due au comportement d'un très petit nombre d'organismes chargés de l'octroi dans chaque État membre. ***Une amélioration radicale de la ponctualité des rapports pourrait être obtenue en ciblant et en formant les quelques organismes qui font des rapports tardifs***.

**Le troisième concerne le défaut de déclaration et le profil des exigences de transparence.** On ne peut pas nécessairement prétendre que les organismes qui font des déclarations tardives sont également responsables de tout manquement à l'obligation de déclaration, car il est impossible de le détecter. Il se peut que les organismes chargés de l'octroi qui ne font pas de rapport le fassent en raison d'un faible niveau de sensibilisation aux obligations et de la rareté des cas (en particulier dans le cas des aides non-RGEC). Parallèlement à une formation ciblée, ***l'adoption d'un***

***texte unique harmonisé sur la transparence*** pourrait accroître la visibilité de l'obligation et améliorer les niveaux de conformité.



## ZUSAMMENFASSUNG

Diese Studie hat drei Hauptziele:

- einen Überblick über die Ansätze zur Erfüllung der Transparenzanforderungen für staatliche Beihilfen zu geben;
- die Wirksamkeit der verschiedenen Ansätze auf der Grundlage der verfügbaren Daten zu bewerten; und
- durch Fallstudien ausgewählter Länder mögliche Änderungen der Transparenzanforderungen zu identifizieren, die die Umsetzung verbessern könnten.

## ANSÄTZE ZUR TRANSPARENZ

Die Überprüfung der Berichterstattungsvorkehrungen lässt **verschiedene Vorkehrungen zur Einhaltung der Transparenzanforderungen** erkennen. Formal ergibt sich die Transparenzanforderung nach der AGVO aus der unmittelbaren Anwendbarkeit des EU-Rechts und bedarf im Prinzip keiner weiteren Umsetzung. Infolgedessen gibt es in etwa einem Drittel der Länder - in der Regel in den Mitgliedstaaten vor 2004 - keine spezifischen Rechtsvorschriften über staatliche Beihilfen. Die übrigen Länder haben zwar Beihilfegesetze erlassen, die jedoch inhaltlich sehr unterschiedlich sind, wobei in einigen Ländern kaum oder gar nicht auf Transparenz Bezug genommen wird, während in anderen wie Polen, Italien, Rumänien und Spanien umfassende nationale Beihilferegister gesetzlich vorgesehen sind.

Die **Form und der Zeitpunkt von Gesetzestexten sind nicht entscheidend für die** Rigorsität, mit der die Transparenzanforderungen umgesetzt werden, sondern vielmehr ein Spiegelbild des breiteren innerstaatlichen institutionellen Kontextes, einschließlich des Zeitpunkts des EU-Beitritts. Wichtig ist auch zu erwähnen, dass die **Gesetzestexte für Beihilferegulungen auf der Grundlage der AGVO die Transparenzanforderung enthalten**. Dies hat zur Folge, dass selbst bei Fehlen übergreifender Rechtsvorschriften oder spezifischer Transparenzvorschriften die Berichterstattungsanforderungen in die Regeln für einzelne Beihilferegulungen integriert sind.

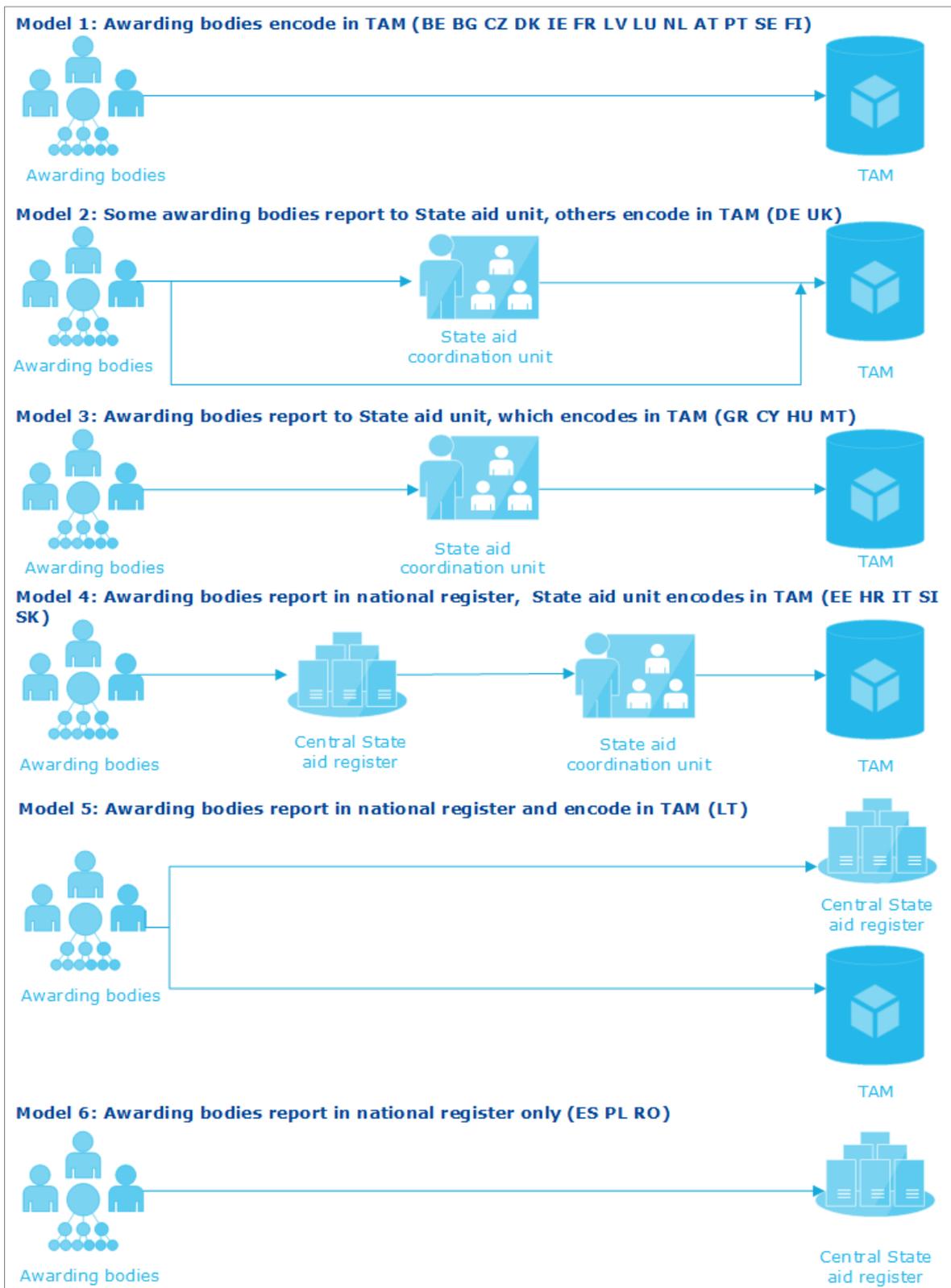
Alle Länder arbeiten mit **mindestens einer Koordinierungsstelle für staatliche Beihilfen**, aber die genauen Modalitäten sind unterschiedlich. Beispielsweise spielen in Belgien, Deutschland und dem Vereinigten Königreich subnationale Koordinierungsstellen eine wichtige Rolle, was die dezentralisierten Verwaltungsstrukturen widerspiegelt. In Fragen der Transparenz **haben die meisten Koordinierungsstellen für staatliche Beihilfen nur eine beratende Funktion**, und sie spielen eine zentrale Rolle bei der Verbreitung von Informationen an die Vergabestellen und häufig auch bei der Schulung in Transparenzfragen. In sieben Ländern gibt es eine obligatorische Aufsicht über die Transparenz. Diese lassen sich in zwei Gruppen einteilen: Länder, die sich alle dafür entschieden haben, die Transparenzverpflichtungen durch inländische Systeme zu erfüllen (Spanien, Polen und Rumänien); und Länder, in denen die Koordinierungsstelle für staatliche Beihilfen die Daten vor der Kodierung in TAM überprüft (Kroatien, Zypern, Ungarn, Slowenien).

In einigen wenigen Ländern sind **Sanktionen für die Nichteinhaltung** der Vorschriften für staatliche Beihilfen vorgesehen. Diese können in Form von Geldbußen oder Geldstrafen gegen die Vergabestellen verhängt werden (Bulgarien, Spanien, Polen, Rumänien, Slowakei). In der Praxis scheinen solche Sanktionen jedoch noch nie angewandt worden zu sein.

Die Länder haben eine Vielzahl von Ansätzen zur Erfüllung der Transparenzverpflichtungen gewählt. **In allen Ländern sind die Vergabestellen in** gewissem Umfang für die externe Berichterstattung über die vorgenommenen Vergaben **verantwortlich** - d.h. für andere als ihre eigenen internen oder abteilungsbezogenen Überwachungssysteme. Darüber hinaus sind die Ansätze unterschiedlich, und es werden sechs verschiedene Ansätze identifiziert, beruhend auf folgenden Kriterien:

- die Vergabestellen sind für die Kodierung der Vergaben in TAM zuständig;
- es gibt ein nationales Register der staatlichen Beihilfen; und, falls ja
- das nationale Register wird für Konformitätszwecke anstelle von TAM verwendet.

**Berichtsflüsse und Transparenzverpflichtungen**



Ansatz 1: die Vergabestellen sind für die Kodierung in TAM zuständig (BE BG CZ DK IE FR LV LU NL AT PT SE FI)

Ansatz 2: einige Vergabestellen berichten an die Abteilung für staatliche Beihilfen, andere kodieren in TAM (DE UK)

Ansatz 3: Vergabestellen berichten an die Abteilung für staatliche Beihilfen, die die Kodierung in TAM vornimmt (GR CY HU MT)

Ansatz 4: Vergabestellen berichten an ein nationales Register, die Abteilung für staatliche Beihilfen kodiert in TAM (EE HR IT SI SK)

Ansatz 5: Vergabestellen berichten an ein nationales Register und kodieren in TAM (LT)

Ansatz 6: Vergabestellen berichten ausschließlich an ein nationales Register (ES PL RO)

## **DIE WIRKSAMKEIT DER VERSCHIEDENEN ANSÄTZE ZUR EINHALTUNG DER VORSCHRIFTEN**

Bei der Prüfung der **Wirksamkeit** verschiedener Ansätze zur Einhaltung der Transparenzanforderungen wurde eine detaillierte Bewertung der verfügbaren Daten zur Berichterstattung vorgenommen. Diese umfasst zwei Datensätze, die von der Kommission zur Verfügung gestellt wurden: „Checks Update“, die Bewertung der Kommission, ob staatliche Beihilfemaßnahmen (Regelungen oder Ad-hoc-/Einzelvergaben) unmittelbare Probleme bei der Einhaltung der Vorschriften aufwerfen, und „Delays Analysis“, ein Auszug aus dem Transparenzmodul mit den gemeldeten Vergaben.

Diese Überprüfung ließ Zweifel an der Gültigkeit von „Checks Update“ aufkommen, da die „Delays Analysis“ zeigt, dass eine große Anzahl von Vergaben unter angeblich konformen Maßnahmen verspätet gemeldet werden (und daher nicht wirklich konform sind). Die „Delays Analysis“ ist robuster. **Eine sehr große Datenlücke betrifft jedoch Vergaben, die überhaupt nicht gemeldet wurden.** Infolgedessen beschränkt sich die Studie darauf, die Pünktlichkeit der Berichterstattung zu berücksichtigen. **Man kann kaum überbetonen, dass dies eine wesentliche Einschränkung des Spielraums für die Bewertung der Wirksamkeit verschiedener Compliance-Ansätze darstellt. Der Umfang der Vergaben, die überhaupt nicht berichtet wurden, ist unbekannt und ist mit den derzeit verfügbaren Daten auch nicht zu ermitteln.**

Dennoch liefert eine Analyse der Pünktlichkeit der Berichterstattung einige interessante Erkenntnisse. Ein narrativer Überblick über alle Vergaben (79.534) in der „Delays Analysis“ zeigte, dass:

- seit 2016 40 Prozent der Vergaben verspätet gemeldet wurden, jedoch verbessert sich die Pünktlichkeit der Berichterstattung - 62 Prozent waren 2016 verspätet, verglichen mit 34 Prozent im Jahr 2018;
- es gibt große Unterschiede zwischen den Ländern hinsichtlich der Anzahl der gemeldeten Vergaben (teilweise aufgrund der Größe des Landes) und des Anteils, der rechtzeitig gemeldet wurde;
- Beihilfen im Rahmen der AGVO werden mit größerer Wahrscheinlichkeit rechtzeitig gemeldet (64 Prozent) als solche, die auf dem Vertrag oder den Leitlinien für staatliche Beihilfen basieren (52 Prozent);
- Die meisten gemeldeten Vergaben werden im Rahmen von Beihilferegelungen angeboten, aber nur 60 Prozent der Zuwendungen im Rahmen von Beihilferegelungen werden pünktlich gemeldet, verglichen mit 68 Prozent der Ad-hoc-Beihilfen;

- Die meisten Vergaben erfolgen in Form von Direkthilfe,<sup>3</sup> aber nur 54 Prozent der direkten Beihilfen werden rechtzeitig gemeldet, verglichen mit 72 Prozent der Vergaben durch Finanzinstrumente und 80 Prozent der fiskalischen Beihilfen;
- Vergaben, die mit ESI-Fonds kofinanziert werden, werden mit größerer Wahrscheinlichkeit pünktlich gemeldet (64 Prozent) als rein inländische Beihilfen (49 Prozent); und
- In allen Ländern macht eine kleine Zahl von Vergabestellen einen großen Anteil der verspäteten Berichterstattung aus.

Eine Regressionsanalyse über einen gefilterten Satz der Vergaben in den Jahren 2016-18 (57.145) versuchte, die **Determinanten der Meldeverzögerungen** zu identifizieren. Dabei wurden sechs Schlüsselprädikatoren verwendet:

- Umfang der Beihilfe
- Art des Instruments
- rechtliche Grundlage
- Dauer der EU-Mitgliedschaft
- Regierungsqualität
- ein Maß für die „regulatorische Strenge“ des nationalen Berichtssystems für staatliche Beihilfen, das auf dem Ansatz der Berichterstattung und anderen spezifischen Merkmalen des inländischen Transparenzansatzes beruht.

Zwei Zufallseffekte (Vergabestelle und Land) wurden einbezogen; der größte Effekt war auf die **Varianz unter den Vergabestellen** zurückzuführen, die viel größer ist als die Varianz auf Länderebene.

Was die "allgemeinen" Prädiktoren anbelangt, so bestätigen die Ergebnisse, dass:

- Je höher der Betrag der Beihilfe, desto unwahrscheinlicher ist es, dass sie verzögert wird, aber der Effekt ist extrem gering;
- Beihilfe, die auf Grundlage der GVO-Landwirtschaft/AGVO gemeldet wird, wird weniger wahrscheinlich verspätet gemeldet als Beihilfe mit einer Grundlage in Richtlinien oder Vertragszielen; und
- Bei fiskalische Maßnahmen sind Verzögerungen weniger wahrscheinlich als bei nicht-fiskalischen Maßnahmen.

Was die "länderspezifischen" Prädiktoren anbelangt, so wird durch die Aufnahme der Bewertung der regulatorischen Strenge, ob es sich um neue/alte Mitgliedstaaten handelt oder nicht, sowie durch die Regierungsqualität, das Modell nicht wesentlich verbessert. Zusammenfassend lässt sich sagen, dass **die Ländermerkmale wenig Erklärungskraft für die rechtzeitige Veröffentlichung von Beihilfen bieten, da diese weitgehend durch Unterschiede in der Leistung der einzelnen Vergabestellen bedingt ist.**

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<sup>3</sup> Wie zum Beispiel Zuschüsse.

## **OPTIONEN ZUR VERBESSERUNG DER KONFORMITÄT DURCH ÄNDERUNGEN DER TRANSPARENZANFORDERUNGEN**

Ziel dieses Teils der Studie war es, Änderungen an den Transparenzanforderungen zu ermitteln, die die Konformität verbessern könnten.

Die befragten Personen nannten zwar mehrere Optionen für Änderungen, doch obwohl diese den Einsatz von TAM erleichtern und einige der operationellen Frustrationen beseitigen könnten, scheint es unwahrscheinlich, dass sie per se wesentliche Auswirkungen auf die Einhaltung der Vorschriften haben würden. Daher sind die unterbreiteten Vorschläge eher inkrementell als radikal.

Das Konzept der Kumulation und der Begriff „Projekt“ scheinen die schwierigsten Herausforderungen zu sein, denen TAM-Nutzer gegenüberstehen, und es werden mehr Klarheit und weitere Anleitungen zu diesem Thema verlangt. Die Harmonisierung der Transparenzanforderungen in einem einzigen Dokument würde im Großen und Ganzen begrüßt. Im Gegensatz dazu würde die Senkung oder Abschaffung der Meldeschwelle nicht positiv bewertet, und es scheint in den Ländern der Fallstudie keinen Bedarf an Investitionen in die Digitalisierung auf nationaler Ebene zu geben.

Im Großen und Ganzen wollen Länder, in denen die Vergabestellen für die TAM-Kodierung verantwortlich sind, keine zusätzliche Berichtslast; und Länder, in denen es nationale Register gibt, wollen nicht, dass zusätzliche Anforderungen gestellt werden, die die bestehenden Systeme stören würden.

## **SCHLUSSPUNKTE UND EMPFEHLUNGEN**

Es gibt große Unterschiede in der Herangehensweise an die Transparenzanforderungen. Die derzeit verfügbaren Daten ermöglichen jedoch keine genaue Beurteilung der Einhaltung der Anforderungen. Daher ist es nicht möglich, den Schluss zu ziehen, dass ein bestimmter Ansatz wirksamer ist als andere.

Dennoch können auf der Grundlage dieser Studie drei Empfehlungen ausgesprochen werden.

**Die erste bezieht sich auf die gesammelten Daten.** Anhand der verfügbaren Daten ist es möglich, die Pünktlichkeit der Berichterstattung zu analysieren, aber es ist nicht möglich, den Umfang der Vergaben zu kennen, die überhaupt nicht berichtet wurden. Eine genauere Bewertung der Einhaltung der Vorschriften könnte dann erfolgen, wenn die **Mitgliedstaaten verpflichtet würden, die tatsächliche Zahl der Vergaben im Rahmen von SARI sowie die Ausgaben zu melden; die Zahl der zu erwartenden Vergaben könnte auch unter SANIZ zur obligatorischen Angabe gemacht werden.** Keiner dieser Vorschläge würde eine vollständige Lösung bieten, aber mit der Zeit würde die Fähigkeit zur genauen Ermittlung wahrscheinlicher Fälle von Verstößen verbessert.

**Die zweite betrifft die Einhaltung der Vorschriften durch die Vergabestellen.** Obwohl das Ausmaß der Versäumnisse der Berichterstattung nicht bekannt ist, liegen detaillierte Daten über die verspätete Berichterstattung vor. Die Analyse dieser Daten zeigt, dass die Rechtzeitigkeit der Berichterstattung im Wesentlichen durch das Verhalten einer sehr kleinen Zahl von Vergabestellen in jedem Mitgliedstaat bestimmt wird. **Eine radikale Verbesserung der**

**Pünktlichkeit der Berichterstattung könnte dadurch erreicht werden, dass die wenigen Organisationen, die verspätet berichten, gezielt erfasst und geschult werden.**

**Die dritte betrifft Versäumnisse der Berichterstattung und die Wahrnehmung der Transparenzanforderungen.** Es kann nicht unbedingt behauptet werden, dass dieselben Organisationen, die verspätet berichten, auch für etwaige Versäumnisse bei der Berichterstattung verantwortlich sind, da dies nicht feststellbar ist. Es kann sein, dass Vergabestellen, die überhaupt nicht Bericht erstatten, dies aufgrund des geringen Bewusstseins für die Verpflichtungen und aufgrund weniger Fälle (insbesondere bei Beihilfen, die nicht unter die AGVO fallen) tun. Neben einer gezielten Schulung könnte die **Annahme eines einzigen harmonisierten Textes zur Transparenz** die Wahrnehmung der Verpflichtung schärfen und den Grad der Konformität verbessern.



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## 1. INTRODUCTION

The objective of this study is to provide a review and analysis of how Member State authorities have implemented the transparency requirements of the General Block Exemption Regulation (GBER) and relevant State aid guidelines.<sup>4</sup> A wider aim is to feed into future policymaking on transparency and compliance.

The core of the study concerns the reporting systems for State aid awards exceeding €500,000, which Member States have had to have in place for individual awards made since 1 July 2016 (including for State aid measures that predate the entry into force of the requirements). The Commission has set up an IT system to facilitate this reporting – the Transparency Award Module (TAM) - but Member States are not obliged to use this and may comply with reporting requirements through publicly accessible online systems that meet the relevant criteria.

The study involves two main tasks:

**Task 1** comprising:

- Task 1.1 - Mapping national setups in Member States for the implementation of the transparency requirements
- Task 1.2 - Assessing the effectiveness of the different national setups in ensuring compliance with the transparency obligations; proposing case studies to be undertaken in Task 2.

**Task 2:** Identification of future changes in the transparency requirements in order to improve compliance on the basis of selected case studies.

This Final Report brings together the results of both tasks and is structured in line with those tasks as follows: Section 2 provides a comparative overview of approaches to compliance; Section 3 explores the available data on compliance to determine whether a link can be established between compliance systems and levels of compliance; Section 4 compares and contrasts the views and attitudes of selected Member States to the transparency requirements with the aim of identifying what changes, if any, could improve compliance; and Section 5 concludes.

This report is accompanied by two Annexes:

- Annex A: Country profiles of the transparency systems for the EU27 and the United Kingdom
- Annex B: Country case studies focused on potential changes to transparency requirements.

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<sup>4</sup> Commission Regulation (EU) No. 651/2014.



## 2. COMPARATIVE OVERVIEW OF APPROACHES TO TRANSPARENCY<sup>5</sup>

### 2.1. LEGAL SET-UP

The extent to which domestic legislative provisions are used to assure compliance with the State aid transparency requirements **varies widely**.

In around one third of Member States, there is **no specific State aid legislation**. Instead, Member States deem that the direct applicability of the GBER is sufficient, but provide training and guidance (which may or may not be published) to support awarding bodies in meeting their obligations. This approach is typical in pre-2004 Member States that do not operate central State aid registers (BE, DK, DE, IE, FR, LU, AT, PT).

The remaining countries have enacted legislation, but the nature of this varies widely and it is not always specific to the transparency requirement. For example:

- Many pre-2004 countries have **basic State aid laws** which predate accession. Prior to accession, such legislation provided national competition authorities with functions analogous to those of the European Commission; post accession, these laws remain in place, amended to take account of EU membership and sometimes supplemented by secondary legislation (e.g. CZ, EE, CY, SI).
- Others have **secondary legislation** which may derive from a basic State aid law or from other legislation (e.g. HR, HU).
- In some countries (e.g. EE) **existing legislation was sufficient** to enable the transparency obligations to be met, while in others (e.g. GR, LV) **new legislation was introduced** specifically to fulfil them.
- Some countries have **legislation that provides for national registers**, whether *de minimis* support only or comprehensive registers, and whether or not they substitute for TAM (e.g. ES, IT, PL, RO, SK).
- The UK is a special case and under the 2018 Withdrawal Act the UK has **fully incorporated EU State aid obligations into domestic law** for the duration of the transitional period.

It is difficult to draw firm conclusions for transparency compliance from these very disparate arrangements. The **form and timing of legislative texts are not decisive** as to the rigour with which the transparency requirements are implemented, but rather a reflection of wider domestic institutional contexts, including the timing of EU accession: a number of countries did adopt new legislation in order to implement the transparency obligation, but for many no domestic legal provisions were made, or in some cases no additional ones were needed.

Also important, a number of respondents emphasised that the **legislative texts for GBER-based aid schemes incorporate the transparency requirement**. As a result, even in the absence of overarching legislation or specific rules on transparency, the reporting requirements may be

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<sup>5</sup> Full country profiles are provided in Annex A.

integrated into the legal basis for individual aid schemes. This is in addition to the more general obligations arising from the direct applicability of EU Regulations mentioned above.

A last observation concerns the **increasing emphasis on transparency generally** among public authorities. This is not limited to State aid, but, in addition to searchable domestic registers, may take the form of freedom of information requests on aid awards (in many countries), or an obligation on beneficiaries to declare public money received and on public authorities to report on funds above certain thresholds paid to undertakings (as in France).

## **2.2. ORGANISATIONAL ARRANGEMENTS FOR TRANSPARENCY**

This section gives a brief overview of arrangements for complying with the transparency obligation by considering the nature and role of **State aid coordinating bodies**, the different **reporting flows and systems** and the **timing** of data encoding.

### *2.2.1. State aid coordinating bodies*

All countries operate with **at least one State aid coordinating body**, but precise arrangements vary. For example: in Belgium, Germany and the United Kingdom, subnational coordinating bodies play a significant role, reflecting decentralised administrative arrangements; in Greece, State aid units operate in each of 15 ministries, in addition to a central unit; in France, coordination is split between the SGAE which coordinates central government departments and ANCT which does the same for subnational government; in Italy, a department in the Ministry of Economic Development, under the auspices of the Presidency of the Council of Ministers, is the main coordinating body, but a government agency, *Invitalia*, undertakes the encoding in TAM.

State aid coordinating bodies are **typically linked to or part of a government ministry** (usually the ministry of finance or the ministry responsible for business). However, some are independent bodies, as is the case in Cyprus, Lithuania and the Slovak Republic, for example. Independent State aid units exist only among post-2004 Member States, a legacy of pre-accession State aid arrangements.

The **role of State aid coordinating bodies varies** between countries both in general terms and specifically in relation to transparency. All have in common the task of disseminating information about the State aid rules to awarding bodies, typically also providing training and guidance.

**In most pre-2004 Member States the domestic tasks of State aid coordinating bodies are limited to guidance and training.** There are exceptions to this. Spain and Italy have central registers and the tasks of the coordinating bodies are more extensive; Greece is in the process of establishing such a register, and also has a developed State aid coordination structure involving State aid units in each of 15 ministries as well as a central coordinating unit.

**State aid coordinating bodies in some post-2004 Member States have mandatory roles** in determining whether proposed measures fit with the GBER or must be notified to the European Commission (as in Romania and Hungary, for example).

**On transparency issues most State aid coordinating bodies have an advisory role only.** In seven countries there is mandatory oversight of transparency. These fall into two groups: countries which have all opted to fulfil the transparency obligations through domestic systems (Spain,

Poland and Romania); and countries where the State aid coordination body checks the data before encoding it in TAM (Croatia, Cyprus, Hungary, Slovenia).

In a few countries there is provision for **sanctions for non-compliance** with the State aid rules. These may take the form of fines or financial penalties levied against awarding bodies (Bulgaria, Spain, Poland, Romania, Slovakia) and, in principle, the scope to recover aid from beneficiaries (Denmark, Hungary). Regarding the latter, it seems unlikely that a beneficiary could be penalised for non-compliance on reporting by an awarding body. In any case, there are no reported instances of any sanctions having been applied for failure to report State aid awards.

### 2.2.2. Reporting flows and systems

Countries have taken a variety of approaches to meeting the transparency obligations. In *all* countries, awarding bodies are responsible for some external reporting on awards made – i.e. other than their own internal monitoring systems. Beyond this, approaches vary according to the following factors:

- whether the State aid monitoring unit has a role in meeting the transparency obligations
- whether there is a central State aid register, and, if so
- whether the domestic State aid register is used to fulfil the transparency requirements rather than TAM.

Largely reflecting these features, six ‘models’ can be identified (see Figure 1).

In **Model 1, awarding bodies encode the data directly in TAM**. Some 13 countries follow this model. These are predominantly pre-2004 Member States, though Bulgaria, Czechia and Latvia also feature. Here, there is a relatively ‘hands off’ approach by State aid coordinating bodies who have no direct involvement in the reporting process, beyond the provision of information, training and guidance.

In **Model 2, some awarding bodies report to the State aid unit and some encode data in TAM**. In other words, Models 1 and 3 (below) are followed in different parts of the administration. This applies in Germany and the United Kingdom. The asymmetric approach owes largely to the devolved nature of administrative arrangements and different options followed at subnational level. In principle, Hungary also follows Model 2, but in practice no awarding bodies input direct into TAM, so Hungary has been classified under Model 3.

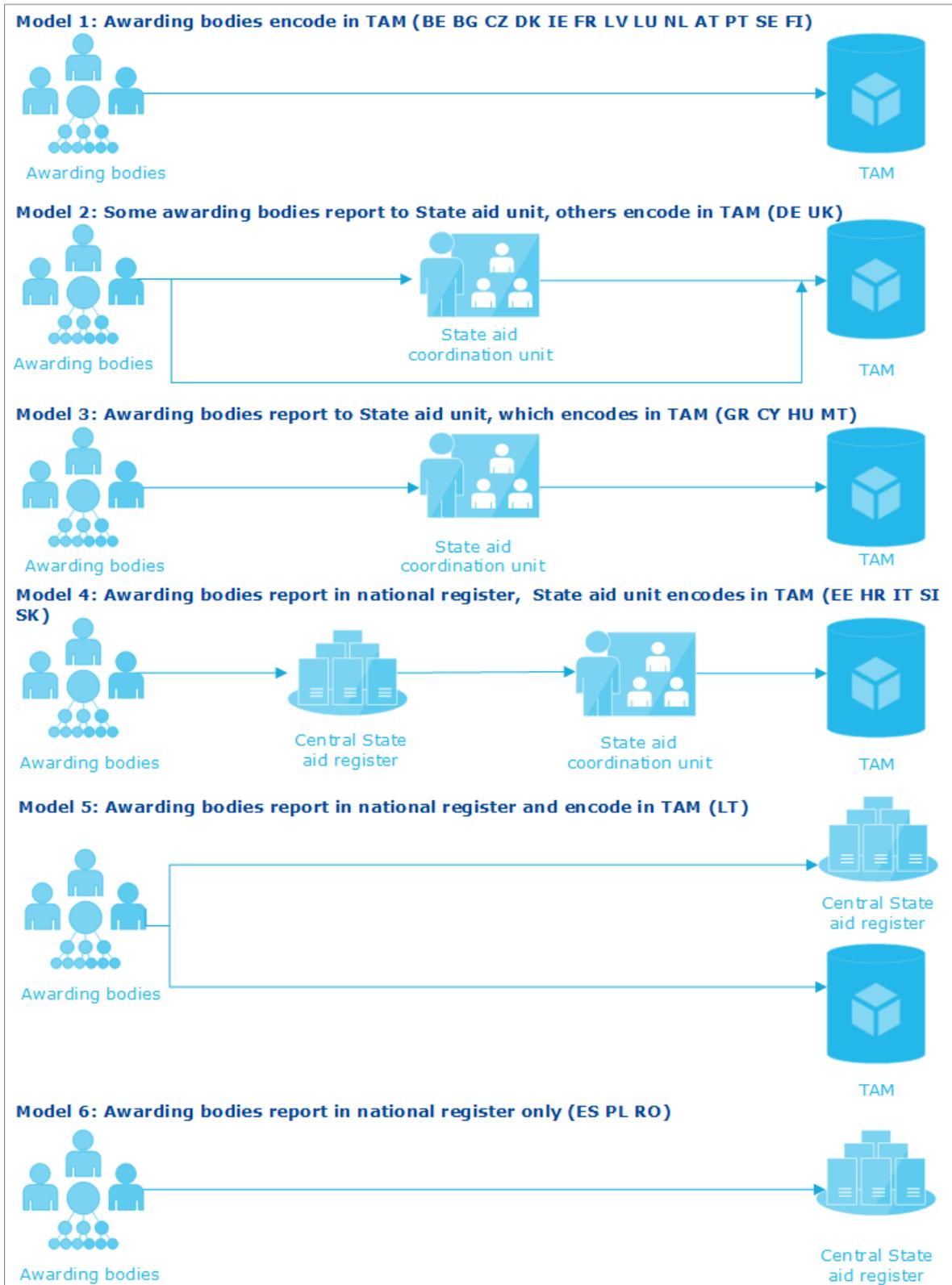
In **Model 3, awarding bodies report large awards to the State aid unit** which encodes the data in TAM. Four countries follow this model – Greece, Cyprus, Hungary and Malta. In all four there are at least some checks carried out on the data provided by awarding bodies. In Greece there is a two-tier structure with State aid units in 15 ministries, as well as a central State aid unit which ultimately encodes the data. Cyprus and Greece are in the process of developing central State aid registers, due for completion in 2020. It is not known how this will affect reporting mechanisms.

In **Model 4, awarding bodies encode data in a central State aid register and the State aid coordinator uses this to encode TAM**. This approach is taken in five countries – Estonia, Croatia, Italy, Slovenia and Slovakia. In Estonia, the national register long predates the transparency obligation (2009) while in Slovenia data has been collected since 2002. Arrangements in Italy, Croatia and Slovakia post-date the GBER. Note that in Slovakia awarding bodies are only obliged

to report awards over €500,000 and *de minimis* support in the central State aid register. Automation of the reporting process between central registers and the TAM appears to be very limited – Italy reports bulk uploading in batches, but only partial interoperability between its domestic register and TAM; the remaining countries report no interoperability (but also fewer relevant cases).

In **Model 5, awarding bodies report to both the national register and TAM**. Lithuania alone falls into this category. This arrangement appears to result from the fact that the scope of the national register is more limited than TAM.

**Figure 1: Reporting flows and transparency obligations**



Source: EPRC research.

In **Model 6**, awarding bodies report in the national register only and transparency obligations are not fulfilled through TAM at all. Spain, Poland and Romania take this approach. In all three cases, the central registers go significantly beyond TAM to include aid of all sizes, including *de minimis* support. In Spain the system dates back to 2000 and was adapted to the EU transparency

obligation in 2014. In Poland, the register was established in 2006 for *de minimis* support but contains data on all other aid awards since 2016. The Spanish and Polish registers are publicly accessible. The Romanian register was set up in 2016; while it contains data on all awards, including *de minimis* support, it is not publicly accessible and the transparency obligations are fulfilled through the automatic extraction and publication of awards over €500,000 on the Competition Council website.

### 2.2.3. *Timing of reporting*

Under the GBER, awards exceeding €500,000 must be reported in the TAM or the national register within six months. It is therefore pertinent to consider whether *domestic* deadlines are imposed on awarding bodies. In practice, approaches to deadlines do not lend themselves to straightforward classification (and precise information is not always easy to obtain if not contained in published texts). Nevertheless, it is clear that where there are national registers and / or State aid coordination units that have an active role in TAM encoding, then deadlines are more prevalent. Conversely, where there is no such provision, the GBER requirements are not usually embellished in any way.

As would be expected in **Model 1** and **Model 2** countries, there are no domestic time limits imposed, awarding bodies being deemed largely responsible for their own reporting. The exception among these countries is **Latvia**, where awarding bodies are required to report quarterly – by 1 January, 1 April, 1 July and 1 September – after the date of the award.

In **Model 3** countries, the State aid monitoring authorities encode data in TAM:

- In **Greece**, the Decentralised State Aid Units encode the data *on receipt* from the awarding bodies, though it appears that no timetable is imposed on the latter.
- In **Hungary**, awarding bodies must report large awards to the State Aid Monitoring Office *every four months* in order to ensure that the six-month deadline is met at national level.
- In **Malta** awarding bodies are ‘encouraged’ to report to the State Aid Monitoring Board on a *quarterly* basis.
- In **Cyprus** no explicit information on timing is available, but the requirement may be less acute, as in Malta, given the small size of the country and the proximity of different parts of the public administration.

In **Model 4** countries, compliance is also a two-stage process – reporting to the national register and extraction of the data for the TAM by the State aid coordinating bodies. This typically results in more stringent reporting schedules, partly because reporting in the national registers often incorporates some checks on eligibility. As a result, the original award decision may be encoded in real time in the national register, and then encoded in TAM either in real time or in batches:

- In **Estonia** awards are encoded in TAM the day after appearing on the national register (but it is not clear what time limits apply to national reporting).
- In **Croatia** it appears that the national register is updated in real time (as it includes some key eligibility checks), but it is not clear how often the National State Aid Coordinator updates TAM.

- In **Italy** it also appears that the national register is updated in real time by awarding bodies; awards are bulk uploaded to TAM every 3-4 months.
- In **Slovenia** awards must be included on the national register within 30 days of the award; it is not clear how frequently the State Aid Monitoring Department encodes in TAM (but there are few awards to encode).
- In **Slovakia** awarding bodies must record large awards in the national register within 6 months of the award.

**Model 5** applies only to Lithuania, where awarding bodies appear to encode awards in the national register, and if relevant in TAM, as they take place.

In the **Model 6** countries, transparency obligations are met through national registers, to which awarding bodies report directly:

- In **Spain** it appears that awards are recorded in real time since the national register, BNDS, has a high degree of interoperability with other systems that determine eligibility.
- In **Poland** awards must be reported in the national register, SUDOP, by the 30<sup>th</sup> day of the month following the award.
- In **Romania** the deadline for reporting awards in the national register, RegAS, is seven working days from the award.

### 2.3. OPERATIONAL AND TECHNICAL ISSUES

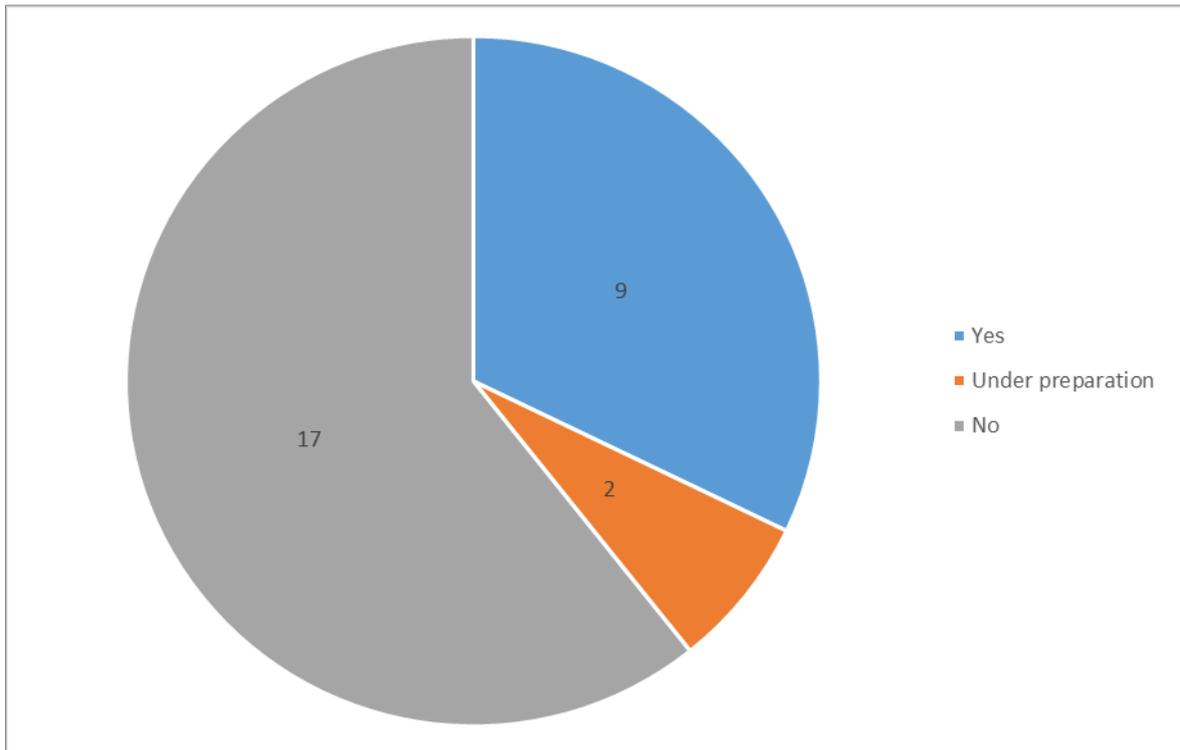
This section considers two aspects of State aid compliance management that go beyond the transparency obligation *per se*. These concern the role and scope of **national State aid registers** and, partly related, the **interoperability of domestic systems for addressing compliance**.

#### 2.3.1. *The role and scope of national registers*

In Models 4 and 6, national State aid registers play a central role in ensuring compliance with the transparency obligations, either because the register is itself the means of ensuring compliance (ES RO PL) or because it provides the basis for encoding the TAM.

**National registers currently operate in nine Member States** (EE HR IT SI SK LT ES PL RO). **Greece and Cyprus have national registers under development** and expected to be operational in 2020. In **Finland, there are proposals for a national register**, but its scope would be partial – it would only include central government aid, but would exclude tax schemes and aid for agriculture, forestry and fishing; progress with the proposals has been delayed by Covid-19.

**Figure 2: Use of national State aid registers**



Source: EPRC research

The key characteristics of the national State aid registers in place are set out in Figure 3. This shows that the history and practice of Member States differs quite widely.

In most cases the **set-up date** confirms that the registers have been established (or extended) in order to meet the European Commission transparency obligations, but in Estonia and Spain the practice of collating this data long predates this requirement.

The **scope** of the registers differs, with Spain including transactions that do not involve State aid. However, the principal difference lies in whether or not support for agriculture, forestry and fisheries is encoded in the same register. In all nine cases *de minimis* support is included, and sometimes *de minimis* support for agriculture and fisheries appears to be included (EE, RO), even if larger awards to these sectors is not. Slovakia is unusual in not requiring comprehensive reporting in the national register – awarding bodies *may* report all awards, but are only obliged to report those over €500,000 and *de minimis* support.

There are also differences in the extent to which **registers are made public**. In Slovenia the register is internal to the administration, while Croatia and Romania only make public information on awards anyway required by the Commission transparency requirements. Lithuania proposes to make its register public in 2020.

**Figure 3: National State aid registers**

MS	Model	Set-up date	Scope	Public
EE	4	2009	All aid <i>except</i> agriculture, forestry and fishing, but including all <i>de minimis</i>	Yes
HR	4	2014	All aid including <i>de minimis</i> , except agriculture, forestry and fishing	No, only >€500k
IT	4	2016	All aid including <i>de minimis</i> , except agriculture, forestry and fishing	Yes
SI	4	2014 but data being collected since 2002	All aid awards above €0.10	No
SK	4	2015	All sectors, but only reporting on >€500k and <i>de minimis</i> support are obligatory	Yes
LT	5	2015 ( <i>de minimis</i> since 2005)	All State aid and <i>de minimis</i> , but fields not as extensive as TAM	From 2020
ES	6	2000	All types of intervention, going beyond State aid <i>per se</i> , above €100.	Yes
PL	6	2016 ( <i>de minimis</i> since 2006)	All general aid including <i>de minimis</i> in SUDOP; SRPP for agriculture	Yes
RO	6	2016	All aid except agriculture, forestry and fishing, but including all <i>de minimis</i>	No, only >€500k

**Note:** Model refers to the reporting flows for transparency compliance shown in Figure 1 above.

**Source:** EPRC research

There are two further points to note regarding registers. First, even in the absence of a **central** State aid register, information is often accessible, though clearly it is likely to be less comprehensive, as well as less convenient to access. **Many awarding bodies or parent ministries operate registers** which are publicly accessible online – in Sweden, for example, more than half of awarding bodies do so. Second, a number of countries that do not have central registers do have *de minimis* registers (BG CZ GR LV LU HU PT), though few of these are in the public domain.

### 2.3.2. Specific compliance issues and interoperability of domestic systems

The existence of central (and *de minimis*) registers provides some opportunities for assessing specific compliance issues. This is not to suggest that eligibility checks are necessarily weaker in the absence of centralised registers, but rather that little is known about how such checks are done, given that responsibility rests with awarding bodies and the processes are both decentralised and often diverse. Nevertheless, among countries where there is a degree of centralisation, there are some interesting examples of interoperability between domestic systems which enable certain criteria to be checked. These include the following:

- In **Estonia** a number of checks are wholly or partially automated. For example, aid to a beneficiary on the *Deggendorf* list cannot be encoded in the national register until the debt is cleared. In addition, there is scope to check the residual *de minimis* support available before making a further award. The State aid register is linked to the national business registration system. Thus, when users enter the company code into the national register, they automatically receive information about the legal form of the company, NACE codes and address.
- In **Spain**, the national register, BDNS, goes significantly beyond the TAM requirements. A number of dimensions are checked through the BDNS when awarding bodies make entries. These include access to criminal court rulings on fraud, tax irregularities and embezzlement, which would exclude an applicant from eligibility, and the scope to check cumulation and *de minimis* limits.

- In **Italy** the national register, NAR, does not directly monitor or control eligibility criteria, but provides tools for administrators, so that they can verify these requirements. In particular, the NAR offers: a company search (chamber of commerce company registration 'visure'); an aid search (for information on the risk of cumulation) ; a *de minimis* search (on which there is cooperation with other systems); and a *Deggendorf* list search. The NAR interfaces with the business register in real time. A certificate is produced for each award, which reports the number of employees and information on the financial statements of the company. These elements help awarding bodies to check firm size and other requirements and provide a tool for the single undertaking identification, firms in difficulty and SME dimension/legal form control. Furthermore, the system automatically blocks the award procedure if the cumulation ceiling has been exceeded.
- In **Romania** the national register RegAS enables awarding bodies to undertake *ex-ante* verification of the eligibility of beneficiaries of State aid / *de minimis* support and helps to reduce the time involved for granting authorities to verify compliance with State aid legislation. RegAS includes information on 'single undertaking' structures for past beneficiaries.
- In **Slovenia** the national State aid register is linked with the Slovenian Companies Register (AJPES database) for the purpose of identifying firms in difficulty and verifying the single undertaking principle. There are also plans to connect the State aid register to the business results of enterprises (balance sheets and profit/loss accounts).
- In **Slovakia** the national register SEMP enables cumulation and *de minimis* criteria to be checked, preventing awards from being made that would exceed the *de minimis* ceiling. A special report can be generated within SEMP to verify the single undertaking principle.

### 3. ASSESSING THE EFFECTIVENESS OF DIFFERENT APPROACHES TO TRANSPARENCY

This section explores the available data on compliance with the transparency requirements and considers to what extent apparent differences in levels of compliance can be attributed to different transparency systems.

This section is in three parts. It begins with an assessment of the available data, looking at how, and how far, it can be used to measure compliance. Second, it provides an overview of patterns of reporting delays. Last, it seeks to explain those delays, exploring the role of transparency systems and other pertinent criteria.

#### 3.1. COMPLIANCE DATA

##### 3.1.1. Background

The starting point for the analysis was the data underpinning the 2019 Compliance Report.<sup>6</sup> The compliance report considers **two dimensions**:

1. Whether or not awards over the €500,000 threshold were reported. This assessment links information reported through SANI2/ISIS, TAM and annual reporting for the State aid scoreboard (SARI). This is analysed in 'Checks Update'.<sup>7</sup>
2. Whether the deadline for reporting was respected. Delays occur at the level of individual awards and are tracked and assessed in 'Quality Update'.<sup>8</sup>

##### (i) Compliance in Reporting Aid Awards - Checks Update

This analysis operated at the level of the **aid measure**. It made use of three linked datasets:

- the budget and *expected* number of recipients reported in SANI2/ISIS;
- reporting of awards exceeding €500,000 through TAM; and
- annual expenditure reporting through SARI for the Scoreboard.

Note that SARI requires the amount paid, but not the number of recipients. Clearly these three datasets provide different perspectives on anticipated or actual spend, but nevertheless enable some insights into when TAM reporting is likely to have been required.

The anticipated average amount spent per beneficiary can be calculated by combining information from both SANI2/ISIS and SARI. If this exceeded €500,000, then some reporting through TAM would be expected; if this was absent then the Commission sought clarification from the Member State. If the average award was less than €500,000, but the amount reported in TAM less than 25 percent of the amount reported in SARI, then clarification was also sought from the Member State.

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<sup>6</sup> Results 2019 Compliance Checks exercise – Transparency (Internal Report, Unit A3 DG COMP).

<sup>7</sup> Final results - 2019 compliance checks\_update 01022020 (Excel) – measure-based data.

<sup>8</sup> Final results - 2019 compliance checks – quality update 01022020 (Excel) – award-based data.

In practice, however, Member States *typically do not report the anticipated number of beneficiaries in SARI* (see Figure 4), so for the vast majority of measures, average awards cannot be estimated. In these cases, the Commission also sought clarification from the Member State.

**Figure 4: Availability of data on estimated number of beneficiaries per scheme**

Measures	Number
Number of measures assessed in <i>Checks Update</i>	2401
Of which, aid schemes (not <i>ad hoc</i> / individual awards)	2005
Of which measures providing estimated number of beneficiaries	148

Source: EPRC calculations from DG COMP Final results - 2019 compliance checks\_update 01022020.

The clarification process undertaken with the Member States in spring/summer 2019 resulted in the measures examined receiving a ‘final classification’ as follows:

- Direct compliance issues
- No compliance issues
- Not under the Transparency<sup>9</sup>

The outcomes are summarised in Figure 5 and suggest that compliance issues arose in 329 of the measures analysed (13.7 percent of the total) and that expenditure associated with these measures (not all of which would necessarily be implicated in the transparency requirement – i.e. some of the awards made would not meet the reporting threshold) amounted to some €47.425 billion (26.9 percent of the total under the measures assessed).

**Figure 5: Compliance issues – final classification**

Compliance / Measure Type	Number of measures	%	Amount spent €m	%
<b>Direct Compliance Issues</b>	<b>329</b>	<b>13.7</b>	<b>47,425</b>	<b>26.9</b>
<i>Ad hoc</i> / individual aid	55	2.3	451	0.3
Aid schemes	274	11.4	46,974	26.6
<b>No Compliance Issues</b>	<b>1643</b>	<b>68.4</b>	<b>113,185</b>	<b>64.2</b>
<i>Ad hoc</i> / individual aid	299	12.5	8,945	5.1
Aid schemes	1344	56.0	104,240	59.1
<b>Not under the Transparency</b>	<b>429</b>	<b>17.9</b>	<b>15,759</b>	<b>8.9</b>
<i>Ad hoc</i> / individual aid	42	1.7	3,732	2.1
Aid schemes	387	16.1	12,027	6.8
<b>Total</b>	<b>2401</b>	<b>100.0</b>	<b>176,369</b>	<b>100.0</b>

Source: EPRC calculations from DG COMP Final results - 2019 compliance checks\_update 01022020.

<sup>9</sup> Some measures that may have made awards exceeding €500,000 since 1 July 2016 are *not subject to the transparency requirement* – because in the past this was not imposed in Commission decisions on notified measures (this is now imposed consistently).

It is useful to distinguish between aid schemes and individual/*ad hoc* awards (both are treated as 'measures' in SANI) for several reasons:

- first, because an aid *scheme* may comprise numerous awards, any number of which may be non-compliant, whereas an *ad hoc* measure involves only one or a very few awards;
- second, and related, the overall expenditure involved in schemes is much more significant – *ad hoc* awards deemed non-compliant in the Commission analysis accounted for just 0.3 percent of total aid expenditure under the measures examined, while non-compliant aid schemes accounted for 26.6 percent;
- third, the award decision making process for an *ad hoc* award may differ from that under aid schemes. For example, *ad hoc* awards may be made by administrators who are less used to the State aid rules and / or who *may* assume that SANI reporting of an *ad hoc* award under the GBER is sufficient to meet all transparency requirements. Conversely, by their very nature, *ad hoc* awards are more high profile, less 'routinised' and greater care may be taken to ensure compliance with the various requirements.

(ii) Compliance in Timing of Publication of Award Decisions - Quality Update

This analysis operated at the level of the **award decision**, using output from the TAM. Specifically, it assessed whether Member States fulfilled their obligations regarding the timing of publication of information on awards exceeding €500,000. This is generally six months, but in the case of fiscal aid schemes is one year from the date the tax declaration is due. This analysis could not include Poland and Romania which use national registers which did not incorporate a reporting date (at least at that time). Among the remaining Member States, some 53,036 awards were assessed of which around 37 percent were reported after the deadline.

For the purposes of this study an **updated dataset** was provided by the Commission. This was downloaded from TAM on 25 May 2020 and the entries for Spain from the national register added by the Commission,<sup>10</sup> bringing the total number of entries to 93,290.

This dataset was 'cleaned' as follows for the purposes of the study:<sup>11</sup>

1. Entries for Iceland were removed as it is not part of the study.
2. Only awards with the legal basis GBER/BER or Guidelines and Treaty Objectives were retained. The main purpose of this was to eliminate awards under ABER, FIBER and the guidelines for the agricultural and fisheries sectors. The justification for this is that the country profiles focus on general State aid – i.e. that under the GBER and horizontal guidelines. However, a by-product of this was to eliminate the entries for Spain as the national register does not record this information.
3. The single award for Romania was removed as this appeared to arise from a cross-border programme.
4. This process resulted in a dataset comprising 79,534 entries.
5. Among these were some 33,164 entries where the Estimated Granted Amount was less than €500,000 – i.e. less than the reporting threshold:

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<sup>10</sup> It was not feasible to add data for the other two countries operating national registers, namely Poland and Romania.

<sup>11</sup> As described below the data was further cleaned to enable the quantitative analysis (Section 3.3).

- In 5,130 of these cases, this is explained by the use of ranges for tax measures, with the lowest range resulting in an estimated granted amount of €250,000.
- In the remaining cases there may be different explanations for TAM entries below the threshold, including: decimal point errors (e.g. assumption that reporting is in €m, not €); aid cumulation – i.e. multiple awards to the same undertaking that do not individually reach the threshold; granting authority decisions to report all awards, irrespective of size; possible exchange rate issues or other uncertainties.

The key differences between the *Quality Update* dataset used in 2019 Commission Compliance Checks and this new *Delays Analysis* dataset are as follows:

- *Delays Analysis* excludes awards under ABER, FIBER and the guidelines for the agricultural and fisheries sectors; these were not explicitly identifiable in *Quality Update* but, based on the activity of the beneficiaries, clearly accounted for a significant proportion.
- *Delays Analysis* includes awards *reported* between 23 May 2019 and 25 May 2020; some 3,525 awards made in 2016-17 were only reported after the *Quality Update* closed.

### 3.1.2. *Data issues and interpretation*

#### (i) *Compliance in Reporting Aid Awards - Checks Update*

In *Checks Update*, the absence of data on the number of beneficiaries in SANI and the small number of measures for which an estimate is available from SARI are significant constraints on the capacity to capture measures that would be expected to report awards in TAM. As a result, the analysis has to rely on a ‘rule of thumb’ to identify *potential* compliance issues, followed through with clarification from Member States to reach a final classification. However, two issues arise from this approach which limit the extent to which the *Checks Update* data can be used to assess the effectiveness of Member State transparency systems.

1. Inclusion of *innocuous* measures in the Direct Compliance Issues classification: it seems possible that a number of measures classed as non-compliant would, in reality, be unlikely to have made awards requiring TAM reporting.
2. Inclusion of *non-compliant* measures in the No Compliance Issues classification: conversely, it also seems that the rule of thumb is insufficiently stringent to capture all measures that failed to report large awards.

These two issues are now discussed in turn.

The possibility that **some ‘innocuous’ measures have been deemed non-compliant** arises from the fact that *annual* expenditure under some of these measures is quite low and that an award requiring TAM reporting could therefore account for a significant proportion of expenditure. That said, it is also important to recognise that *Checks Update* analyses TAM data, which refers to awards, effectively *commitments*, alongside *expenditure* data which concerns commitments in earlier years. As such, expenditure in a given year is not indicative of commitments. Nevertheless, it may be that a number of measures flagged as non-compliant, and where the Member State did not provide the clarification required, were actually compliant.

It can also be shown that some **measures deemed to have no compliance issues were in fact not fully compliant** with TAM reporting at the time of the Commission analysis.

This point is illustrated in Figure 6 which is derived from an updated TAM download provided by the Commission,<sup>12</sup> cross tabulated with the results of *Checks Update*. This shows TAM reporting under aid schemes deemed to have *no compliance issues* in the checks update. Of the total 28,431 TAM awards, 13,950 were made on time; 13,280 were late, but before 23 May 2019 when the Commission *Quality Update* was closed; a further 1,201 awards were reported in TAM after the Compliance Checks Exercise data was finalised. **In short, over half the awards reported to TAM under aid schemes deemed to have no compliance issues were late.**

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<sup>12</sup> This data was downloaded from TAM on 25 May 2020. Poland, Romania and Spain were not included in this dataset as all operate domestic registers in place of TAM.

**Figure 6: TAM Reporting in Aid Schemes with *No Compliance Issues***

	On time (OT)	Late (LATE)	After COM Quality Checks (PQC)	Total
Austria	355	118	11	484
Belgium	274	142	33	449
Bulgaria	125	59		184
Croatia		35		35
Czech Republic	671	212		883
Denmark	79	276	23	378
Estonia	51	10	1	62
Finland	182	291	7	480
France	1206	684	414	2304
Germany	6718	2737	96	9551
Greece		1		1
Hungary	714	3540	26	4280
Ireland	32	90		122
Italy	195	1678	486	2359
Latvia	25	2		27
Lithuania	117	27		144
Luxembourg	45	1		46
Malta	11	49		60
Netherlands	68	1736	1	1805
Portugal	1843	880	1	2724
Slovakia	76	72		148
Slovenia	9	31	6	46
Sweden	556	146		702
United Kingdom	598	463	96	1157
<b>Total</b>	<b>13950</b>	<b>13280</b>	<b>1201</b>	<b>28431</b>

**Note:** This table only covers awards made in 2016-17. 'Late' refers to reporting after the deadline, but before the Commission quality checks closed – 23 May 2019; PQC refers to reporting after 23 May 2019.

**Source:** EPRC calculations from DG COMP Final results - 2019 compliance checks\_update 01022020 and *Delays Analysis*.

More specific information is provided in Figure 7, which shows that:

- Of the 1,344 aid schemes with no compliance issues (see Figure 5), 303 schemes registered a total of 13,280 awards in the TAM belatedly, albeit before *Quality Update* closed on 23 May 2019;
- Some 84 aid schemes found to have no compliance issues in *Checks Update* reported at least some TAM awards after 23 May 2019 (32 of these aid schemes *only* reported awards in the TAM after 23 May 2019 – i.e. all of their reporting was after *Quality Update* closed).

**Figure 7: Late TAM Reporting in Aid Schemes with *No Compliance Issues***

	Late		After COM Quality Checks (PQC)	
	Aid schemes	Awards	Aid schemes	Awards
Austria	18	118	1	11
Belgium	14	142	4	33
Bulgaria	2	59		
Croatia	3	35		
Czech Republic	11	212		
Denmark	13	276	5	23
Estonia	4	10	1	1
Finland	13	291	2	7
France	20	684	11	414
Germany	55	2737	18	96
Greece	1	1		
Hungary	34	3540	5	26
Ireland	4	90		
Italy	39	1678	28	486
Latvia	2	2		
Lithuania	6	27		
Luxembourg	1	1		
Malta	3	49		
Netherlands	17	1736	1	1
Portugal	6	880	1	1
Slovakia	2	72		
Slovenia	5	31	2	6
Sweden	7	146		
United Kingdom	23	463	5	96
	<b>303</b>	<b>13280</b>	<b>84</b>	<b>1201</b>

Source: EPRC calculations from DG COMP Final results - 2019 compliance checks\_update 01022020 and *Delays Analysis*.

Against this background, it can be seen that ‘Checks Update’ does not provide a conclusive assessment of whether or not aid measures had direct compliance issues – indeed at aid scheme level, almost a quarter of measures had made at least some awards that had not been reported on time. In short, there are compelling reasons to conclude that:

- some measures which are unlikely to have made large awards have been deemed as having Direct Compliance Issues; and that
- some aid schemes classified as having No Compliance Issues have not in practice complied with the Transparency requirements.

This in turn suggests that the *Checks Update* data is insufficiently robust to use with confidence in ‘testing’ the effectiveness of national transparency systems.

(ii) *Compliance in Timing of Publication of Award Decisions - Quality update*

As explained above (see Section 3.1.1(ii)), the study used an updated extract from TAM, termed *Delays Analysis*. The Delays Analysis dataset is more sharply focused on the GBER and horizontal aid schemes (which are the topic of the country profiles). At the same time, this dataset allows for some consideration of Member State responses to the Commission compliance checks process. Nevertheless, **a major limitation of this dataset remains – it can only assess the timeliness of reporting that was done; it is silent on whether or not reporting should have been done.**

This major caveat notwithstanding, the following two sections explore this data to provide an overview of compliance with the reporting deadlines (Section 3.2); and the extent to which patterns of compliance are related to specific country characteristics (Section 3.3).

### **3.2. DELAYS ANALYSIS: AN OVERVIEW**

The aim of this section is to provide a narrative of the key patterns emerging from the *Delays Analysis* dataset.

Across all years, **60 percent of awards were reported on time and 40 percent late** (see Figure 8). However, there are wide variations in the number of awards reported – Italy and Germany together account for 40 percent of all awards reported. There are also significant differences in the timeliness of reporting: Cyprus has a 100 percent record (based on a single award), while just five percent of awards in Croatia were reported within the deadline.

Figure 8: TAM awards reported on time and late as at 25 May 2020 (all years)

	On time		LATE		Total
	Awards reported	Awards reported %	Awards reported	Awards reported %	Awards reported No
Austria	1416	85%	241	15%	1657
Belgium	1154	59%	804	41%	1958
Bulgaria	418	47%	474	53%	892
Croatia	9	5%	164	95%	173
Cyprus	1	100%		0%	1
Czech Republic	1840	87%	286	13%	2126
Denmark	629	62%	379	38%	1008
Estonia	267	84%	51	16%	318
Finland	615	55%	510	45%	1125
France	3553	59%	2429	41%	5982
Germany	12056	76%	3856	24%	15912
Greece	344	69%	156	31%	500
Hungary	2871	37%	4992	63%	7863
Ireland	234	48%	252	52%	486
Italy	9985	64%	5546	36%	15531
Latvia	381	75%	127	25%	508
Lithuania	418	66%	213	34%	631
Luxembourg	111	93%	8	7%	119
Malta	59	46%	68	54%	127
Netherlands	1242	17%	5889	83%	7131
Portugal	3947	79%	1035	21%	4982
Slovakia	279	74%	97	26%	376
Slovenia	17	27%	47	73%	64
Sweden	2944	54%	2558	46%	5502
United Kingdom	3177	70%	1385	30%	4562
<b>Total</b>	<b>47967</b>	<b>60%</b>	<b>31567</b>	<b>40%</b>	<b>79534</b>

Source: EPRC calculations from *Delays Analysis*.

In considering the timeliness of reporting, it is important to consider *when* awards were made. Figure 9 shows that **late reporting has declined over time**, although this pattern is not consistent across all countries. Nevertheless, on average, there is a notable 'improvement' in 2018 when the number of awards reported was significantly higher than in 2017, but a larger share was done on time. However, a much smaller number of awards has been reported for 2019 and while there was still time for some awards (most notably fiscal aids) to be reported on time, the share of late reporting of awards made in 2019 could yet increase significantly. On the other hand, by end May 2020, awards made in 2020 could not yet be late.<sup>13</sup>

<sup>13</sup> For this reason, the analysis in Section 3.3 below does not include awards made in 2019.

**Figure 9: Trends in the timeliness of TAM reporting by year of award**

	On time		LATE		Total
	Awards reported	Awards reported %	Awards reported	Awards reported %	Awards reported
2016	5113	38%	8277	62%	13390
2017	11113	52%	10179	48%	21292
2018	16570	66%	8483	34%	25053
2019	13635	75%	4628	25%	18263
2020	1536	100%		0%	1536
<b>Total</b>	<b>47967</b>	<b>60%</b>	<b>31567</b>	<b>40%</b>	<b>79534</b>

Source: EPRC calculations from *Delays Analysis*.

Among awards that are reported to TAM after the deadline, the **delay in reporting has tended to become shorter**. However, a longer data set is required to know whether this pattern is established since, by definition, reporting delays are shorter in more recent years.

**Figure 10: Trends in TAM reporting delay (Months)**

	2016	2017	2018	2019
Austria	6.4	6.1	6.8	1.5
Belgium	27.0	16.6	6.0	2.8
Bulgaria	29.6	2.9	8.3	1.9
Croatia	23.4	17.0	9.9	4.3
Czech Republic	6.3	3.3	7.4	3.3
Denmark	8.9	7.9	6.1	2.5
Estonia	3.0	2.5	4.2	2.8
Finland	1.7	2.0	1.9	2.3
France	13.4	15.7	8.4	2.6
Germany	6.0	7.4	4.0	2.2
Greece		17.8	3.6	2.0
Hungary	4.8	7.3	5.4	3.0
Ireland	4.8	6.5	3.2	3.3
Italy	17.7	8.3	8.2	3.5
Latvia	0.3	5.8	2.3	1.1
Lithuania	26.3	14.1	9.6	2.3
Luxembourg	2.7	5.2		0.3
Malta	15.0	4.7	2.6	0.7
Netherlands	9.2	4.1	4.9	4.2
Portugal	1.7	4.8	2.5	2.6
Slovakia	29.2	3.5	1.8	1.0
Slovenia	21.7	10.4	3.8	2.4
Sweden	22.0	14.4	6.2	3.5
United Kingdom	18.3	9.9	7.8	1.2
<b>Total</b>	<b>9.6</b>	<b>8.4</b>	<b>6.4</b>	<b>3.6</b>

Source: EPRC calculations from *Delays Analysis*.

As might be expected, the legal basis for the award has an impact on timeliness of reporting. Specifically, **awards based on the GBER are more likely to be reported on time** than those based on the Treaty or on specific guidelines. This likely reflects the fact that failure to comply with all of

the GBER conditions may lead to the withdrawal of the cover provided by the block exemption and a requirement to notify proposed aid instead.<sup>14</sup>

**Figure 11: Timeliness of TAM reporting by legal basis**

	On time		Late		Total
Legal basis	Awards reported	Awards reported %	Awards reported	Awards reported %	Awards reported
BER/GBER	35703	64%	20159	36%	55862
Guidelines & Treaty objectives	12264	52%	11408	48%	23672
<b>Total</b>	<b>47967</b>	<b>60%</b>	<b>31567</b>	<b>40%</b>	<b>79534</b>

Source: EPRC calculations from *Delays Analysis*.

The vast majority of awards reported (99 percent +) are made under aid schemes – see Figure 12. However, **ad hoc awards and individual aids are more likely to be reported on time** than awards under schemes (see Figure 12). As noted earlier, there are reasons to think that this may be associated with the less ‘routinised’ administration and higher profile of such awards – though again it must be stressed that this dataset considers only the timeliness of reporting, and cannot account for awards that were not reported at all.

**Figure 12: Timeliness of TAM reporting by type of measure (all years)**

	On time		LATE		Total
	Awards reported	Awards reported %	Awards reported	Awards reported %	Awards reported
<b>Ad hoc / individual</b>	468	68%	222	32%	690
<b>Schemes</b>	47466	60%	31329	40%	78795
<b>No information</b>	33	67%	16	33%	49
<b>Total</b>	<b>47967</b>	<b>60%</b>	<b>31567</b>	<b>40%</b>	<b>79534</b>

Source: EPRC calculations from *Delays Analysis*.

Most awards take the form of ‘direct aid’ – grants, interest rate subsidies, employment premia. Although more prevalent, **direct aid is more likely to be reported late than other aid instruments** -see Figure 13. This factors in the additional delay allowed for reporting fiscal aids. It may be surprising that financial instruments (FIs) are more likely to be reported on time than direct aid since the degree of delegation in the implementation of policy tends to be greater; nevertheless, the TAM data suggests that (among awards actually reported, of course) this is the case.

<sup>14</sup> GBER, Article10.

**Figure 13: Timeliness of TAM reporting by type of aid instrument (all years)**

	On time		LATE		Total
	Awards reported	Awards reported %	Awards reported	Awards reported %	Awards reported
Direct aid	31185	54%	26676	46%	57861
FIs	4603	72%	1793	28%	6396
Fiscal aid	12179	80%	3098	20%	15277
<b>Total</b>	<b>47967</b>	<b>60%</b>	<b>31567</b>	<b>40%</b>	<b>79534</b>

Source: EPRC calculations from *Delays Analysis*.

A significant proportion of State aid is co-financed through the European Structural and Investment Funds. **Co-financed awards are less likely to be reported late** than purely domestic aid – see Figure 14. Note that fiscal aids are excluded since they are assumed not to be co-financed. This is consistent with the scrutiny to which co-financed projects are subject, notably through the audit process, which may result in more timely TAM reporting; it does not, evidently, eliminate TAM reporting delays altogether.

**Figure 14: Timeliness of TAM reporting of co-financed aid and domestic aid**

Co-financed?	On time		LATE		Total
	Awards reported	Awards reported %	Awards reported	Awards reported %	Awards reported
No	16756	49%	17670	51%	34426
Yes	19032	64%	10799	36%	29831
<b>Total</b>	<b>35788</b>	<b>56%</b>	<b>28469</b>	<b>44%</b>	<b>64257</b>

Source: EPRC calculations from *Delays Analysis*.

Arguably the most important outcome from this descriptive overview of the *Delays Analysis* is that **a small number of awarding bodies is responsible for a large proportion of late TAM reporting**. This is illustrated in Figure 15 which shows the total number of granting authorities that have reported awards in TAM and, of these, how many have been responsible for reporting awards late. The final column shows *what percentage of late awards were the responsibility of the single worst performing awarding body* (i.e. the one which reported the largest number of late awards). The overall number of awarding bodies varies widely between countries; however, the performance of reporting in terms of timeliness is highly uneven and poor performance is concentrated in a few organisations. In several countries, a single body accounts for over two-thirds of late awards (Bulgaria, Czech Republic, France, Latvia, Luxembourg, Malta, Netherlands, Slovakia, Sweden). Even in Italy where the number of awarding bodies is very large (172), a single organisation is responsible for over one-sixth of late awards.

**Figure 15: Timeliness of TAM reporting and granting authorities**

	Number of awarding bodies reporting	Number of awarding bodies reporting late	Share of late award reports by the 'worst' performing awarding body
Austria	34	19	32
Belgium	22	15	44
Bulgaria	8	4	85
Croatia	8	8	45
Czech Republic	21	13	66
Denmark	20	15	59
Estonia	18	12	25
Finland	25	14	63
France	27	22	67
Germany	122	88	47
Greece	32	18	26
Hungary	29	29	59
Ireland	8	6	48
Italy	172	166	17
Latvia	10	5	93
Lithuania	9	7	44
Luxembourg	2	1	100
Malta	4	3	79
Netherlands	47	29	88
Portugal	11	10	52
Slovakia	12	8	73
Slovenia	5	4	38
Sweden	41	25	87
United Kingdom	40	28	41

Source: EPRC calculations from *Delays Analysis*.

### 3.3. EXPLAINING PATTERNS OF COMPLIANCE

From the discussion in Section 3.1 *ci-dessus*, it is evident that the data available can offer only a partial view of compliance. The *Checks Update* likely captures some innocuous measures and classified them as having Direct Compliance Issues, whilst also ‘clearing’ measures that can be shown to have failed to report TAM awards until significantly after the deadline. This data is not robust enough for the purpose of establishing the effectiveness of national transparency systems.

The *Quality Update* (now replaced with *Delays Analysis*) provides useful insights into the extent to which deadlines are met or overrun, but not on the extent to which reporting was complied with. In other words, it can say how late or otherwise reporting was done, but it is ignorant of those awards that should have been reported, but were not. Nevertheless, this data can be used to determine whether there are specific factors that affect the timeliness of the reporting that *is* done.

#### 3.3.1. Key predictors

This analysis used a number of key predictors from the dataset or existing published sources:

- **award value** – the hypothesis being that larger awards would be prominent in awarding body decision-making and might lead to a heightened awareness of compliance issues

- **fiscal measures** – that the combination of the longer deadline and the greater automaticity associated with fiscal measures might lead to fewer reporting delays
- **legal basis** – that the prominence of the reporting requirement under the GBER, the legal implication of failing to comply with the transparency requirements and the large number of routinised awards decisions would lead to reporting deadlines being more embedded in national decision-making processes
- **length of EU membership** – distinguishing between EU15 (pre-2004) and newer Member States, reflecting the finding that newer Member States have fewer infringement proceedings brought against them and *may* be considered more compliant<sup>15</sup>
- **quality of government** –that countries with higher quality of government are more likely to comply.<sup>16</sup>

In addition, using the Transparency systems characteristics database developed in Task 1.1, a **regulatory stringency** score was calculated, based on the hypothesis that countries with ostensibly more robust and formal procedures and systems would be more likely to report on time. Of course, the existence of such systems is not a guide as to whether they function effectively or are enforceable. Nevertheless, the following criteria were considered relevant:

- Is there a domestic legal basis for State aid compliance beyond the direct applicability of EU law? (Yes 5; No 0)
- Do domestic transparency requirements exceed EU requirements? (Yes 5; No 0)
- What is the role of the State aid coordinating body in State aid transparency? (Mandatory oversight 5; Advisory 0)
- Does the State aid coordinating body check TAM inputs? (Yes 5; No 0)
- Are there specific sanctions for non-compliance with transparency requirements? (Yes 5; No 0)
- Is there an ex-post audit on granting acts? (Yes 5; No 0)
- Is there a national State aid register? (Yes 5; No 0)
- Are there internal reporting deadlines that are less than 6 months? (Yes 5; Reminders 3; No 0)

This assessment resulted in a ‘regulatory stringency’ score for each country.

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<sup>15</sup> Toshkov D (2016) Compliance and enforcement of EU law: Who wins, who loses, and who settles, paper submitted to the Ninth Annual Conference on the Political Economy of International Organizations, University of Utah, Salt Lake City, Utah January 7-9, 2016.

<sup>16</sup> See Quality of Government Institute: <https://qog.pol.gu.se/data/datadownloads/qog-egi-data#:~:text=The%20European%20Quality%20of%20Government,next%20round%20expected%20in%202020.>

**Figure 16 : Regulatory stringency scores for State aid transparency systems**

Member State	Score
PL	35
ES	30
RO	30
HR	25
HU	25
SI	25
EE	20
SK	20
BG	15
GR	15
IT	15
CY	15
MT	13
LV	10
LT	10
LU	8
CZ	5
DK	5
FR	5
NL	5
SE	5
FI	5
UK	5
BE	0
DE	0
IE	0
AT	0
PT	0

Source: EPRC assessment from Task 1.1 Transparency system characteristics database.

### 3.3.2. Analysis

A first point to note is that the analysis could only be performed on a selection of the TAM entries because three filters were applied:

- the exclusion of awards made in 2019 and 2020, since there is still scope for awards in these years to be made on time, unlike awards made in 2016-2018;
- the removal of non-credible amounts (e.g. large German companies with awards of less than €100 euros) through the application of a filter of €1,000; and
- the need for at least 100 observations per country, which removes Cyprus, Luxembourg, Malta and Slovenia.

This reduces the N of observations from 79,534 to 57,145.

To explore the determinants of delays in the reporting of aid awards in TAM, a regression analysis was employed. The basic unit is the aid award. To take account of the pooled/nested nature of the data, a mixed effects binary logistic model was used to predict whether there was a reporting delay. Specifically, random effects were included for the nested structure involving grant authorities and country. The results of this analysis are shown in Figure 17.

The dependent variable is binary and measures whether the aid was reported within the reporting deadline (Yes or No). As noted, for non-fiscal aid the deadline is 6 months after the granting date and for fiscal aid 1 year after the ultimate deadline to submit the fiscal declarations. The key predictors of delay are the aid award amount (logged), the legal basis of the aid (Guidelines and Treaty objectives vs BER/GBER), and the nature of the aid instrument (fiscal versus non-fiscal measures). The impact of three country characteristics was also explored, namely: regulatory stringency in the State aid transparency system, using the index described above; the quality of government, using the EQI index; and length of EU membership (distinguishing EU15 from other Member States).

An incremental model fitting approach was pursued with model 1 to 4 including different specifications of fixed effects. Across all models it can be seen that of the two random effects (granting authority and country), the largest effect is due to variance among the granting authorities, which is much greater than the variance at the country level - as reflected in the intra-class correlation (ICC) values.

Model 1 introduces the key predictors related to the aid award, legal basis and fiscal measures. The results of this model confirm that:

- the higher the aid award value, the less likely it is to be delayed, but the effect is extremely small;
- aid reported under a BER/GBER legal basis is less likely to be delayed than aid with a legal basis on Guidelines/Treaty objectives; and
- fiscal measures are less likely to be delayed than non-fiscal measures.

Turning to the country predictors, the addition of the country characteristics regulatory stringency, new Member State and quality of government does not significantly improve the model fit (BIC scores). In sum, the country characteristics offer little explanatory power in accounting for timely publication of aid awards.

**Figure 17 : Mixed effects logistic regression - dependent variable is delayed reporting of aid awards**

	Model 1		Model 2		Model 3		Model 4	
<b>Predictors (fixed part)</b>								
Award value (log)	-0.034	(-4.062)***	-0.034	(-4.051)***	-0.034	(-4.061)***	-0.034	(-4.040)***
Fiscal measure	-2.352	(-35.355)***	-2.351	(-35.352)***	-2.352	(-35.328)***	-2.353	(-35.353)***
Legal base	-1.021	(-20.335)***	-1.021	(-20.327)***	-1.021	(-20.319)***	-1.021	(-20.325)***
Regulatory stringency			1.723	(3.021)*				
New Member State					0.521	(0.721)		
Quality of government							-0.881	(-3.467)***
<b>Variance (random part)</b>								
Granting authority (ICC)	0.59		0.64		0.76		0.65	
Country (ICC)	0.15		0.09		0.07		0.07	
N of observations	57145		57145		57145		57145	
BIC	50788.7		50793.1		50799.2		50791.3	

**Note:** Estimates are on the log odds scale with z values in parenthesis. Significance values: \* p<.05; \*\* p<.01; \*\*\* p<.001.

**Source:** EPRC calculations.



#### 4. IDENTIFICATION OF POTENTIAL CHANGES TO TRANSPARENCY REQUIREMENTS

One of the aims of the study is to identify possible changes to the transparency requirements that would facilitate compliance. This was addressed through semi-structured interviews with stakeholders in selected countries.<sup>17</sup> These were to include the three countries that do not use TAM (Spain, Poland and Romania) and up to five further countries selected to take account of:

- the results of the analysis undertaken
- geographical representativeness – north/south – east/west
- EU joining date (EU15 / post 2004 Member States)
- Total volume of granted aid.

The research undertaken suggests that countries fall into one of six transparency models (see Figure 1). For the purposes of the case studies, the following grouping can be applied:

- **Type I – awarding bodies (generally) encode in TAM directly** (comprising Models 1 and 2 in Figure 1)
- **Type II – State aid units encode in TAM** (comprising Models 3, 4 and 5 in Figure 1)
- **Type III - a national State aid register operates *instead* of TAM:** (Model 6 in Figure 1).

In terms of expenditure, State aid as a percentage of GDP can usefully identify key areas of focus (see Figure 19), though absolute spend is also relevant.

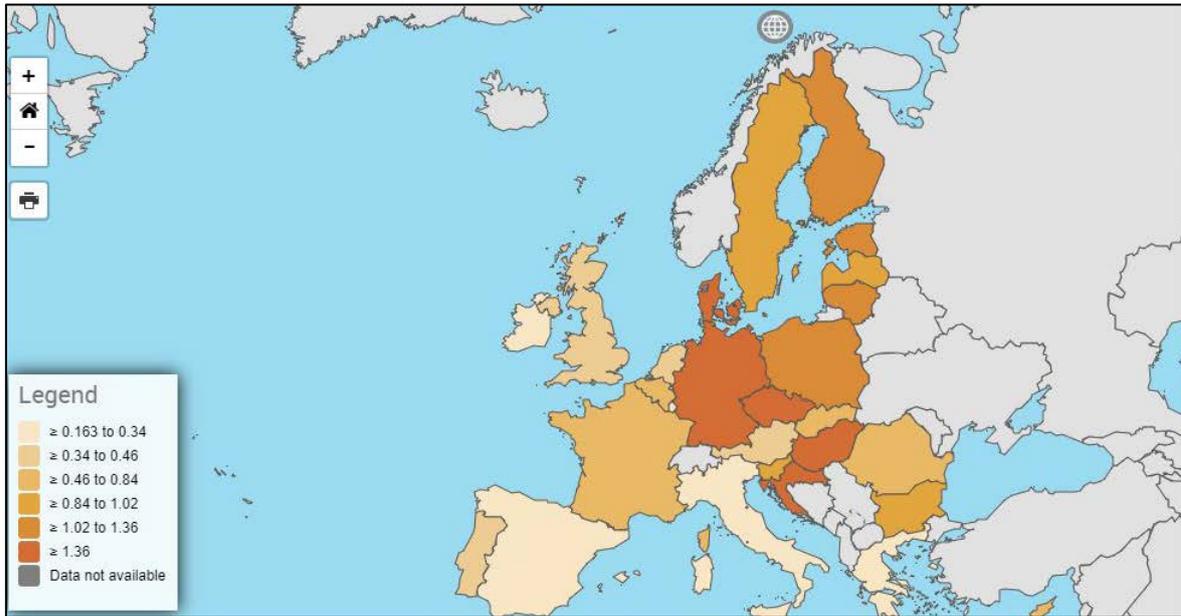
Taking these four elements into account, the following countries were proposed as case studies.

**Figure 18 : Case study countries and characteristics**

	Type	EU15/EU13	Geography	Spend (% of GDP)
<b>Czech Republic</b>	I	New	East	High
<b>Germany</b>	I	Old	West	High
<b>Netherlands</b>	I	Old	North	Low
<b>Estonia</b>	II	New	North	Medium
<b>Italy</b>	II	Old	South	Low
<b>Spain</b>	III	Old	South	Low
<b>Poland</b>	III	New	East	Medium
<b>Romania</b>	III	New	East	Medium

<sup>17</sup> The 'framework' questionnaire is appended to this report. This was adapted as required by specific national characteristics (such as whether a national register exists).

**Figure 19: State aid expenditure as % of GDP 2018**



Source: European Commission:

[https://webgate.ec.europa.eu/comp/redisstat/databrowser/view/AID\\_SCB\\_OBJ/default/map?lang=en&category=AID\\_SCB\\_OBJ](https://webgate.ec.europa.eu/comp/redisstat/databrowser/view/AID_SCB_OBJ/default/map?lang=en&category=AID_SCB_OBJ)

The remainder of this section provides a comparative overview of the case study responses. The case studies for each country are provided as Annex B.

#### 4.1. NATIONAL CONTEXTS

National contexts are an essential backdrop to understanding Member State perspectives on the transparency requirements and potential changes to them.

In the **Type I** case study countries (Czech Republic, Germany, the Netherlands), **the burden of reporting in TAM falls on awarding bodies** rather than the State aid unit as there is no central mechanism for collating or reporting aid information.

In the **Type II** countries (Estonia, Italy) there is a national register, but the central authorities use this to report to TAM. As such, **the State aid unit(s) would carry the burden of changes to the requirements**, and/or benefit directly from improvements to TAM.

The **Type III** countries (Spain, Poland and Romania) do not use TAM. These countries are not well-placed to feedback on TAM, but do have relevant domestic experience. Moreover, like the Type II countries, **there are potential concerns at changes to the EU transparency requirements that could affect the configuration of domestic systems**.

#### 4.2. EXPERIENCE WITH CURRENT REPORTING REQUIREMENTS

Respondents were asked about their experience with the transparency requirements and whether there were specific legal, operational, technical or other problems which arose.

A **legal** issue that was cited by several countries concerns **cumulation and the calculation of the €500,000 threshold**. The problems concern the absence of a definition of 'project' and the lack of a time limit for cumulation to reach the threshold. The Type I and II countries, especially, point to insufficient clarity in the notion of cumulation, problems of interpretation and the difficulties of

dealing with projects that are implemented in several parts and/or over a protracted period. The question does not arise in the same way for Romania, Spain and Poland where awards all sizes are reported on the national system and there is no requirement to identify awards over a given threshold. Indeed, Poland noted explicitly that having to filter and select certain awards for publication would be problematic.

In terms of **operational** aspects, the **high level of administrative burden** was mentioned in several Type I and II countries. Estonia pointed to the concentrated workload involved in reporting tax measures at the year-end. Germany noted that a degree of user experience is required to encode in TAM and staff turnover can make this challenging. The Netherlands also commented on the burden for awarding bodies. Although Romania operates a national register instead of TAM, capacity issues were also noted here.

Some **technical** problems have also been experienced with the TAM. Czechia reported some users finding **difficulty with the login** to TAM. Germany and the Netherlands noted that the **responsiveness and speed** of TAM could be improved. Italy mentioned problems arising from discrepancies between SANI2 and TAM affecting a substantial proportion of entries.

**Other problems mentioned** include: the difficulty in **finding TAM entries after upload** as there is no facility to store a local identification or reference number – the TAM reference is applied, as mentioned by Germany; Estonia noted that while it is possible to delete a block of entries, **it is not possible to publish a block of entries** – this has to be done line-by-line and there is no scope to save partial entries. In Estonia this arises because the bulk upload facility cannot be used owing to incompatibilities with the domestic register. The Netherlands noted that **TAM itself could be made easier to find and better communicated**.

#### 4.3. THE VALUE-ADDED OF TRANSPARENCY REQUIREMENTS FOR MEMBER STATES

The **transparency requirements are not perceived to offer any benefits to Member States among those who use the TAM** to fulfil this requirement. The data collected for the TAM is not used by Member States for any other purpose and is not considered as having improved other aspects of the public administration in any way. In the Netherlands, for example, it was noted that transparency is guaranteed in other ways, and in Italy, the national register, NAR, is far more extensive and has all the information required for domestic purposes.

By contrast, in Poland **the domestic register SUDOP is considered useful for evaluation and other analyses** and is used by beneficiaries to check amounts already received. In Spain, the transparency system BDNS has also proved useful for other activities of the public administration. **BDNS data has been used as a source by the Tax Agency and the Independent Fiscal Authority has used BDNS data for its spending review**. Several commercial undertakings providing economic intelligence (e.g. the ORBIS global database of firms) download data from the public portal for analysis, studies and dissemination. The media also uses the data extensively. In Romania too, the national register **RegAS is considered to have been useful for audit purposes**, although the Romanian Competition Council (RCC) noted that there would be additional benefits if awarding body reporting were more accurate and timely.

#### 4.4. PERSPECTIVES ON THE HARMONISATION OF TRANSPARENCY REQUIREMENTS

The GBER aside, the transparency requirements for different policy areas are dispersed across several documents and while the substance is broadly consistent, there are differences in wording, and of scope (there are no such requirements in some areas).

The **absence of full harmonisation was not a major issue for respondents**. However, Czechia favoured a single text and threshold for all awards (except agriculture and fisheries) which should apply for the same eligible costs and objectives within a project. The Netherlands also argued that harmonising the requirements would bring more clarity and certainty, as did Spain and Romania. Estonia noted that the absence of a single text had not caused particular problems, but considered that harmonisation would be a good approach. Germany, Italy and Poland did not consider that harmonisation of texts would make any difference to compliance.

#### 4.5. REMOVAL OF REPORTING THRESHOLDS

Respondents were quite **sharply divided over the question of removing reporting thresholds**. In the three Type I countries (Czechia, Germany and the Netherlands), such an approach would dramatically increase the administrative burden for awarding bodies (which are responsible for encoding the TAM). The Netherlands suggested **raising the reporting threshold instead and/or reporting aggregated amounts in some circumstances**.

In the Type II countries (Estonia and Italy) which have national registers, opinions differed. Estonia favoured **removing the threshold, but not until machine-to-machine solutions are available**. By contrast, in Italy, there was considered to be **no justification for reporting all awards** and it was noted that those above the threshold account for a large share of total award amounts, but a small share of the number of awards. Italy also argued that consideration should be given to simplifying the rules for fiscal aid where the amount is only known *ex post*.

Attitudes in Poland and Spain (Type III), which already publish *all* awards on publicly available domestic registers, were neutral as their arrangements would not be affected by any change of threshold. By contrast, in Romania, reducing the reporting threshold would be problematic. This is because the transparency requirements are met by automatic filtering awards from RegAS and displaying the output on the RCC website – RegAS itself is not publicly accessible. Lowering the threshold would require increasing the capacity of the system to process a larger volume of data. That capacity is not available at present.

#### 4.6. ROLE OF INVESTMENT IN DIGITALISATION

The **enthusiasm for investment in digitalisation to support transparency seems rather limited**. None of the Type I countries showed any appetite for investment in the kind of registers established in Type II and III countries – even if funded at EU level. The Czech State aid unit noted that any such investment would need to be at the level of the awarding bodies in order to be compatible with their systems (there appeared to be no desire to develop a central register). The German respondents considered that **investment could focus on making the TAM more user-friendly and 'intelligent'** – for instance by limiting the options available on menus based on past choices; the Netherlands also supported **initiatives that would facilitate TAM reporting**.

Clearly significant investment already has taken place in Type II and Type III countries – Estonia, Italy, Poland, Romania and Spain have all invested heavily in domestic State aid registers. Even so,

the scope for further investment, to the extent that it was identified, generally concerned the EU level. Spain, for example, suggested that **transparency could be improved through a genuinely pan-Europe approach** that integrated the national systems, enabling searches for any single undertaking across different Member States. Italy pointed to the need better to integrate SANI2 and TAM and Estonia noted the **scope to improve TAM through specific features** relating to draft entries, block publishing, improvement of translation and the inclusion of project names. By contrast, Romania noted that **additional investment domestically** could facilitate the export of data from RegAS to the national transparency website.

#### 4.7. LINKS WITH OTHER REPORTING REQUIREMENTS

Another theme explored in the case studies concerns the scope to integrate TAM with other types of reporting – such as annual reports or *de minimis* registers.

In general terms, the possible advantages of doing so are perceived to be outweighed by the complexities, and/or the different systems serve different purposes, so the potential appears limited. Romania specifically noted that linking transparency requirements and annual reporting would increase the administrative burden without improving the quality of monitoring. Nevertheless, a number of interesting points were made by respondents in the case studies.

Czechia and Germany suggested that **data for TAM and SARI should be reported according to the same timescale each year** – meaning annual reporting under TAM in place of the post award deadlines.

More fundamentally, Germany proposed that **the substance of the reporting be harmonised** – at present TAM collects data on *awards* while SARI collects data on *payments*. In principle, these amounts should ultimately be related, but because there is no scope to change TAM, even when modifications to the award are made, the amounts paid can differ from the amounts planned.

Italy and the Netherlands both suggest explicit **links between SANI2 and TAM** to address specific issues. In Italy, inconsistencies between the national register (NAR) and SANI2 are replicated in TAM and prevent the encoding of awards; however, this is apparent only after the bulk upload has been done and the errors can be time-consuming to identify in a bulk upload of more than 1,000 awards. A cross-check enabling immediate identification of inconsistencies would be helpful. The Dutch proposal is that the reporting of *ad hoc* or individual awards in SANI2 could be used to create a draft entry in TAM to obviate the need for the information to be entered into two different systems.

#### 4.8. SPECIFIC RECOMMENDATIONS FOR IMPROVEMENT

The aim of this part of the study was to identify changes to the transparency requirements which might improve levels of compliance. The respondents interviewed did identify several options for change, but while these might facilitate the use of TAM and address some of the operational frustrations, it seems unlikely that they would have a material impact on compliance *per se*. As such, the proposals made are more incremental than radical.

In broad terms, Type I countries – those where awarding bodies are responsible for TAM encoding - do not want any additional reporting burdens; and Type II and III countries - those where

national registers are in place - do not want additional demands to be made that would disrupt existing systems.

Although the overall emphasis is very much on continuity rather than change several respondents made **concrete suggestions for improvement**, which can be summarised as follows:

1. Clarify the concept of cumulation, the definition of project and the time period over which cumulation applies and provide guidance. (Proposed by most countries using TAM).
2. Streamline aspects of the TAM, specifically:
  - a) improve speed / responsiveness of the system (Germany, the Netherlands)
  - b) make TAM 'smarter' and more user-friendly by limiting the options available on the basis of previous choices (Germany)
  - c) add an option to include a national identifier for the award to enable easier *ex post* identification of awards (Germany)
  - d) require less detailed reporting (Germany)
  - e) add the capability to make draft entries, save them and publish them as a block rather than requiring line-by-line publication (Estonia)
  - f) a 'project name' as one of the fields (Estonia)
  - g) improve the translation function (Estonia)
  - h) give more prominence and publicity to the TAM (the Netherlands).
3. Harmonise the transparency requirements across the regulations and guidelines into a single text. (Proposed by several, but thought superfluous by others).
4. Maintain the current €500,000 threshold or even increase it (Type I and II countries).
5. Review the relationship between different Commission systems:
  - a) link SANI2 and TAM to enable immediate rather than post bulk upload error reporting (Italy)
  - b) when SANI2 is used to report *ad hoc* or individual awards, automatically generate a draft TAM entry (the Netherlands)
  - c) consider whether reporting thresholds could be raised and replaced with aggregated information in SARI reporting – e.g. number of awards, overall amount and distribution by sector (the Netherlands)
  - d) consider whether TAM should be harmonised with SARI to report amounts *paid*, rather than amounts *awarded* (Germany)
  - e) consider bringing TAM and SARI onto the same reporting schedule i.e. annual (Czechia and Germany) and the same reporting platform (Czechia)

- f) introduce a data collection tool for support for Services of General Economic Interest.



## 5. CONCLUSIONS AND RECOMMENDATIONS

There are wide differences in approaches to the transparency requirements. However, the data currently available do not enable an accurate assessment of compliance with the requirements to be made. As such, it is not possible to conclude that a particular model is more effective than others.

From the data available it is possible to analyse the timeliness of reporting, but it is not possible to know the scale of awards that were not reported at all. A more accurate assessment of compliance might be gleaned from **requiring Member States to report the actual number of awards under SARI**, as well as expenditure; **the number of awards anticipated might also be made an obligatory entry under SANI2**. Neither of these proposals would provide a complete solution, but over time would enhance the capacity accurately to identify likely instances of transgression.

Although the scale of *failure* to report is unknown, detailed data on *delayed* reporting is available. Analysis of this data shows that the timeliness or otherwise of reporting is essentially driven by the behaviour of a very small number of awarding bodies in each Member State. **A radical improvement in the timeliness of reporting could be achieved by targeting and training those few organisations that report belatedly.**

It cannot necessarily be concluded that the same organisations responsible for delayed reporting are also responsible for failures to report since this is not possible to detect. However, it may be that awarding bodies failing to report *at all* do so due to low levels of awareness of the obligations and few instances (particularly in the case of non-GBER aid). Alongside targeted training, the **adoption of a single harmonised text on transparency** might raise the profile of the obligation and improve levels of compliance.



## APPENDIX: TASK 2 FRAMEWORK QUESTIONNAIRE

1. What are your **views on the current requirements for reporting** individual awards under the GBER and the relevant State aid Guidelines?
  - *Are there general obstacles to implementing the transparency requirements and reporting? Are these technical, legal, organisational, administrative...?*
  - *What specific difficulties, if any, are encountered? What is the nature of these? Practical, technical, interpretation, complexity, duplication...?*
  - *What would alleviate these difficulties? (other than the transparency requirement being dropped)*
  - *Has transparency proven useful for any other activity of the public administration in your Member State related to public finance/investment? For instance, is the data collected / collated used for other purposes such as evaluation or audit?*
2. To what extent, if at all, do **differences in reporting requirements** between aid measures approved under different legal bases complicate aid administration? Would a harmonised transparency requirement for all State aid Guidelines (apart from those for agriculture and fisheries) facilitate the publication of aid awards? [**see below for explanation of context for this question**].
3. What would be the **effect of the Commission removing the individual aid reporting thresholds** under the transparency requirement? In other words, requiring all awards to be reported, irrespective of size?
  - *Would this facilitate reporting because selection was no longer required?*
  - *Do you anticipate any obstacles to removing the threshold or any operational difficulties, such as volume of data?*
4. Could **additional investment in digital technologies** facilitate the reporting in the TAM while reducing administrative burden? Would you support this solution if adopted at the level of the European Commission?
5. Are there ways in which the **transparency requirements could link in better** with related monitoring and reporting mechanisms?
  - *For example, could this link with monitoring for de minimis support, even if retained only for domestic purposes?*
  - *Are there approaches to reporting that would fit better with domestic needs?*
  - *Could reporting of individual aid awards under transparency requirements be linked more closely to annual expenditure reporting for domestic purposes and / or for State aid scoreboard reporting?*
6. Are there **any other changes to Commission requirements and arrangements** that would facilitate compliance and reporting?

## CONTEXT FOR QUESTION 2

a) the transparency requirements across the GBER and the various Guidelines are more or less aligned. However, the wording is not exactly the same and the “position” and number of the article in the different texts is different. For instance, in the GBER the transparency requirements are referred to in **Article 9(1)(c)** as part of a more general requirement on “Publication and information”. In addition, the detailed description of the type of information to be published, including its modalities, is described in **Annex III**. In contrast, the Guidelines normally only have a short paragraph that “condenses” what is in the GBER and does not explain in detail how the publication should be done. Could a fully standardised text, identical across all legal bases, or even a single transparency requirement communication, help Member States understand what they have to publish and how?

b) Currently, the transparency requirements are spelled out in most of the Guidelines. However, the requirements do not apply to aid awards granted under the following:

- SGEI Guidelines
- Short-term export credit communication
- Railway Guidelines
- Banking communication
- Public service broadcasting communication

Would applying the transparency requirements to all existing State aid that can be possibly granted by Member States be seen as an improvement? If everything is by design subject to transparency, Member States should simply publish everything without the need to verify whether the requirements apply or not.

## ANNEX A: COUNTRY PROFILES

## 1. BELGIUM

KEY DIMENSIONS	MAIN CHARACTERISTICS
Legal	<ul style="list-style-type: none"> <li>• GBER is directly applicable; there is no domestic State aid law</li> <li>• The four State aid units have a training and information function, but no enforcement role</li> <li>• Separate arrangements apply for agriculture, forestry and fisheries and are the responsibility of the regional ministries for agriculture, where relevant</li> </ul>
Organisational	<ul style="list-style-type: none"> <li>• State aid coordination is highly decentralised: <ul style="list-style-type: none"> <li>○ Brussels Capital Region: Economy and Employment, Service Public Régionale de Bruxelles</li> <li>○ Flanders: Innovation and Entrepreneurship Agency, VLAIO</li> <li>○ Wallonia: Directorate for Economy, Labour and Research</li> <li>○ Federal level: Permanent Representation to the EU</li> </ul> </li> <li>• Awarding bodies are responsible for State aid compliance</li> </ul>
Operational and technical	<ul style="list-style-type: none"> <li>• Awarding bodies input to TAM directly</li> <li>• No central (or regional) State aid register</li> <li>• No <i>de minimis</i> register</li> </ul>
Other points to note	<ul style="list-style-type: none"> <li>• The four State aid coordinating bodies collaborate closely but are institutionally separate</li> <li>• Brussels Capital Region is planning a 'catalogue of services' to include all State support, including <i>de minimis</i></li> </ul>

## 1.1. Summary

Responsibility for implementing the transparency requirements in Belgium is highly decentralised, reflecting the federal nature of the country. At regional level, certain units or officials within the Flanders, Walloon and Brussels Capital governments play a coordination and advisory role for awarding bodies within their jurisdictions; the federal government has a similar role for nationwide measures. The approach in all four cases (three regional, one national) is broadly similar insofar as the State aid coordinators provide a support network for awarding bodies and/or their parent ministries, but have no jurisdiction over them and the latter are formally responsible for reporting under the transparency requirements.

Introduction of the transparency requirements in 2016 did not require specific *legislative* action as the GBER is directly applicable. Instead, the main shift has been in providing *information and advice* to awarding bodies regarding transparency reporting. This has involved upgrading the guidance provided, specific seminars/webinars, networking and other training and information activities.

Prior to the introduction of the TAM, there was no centralised system of award reporting in Belgium.

Formal responsibility for compliance with the transparency requirements rests with the awarding bodies. The State aid coordinators for the four jurisdictions have information and advisory roles and have been involved in training awarding bodies on encoding and other aspects of the TAM; however, they have no direct role in inputting the data. In practical terms, awarding bodies apply for TAM login details through the Belgian Permanent Representation and organise the reporting of awards under the transparency requirement as each sees fit.

Arrangements for ABER and FIBER are separate, but similar. In **Flanders** (the only region with a coastal maritime sector) responsibility lies with the regional ministerial agencies in the agriculture and fisheries policy domain. In **Wallonia**, formal responsibility lies with the Department for Agriculture, Natural Resources and the Environment. The **Brussels Capital Region** does not provide aid under ABER or FIBER.

The overall system is similar for the four jurisdictions: State aid coordinators in each provide advice, training and support, but awarding bodies are responsible for transparency reporting.

## **1.2. Legal arrangements**

### *1.2.1. Legal basis*

Introduction of the transparency requirements in 2016 did not require specific *legislative* action as the GBER is directly applicable.

Nevertheless, in **Flanders**, the Innovation and Entrepreneurship Agency (VLAIO), of which the State aid coordinator is a part, has added an updated State aid compliance article (referring, among other things, to the scope of the GBER, the Deggendorf principle, undertakings in difficulty and the transparency requirements) to the legal basis for all its schemes. The terms and conditions of the VLAIO aid scheme now contain a specific provision outlining the transparency requirements, and other Flanders agencies have been encouraged to do the same.

Elsewhere there has been no explicit legislative change because the GBER is directly applicable.

Prior to the introduction of the TAM, there was no centralised system of award reporting in Belgium. However, within **Flanders**, some information on large awards was centrally collated as part of a long-term strategy of increasing awareness of State aid and large amounts of aid, but these were not systematically published. The **Brussels Capital Region** operated a system of *ordonnances* on publishing awards to Brussels businesses, which facilitated access to information and likely made implementation of the transparency requirements easier in some respects.

### *1.2.2. Substantive provisions*

To the extent that domestic provisions have been introduced (i.e. only in **Flanders**), these replicate the EU transparency requirements and do not go beyond them.

### 1.2.3. *Enforcement*

The State aid coordinators at regional and federal level do not have an enforcement role with respect to State aid transparency requirements, nor indeed regarding State aid compliance more generally.

Awarding bodies and their parent administrations in all four jurisdictions are ultimately responsible for compliance with the transparency requirements, but there are no specific procedures to enforce this, nor any specific sanctions for non-compliance.

The Belgian competition authority (BMA-ABC) has no competence in State aid matters.

## 1.3. **Organisational arrangements**

### 1.3.1. *Institutional arrangements*

The institutional arrangements for compliance with the transparency requirements are highly decentralised, but broadly similar across Belgium.

In all three regions (Flanders, Wallonia and the Brussels Capital Region), and at the Federal level, there are well-developed coordination and advisory mechanisms; however, awarding bodies and/or their parent ministries are responsible for compliance for reporting awards exceeding €500,000. The coordinators provide guidance and may signal potential compliance issues, but have no formal responsibility.

All the regions and the Federal level have a coordination capacity with respect to State aid. In **Flanders** this function is the responsibility of a single official in VLAIO who provides guidance, manages the network of awarding bodies and liaises with the other Belgian regions, the federal government and the European Commission. The network of representatives of awarding bodies in Flanders numbers around 200. In **Wallonia** the coordination function is provided by the regional contact point on State aid, situated in the Directorate for Economy, Labour and Research in the Walloon regional government. As in Flanders, the coordinator provides information and awareness-raising sessions and training for awarding bodies in Wallonia. The Walloon network comprises around 100 people from different ministries and parts of the administration.

The four State aid coordinators meet regularly to discuss common issues within their own networks.

### 1.3.2. *Scrutiny and control of specific compliance issues*

There is no centralised mechanism to ensure compliance with specific compliance issues (namely: Deggendorf principle, cumulation limits, *de minimis* conditions, firms in difficulty and single undertaking criteria), but the State aid coordinating bodies provide advice and guidance as required. For example, regarding firms in difficulty, a case in which the Commission intervened led to a new approach to assessing the financial situation of firms. While this has been shared with the networks by the Flanders coordinator, the responsibility for adopting such formulae rests with the awarding bodies.

## 1.4. Operational and technical arrangements

### 1.4.1. Domestic State aid registers

There is no domestic State aid register in Belgium beyond reporting under the European registration systems (TAM and SARI).

The Flemish, Walloon, Brussels Capital Region and federal governments are each responsible for their own entries into TAM and SARI. Some agencies have their own internal registers, as in the Flanders Innovation and Entrepreneurship agency. This register is more detailed than the information required for TAM, e.g. including more firm details. However, the internal registers that agencies may have are not standardised in any way.

The Brussels Capital Region is currently establishing a 'catalogue of services', which aims to cover all support to enterprises, whether or not it constitutes State aid. The catalogue will indicate when a given intervention falls within the EU State aid rules and, if so, on what basis it is compatible. The catalogue is called Brupeo and will be fully digitised by the end of 2020, which will allow everyone to view it interactively. In the medium term, it will be possible to visualise all aid awarded by the Brussels Capital Region according to anyone's needs.

The rationale for using TAM was that no comprehensive domestic system already existed and that by using TAM directly, no harmonisation with existing (fragmented) systems was required.

### 1.4.2. Interoperability

As with other aspects of transparency, there are broad similarities of approach between the three regions and at Federal level.

In **Flanders**, there is no link between domestic systems for ensuring State aid compliance and other domestic digital sources. Each Flemish award body enters information on aid above the threshold into TAM. Some awarding bodies maintain their own State aid records, but these are not harmonised with TAM entry details (SA number, VAT registration number, date, NACE code, etc.). In practical terms, the Flemish awarding bodies enter data into TAM every three months. In each agency, a small number of officials are registered, or have a profile as approver or encoder as local administrators to enter the data in batches. The State aid network coordinator has recommended the regional agencies to use this approach, but does not monitor it actively. Ultimately, each Flanders ministry is responsible for the correct and timely entries of their agencies; there are no central checks, filtering, cleaning or other manipulations of the data before entry. The information and guidance provided by the network coordinator and his office (VLAIO) is the only form of arrangement to ensure compliance in Flanders. This includes guidance on how to deal with the entry of multi-firm State aid awards: where individual firms receive combined support that exceeds the threshold (e.g. €600,000 but under two different GBER objectives), the combined amount is entered for transparency reasons.

In **Wallonia**, there is a link between the system for ensuring State aid compliance and bank databases. Each aid awarding authority requests various national databases to assist them in their decisions, in particular the *Banque-Carrefour des Entreprises*, CBE, and the National Bank of Belgium (NBB). The data collection into TAM is a matter of choice by the awarding authority, which either uploads in batches or in real time.

In **Brussels Capital Region**, there is no automatic domestic system for checking the compliance of each instance of State aid. Aid dossiers of each firm are specific and require a case-by-case analysis, in which all available sources of information are used, e.g. the central register of the *Banque-Carrefour des Entreprises*, CBE. In this context, a possible creation of a European database would facilitate the detection of all existing links between firms, and would improve the monitoring of compliance with the requirements (size of a company, single undertaking, etc.). Like the other federal regions, each Brussels regional authority awarding State aid enters the case in TAM when resources are available and in compliance with the time limit for making entries.

#### *1.4.3. Lessons for e-government and the digital agenda*

There are no specific examples of IT solutions in **Flanders** that are designed to meet the transparency and other compliance requirements. The regional agencies all make use of the Commission web portals. When Flanders was consulted on this in preparation of the 2016 transparency requirements, it was highlighted that an own domestic (Belgian or Flemish) system would be too costly and administratively burdensome. Now the TAM system is in use, the Flemish administration supports its continuation.

In **Wallonia**, a new digital application is being developed to help determine firm size and links with other firms. It aims to support regional authorities' decisions on State aid awards, and is designed to define the size of the firm (very small enterprise, SME or large) and to check its shareholdings and interconnections (per firm). There is no information on costs, satisfaction or obstacles available, since the application is not yet finalised.

In **Brussels**, the introduction of a digital system dedicated to the TAM would involve a heavy administrative and financial burden, since its reporting only concerns a small number of cases.

### **1.5. Other State aid reporting**

#### *1.5.1. Links between systems for TAM and annual spending reports*

**Flanders** has a single coordinator who oversees the arrangements for both types of reporting (TAM and SARI); they remind the aid awarding bodies (regional government agencies) of the data to be collected (e.g. assigning each award with an SA number). Each of the regional administrators involved in reporting State aid awards exceeding the threshold is part of the regional network that has access to guidance documents and slides, training events, and which advises on specific issues using the experience of other network members. A similar arrangement applies in **Wallonia**. There are no opportunities to combine transparency award monitoring with the annual reporting, since there is no central control administration for both systems (regional ministries have to report awards individually).

For the **Brussels Capital Region** annual reporting requirements through SARI, the State aid coordinator enters the data for all Brussels aid awarding regional entities. The entries are signed by the relevant directorates-general and validated by the Belgian permanent representation. The entering of TAM data is done by each of the awarding bodies (DGs or other regional agencies). This distinction allows the coordinator to check that all entries into SARI which fall under the scope of TAM have been encoded in TAM as well.

### 1.5.2. *De minimis* compliance

There is no *de minimis* register used in any part of the Belgian administration. In all cases, the main reason is the overall structure and organisational capacity it would require, together with the scale of the support offered.

There are potentially hundreds of State aid awarding bodies in **Flanders** alone, which would have very different ways of registering awards. Awards are rather small, and knowledge levels around compliance and control are rather low at devolved administrative levels (provinces, municipalities, inter-governmental bodies). It would require the introduction of a complex set of legal arrangements (including enforcement) with a top-down structure, which would be very burdensome to the central (Flemish) administration. Similarly, in **Wallonia** it is considered that the development of a *de minimis* register would involve a legal and IT framework requiring a high volume of human and financial resources.

In the **Brussels Capital Region** the future implementation of a catalogue will incorporate State aid records based on the *de minimis* Regulation. The issue of cumulation will, however, persist under *de minimis* regulations and other regulations such as the GBER. It was suggested that a European coding system for *de minimis* aid would be a pragmatic solution in addition to SANI, SARI and TAM.

### 1.5.3. *Domestic reporting*

There is no centralised domestic reporting of State aid in Belgium.

## 1.6. References

De Corte & Nolens (2016) *Staatssteun: Vleeva Infosessie*. Brussels, Department for Labour and Social Economy: <https://fdocuments.nl/document/presentatie-karel-de-corte-en-farah-nolens.html> (slides 30, 52, 59-63)

VLAIO (2016) *Staatssteunrichtlijnen voor Subsidie ontvangers*. Brussels, Flemish Innovation and Entrepreneurship: <https://www.vlaio.be/nl/media/326>.

General information for potential Flemish beneficiaries: <https://www.vlaio.be/nl/andere-doelgroepen/europees-fonds-voor-regionale-ontwikkeling-efro/efro-project-indienen-0>.

## 2. BULGARIA

KEY DIMENSIONS	MAIN CHARACTERISTICS
Legal	<ul style="list-style-type: none"> <li>• State aid in Bulgaria has been regulated by successive State Aid Acts; the current text dates from 2017</li> <li>• The State Aid and Real Sector Directorate of the Ministry of Finance is the national State aid authority responsible for monitoring, transparency and coordination of State aid and <i>de minimis</i> support at national, regional and municipal level (it provides a mandatory preliminary assessment of all State aid and <i>de minimis</i> aid ESIF measures, except for the measures in areas of agriculture, rural development, forestry, hunting and fisheries; decisions on the applicability of the GBER are binding; for all other notifiable measures, in case the opinion of the Ministry of Finance is not fully respected, it could be sent to the Commission only with a dedicated declaration of the Aid Administrator). The Public Financial Inspection Agency has a controlling role, including sanctions. Separate arrangements apply for agriculture, rural development, forestry, hunting and fisheries and are the responsibility of the Ministry of Agriculture, Food and Forestry</li> </ul>
Organisational	<ul style="list-style-type: none"> <li>• State aid coordination is centralised in the State aid and Real Sector Directorate of the Ministry of Finance</li> <li>• Awarding bodies are responsible for ensuring compliance with the State aid and <i>de minimis</i> rules, but subject to dedicated checks by the Public Financial Inspection Agency</li> </ul>
Operational and technical	<ul style="list-style-type: none"> <li>• Awarding bodies input to TAM directly</li> <li>• There is no central State aid register, but various registers exist, some of which are partially publicly accessible; there is a register for all aid for agriculture and rural development</li> <li>• A <i>de minimis</i> register for general support and SGEI was set up in 2009; this is partially publicly-available; <i>de minimis</i> support for agriculture and fisheries is not part of the general <i>de minimis</i> register (these are registered in the database maintained by the State Fund for Agriculture), so a declaration is also used for all <i>de minimis</i> support.</li> </ul>
Other points to note	<ul style="list-style-type: none"> <li>• Awarding bodies are free to encode in TAM awards below the €500,000 threshold; some but not all do</li> </ul>

## 2.1. Summary

The use of State aid in Bulgaria has been regulated by successive State Aid Acts, with the current text dating from 2017.<sup>18</sup>

The entry into force of the transparency requirements in July 2016 coincided with the preparation of the 2017 State Aid Act and transparency provisions were included in the new Act and subsequently in the Rules for the implementation of the State Aid Act.<sup>19</sup>

Before July 2016 there were no similar domestic transparency requirements in the national State aid legislation. The current legislation provides that, for awards equal to or above the €500,000 threshold granted since 1 July 2016, awarding bodies should directly enter information into the Transparency Award Module, in line with the EU requirements.

General responsibility for State aid compliance rests with the Ministry of Finance (except for aid for agriculture, rural development, forestry, hunting and fisheries). The ministry has a wide range of State aid competences, including assessment of State aid and *de minimis* compliance. On transparency issues, responsibility lies chiefly with the awarding bodies. The Ministry of Finance does not have an obligation to scrutinise how awarding bodies comply with the transparency obligations or check their inputs into the system; however, the Public Financial Inspection Agency does have a role in ensuring that the State aid rules are complied with and there are potential sanctions for failure to do so.

Responsibility for the agriculture and fisheries sectors lies with the Minister of Agriculture, Food and Forestry.

## 2.2. Legal arrangements

### 2.2.1. Legal basis

The overall State aid regulatory framework in Bulgaria is based on the 2017 State Aid Act. This sets out the requirements and procedures for:

1. The assessment and provision of State aid and *de minimis* support
2. Implementation of the notification procedures under Article 108(3) TFEU
3. Categories of State aid compatible with the internal market
4. Implementation of data reporting, collection, registration and storage requirements
5. Repayment of unlawful, incompatible or incorrectly used State aid
6. Repayment of incorrectly received *de minimis* support
7. Assessment of State aid under the Block Exemption Regulations
8. Disputes related to State aid and *de minimis* support.

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<sup>18</sup> State Aid Act 2017, State Gazette No 85 of 24 October 2017: <https://stateaid.minfin.bg/bg/page/427>

<sup>19</sup> Rules for the Implementation of the State Aid Act (SG 72.08.088) State Gazette No 72 of 31 August 2018: <https://stateaid.minfin.bg/bg/page/428>

Transparency provisions are set out in the following:

- 2017 State Aid Act<sup>20</sup>
- Rules for the implementation of the State Aid Act<sup>21</sup>
- Procedure for user access management and working with the State Aid Transparency Award Module of the European Commission.<sup>22</sup>

The State Aid Act sets out provisions for transparency in line with the requirements of the European Commission;<sup>23</sup> the Rules for the implementation of the State Aid Act<sup>24</sup> stipulate that the information required shall be manually encoded in the TAM by aid administrators. The practicalities are set out in the Procedure for user access management and working with the State Aid Transparency Award Module of the European Commission provided for by Ministerial Order.

Under the State Aid Act<sup>25</sup> the Minister of Finance is the national authority responsible for the monitoring, transparency and coordination of State aid and *de minimis* support at national, regional and municipal level.<sup>26</sup> However, the Ministry of Finance does not have a 'controlling', but rather a 'methodological' function. As such, the Ministry provides guidance to the granting authorities on how transparency of the State aid granted by them must be ensured. Under Article 79 of the State Aid Act the 'control' functions lie with the Public Financial Inspection Agency.

Under the State Financial Inspection Act<sup>27</sup> inspections may be carried out in respect of:

*"...7) aid administrators, recipients of state or de minimis aid, persons financed by public or municipal budgets, by international treaties or by European Union programmes, as well as persons financed by public funds under Art. 62, para. 3 of the Commerce Act, in relation to the use of such funds."*

More specifically, financial inspections shall be carried out as follows:<sup>28</sup>

1. On the basis of requests, complaints and reports concerning breaches of the budgetary, financial and commercial activities of organisations and persons referred to in Article 4, submitted by public authorities, natural and legal persons.
2. At the request of the Public Procurement Agency or the Court of Auditors in the statutory cases.
3. To verify the lawful provision and absorption of State aid or *de minimis* support and the spending of targeted subsidies granted under the State Budget of the Republic of Bulgaria Law for that year and under the Ordinances of the Council of Ministers.
4. At the request of the Council of Ministers or the Minister of Finance.

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<sup>20</sup> Article 52(3).

<sup>21</sup> Chapter 11, Art. 26-27.

<sup>22</sup> Order of the Minister of Finance No 3MΦ-71/21.01.2019.

<sup>23</sup> Article 52(3).

<sup>24</sup> Article 26(1) generally and Article 27 for agriculture, rural development, forestry and hunting and fishing.

<sup>25</sup> Article 7(1).

<sup>26</sup> Except for aid for agriculture, rural development, forestry, hunting and fishing.

<sup>27</sup> State Financial Inspection Act (State Gazette No. 85/24.10.2017), Article 4.

<sup>28</sup> Article 5(1).

5. As required by the public prosecutor's office pursuant to Article 145(1)3 of the Judicial System Act.
6. On reports of breaches affecting the financial interests of the European Communities established by the Directorate for the Protection of the Financial Interests of the European Union (AFCOS) of the Ministry of Interior.
7. To comply with the instructions and time limits.

### 2.2.2. *Substantive provisions*

The Bulgarian State aid legislation replicates the EU requirements for State aid transparency - thresholds, deadlines for publication, the range of data collected, etc. The granting authorities are obliged to encode and publish in the TAM information on awards equal to or above the €500,000 threshold but if they wish, may also publish information about the aid awards below this threshold. For example, the Ministry of Labour and Social Policy, as a granting authority, publishes information in the TAM on all aid awards, regardless of amount.

### 2.2.3. *Enforcement*

As aid administrators are solely responsible for the compliance of their measures with Bulgarian and EU State aid legislation, they also have responsibility for entering data in the TAM in compliance with the State aid transparency requirements.

The State aid controlling functions lie with the Public Financial Inspection Agency in compliance with the State Financial Inspection Act.

In addition, Chapter 9 of the State Aid Act provides for 'Administrative Penal Provisions'. Under these provisions<sup>29</sup> violations of this Act are to be drawn up by officials authorised by the Director of the Public Financial Inspection Agency within six months of the offence, but within four years of the violation. The State Aid Act<sup>30</sup> stipulates that fines and property sanctions shall be subject to enforced collection by the National Revenue Agency in accordance with the procedure in the Tax and Social Insurance Procedure Code.

The State Aid Act regulates general liability for compliance<sup>31</sup> and any aid administrator granting State aid or *de minimis* support in breach of EU or Bulgarian State aid legislation is liable to a fine or to property sanctions ranging from 2,000 BGN to 5,000 BGN (about €1,000 to €2,500). Any official who commits an offence under Article 66(1) shall be liable to a fine ranging from 200 BGN to 500 BGN (about €100 to €250).

Considering the above, and that the transparency requirements are an integral part of the EU State aid legislation, it is legally possible for fines and property sanctions to be imposed if the Public Financial Inspection Agency finds that the transparency requirements have not been respected by the granting authorities.

The scope for imposing fines and sanctions for infringement of the transparency provisions has not been used yet because:

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<sup>29</sup> Article 79(1).

<sup>30</sup> Article 80.

<sup>31</sup> Article 66(1).

- the new State Aid Act was adopted and promulgated at the end of 2017 and the Rules for its implementation were adopted and promulgated in 2018;
- on the basis of the State Aid Act and the Rules for its implementation, the Public Financial Inspection Agency plans its checks for State aid legislation compliance. The first such checks were made in 2019, but the compliance with the transparency provisions was not a part of them since the transparency rules are quite new.

## 2.3. Organisational arrangements

### 2.3.1. Institutional arrangements

Under the State Aid Act, the Minister of Finance is the national State aid authority responsible for the monitoring, transparency and coordination of State aid and *de minimis* support at national, regional and municipal levels and for the interaction with the European Commission, except for the areas of agriculture, rural development, forestry, hunting and fisheries.

Under the State Aid Act<sup>32</sup> the Minister of Finance undertakes the following:

- carries out the monitoring, coordination and interaction with the European Commission and aid administrators in the field of State aid and *de minimis* support;
- receives and assesses State aid notifications for completeness, quality and compliance with EU and Bulgarian rules on State aid;
- monitors and delivers opinions on new aid and on the modification of existing State aid in terms of compliance with EU and Bulgarian rules on State aid;
- coordinates and transmits State aid notifications to the European Commission;
- assesses whether State aid falls within the scope of the General Block Exemption Regulation (the opinion of the Minister of Finance is binding in relation to State aid measures under the GBER);
- delivers opinions regarding aid which is exempt from the notification requirement by an act of the Council of the European Union or of the European Commission;
- prepares the notification of the regional aid map;
- receives, summarises and stores information from all aid administrators, including in respect of *de minimis* support;
- prepares annual reports and thematic reports on State aid and transmits such reports to the European Commission;
- coordinates and assists aid administrators in exercising their rights and fulfilling their obligations arising from EU and Bulgarian rules on State aid;
- coordinates the actions relating to the recovery of unlawful and incompatible State aid and recovery of misused State aid, including where State aid in the field of agriculture, rural development, forestry, hunting and fisheries is concerned;
- delivers opinions on draft statutory and other instruments relating to the settlement of relations in the field of State aid;
- participates in the activity of the working bodies of the European Commission on State aid matters;

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<sup>32</sup> Article 7(1).

- provides methodological guidance on the application of the State Aid Act, the statutory acts on its implementation and the State aid rules
- takes measures to develop and improve the State aid rules and to ensure transparency.

The above mentioned functions of the Minister of Finance are implemented through the ‘State aid and Real sector’ Directorate within the Ministry.

All granting authorities at central, regional and municipal level are aware of the functions of the Minister of Finance and they can seek for opinion, guidance or advice when needed, in addition to their obligations under the State Aid Act.

The Ministry of Finance plays a central role in State aid compliance through its assessment role. However, all aid administrators are responsible for the lawfulness of the State aid and *de minimis* measures they design and implement. If the Minister of Finance deems that a State aid notification is in full compliance with the State aid rules, it is transmitted to the Commission. If the notification is *not* deemed in conformity with the State aid rules, the granting authority is notified and appropriate measures for bringing the aid in compliance are proposed. A granting authority which does not bring the aid in compliance upon the proposal of the Minister of Finance is obliged to submit to the Ministry of Finance a written declaration and arguments for the refusal. The administrator of the aid bears full responsibility for its legality. The opinion of the Minister of Finance on notifiable aid is non-binding; on aid exempt from the notification requirement by an act of the Council of the European Union or of the European Commission – non-binding. Nevertheless, all aid administrators must notify the Commission of such aid. On *de minimis* support its opinion is also non-binding. However, the opinion of the Minister of Finance on whether aid is in compliance with the GBER *is* binding. All aid granted under ESIF is subject to mandatory preliminary assessment by the Ministry of Finance.

Under the Bulgarian institutional arrangements, each granting authority at whatever level is responsible for measures within its competences. The State Aid Act provides that the aid administrator of each State aid/*de minimis* measure shall be explicitly identified.<sup>33</sup> This is very useful in the case of mixed competences as it specifies the authority responsible for the lawful provisions of the aid measures and their State aid compliance.

Responsibility for ensuring compliance with the State aid rules, including the transparency provisions, lies within the aid administrator (at whatever level – national/regional/municipal). They are tasked with encoding, verifying and publishing information about their aid awards in the TAM.

With respect to the user part of the Module, the order and levels for permitting access are as follows:

- National Office - for State aids outside the agriculture and fisheries sectors, the ‘State Aid and Real Sector’ Directorate is the National Administrator, responsible for creating an account for each individual administrator (Granting Authority Office) and to users with administrator rights (Granting Authority Administrator user) within the relevant authority, meaning that the national administrator delegates permission for user management to the user with administration rights.

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<sup>33</sup> Article 9 and 11 of the State Aid Act

- Granting Authority Office - National Administrator creates an account for each Granting Authority Office as well as users with administration rights. (Granting Authority Administrator users) under the relevant Granting Authority Office.

The State aid and Real Sector Directorate has developed a national procedure for user access management and working with the TAM. This is approved by an Order of the Minister of Finance and is mandatory for all granting authorities. The Procedure defines who and what kind of access administrators can have to the Module, specifies rules for user access management and technical and methodological rules for encoding and publishing information in the TAM. The Procedure also refers to the European Commission's transparency documentation - the User Manual and the Encoding Guidance, and requires them to be respected.

The National Revenue Agency is responsible for the control, reporting and transparency of measures constituting State aid under the Corporate Income Taxation Act.

### 2.3.2. *Scrutiny and control of specific compliance issues*

In general, aid is either confirmed as compatible with the GBER by the Ministry of Finance (a binding opinion in the domestic context) or is required to be notified to the Commission (unless it is aid exempted from the notification requirement by an act of the Council of the European Union or of the European Commission *or is de minimis* support).

Since the lawfulness of the elaboration and provision of State aid and *de minimis* aid lies solely within the competences of the aid administrators, the various controlling mechanisms internally elaborated by them are outside the scope of the Ministry of Finance's competences. However, the Ministry notes some good practices of granting authorities. There is a contractual obligation for ensuring compliance with all the eligibility requirements, including State aid. This also covers ensuring compliance with the Deggendorf principle. They elaborate internal policies for the entire eligibility assessment of aid applicants and the checking and verification process - documentary checks, checks in public registers and declarations, quarterly reports, on-the-spot checks (which shall be at least once a year on annual plan for such checks), and requirements for documenting the verification.

#### i Compliance with the Deggendorf principle

Under the State Aid Act,<sup>34</sup> the Ministry of Finance must maintain a register on the recovery decisions of the European Commission for cases of unlawful and incompatible State aid or misuse of aid, and the beneficiaries of the aid to be recovered. The register is public.<sup>35</sup> By checking the information stored in this register the aid administrators can avoid granting aid to beneficiaries subject to recovery decision.

In addition, granting authorities may use any other internal controlling mechanism, elaborated by them for preventing the award of State aid to firms subject to the Deggendorf principle. A possible mechanism could be a declaration.

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<sup>34</sup> Article 52(2)4

<sup>35</sup> See: <https://stateaid.minfin.bg/bg/page/483>

## ii Cumulation

As there is no national central State aid register, the Ministry of Finance has elaborated a model declaration for *de minimis* and State aid which the granting authorities may use if they wish to. All types of *de minimis* and State aid received by a certain beneficiary at a group level from different granting authorities and/or from different sources are included in this declaration for cumulation purposes. Thus the different specified aid thresholds and aid intensities can be checked by aid administrators before awarding a new aid. Any other checks developed internally by granting authorities could also be used. It is not known how different award bodies operate.

## iii de minimis conditions

The *de minimis* Register<sup>36</sup> aims to inform aid administrators of the amount of *de minimis* support granted to the undertaking concerned and to obtain information on the other *de minimis* support received in the last three fiscal years by the same undertaking. Granting authorities must register *de minimis* support within three working days of the granting of the award. This Register can be used by any aid administrator as a second check (since the register is not up-to-date at every single moment) to verify that the award of new *de minimis* does not exceed the *de minimis* ceilings. Obtaining *de minimis* information for undertakings does not require any user registration. However, as part of the information is confidential, there is a login option for aid administrators only.

Under the State Aid Act,<sup>37</sup> aid administrators are responsible for the lawful granting and spending of State aid and *de minimis* support in compliance with EU rules and Bulgarian law. In addition, *de minimis* compliance checks are the responsibility of the relevant aid administrator.<sup>38</sup> In short, responsibility for ensuring compliance with the *de minimis* Regulation rests entirely with the aid administrators who must perform internal checks for each *de minimis* provision. However, aid administrators normally provide their *de minimis* measures to the Ministry of Finance for its preliminary assessment.

## iv Firms in difficulty

The responsibility for preventing the use of aid to support firms in difficulty lies with the aid administrators who must perform relevant checks in order to ensure compliance with this rule. This could involve, for example: checking the information stored in the Commercial Register regarding the financial situation of the firm; checking the annual financial reports of the firm and the company activity reports; checking the Register of non-profit legal entities; and checking whether the firm is subject to collective insolvency proceedings.

## v Single undertaking principle

The provisions of the Bulgarian Small and Medium-Sized Enterprises Law for determining SME status and whether the undertaking is an autonomous enterprise, partner enterprise or linked enterprise are in compliance with the single undertaking principle of the European Commission. Ensuring compliance with this principle is the responsibility of the aid administrators who must

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<sup>36</sup> See: <https://minimis.minfin.bg/>

<sup>37</sup> Article 12(1).

<sup>38</sup> Article 32(3).

undertake internal checks to guarantee the principle is respected. For example, a very detailed declaration for determining SME status and the linked enterprises by an aid applicant has been developed by the Ministry of Economy.

## 2.4. Operational and technical arrangements

### 2.4.1. Domestic State aid registers

There is no single register covering aid to all sectors and of all types; however, various different registers are in place, some of which are at least partially publicly-accessible.

#### i Open data portal

The Open Data Portal of the Republic of Bulgaria<sup>39</sup> is maintained by the e-Government State Agency. A few municipalities in Bulgaria have provided information on self-maintained State aid registers, but the information provided is not searchable.

#### ii State Fund Agriculture, system for electronic services

The State Fund for Agriculture is responsible for and maintains a *de minimis* register.<sup>40</sup> Information in the Register is public and no prior user registration is required, but for more specific data a login is necessary.

#### i. iii State Fund Agriculture

The State Fund for Agriculture register covers all types of State aid for agriculture and rural development.<sup>41</sup>

#### iv De minimis register

The *de minimis* Register<sup>42</sup> aims to inform aid administrators of the amount of *de minimis* support granted to the undertaking concerned and to obtain information on the other *de minimis* support received in the last three fiscal years by the same undertaking. Through this register, any aid administrator can undertake a second check on whether the *de minimis* ceiling has been reached. Obtaining *de minimis* information for undertakings does not require any user registration. However, as part of the information is confidential, there is a login option for aid administrators only.

#### v Employment agency aid register

The Employment Agency, maintains its own records of aid granted.<sup>43</sup> In order to comply with the principle of transparency, the Employment Agency publishes information on State aid and *de*

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<sup>39</sup> <https://data.egov.bg/>

<sup>40</sup> <https://seu.dfz.bg/seu/f?p=727:8000:::>

<sup>41</sup> <https://www.dfz.bg/bg/darzhavni-pomoshti/>

<sup>42</sup> <https://minimis.minfin.bg/>

<sup>43</sup> <https://www.az.government.bg/pages/darzhavni-pomoshti/>

*de minimis* support granted under Regulation (EU) No 651/2014 (mainly on aid for the employment of disadvantaged workers). No prior user registration is required.

#### vi SME Promotion Agency register

The Bulgarian Small and Medium-Sized Enterprises Promotion Agency maintains its own Register of State aid for participation in international fair and exhibitions.<sup>44</sup> The Register is cumulative and contains data since 2007. No prior user registration is required.

#### 2.4.2. Interoperability

There is no interoperability between any of the internal registers and any domestic systems (for example, business registration, insolvency registers, *de minimis* database, other granting authority systems, public administration databases, tax records, accounting databases), nor between any of the domestic aid registers and the TAM. Indeed, the view of the Bulgarian authorities is that, owing to the complexity of the various systems, technical errors would be likely and may even increase the scope for errors in the collection of transparency data. As a result, there would be little or no added value in comparison with the huge administrative burden of trying to ensure such connections.

The checking procedures are regulated internally and are the responsibility of each granting authority.

#### 2.4.3. Lessons for e-government and the digital agenda

In September 2019 the Council of Ministers updated the e-Government Development Strategy for 2019-23,<sup>45</sup> in which one of the underlying e-government principles is openness and transparency. More specifically, it provides that public administrations should: share information and data between themselves and enable citizens and businesses to access, control and correct their own data; enable users to monitor administrative processes that involve them; engage with and open up to stakeholders (such as businesses, researchers and non-profit organisations) in the design and delivery of services. Thus, all public registers should be visible and accessible, and allow users to correct their own data.

### 2.5. Other State aid reporting

#### 2.5.1. Links between systems for TAM and annual spending reports

There are no links between TAM and annual reporting in the Commission requirements and for this reason there are none in the Bulgarian reporting arrangements.

#### 2.5.2. *De minimis* compliance

There is a national *de minimis* register (the Register), administered by the Ministry of Finance since 2009, which stores data on *de minimis* support granted since 2008. All granting authorities are required to encode the information in the Register within three working days of granting *de minimis* support. In view of the potential three-day time-lag for reporting, it is not considered a central register as such.

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<sup>44</sup> [https://www.sme.government.bg/?page\\_id=23](https://www.sme.government.bg/?page_id=23)

<sup>45</sup> e-Government Action Plan 2016-2020: <https://ec.europa.eu/digital-agenda/en/news/contributions-and-preliminary-trends-public-consultation-egovernment-action-plan-2016-2020>

The Register covers *de minimis* support under Regulations (EU) 1407/2013 and (EU) 360/2012. Only granting authorities can enter data in the Register and have access to confidential information, but there is also a public component.

As the Register does not store information on *de minimis* support in the agriculture and fisheries sector, in order to ensure compliance with the different *de minimis* regulations thresholds within the three-year period, a model declaration for all types of *de minimis* support received is used. In addition, the granting authorities are free to elaborate any other suitable mechanisms to verify that cumulation requirements are correctly applied.

### 2.5.3. Domestic reporting

There is no purely domestic reporting or analysis of State aid in Bulgaria beyond the registers described above or the obligatory reporting required by the European Commission

## 2.6. References

- State Aid Act (State Gazette № 85/24.10.2017) – <https://stateaid.minfin.bg/bg/page/427>
- Rules for the implementation of the State Aid Act (State Gazette No 72/31.08.2018): <https://stateaid.minfin.bg/bg/page/428> – file name: „Правилник за прилагане на Закона за държавните помощи (обн. ДВ бр. 72 от 31.08.2018 г.)“
- Procedure for user access management and working with the State Aid Transparency Award Module of the European Commission, approved by an Order of the Minister of Finance № ЗМФ-71/21.01.2019 - <https://stateaid.minfin.bg/bg/page/518> – file name: „Процедура за управление на потребителския достъп и работа с Модула за прозрачност на държавните помощи на Европейската комисия“
- State Financial Inspection Act
- Corporate Income Taxation Act
- State aid and real sector Directorate: <https://stateaid.minfin.bg/bg/>



### 3. CZECHIA

KEY DIMENSIONS	MAIN CHARACTERISTICS
Legal	<ul style="list-style-type: none"> <li>• GBER is directly applicable; there is no domestic State aid law as such but the role of the Office for the Protection of Competition (OPC) is defined in a law dating from 2004</li> <li>• The role of the OPC is mainly advisory, but there is an enforcement role for late entries in the <i>de minimis</i> register</li> <li>• Separate but similar arrangements apply for agriculture, forestry and fisheries and are the responsibility of the Ministry of Agriculture (MoA) under the same law as for the OPC</li> </ul>
Organisational	<ul style="list-style-type: none"> <li>• State aid coordination is centralised in the OPC and MoA, independent authorities</li> <li>• Awarding bodies are responsible for ensuring compliance</li> </ul>
Operational and technical	<ul style="list-style-type: none"> <li>• Awarding bodies input to TAM directly</li> <li>• There is no central State aid register</li> <li>• A <i>de minimis</i> register was set up in 2010; access to the <i>de minimis</i> register is for registered users as well as partially publicly available</li> </ul>

#### 3.1. Summary

The Czech Republic has two State aid coordinating bodies: the Office for the Protection of Competition (OPC), for State aid in general, and the Ministry of Agriculture for support in the areas of agriculture, rural development, forestry and fisheries. Guidelines for the fulfilment of transparency obligation (the 'Guidelines'), were introduced by the OPC and Ministry of Agriculture to support awarding bodies. These are sent to awarding bodies when they notify the coordinators of their intention to introduce measures involving State aid.

The interviewees for this study drew attention to the following input from the Czech authorities in the consultation on the GBER transparency proposals:

*“We do not agree with the proposed obligation to submit the proposed standardized form for each individual aid application and we also disagree with the proposed obligation to administer data on individual GBER support on a single website which we consider to be non-conceptual, ineffective, inadequately linked to requirements for European funds and only generating financial burdens for Member States and aid providers. If the Commission insists on setting up a website, we ask for a minimum transitional period of at least one year to set up such a website, given the technical and administrative process involved in developing the prescribed web application.*

*Given the crucial importance of the revised GBER Regulation, the Czech Republic would welcome the continuation of the discussion with Member States in order to set optimal GBER criteria that will lead to the most effective, non-over bureaucratic and meaningful application of block exemptions.”*

Prior to the transparency requirements, there were no domestic systems in place, other than the *de minimis* register. The main change resulting from the transparency requirement was the introduction of the Guidelines informing awarding bodies of their obligations and how to fulfil them. There are no national registers and only the TAM system is used for the transparency obligation.

Formal responsibility for compliance rests with the awarding bodies. The GBER is directly applicable so there are no additional provisions in the national legislation on the transparency obligation. The coordinating bodies have developed the Guidelines in order to provide comprehensive support to aid providers on the requirements.

There is no overall structure for compliance; awarding bodies are responsible for entering the relevant data into TAM according to the Guidelines. These apply to all relevant sectors, including aid under ABER and FIBER.

The overall system is as follows. When the OPC sends an approval receipt to an awarding body for *ad hoc* aid or a SANI II aid scheme, it also informs the aid provider of the transparency requirement. Reporting of aid awards is done by remote access to the TAM by the awarding body. Administrators from the designated award bodies first register in the system, fill out the TAM application form, send it to the appropriate coordinating body, and then, as appropriate, set up roles for other users from their organisation according to their specific roles. The requested data are entered into the TAM system by the awarding body. The awarding body also checks the data entered and confirms it by signature.

## **3.2. Legal arrangements**

### *3.2.1. Legal basis*

Regarding transparency requirements in the GBER/ABER/FIBER, the Czech Republic is governed by the rule of direct applicability of EU law (regulation). There is no additional provision in the national legislation on the obligation of transparency as the GBER is directly applicable in Czech law; however, the coordinating bodies (OPC and the Ministry of Agriculture) have developed Guidelines for the fulfilment of transparency obligation which are systematically provided to awarding bodies.

Prior to July 2016, only the obligation to register *de minimis* support was centrally coordinated. The obligation of "transparency", which resulted from other European State aid legislation or decisions of the European Commission, was fulfilled through the websites of the aid providers.

The Guidelines for reporting aid for agriculture and fisheries are the same as for the GBER. The only difference is in a level of thresholds for reporting particular aids. The obligation to meet the transparency requirements is set in subsidy programs of granting authorities.

The Guidelines provided to awarding bodies mirror the EU transparency requirements, but are in themselves only advisory and do not have an enforceable legal basis.

In the Czech Republic, only *de minimis* support is registered centrally.

### 3.2.2. Enforcement

The position of the coordinating bodies – OPC and the Ministry of Agriculture - is defined by Act 215/2004 Coll. The OPC exercises the powers of the coordinating body outside the area of agriculture and fisheries and the Ministry of Agriculture in the field of agriculture and fisheries. Pursuant to the aforementioned Act, both bodies perform central coordination, advisory, consulting and monitoring activities in the area of State aid within the scope of their fields of competence. They are empowered to undertake administrative enforcement proceedings only concerning the late entry of *de minimis* support into the register.

Both the OPC and the Ministry of Agriculture have the function of a national administrator in the TAM. As stated above, there is no specific provision in national law for the transparency obligation. The Guidelines on transparency obligations provide comprehensive coverage of the requirements, including the TAM registration process, but are not legally binding and are only recommendations by the coordinating bodies based on the Commission methodologies.

The national legislation provides for penalties for late entry of information in the *de minimis* support register, as it is a national scheme and a national obligation on the provider of the aid. Given that the obligation of transparency is governed by directly applicable European Union legislation (GBER, ABER, FIBER) and the Czech Republic does not have legal competence to interpret the obligation, it is not legally possible to penalise in any way the failures of this obligation.

### 3.3. Organisational arrangements

#### 3.3.1. Institutional arrangements

The obligation to enter the required data within the Czech Republic into the TAM applies to providers of State aid as the owners of the data at their disposal. It is up to the awarding bodies to determine the procedure for obtaining the necessary data. Where there are several entities involved in an aid granting process, the coordinating authorities in the Guideline recommend to the authority responsible for the notification of the aid measure to determine which of the entities will be responsible for recording the records of the aid in question into the TAM, including all necessary procedures of the aid in question.

There are no additional domestic obligations regarding transparency. The coordinating bodies developed the Guidelines to provide comprehensive guidance to aid providers in this area but they are only recommendations. There are no additional requirements related to domestic audit/control purposes that fall within the remit of the coordinating bodies.

The introduction of the transparency requirements did not involve any changes to the overall system of State aid coordination in the Czech Republic beyond the development of the Guidelines to support awarding bodies.

As concerns the scale of resources involved in transparency compliance, the obligation applies to all providers of State aid in the Czech Republic. Currently, 142 users are registered in the TAM for the Czech Republic.

### 3.3.2. *Scrutiny and control of specific compliance issues*

The OPC or the Ministry of Agriculture actively cooperates with the providers of aid in the notification of measures in accordance with the GBER Regulation or ABER and FIBER. These institutions provide observations/comments on aid schemes, ad hoc aids and legal acts granting aids and check that all five principles (Deggendorf, cumulation, *de minimis* conditions, firms in difficulty and single undertakings) are taken into account in the acts concerned.

For *de minimis* support, each aid provider is obliged by the national guideline to check *de minimis* limit in the register prior to granting *de minimis* support.

Where there is more than one awarding body for a given aid scheme, the institution responsible for notification of the measure aid is advised to specify responsibility for the registration of aid into the TAM.<sup>46</sup>

## 3.4. **Operational and technical arrangements**

### 3.4.1. *Domestic State aid registers*

Since 1 January 2010 the Czech Republic has operated a *de minimis* register.

There is also a monitoring system administered by the Ministry for Regional Development for all measures co-financed from the Structural Funds (even those that do not involve State aid).

The same systems are used for recording State aid for other sectors (such as agriculture or fisheries) in the Czech Republic. The only central register is the *de minimis* register, which serves to record *de minimis* support from all sectors.

The rationale for using the TAM was that the Czech Republic did not have any monitoring system for State aid. Consequently, the choice of TAM was clear and straightforward.

### 3.4.2. *Interoperability*

There are no domestic systems for ensuring State aid compliance linked to other domestic digital sources.

As regards practical experience on how and when data is fed into the TAM, information is entered by specific aid providers in the TAM, but this is not overseen by the coordinating authorities in any way. Nevertheless, the coordinating authorities presume that, in the case of aid measures involving a high number of individual awards, the data is filtered with respect to the notified threshold. Regarding *ad hoc* aid, providers usually register them within a few weeks after the legal act of granting comes into effect.

There is no central control of entries into the TAM in the Czech Republic.

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<sup>46</sup> Office for the Protection of Competition and Ministry of Agriculture Guidelines, 2019, pp. 16.

### 3.4.3. *Lessons for e-government and the digital agenda*

There are no examples of IT solutions considered innovative or novel and introduced to meet the transparency and other compliance requirements in the Czech Republic as it fully uses the TAM system.

## 3.5. **Other State aid reporting**

### 3.5.1. *Links between systems for TAM and annual spending reports*

Data for the annual report on disbursed State aid is entered by providers with a large number of notified measures (e.g. some ministries) by themselves into the SARI system. Smaller providers send this data on a form to the coordinating authority, which will then enter the data into the SARI system. Collection and storage of data on State aids are the responsibility of individual aid providers.

In the case of recording in the TAM, individual providers have access to the system and make these records themselves. The coordinating authorities do not have detailed information on the individual storage and collection systems of each provider.

### 3.5.2. *De minimis compliance*

From 1 January 2010, a *de minimis* register was set up to enable aid providers to verify the scope to provide *de minimis* support to a given applicant (by verifying aid limits) and then record information on any *de minimis* support granted.

The methodological guideline sets out the minimum requirements for cumulation, whereby the coordinating bodies recommend that at least the minimum requirements of the European Commission are complied with, cumulating the acts granting the aid to the same beneficiary and for the same eligible costs for the same objective within the same project.

### 3.5.3. *Domestic reporting*

Under the national legislation of Act No. 215/2004 Coll., as amended, awarding bodies are obliged to submit to the coordinating body by the end of April information on State aids granted in the previous calendar year and on the ongoing State aid programmes. However, this is not a purely domestic requirement as the information which the provider is required to supply to the coordinating authority is laid down in a directly applicable EU regulation (even though transferred into domestic legislation in order to ensure the coordinating authorities can execute their duties accordingly and on time) and used for submitting the annual report to the EC. The provider is obliged to send the information to the coordinating body even if it did not pay any funds within the notified State aid in the given year.

## 3.6. **References**

- Úřad pro ochranu hospodářské soutěže, Ministerstvo zemědělství (2019): Metodika k plnění povinnosti transparentnosti (zápis údajů do elektronického systému Evropské komise). (Office for the Protection of Competition, Ministry of Agriculture (2019): Guidelines for Fulfilment of Obligations of Transparency). Accessed February 2020 [http://eagri.cz/public/web/file/518245/Metodika\\_k\\_plneni\\_povinnosti\\_transparentnosti.pdf](http://eagri.cz/public/web/file/518245/Metodika_k_plneni_povinnosti_transparentnosti.pdf).

- Act No 215/2004 Coll. of 2 April 2004 on the regulation of certain relationships within the area of state aid and on amendment to the Act to support research and development. Accessed February 2020 <https://www.zakonyprolidi.cz/cs/2004-215>
- Government Decree No. 298/2020 Decree on the content and scope of data that the de minimis support provider is obliged to record in the central register of de minimis aid and on the procedure for recording them. Accessed September 2020. <https://www.zakonyprolidi.cz/cs/2020-298>
- Request form to assign or remove roles into the TAM system - [Žádost o přidělení nebo odebrání rolí do systému TAM – in Czech.](#)
- Webpage of the Office for Protection of Competition dedicated to the obligation of transparency aids - <https://www.uohs.cz/cs/verejna-podpora/evidencni-povinnost-poskytovatelu-transparentnost-podpor.html> - in Czech only. Accessed February 2020.
- Webpage of the Ministry of Agriculture dedicated to the obligation of transparency aids - <http://eagri.cz/public/web/mze/dotace/verejna-podpora-a-de-minimis/transparentnost-verejnych-podpor/> - in Czech only. Accessed February 2020.

## 4. DENMARK

KEY DIMENSIONS	MAIN CHARACTERISTICS
Legal	<ul style="list-style-type: none"> <li>• GBER is directly applicable; there is no domestic State aid law</li> <li>• The State Aid Division has an advisory and coordination role, but no powers of enforcement. There are no separate arrangements for agriculture, forestry and fisheries</li> </ul>
Organisational	<ul style="list-style-type: none"> <li>• State aid coordination is centralised in the State Aid Division, Ministry of Business Industry and Financial Affairs</li> <li>• Awarding bodies are responsible for ensuring compliance</li> </ul>
Operational and technical	<ul style="list-style-type: none"> <li>• Awarding bodies input to TAM directly</li> <li>• No central (or regional) State aid register</li> <li>• No <i>de minimis</i> register</li> </ul>
Other points to note	<ul style="list-style-type: none"> <li>• Danish Business Authority ESF and ERDF project reporting IT system is considered an innovative IT solution</li> </ul>

### 4.1. Summary

In Denmark, the transparency requirement introduced in 2016 has been implemented using the Transparency Award Module (TAM) developed by the Commission. Previously there was no State aid register in place in Denmark. Therefore, it was decided to enforce the Regulation directly according to Commission guidelines.

The State Aid Division at the Ministry of Business, Industry and Financial Affairs provides information and guidance to the national awarding bodies about what should be reported and when. Further, the State Aid Division has a coordinating function in relation to the Commission's compliance checks where the Division follows up with the relevant national awarding bodies. The Danish Business Authority is responsible for the technical support and management of TAM. The Authority provides detailed guidance for registration in TAM on their website.

Overall, the Danish compliance with the transparency requirement is built on trust, and national awarding bodies are themselves responsible for registering data in TAM. This also applies to the areas of agriculture and fisheries. It has become part of the routine of awarding bodies to register aid over the threshold in TAM.

### 4.2. Legal arrangements

#### 4.2.1. Legal basis

The GBER regulation is directly applicable in Denmark using the Transparency Award Module (TAM) developed by the Commission. There is no national legal basis for the obligation. All national awarding bodies are responsible for registering in TAM when relevant. This also includes agriculture and fisheries (under ABER and FIBER).

Denmark did not have domestic State aid databases in place before the obligation came into force. Previously there had been some discussion on whether a national State aid database was

needed. However, it is a national priority to reduce administrative burdens. The need for enhanced State aid transparency was not considered high enough to take measures nationally.

The implementation of the regulation in Denmark is built on trust. The State Aid Division in the Danish Ministry of Business, Industry and Financial Affairs offers legal advice to the national awarding bodies but does not systematically monitor/check implementation.

#### *4.2.2. Substantive provisions*

The guidelines provided by the Commission are followed. There are no substantive provisions in the implementation of the regulation in Denmark.

#### *4.2.3. Enforcement*

The NCA, the Danish Consumer and Competition Authority, is responsible for enforcing national competition law, including domestic competition-distorting aid. The NCA does not have competence on the EU State aid rules.

In principle, if an awarding body fails to report information on TAM, the beneficiary can be required to repay the aid. In practice, there is no mechanism for the State aid division to check reporting or to impose sanctions. As a result, the system works on the basis of trust and there are no examples where awarding bodies have reclaimed funds from beneficiaries due to failure to register awards in TAM.

### **4.3. Organisational arrangements**

#### *4.3.1. Institutional arrangements*

The State Aid State Aid Division in the Danish Ministry of Business, Industry and Financial Affairs advises the central administration on matters of State aid when there is doubt as to whether proposed legislation, support measures or public funding contain State aid. Through dialogue with the State Aid Division, it is ensured that Danish rules and spending initiatives are designed in accordance with EU State aid rules.

The State Aid Division has published a State Aid Handbook,<sup>47</sup> which is used as a tool to ensure that Denmark avoids illegal State aid cases. The handbook contains a detailed description of the concept of State aid and practical information on processes for an aid scheme from initiative to actual implementation. It is the responsibility of each awarding body to ensure compliance with State aid rules, but the State Aid Division is available to provide guidance. To help awarding bodies during the start-up phase of a project, the State Aid Division has developed a checklist which contains several specific issues concerning State aid rules that need to be addressed.<sup>48</sup>

The responsibility of the State Aid Division regarding transparency is to provide information and guidance to the national awarding bodies about what should be reported and when. Further, the State Aid Division has a coordinating function in relation to the Commission's compliance checks. Thus, when asked by the Commission, the Division will follow up with the relevant authorities, e.g.

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<sup>47</sup> <https://em.dk/media/10141/statsstoettehaandbog-2017.pdf> (accessed on 9 March 2020)

<sup>48</sup> <https://em.dk/media/11923/06-21-statsstoettetjeklisten.pdf> (accessed on 9 March 2020)

to remind them to report specific grants or provide guidance in cases where mistakes have been made in reporting.

There are no distinct or additional requirements for domestic audit purposes. A separate auditing authority has been established for EU Cohesion Funds. They check for compliance with State aid rules but do not have measures in place to check compliance with the transparency requirement.

The Danish Business Authority is responsible for the technical support and management of TAM. The Authority provides detailed guidance for registration in TAM on their website.<sup>49</sup> No arrangements were in place concerning transparency requirements before 2016, and therefore the measures taken to provide guidance happened in 2016-2017, including revision of the State aid handbook and State aid checklist.

The State Aid Division has three full-time employees and a part-time student. Two of the employees are partly working with transparency compliance checks. A further person at the Danish Business Authority is responsible for the technical aspects. Initially when the rules were introduced, the State Aid Division spent a lot of time formulating the guidelines and presenting the rules to the awarding bodies. The transparency obligation is now implemented by the awarding bodies and has become part of their routines. The main share of the workload is in connection with the Commission's compliance checks, where the State Aid Division provides a coordinating function in contacting the relevant awarding bodies. The awarding bodies which are responsible for encoding the data into TAM also use resources for this. However, it is difficult to make an estimation as to how much.

#### 4.3.2. *Scrutiny and control of specific compliance issues*

Denmark complies with the EU regulation directly and does not have centralised mechanisms in place for addressing specific compliance issues. In general, the focus on compliance in Denmark happens *ex ante* where the awarding bodies are trusted to follow the guidelines provided and register in TAM when obliged to. There is no *ex post* control conducted at national level.

For example, there are no centralised requirements for checking compliance of *de minimis* conditions. However, beneficiaries are required to sign a solemn declaration concerning the amount they have previously been granted according to the *de minimis* Regulations. Individual awarding bodies may have compliance mechanisms in place which the State Aid Division is not aware of.

### 4.4. **Operational and technical arrangements**

#### 4.4.1. *Domestic State aid registers*

Only the TAM register is used. The rationale for using TAM is that it requires less resources to use the system that has already been developed by the Commission. It ensures that implementation follows the EU regulation and reduces the risk of making mistakes.

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<sup>49</sup> <https://erhvervsstyrelsen.dk/veiledning-registrering-af-statsstotte-i-eus-statsstotteregeister> (accessed on 9 March 2020)

#### 4.4.2. Interoperability

TAM is not linked to any domestic systems.

The data is not checked centrally before it is entered in TAM. It is the responsibility of the individual awarding bodies at what time they want to register data in TAM. Aid awards must be submitted in TAM no later than six months after the grant allocation, and the State Aid Division does not monitor whether the registrations are made in real time or in bulk before the deadlines.

#### 4.4.3. Lessons for e-government and the digital agenda

An example of an IT solution which is considered innovative in Denmark is the system for project reporting developed by the Danish Business Authority for ESF and ERDF. The new system was developed to meet the requirements of e-cohesion, digitalisation of project reporting and the administration by the Managing Authority for ERDF and ESF.

The cost of developing the IT system from scratch was approximately €1 million. The system has a Java backend and html5 frontend, which means it can be run on smartphones, iPad and computers, and, as such, is well protected from future upgrades of internet software.

The system was developed with the intent that the project owner would have improved possibilities to collect input from the partners and participants in the project, thus reducing the administrative burden. The system includes time registration, so the project partners could fill in timesheets individually, and it includes bookkeeping where the partners could get access to fill out their individual costs. The project owner would always have the responsibility to approve the partner registrations and to submit the report. However, obstacles to this system have arisen with the GDPR rules, which means that the project owner is required to fill in all information themselves.

### 4.5. Other State aid reporting

#### 4.5.1. Links between systems for TAM and annual spending reports

The systems for TAM and annual spending reports are not currently linked. The State Aid Division provides a link to the Commission's State Aid Scoreboard on its website.<sup>50</sup> The State Aid Division sees there may be potential in linking the reporting systems, if there is a way to reduce the administrative burden by only registering the information once, automatically transferring data from one system to the other.

#### 4.5.2. De minimis compliance

There is no *de minimis* register in Denmark. It has been considered, but the need for a register has not been found to outweigh the additional administrative burden. Therefore, the solemn declaration method is used instead, which is also an approach that has been suggested by the Commission in the *de minimis* regulations.

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<sup>50</sup> <https://em.dk/ministeriet/arbejdsomraader/erhvervsregulering-og-internationale-forhold/statsstoette/> (accessed on 9 March 2020)

#### 4.5.3. *Domestic reporting*

No domestic reporting is made concerning State aid. However, the annual State Aid Scoreboard and analyses available in connection with this are used. It is considered highly relevant to use the statistics provided by the Commission, not least for comparisons with other Member States. The State Aid Division monitors whether there have been substantial increases in State aid within certain sectors and concerning the horizontal objectives, e.g. for sustainable development, that initiatives are not in opposition to each other. If there is cause for concern the State Aid Division will flag this.

#### 4.6. **References**

- Danish Business Authority, technical guidance for registration in TAM: <https://erhvervsstyrelsen.dk/vejledning-registrering-af-statsstotte-i-eus-statsstotteregister> (accessed on 9 March 2020)
- Danish Ministry of Business, Industry and Financial Affairs (2017), State aid handbook: <https://em.dk/media/10141/statsstoettehaandbog-2017.pdf> (accessed on 9 March 2020)
- Danish Ministry of Business, Industry and Financial Affairs, State aid checklist: <https://em.dk/media/11923/06-21-statsstoettetjeklisten.pdf> (accessed on 9 March 2020)



## 5. GERMANY

KEY DIMENSIONS	MAIN CHARACTERISTICS
Legal	<ul style="list-style-type: none"> <li>• GBER is directly applicable; there is no domestic State aid law</li> <li>• The Federal Ministry of Economics and Energy (BMWi) has a general coordination role</li> <li>• Separate but similar arrangements apply for agriculture, forestry and fisheries and are the responsibility of the Federal Ministry of Food and Agriculture; for transport this falls to the Federal Ministry of Transport and Digital Infrastructure</li> </ul>
Organisational	<ul style="list-style-type: none"> <li>• BMWi plays a lead role at federal level; <i>Land</i> level economics ministries also play a role, but this varies between <i>Länder</i></li> <li>• Awarding bodies are responsible for ensuring compliance</li> </ul>
Operational and technical	<ul style="list-style-type: none"> <li>• In some cases awarding bodies input to TAM directly – federal ministries and agencies, and in some <i>Länder</i>; in other <i>Länder</i>, awarding bodies supply the data to the <i>Land</i> economics ministry which encodes it</li> <li>• There is no general central register, but there is a (publicly-accessible) register covering aid programmes offered by six federal ministries</li> <li>• There is no <i>de minimis</i> register</li> </ul>
Other points to note	<ul style="list-style-type: none"> <li>• Strong institutional coordination on State aid through permanent email distribution list for State aid experts (Federal, <i>Land</i>, municipal and associations and development banks) and working group on EU State aid law</li> </ul>

### 5.1. Summary

In Germany, transparency requirements have been decentralised and generally awarding authorities are responsible for compliance.

At Federal level, a database existed before 2016 and continues to exist where federal ministries may publish award information. This database is, however, in addition to TAM and there is no obligation on Federal ministries.

Practice varies at *Land* level. Some regional ministries have centralised data submission to TAM (e.g. Mecklenburg-Vorpommern) while others have authorised awarding authorities to upload the data themselves (e.g. Bayern).

Overall, the new requirements added the obligation for awarding authorities to publish award decisions on TAM and formal responsibility for supplying information to TAM lies with the awarding bodies.

A centralised register for ABER and FIBER exists. Publication on this register exempts the awarding authority from publishing on TAM.

## **5.2. Legal arrangements**

### *5.2.1. Legal basis*

The transparency requirements are directly applicable in Germany without the need for further implementation. Transparency requirements are integrated within the set-up of each funding programme. This means that the support schemes on which the aid is based contain provisions on transparency obligations and measures or refer directly to the corresponding provisions of the GBER or other relevant State aid legislation. Transparency requirements thus form part of the grant procedure and are complied with when the aid is granted.

At Federal level a database existed before 2016 and continues to exist where Federal ministries may (but are not obliged to) publish award information. This database is in addition to TAM.

Trust plays a role because of the principle of *Rechtsstaat* – that the administration is bound by the law. It is the responsibility of the individual funding provider to comply with the applicable laws and thus also to observe the law on State aid.

An exemption from publication on TAM is available under ABER and FIBER. The Federal Agency for Agriculture and Food publishes the recipients of EAFRD payments on a specific website. Where rural development measures are financed partly from national funds and EU State aid law applies, the publication of information on the website serves to create transparency on State aid. In this case, no additional publication in TAM is required.

### *5.2.2. Substantive provisions*

The transparency requirements are directly applicable in Germany without the need for further implementation.

### *5.2.3. Enforcement*

At national level, the Federal Ministry of Economics and Energy (BMWi) is responsible for fundamental issues of European State aid policy. The Federal Ministry of Economics and Energy also represents the Federal Republic of Germany in most State aid proceedings before the European Commission. This task is performed by the Federal Ministry of Food and Agriculture (BMEL) or the Federal Ministry of Transport and Digital Infrastructure (BMVI) in the specialised areas of agriculture and transport.

The responsibilities of the BMWi include:

- initial notification of individual aid or aid schemes to the European Commission;
- monitoring of notification procedures
- after the European Commission has approved aid measures, mediation between the European Commission and the various national aid providers (such as Federal and regional ministries, municipalities and development banks) in the implementation of the

aid measures (for example in the form of annual reports) including any recovery procedures (in the event of a negative decision by the European Commission).

As the national competition authority, the BMWi leads on State aid compliance through provision of elements such as: an aid manual; aid guidelines including an aid self-test; provision of a handbook with recommendations for action; the appointment of a State Aid Compliance Officer.

In terms of transparency requirements, however, these have been decentralised, and each awarding authority is responsible for compliance. BMWi does not have any role in ensuring compliance apart from providing assistance if requested.

### **5.3. Organisational arrangements**

#### *5.3.1. Institutional arrangements*

In Germany a decentralised system is in place in which awarding authorities are responsible for complying with transparency requirements, although differences exist between the *Länder*. For example, in Mecklenburg-Vorpommern, the individual awarding authorities regularly report to the economics ministry of Mecklenburg-Vorpommern through a predefined document (in tabular form) based on the TAM system, and from there the entries are made in TAM. In contrast, Bayern follows the Federal level model, which means that awarding authorities are responsible for data submission while the regional ministry for economy provides assistance and fulfils coordination functions.

In principle, the various bodies (e.g. awarding authorities at different levels - federal, regional or municipal) are independent from each other. However, there is strong cooperation marked by a constant exchange of information.

Several guidance and exchange of information mechanisms have been put in place by the Ministry for Economics and Energy, BMWi at federal level, including:

- A permanent e-mail distribution list for State aid experts (Federal, *Land*, municipal and associations and development banks). It aims to ensure regular exchange of information.
- A working group on EU State aid law which meets twice a year, and bilateral contacts between the represented bodies takes place almost daily.
- BMWi continuously provides training for State aid experts, judges, auditors and other stakeholders. Training and information material is provided electronically by BMWi.

Due to the decentralised responsibility for the award of grants and the lack of information on the resources mobilised to comply with transparency requirements, it is difficult to assess the scale of resources dedicated to the task. As an indication, in Bayern 0.6 FTE (full-time equivalent) staff member is responsible for TAM, SANI and SARI.

#### *5.3.2. Scrutiny and control of specific compliance issues*

i Compliance with the Deggendorf principle

Awarding authorities are individually responsible for compliance.

ii Cumulation

Funding conditions require that the recipient of a grant declares all grants relating to the respective measure when applying for funding. This enables the authority awarding the aid to ensure compliance with the aid ceilings. The information provided by the applicant is an essential element of the subsidy and false information may be considered a criminal offense.

iii de minimis conditions

The support schemes provide that the beneficiary must declare all *de minimis* support received within the relevant period when applying for support. This enables the awarding body to ensure compliance with the *de minimis* ceilings. Once the aid has been approved, the body awarding the aid will issue a *de minimis* certificate to the beneficiary confirming that the grant constitutes *de minimis* support. The information provided by the applicant is relevant to the subsidy and false statements are therefore criminally chargeable.

iv Firms in difficulty

All respondents affirm that this is being checked but no details are available on how the checks are done.

v Single undertaking principle

At *Land* level, usually in the ministries of economics, there are so-called aid or aid control departments (also in the ministries of agriculture for agriculture and fisheries) which regularly inform all *Land* ministries and subordinate departments about current aid law.

#### 5.4. Operational and technical arrangements

##### 5.4.1. Domestic State aid registers

A centralised database exists for federal aid programmes including the information provided by the following ministries:

- Federal Ministry of Education and Research: Project funding and research and development contracts
- Federal Ministry for the Environment, Nature Conservation and Nuclear Safety (BMU): Project funding measures and research and development contracts
- Federal Ministry of Economics and Energy: Projects of direct project funding in the fields of energy, aviation research, multimedia, aerospace and InnoNet
- Federal Ministry of Food and Agriculture: Projects of direct project funding by the Federal Agency for Agriculture and Food and the Agency for Renewable Resources
- Federal Ministry of Transport and Digital Infrastructure: Project support measures and research and development contracts
- Federal Ministry of Justice and Consumer Protection.

The database may however not be complete as each ministry decides independently which funding areas are to be included in the register. Moreover, regional or municipal awarding authorities are not included and may run their own databases.

Data submission to TAM in bulk or real time depends on the preference of the awarding authority (both examples are possible and are being applied in Germany). In case of centralised data submission at *Länder* level, the only filters concern the thresholds (no information below the thresholds seems to be published).

#### *5.4.2. Interoperability*

Some *Land* representatives have stated that interoperability was not possible.

#### *5.4.3. Lessons for e-government and the digital agenda*

None identified.

### **5.5. Other State aid reporting**

#### *5.5.1. Links between systems for TAM and annual spending reports*

*Land* representatives reported that there are no links between the systems for TAM and annual spending reports.

#### *5.5.2. de minimis compliance*

No *de minimis* register exists in Germany; compliance is based on declarations and certificates.

#### *5.5.3. Domestic reporting*

The following measures have been put in place at Federal level (BMWi) to improve State aid compliance:

- Active case management
- Annual case prioritisations
- GBER screening
- Implementation of best practices in the SAM Progress Report (iSAM)
- Annual statistical case evaluation by BMWi-EA6.

The results flow directly into working practices. If a need for improvement is identified, the relevant information is shared through an email distribution list in order to communicate and implement the need in a timely manner.

### **5.6. References**

Guidance documents provided by the Federal Ministry for Economy and Energy:

- Handbuch über staatliche Beihilfen:  
<https://www.bmwi.de/Redaktion/DE/Downloads/B/beihilfenkontrollpolitik-handbuch-ueber-staatliche-beihilfen.html>
- Empfehlungen für die Umsetzung des europäischen Beihilferechts in Deutschland:  
[https://www.efre-thueringen.de/mam/efre20/bibliothek/beihilferegulungen\\_der\\_kom/handlungsempfehlungen\\_bmwi\\_compliance\\_-\\_stand\\_14.12.2015.pdf](https://www.efre-thueringen.de/mam/efre20/bibliothek/beihilferegulungen_der_kom/handlungsempfehlungen_bmwi_compliance_-_stand_14.12.2015.pdf)

Central State aid register for aid awarded by federal ministries:

<https://foerderportal.bund.de/foekat/jsp/StartAction.do?actionMode=list>

Central information portal on existing aid programmes:

<https://www.foerderinfo.bund.de/index.php>

Federal Agency for Agriculture and Food website for EAFRD payments:

<https://agrar-fischerei-zahlungen.de/>

## 6. ESTONIA

KEY DIMENSIONS	MAIN CHARACTERISTICS
Legal	<ul style="list-style-type: none"> <li>• Transparency requirements have been transposed into the 2001 Competition Act (as amended) and equivalent acts for agriculture and fisheries</li> <li>• The Ministry of Finance has general responsibility for State aid transparency and coordination, but no enforcement role</li> <li>• Separate arrangements apply to agriculture, forestry and fisheries. Responsibility is divided between the Ministry of Rural Affairs and awarding bodies for the sector.</li> </ul>
Organisational	<ul style="list-style-type: none"> <li>• State aid coordination and responsibility for transparency is centralised in the Ministry of Finance</li> <li>• Awarding bodies are responsible for compliance</li> </ul>
Operational and technical	<ul style="list-style-type: none"> <li>• TAM is used but not directly by awarding bodies</li> <li>• There has been a central State aid register for awards of all sizes (including <i>de minimis</i> but not agricultural and fisheries aid) since 2009. It is publicly-accessible. Awarding bodies encode awards in the national register. The Ministry of Finance manually adds awards over €500,000, of which there are relatively few, to TAM</li> <li>• The central register includes <i>de minimis</i> support</li> </ul>
Other points to note	<ul style="list-style-type: none"> <li>• The national register includes more information than required by TAM (not just awards below €500,000)</li> </ul>

### 6.1. Summary

In broad terms, Estonia has responded to the transparency requirements introduced in 2016 by taking advantage of the existing national State aid and *de minimis* aid register created in 2009. The national register covers all State aid (except State aid in the fields of agriculture and fisheries) and all *de minimis* aid awards. The domestic register contains more information than required by the transparency requirements (e.g. including also eligible costs, payments, etc.). The Estonian register reports all awards with no threshold. It also has a logging system showing who, when and what data has been entered or changed. It is also possible to create various overviews with additional information (e.g. create the list of all measures from a particular aid grantor with the number of beneficiaries under each measure; obtain information about the residual amounts available under the *de minimis* limit, etc.). Changes adapting to the new transparency requirements were mostly legislative; Estonia had to change the Competition Act 2001, Rural Development and Agricultural Market Regulation Act 2008 and Fisheries Market Organisation Act 2014.

In Estonia the arrangements for reporting aid for agriculture and fisheries under ABER and FIBER and Guidelines related to these sectors are separate from the arrangements for reporting aid under GBER and relevant Guidelines. The formal responsibility for compliance with TAM lies

within two Ministries – the Ministry of Finance (all fields except agriculture and fisheries) and the Ministry of Rural Affairs (agriculture and fisheries). The Ministry of Finance encodes, finalises and publishes awards exceeding €500,000 as required under GBER and relevant Guidelines. In the fields of agriculture and fisheries, aid grantors encode and finalise aid awards exceeding the thresholds in TAM, after which they notify the Ministry of Rural Affairs who then publishes the data in TAM.

In summary, Estonia already had a well functioning register in place. On this basis, TAM is not perceived as offering additional value to Estonia, and there is little awareness of TAM. When information is needed, the domestic register is usually used (by all groups, including aid grantors, beneficiaries and the public). Thus, the new requirements are seen to have increased the administrative burden to a certain extent within the State administration, with no additional value for stakeholders. On the other hand, it is not difficult to enter data into TAM, as there have not been many aid awards over the threshold so far in Estonia. This could become more challenging in future if new rules or approaches on how to calculate cumulative sums or thresholds are introduced. Many rules on how to interpret transparency requirements are currently under discussion with no concrete well-defined outcome. Thus, the majority of the burden is currently connected to interpretation of the rules and requirements, rather than filling in data.

## **6.2. Legal arrangements**

### *6.2.1. Legal basis*

The transparency requirements in the GBER, ABER and FIBER and in the relevant guidelines are transposed into domestic legislation through three different legal acts, which provide the legal basis. These are the Competition Act 2001, the Rural Development and Agricultural Market Regulation Act 2008 and the Fisheries Market Organisation Act 2014.

Thus, the legal basis for reporting aid for agriculture and fisheries is separate from the legal basis for reporting aid for GBER, though they are similar. Domestic transparency requirements applied in Estonia before July 2016 due to requirements to provide information to the national State aid and *de minimis* aid register. The national register covers all State aid (except agriculture and fisheries) and all *de minimis* aids, including information not only on aid awards but also on expenditure. There is no threshold for entries.

The legal basis provides both in theory and in practice the reason and motivation for gathering and publishing data in TAM. In this respect, the theory and the practice do not differ.

### *6.2.2. Substantive provisions*

The Estonian domestic legal basis for implementing the transparency requirements go beyond EU requirements concerning the amount and type of information collected for the national register (e.g. dates and amounts of expenditures, legal statuses of beneficiaries, etc.). Domestic rules do not have a threshold for reporting. The rules are mandatory to all aid awarding bodies with no flexibility or different application across sectors. There are, however, some exceptions concerning the deadlines in the case of tax measures.

### 6.2.3. *Enforcement*

The Ministry of Finance and the Ministry of Rural Affairs do not have any official authority over implementation. Their powers are advisory. Neither the Ministry of Finance nor the Ministry of Rural Affairs can fine or force compliance with the transparency requirements. In case of need, both Ministries use 'soft powers' i.e. reminder emails, sharing information, advising online, etc. There are no fines or sanctions for late reporting.

The NCA has full competencies with respect to State aid transparency and compliance. Both ministries frequently take part in EC meetings, they have had special training in administrating the system, etc. They share information and experience with each other on an ongoing basis, they also hold joint meetings if needed, etc. Mostly there is a need to share thoughts and opinions concerning the interpretation of transparency rules and guidelines.

## 6.3. **Organisational arrangements**

### 6.3.1. *Institutional arrangements*

Responsibility for transparency and compliance with other State aid requirements in Estonia is centralised on a horizontal level. The Ministry of Finance is responsible for the 'general' State aid and *de minimis* register covering all sectors except State aid in agriculture and fisheries. The Ministry of Finance encodes, finalises and publishes data in TAM. Granters are responsible for presenting data to the Estonian national register from where the Ministry of Finance takes the data for TAM. For agriculture and fisheries, the responsibility is decentralised, and is divided between the Ministry of Rural Affairs and multiple aid grantors (mostly foundations and government agencies). The Ministry of Rural Affairs does not collect data, it just publishes it. Grantors are the ones encoding and finalising the aid awards. They then notify the Ministry of Rural Affairs, who checks the data and publishes it in TAM. They are also the ones ensuring the transparency and efficiency of the grants of State aid. There are no subnational units responsible for ensuring compliance.

There are no distinct or additional requirement for domestic audit purposes. The Ministry of Finance is not responsible for auditing TAM. The Estonian national register is audited by domestic audits while performing the usual auditing of State aid measures. There is no formal guidance in place for awarding bodies concerning general aid presented in TAM, but there are official guidelines on how to use the national register, also the Commission encoding guidance on TAM. Most guidance takes place on an ongoing basis via phone and emails. There have also been several training sessions held by the Commission in which ministries and aid grantors took part.

Arrangements have not changed significantly to meet the transparency requirements introduced from July 2016. The Ministry of Rural Affairs took on the responsibility to fill in transparency data concerning agriculture and fisheries into TAM and the Ministry of Finance took on the responsibility to fill in data concerning other areas. In both ministries, one person is mainly responsible for TAM. Additionally, there is another person in both ministries able to replace them in case of need (e.g. vacation time). The responsibility for TAM is an additional administrative part-time task (less than 0.2 FTE). It takes much more time when the encoding and publishing concerns data which are sent to the national register once a year and these data have to be cumulated.

### 6.3.2. Scrutiny and control of specific compliance issues

#### i Compliance with the Deggendorf principle

When the Ministry of Finance makes a note about a negative Commission decision on the aid award, the beneficiary will be entered into a 'blacklist' and can be found by the query. Aid grantors cannot encode aid to this beneficiary until incompatible aid is paid back. After it is paid back, it will be reflected in a payments block. The national registry has a function enabling the Deggendorf check to be made by designated users and not through public search.

#### ii Cumulation

In Estonia the application form for aid usually includes a question about aid granted for the same purpose by another awarding body. Currently the responsibility for checking this information lies with the aid grantors. Still, there is a need for a better system on how to control cumulations of aid presented in the national register. The situation is a bit blurred by the fact that there is no common definition of what exactly is 'a project'. At the same time implementing this principle has not created any major problems in Estonia so far.

#### iii de minimis conditions

There is scope to check the national register for information on previously granted *de minimis* support (names of beneficiaries, amounts of aids, granting dates, residual amount available etc.). This information can be checked both by designated users and by public search within the register. In general, the Estonian register has received quite positive feedback concerning information about *de minimis* aids by all stakeholders, and it is perceived to be the most valued and used section of the register.

#### iv Firms in difficulty

There is no centralised mechanism in place for detecting firms in difficulty. Aid grantors check this information mostly through application forms and various public registers, e.g. the business registration system. It is quite a heavy burden for them, because of the need to check and combine the information about the size and affiliations of beneficiaries with many factors that might be constantly changing. It is the toughest requirement set for the administration to control and it might not be feasible to have this requirement for each measure (e.g. in case of subsidised services in the agricultural sector, etc.).

#### v Single undertaking principle

There is no centralised mechanism in place in Estonia. Information is gathered through the data submitted to the national business register. Aid grantors are responsible for controlling this information. This is often the most time consuming task. In the national State aid register it is possible to combine various firms/companies under the single undertaking principle, but the function is not often used because it is complicated and time consuming.

## 6.4. Operational and technical arrangements

### 6.4.1. Domestic State aid registers

In Estonia a domestic State aid register has been in operation since 2009 which covers the general part of State aid (excluding for agriculture and fisheries) and all *de minimis* aids. Initially Estonia did not plan to join TAM in terms of aids covered already by the national register, but after the non-official consultations with the Commission, the central administration agreed with the argument that all State aids should be accessible from one site. Thus, the Ministry of Finance agreed to feed in information about horizontal awards in addition to the Ministry of Rural Affairs (agriculture and fisheries). Currently Estonia uses both a national register and TAM.

The Estonian national register is harmonised with TAM in terms of available information – all information available in TAM is also available in the national register. On other hand, the national register includes much more information. There were therefore no changes required within the national register to meet the transparency requirements introduced in 2016. There are some minor differences in the structure of objectives and aid instruments within these two systems (e.g. in the TAM system, ‘the objective’ is equivalent to ‘the sub-objective’ in the national register), but since TAM is filled in manually, it is not a problem to enter the required information in the correct format. In order to start to use machine to machine solutions, additional IT development will be needed within the register (in 2016, the estimated costs for such updates were €25,000, but the idea was abandoned).

### 6.4.2. Interoperability

The Estonian national register is linked to the national business registration system. Thus if the user enters the company’s code into the national register, they will automatically receive also information about the legal form of the company, NACE codes and address. Additionally, the national register is also linked to the databases of several grant-awarding authorities via an interface based on automatic updates to the national register.

In practical terms, data is fed into TAM manually by the officials of ministries. Since there are not too many grants in Estonia exceeding €500,000, data is fed in in most cases within a day of the data being available in the national system (or sent to the Ministry of Rural Affairs, as in the case of agriculture and fisheries). Data is fed in case-by-case (no bulk uploading or machine to machine) and in case of ‘horizontal’ aids it is a copy-paste from the domestic systems. There is no need to filter or clean or manipulate it for harmonisation (e.g. there is just a need to clean spaces within numbers since the Estonian national register uses spaces within numbers).

### 6.4.3. Lessons for e-government and the digital agenda

The Estonian register is considered to be very useful for keeping account of *de minimis* aid ceilings and also for transparency purposes for *de minimis* and State aid. However, it is difficult to judge whether the Estonian national register is innovative or novel. It might have been at the time it was set up in 2009, but may no longer be so. At the same time, it is possible to say that the system has been sustainable since it is still working well after 11 years. In recent years there have not been any major updates within the system and based on that there are no significant costs. Overall satisfaction with the system is high (very high concerning *de minimis* aid), but there might be some updates desired concerning functionality of State aid.

## 6.5. Other State aid reporting

### 6.5.1. Links between systems for TAM and annual spending reports

In Estonia there are no links between systems for TAM and annual spending reports. On the contrary, from an administration point of view it is not feasible to link the two types of actions. TAM is for publishing aid awards grants to beneficiaries and SARI is for reporting expenses from aid measures. It could be feasible to 'link' the two systems at a personnel level (the same people work on both systems) but this decision should be made by each organisation itself.

### 6.5.2. De minimis compliance

The Estonian national register includes all *de minimis* support and is used by aid grantors. It is possible to make a public enquiry on the webpage of the Ministry of Finance to get information about the free residual of the *de minimis* limit. This function is used frequently by possible applicants.

### 6.5.3. Domestic reporting

The Ministry of Finance has to submit an overview of all State aid and *de minimis* aid granted in Estonia to the Government of the Republic once a year. The purpose of this overview is to provide transparency of public expenditure (the report is based on expenditure). It covers all State aids and all *de minimis* aids. After approval by the government, the overview is published on the homepage of Ministry of Finance. This provision has been in force since 2008, long before the introduction of TAM.

## 6.6. References

- Competition Act 2001: <https://www.riigiteataja.ee/en/eli/510042019001/consolide>
- Rural Development and Agricultural Market Regulation Act 2008: <https://www.riigiteataja.ee/en/eli/529032019007/consolide>
- Fisheries Market Organisation Act 2014: <https://www.riigiteataja.ee/en/eli/510012019011/consolide>

## 7. IRELAND

KEY DIMENSIONS	MAIN CHARACTERISTICS
Legal	<ul style="list-style-type: none"> <li>• GBER is directly applicable; there is no domestic State aid law</li> <li>• Department of Business Enterprise and Innovation (DBEI) plays a coordinating and advisory role, but none in enforcement</li> <li>• Reporting arrangements are the same for agriculture, forestry and fisheries, but the Ministry of Agriculture plays the advisory role for this sector.</li> </ul>
Organisational	<ul style="list-style-type: none"> <li>• State aid coordination is centralised in DBEI</li> <li>• Awarding bodies are responsible for ensuring compliance</li> </ul>
Operational and technical	<ul style="list-style-type: none"> <li>• Awarding bodies input to TAM directly</li> <li>• No central State aid register</li> <li>• No <i>de minimis</i> register</li> </ul>

### 7.1. Summary

The Department of Business Enterprise and Innovation (DBEI) plays a coordinating and advisory role in State aid compliance in Ireland, but there is no overarching authority with responsibility for State aid compliance.

In response to the transparency requirements introduced in 2016, a dedicated web page was included on the DBEI website. This outlines the transparency requirements to be met by awarding bodies and provides links to the State Aid Transparency search page on the European Commission website. In legal terms, there are no specific rules in place to implement the transparency requirements of the General Block Exemption Regulation, which is operational and deemed directly applicable in Ireland by dint of being an EU Regulation.

Ireland does not have a centralised register of State aid awards. Each awarding body is responsible for publishing information about aid schemes on their websites and retaining all records of expenditure from State aid resources. Awarding bodies are also responsible for inputting information in the TAM on the aid awards exceeding €500,000. The State aid unit of the DBEI keeps awarding bodies up-to-date and aware of their obligations by circulating the relevant encoding guidance and compliance checks. It also provides technical support for awarding bodies using the TAM.

Reporting arrangements are the same for agriculture, forestry and fisheries, but the Ministry of Agriculture plays the advisory role for this sector.

## **7.2. Legal arrangements**

### *7.2.1. Legal basis*

There is no domestic legal basis for State aid compliance in Ireland. The transparency and other requirements of the GBER are directly applicable in Ireland and not subject to further implementation rules.

### *7.2.2. Substantive provisions*

Not applicable; there is no domestic legislation.

### *7.2.3. Enforcement*

The State aid unit of the DBEI has a coordination, training and information role in State aid compliance and the transparency requirements, but it does not have powers of enforcement over awarding bodies.

## **7.3. Organisational arrangements**

### *7.3.1. Institutional arrangements*

There is no centralised system for ensuring State aid compliance or collecting aid award data. Instead, each awarding body is responsible for ensuring that their schemes comply with the State aid rules, including with respect to transparency.

The Interdepartmental committee on state aid (ICSA) provides a useful forum to keep other government departments up to date on State Aid developments, their opportunities and responsibilities as Granting Authorities and to share their experience of engagement with DG Comp when developing and notifying schemes.

### *7.3.2. Scrutiny and control of specific compliance issues*

Scrutiny and control of specific issues (such as the Deggendorf principle, cumulation limits, *de minimis*, aid to firms in difficulty and the definition of single undertaking) is the responsibility of the awarding bodies and is not undertaken centrally.

## **7.4. Operational and technical arrangements**

### *7.4.1. Domestic State aid registers*

There are no domestic State aid registers. Each awarding body keeps its own records and is responsible for reporting aid awards exceeding €500,000 on the TAM. The DBEI State Aid Unit provides advice and technical support, but does not monitor or scrutinise the reporting done by the awarding bodies.

### *7.4.2. Interoperability*

There is no interoperability between the systems for collecting aid award information and other systems.

In practical terms, the information on awards exceeding the threshold is manually added to the TAM by the relevant awarding bodies. The State Aid Unit of the DBEI provides technical guidance on reporting and encoding.

*7.4.3. Lessons for e-government and the digital agenda*

Not relevant.

**7.5. Other State aid reporting**

*7.5.1. Links between systems for TAM and annual spending reports*

None.

*7.5.2. De minimis compliance*

Compliance with the *de minimis* Regulation is the responsibility of awarding bodies; there is no central register.

*7.5.3. Domestic reporting*

There are no separate arrangements for domestic reporting of State aid in Ireland.

**7.6. References**

Department for Business Enterprise and Innovation information on transparency:

<https://dbei.gov.ie/en/What-We-Do/EU-Internal-Market/EU-State-Aid-Rules/Transparency-of-State-Aid/> (accessed May 2020).



## 8. GREECE

KEY DIMENSIONS	MAIN CHARACTERISTICS
Legal	<ul style="list-style-type: none"> <li>The transparency requirements have been transposed into the National State Aid Law 2013, as amended</li> <li>The Central State Aid Unit (CSAU) has a coordinating role, but also checks inputs from the Decentralised State Aid Units (DSAU) and awarding bodies; it does not have an enforcement role</li> <li>The same arrangement applies to agriculture, forestry and fisheries through the DSAU of the Ministry of Rural Development and Food</li> </ul>
Organisational	<ul style="list-style-type: none"> <li>The CSAU is part of the Ministry of Finance. DSAU have been set up in 15 ministries. The DSAU coordinate the awarding bodies in their fields</li> <li>Awarding bodies are responsible for compliance, but the CSAU performs sample checks</li> </ul>
Operational and technical	<ul style="list-style-type: none"> <li>The TAM is used but not directly by the awarding bodies. Awarding bodies report awards exceeding €500,000 to the relevant DSAU, which encode the data into TAM. This is validated by the CSAU.</li> <li>There is (currently) no central State aid register</li> <li>There is a <i>de minimis</i> register but it is considered in need of upgrading</li> </ul>
Other points to note	<ul style="list-style-type: none"> <li>A central State aid register is under development and due to be finalised in 2020</li> </ul>

### 8.1. Summary

The Greek authorities responded to the State aid transparency requirements by amending domestic legislation on State control.<sup>51</sup> The revision provides that, in order to meet these requirements, summary information on State aid granted after 1 July 2016 is posted on a publicly accessible website. Under this legislation, acceptance of State aid by any recipient implies the automatic acceptance of the award details.

Before the introduction of the EU transparency system, other registries were in place, but these primarily served the needs of the awarding bodies for project monitoring. For example, the State Aid management information system (MIS) in the Ministry of Development and Investments covers all State aid co-funded by the ESIF operational programmes. The *de minimis* database is also located in the same ministry, although it is said to need upgrading. In the Ministry of Rural Development and Food, relevant databases are the MIS operated by the Greek Payment Authority for Common Agriculture Policy Aid schemes (OPEKEPE) and the MIS of the Organisation of Agricultural Insurance (ELGA). Similar databases, mainly in the field of horizontal aid, operate in other sectors, such as R&D, fisheries, etc.

A key provision of the National State Aid Law was the establishment of the Central State Aid Unit (CSAU)<sup>52</sup> as the competent authority for State aids in Greece. The CSAU is the unique contact

<sup>51</sup> Law 4152/2013, as amended in 2016 with the addition of the subparagraph B.11 to Article 1. See: [https://www.minfin.gr/documents/31441/8880701/4152\\_2013\\_with\\_changes/cb3cb818-1a1f-4fe4-b17b-d656d20fbfc1](https://www.minfin.gr/documents/31441/8880701/4152_2013_with_changes/cb3cb818-1a1f-4fe4-b17b-d656d20fbfc1) Hereafter Law 4152/2013 is referred to as the National State Aid Law.

<sup>52</sup> Central State Aid Unit: <https://www.minfin.gr/web/kentrike-monada-kratikon-enischyseon>

point for State aid issues with the European Commission and other European or international institutions. Further, the CSAU, in cooperation with the Decentralised State Aid Units (DSAU) - State aid services set up in the majority of ministries,<sup>53</sup> coordinates the awarding bodies. The DSAU are an integral part of the transparency system. The DSAU are subject to the organisational structure of each ministry with primary responsibility for checking the potential existence of State aid in all laws, regulations and decisions of the ministries.

Finally, the responsibility for transparency and compliance with the State aid regulation is decentralised: the awarding bodies report the State aid cases that exceed the thresholds to the relevant DSAU, which manage the digital platforms. CSAU has a coordinating role, while it is the authority in charge of validating the State aid cases reported by the awarding bodies through the DSAU network. Before validating the inputs, CSAU checks some data for each State aid scheme. The whole process is based on the trust among all parties involved and significant problems have not been experienced since this system began operating.

The preparation of a new domestic central State aid database is underway and is expected to be finalised later in 2020.

## **8.2. Legal arrangements**

### *8.2.1. Legal basis*

The coordination and control procedures to ensure compliance with EU State aid legislation at national level are set out in Law 4152/2013 – the National State Aid Law - as revised in 2016. The revision added subparagraph B.11 to Article 1 according to which:

*“to ensure transparency as imposed by the EU rules on State aid, summary information on State aid granted after 1 July 2016, is posted on a publicly accessible website”.*

Under the law as amended, the acceptance of State aid by any recipient also implies automatic acceptance of the publication of data on the State aid granted. All data are registered in TAM application. Moreover, a main provision of the Law was the establishment of the Central State Aid Unit (CSAU) as the competent authority for State aids in Greece and the contact point for State aid issues with the European Commission and other European or international institutions.

The strategic goal of CSAU and the relevant DSAU network is the efficient and organised use of State resources in order to promote economic growth and avoid the negative effects of granting unlawful and/or incompatible State aid. CSAU examines/assesses every draft State aid measure for its compatibility with State aid rules, expresses an opinion which is attached to the draft measure and is responsible for notifying the draft measures to the Commission through SANI (State Aid Notification Interactive).

Furthermore, CSAU, in cooperation with DSAUs, coordinates the awarding bodies and State aid cases. The DSAUs are an integral part of the transparency system. They are subject to the organisational structure of each ministry, with primary responsibility for checking the potential existence of State aid in all laws, regulations and decisions of the ministries. The DSAU network contributes to the formulation of State aid schemes compatible with EU legislation and the

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<sup>53</sup> The DSAU network cover 17 Ministries.

preparation or promotion of measures for opinion or approval by the Central State Aid Unit. Through this process the CSAU has an active role in shaping and formulating the national State aid policy.

Prior to the new transparency rules there was no specific domestic legislation. In some specific cases data on State aid grants were publicly communicated, in accordance with other procedures. For example, all government decisions have to be published in the Transparency Platform (DIAVGEIA),<sup>54</sup> while the European Structural and Investment Funds (ESIF) regulations also impose specific publicity requirements - publishing the lists of funded projects has been mandatory for the Managing Authorities of ESIF operational programmes. However, searching for information on State aid recipients by interested parties is not possible as the published information is not linked to any databases.

The operation of the new process is based on the establishment of CSAU and the DSAU and their collaboration with the granting authorities. The granting authorities report State aid cases that exceed the €500,000 threshold to the DSAU, which manage the digital platforms (State Aid Reporting Interactive - SARI, State Aid Notification Interactive - SANI). The process is based on the trust among all parties involved and significant problems have not been observed since the system began.

Some delays that occurred early on have been eliminated as the awarding authorities have become used to the new system. CSAU may perform cross-checks on the basis of the available in SARI and SANI platforms.

### *8.2.2. Substantive provisions*

The national legislation reflects exactly the provisions of the EU State aid rules; there are no domestic rules additional to the EU requirements.

Furthermore, the National State Aid Law adopts the thresholds set by the EU legislation. Stricter rules could be applied in the future. For example, the elimination of the thresholds would impose transparency rules for any State aid, regardless the amount of aid, which could reduce the cost of the whole process, increase transparency and facilitate the monitoring of cumulation whenever it is required.

### *8.2.3. Enforcement*

CSAU is part of the public administration. It is a Unit of the Ministry of Finance, subject directly to the General Secretary for Economic Policy, and not incorporated to any General Directorate of the Ministry.<sup>55</sup> The Unit has the following operational objectives:

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<sup>54</sup> From 1 October 2010, all government institutions are obliged to publish acts and decisions on the internet, while paying special attention to issues of national security and sensitive personal data. Each document is digitally signed and assigned a unique Internet Uploading Number (IUN) certifying that the decision has been uploaded at the "Transparency Portal". Following the latest legislative initiative (Law 4210/2013) administrative acts and decisions are not valid unless published online.

<sup>55</sup> Presidential Decree 142/2107, Article 2, par. 3c and Article 30.

- Ensure and monitor at an early stage the proper and organised use of State and European resources in line with EU and national State aid legislation and serve the purposes as set out by the respective government policy.
- The medium-to-long term contribution to fiscal stabilisation, by encouraging the efficient use of State aid in innovative and productive sectors and harmonising its objectives with those of the EU Directorate-General for Competition.
- Revising and streamlining the State aid policy, as well as co-ordinating, supporting and controlling the authorities and aid awarding bodies.
- Cooperation with the EU, Member States and international organisations on State aid.

The competences of CSAU, as defined by the L.4152/2013 (Article 1, B.11), are the following:

- Coordination at national level on State aid issues, in co-operation with ministries, other agencies and authorities, through the Decentralised State Aid Network.
- Providing an opinion on the existence of State aid in all draft measures which may involve the transfer and allocation of State aid resources to public or private entities, including guarantees, grants, delegation of responsibilities and funding, tax and other exemptions, privatisations, investments.
- The examination of the proposed projects, forwarded to the Unit by the ministries and supervised bodies through the DSAU, for their compatibility with State aid rules and the provision of a written opinion, before their final adoption.
- Responsibility for notifying measures, on behalf of the Hellenic Republic, for approval by the competent European Commission bodies during the notification process and managing the SANI notification system.
- Conducting and coordinating official and technical contacts and consultations on State aid, both with the European Commission and with other European and international bodies. Participating in advisory bodies of the European Commission's Directorate-General for Competition to lay down new rules, communications and procedures on State aid.
- Overseeing and monitoring the progress of State aid cases, including those under examination or recovery by the Commission, and supporting the Decentralised Administrations in formulating responses to the European Commission.
- Checking the Greek authorities' responses before submitting them to the Commission and ensuring that deadlines set by the European Commission are met.
- Participating in the formulation of State aid policy and checking the compatibility of State aid schemes and public aid schemes, in accordance with Articles 107 and 108 of the Treaty on the Functioning of the European Union.
- Involvement in the formulation and verification of the compliance of the Services of General Economic Interest policy, as well as cooperation with the authorities responsible for the preparation of the periodic report on such services.
- Monitoring and compilation of the annual SARI (State Aid Reporting Interactive).
- Providing supporting materials, training and know-how to the Decentralised Units in cooperation with relevant bodies involved in the State aid policy and procedures.

- Management of the Central State Aid Registry for all State aid granted.
- Submitting suggestions and providing secretarial support to the Inter-ministerial State Aid Committee.
- Coordination of the actions of the Hellenic Republic, cooperation with the awarding bodies and the DSAU for the implementation of the decisions concerning the recovery of unlawful State aid, in accordance with the existing provisions. Functioning as a single point of contact with the EU on the implementation of the recoveries, informing the Commission of difficulties, and suggesting the necessary arrangements for the implementation of the decisions.

The ministries and supervised authorities submit all measures that may involve the transfer of State resources to CSAU before their final approval. CSAU examines their compatibility with the State aid legislation and expresses a written opinion, annexed to each plan examined. A measure should not be implemented without the positive opinion of CSAU. In cases of disagreement between CSAU and the awarding body, the case is referred to an inter-ministerial committee whose decision is binding.

CSAU is responsible for the final validation of the State aid in TAM before its publication.

There are no sanctions foreseen; the experience from the implementation of the transparency regulation so far indicates that a sanctions system is not required as major problems have not occurred.

### **8.3. Organisational arrangements**

#### *8.3.1. Institutional arrangements*

The responsibility for transparency and compliance with the State aid regulation is decentralised; the awarding bodies have responsibility for reporting State aid awards over the thresholds. CSAU has a coordinating role and is responsible for validating the State aid cases reported by the awarding bodies through the DSAU network. Before validating, CSAU checks some data in each State aid scheme.

As already mentioned, the implementation of transparency rules rests on the efficient collaboration among the CSAU, the DSAU and the awarding bodies. The rules are the same for all awarding bodies. There are no distinct or additional requirements for domestic audit purposes.

The guidance provided to awarding bodies consists of several Circulars<sup>56</sup>, signed by the Minister of Finance, whose provisions are obligatory for all awarding bodies. The main Circulars are the following:

- Check for the existence of State Aid (9 August 2016)
- Obligation and procedures for publishing data on State aid (23 December 2016)

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<sup>56</sup> Ministry Circular Notes (in Greek): <https://www.minfin.gr/web/kentrike-monada-kratikon-enischyseon/thesmiko-plaisio-odegies-kemke>

- State aid measures with a legal basis Exemption Regulations and *de minimis* rule – Methodology for the reduction of aid and the eligible cost in Present Value at the time the aid is granted – Tool for the estimation of the Present Value (15 November 2017)
- Guidance on aid measures based on GBER and *de minimis* - Indicative structure of State aid measures (05 April 2019).

All these arrangements are in full compliance with the EU regulation. In addition, various documents were issued on aspects of implementation and procedures.<sup>57</sup>

In terms of resources, it is estimated that in CSAU one full-time employee is engaged in the management of the digital platforms, while all other officers of the Unit are partially involved. At the Decentralised Units it is estimated that at least 1-2 employees per Unit are also involved in the State aid reporting procedures, although on a part-time basis.

### 8.3.2. *Scrutiny and control of specific compliance issues*

The arrangements for specific compliance issues are as follows:

#### i Compliance with the Deggendorf principle

The beneficiary of the State aid is asked to submit: a) a Declaration of Honour, stating on non obligation for recovery of unlawful aid, and b) a Tax Clearance Certificate.

#### ii Cumulation

For the control of cumulation, in case there is more than one source of funding, beneficiaries are asked to declare any aid received for the same eligible costs under any State aid scheme.

The application for State aid includes a Declaration of Honour, where the applicant provides all data regarding possible cumulation. The truth of the Declaration is verified during the audit; the aid is recovered in case of violation of the terms and conditions of the applicable legal framework.

#### iii De minimis conditions

Checking for *de minimis* is based on a Declaration of Honour submitted by applicants for State aid; the data provided are checked in the *de minimis* management information system, operated by the Ministry of Development and Investments.

#### iv Firms in difficulty

Documents proving that the applicant is not a firm in difficulty (also at the level of single undertakings) are requested. The control takes place before the approval of the aid.

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<sup>57</sup> These are: 'Scheduling and Procedure for notification of State aid schemes to DG Competition' was issued on 5 December 2017, accompanied by the 'Template to guide early engagement between the Commission and a Member State on a question of State aid' and the 'Checklist for the information required for notification on State aid schemes to DG Competition'.

v Single undertaking principle

The applicants for State aid are requested to provide: a) data on the size of the company, b) data on affiliated companies where applicable, and c) data on the ownership structure of the company. The single undertaking principle is also applied to checking firms in difficulty.

#### 8.4. Operational and technical arrangements

##### 8.4.1. Domestic State aid registers

Before the introduction of the TAM, there were several State aid registries, but these essentially served internal monitoring purposes.

The Management Information System (MIS) for State Aid (in the Ministry of Development and Investments) covers all State aid to entrepreneurship co-funded by the ESIF operational programmes. More specifically, the MIS is operated by the Special Service for State Aid (EYKE), which carries out the responsibilities of the National Coordination Authority for the implementation of State aid actions under the 2014-2020 Operational Programmes.<sup>58</sup> This MIS was the first registry for State aid developed in the country.

The same Ministry hosts the database for the monitoring *de minimis* cumulation.<sup>59</sup>

In the Ministry of Rural Development and Food, the relevant databases are the MIS operated from the Greek Payment Authority of Common Agriculture Policy Aid Schemes (OPEKEPE) and the MIS of the Organisation of Agricultural Insurances (ELGA). Similar databases, mainly in the field of horizontal aid, operate in other areas, such as R&D, fisheries, etc.

The Greek authorities decided to use TAM for State aid reporting for the transparency obligation, not least because it did not involve additional costs for the country, as the system was already available at no cost for all EU Member States.

The preparation of a new domestic Central State aid database is underway and is expected to be finalised later in 2020

##### 8.4.2. Interoperability

All databases and registers mentioned above will, in future, be linked with the Central State Aid Registry, which is under preparation; it is expected to be operational by end 2020. Specific legislation will be introduced to regulate the mandatory interoperability of all systems with the Central State Aid Registry.

It is provided for a six-month margin for entering the data of an approved State aid, but the DSAU may enter the data in real time, just after receiving the report from the awarding body. As the number of the State aid grants which exceed the threshold is not very large, the data are entered manually; a bulk upload of data has not been required. It is of note that State aid under the threshold can also be uploaded, and there is no restriction on this. This practice is useful,

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<sup>58</sup> L.4314/2014, Article 15, par. 5 (in Greek): [https://www.kodiko.gr/nomologia/document\\_navigation/102074/nomos-4314-2014](https://www.kodiko.gr/nomologia/document_navigation/102074/nomos-4314-2014)

<sup>59</sup> L.4314/2014, Article 57A

especially in cases where multiple State aid entries (under the thresholds) can be referred to same beneficiaries and the sum of those entries could exceed the threshold.

CSAU performs checks after a State aid granting decision is entered in the system, while the Unit performs cross-checking of the entries with SARI and SANI as mentioned above.

#### *8.4.3. Lessons for e-government and the digital agenda*

For the first years of the implementation of transparency legislation all respective procedures are being handled manually. The operation of the Central State Aid Registry will provide opportunities for using IT solutions for reporting.

### **8.5. Other State aid reporting**

#### *8.5.1. Links between systems for TAM and annual spending reports*

TAM records data based on decisions to grant aid, while SARI concerns data on expenditure. There is no link between the two systems. In most cases the same employees deal with both systems. In addition, as abovementioned, there are no links among TAM and the other domestic data bases; the required interoperability will be achieved after the development of the Central State Aid Registry, expected by the end of 2020.

#### *8.5.2. De minimis compliance*

For ensuring the compliance of the State aid with the *de minimis* cumulation rule the relevant MIS is used (Ministry of Development and Investments).

#### *8.5.3. Domestic reporting*

There is no further domestic reporting on State aid issues.

### **8.6. REFERENCES**

- National State Aid Law, L 4152/2013 as revised (in Greek):  
[https://www.minfin.gr/documents/31441/8880701/4152\\_2013\\_with\\_changes/cb3cb818-1a1f-4fe4-b17b-d656d20bfc1](https://www.minfin.gr/documents/31441/8880701/4152_2013_with_changes/cb3cb818-1a1f-4fe4-b17b-d656d20bfc1)
- Central State Aid Unit: <https://www.minfin.gr/web/kentrike-monada-kratikon-enischyseon>
- The DSAU network covers 17 Ministries; the Ministry of Rural Development and Food (DSAU), the Ministry of Environment and Energy (DSAU), the Ministry of Economics and Development (Special Service for State Aid), the Ministry of Tourism (Department of Operational Programmes and State Aid), the Ministry of Interior (Department of Development Programmes and State Aid), the former Ministry of Administrative Reorganisation currently incorporated into the Ministry of Interior, the Ministry of Macedonia and Thrace (Department of State Aid), the Ministry of Justice (Department of Budget and State Aid), Ministry of Labour and Social Affairs (DSAU), Ministry of Shipping and Island Policy (DSAU), Ministry of Education and Religious Affairs (Department for Budget Monitoring of supervised authorities), Ministry of Culture and Sports (Department for Budgeting), Ministry of Health (Department for State Aid), Ministry of Infrastructure and Transport (Department for State Aid), Ministry of Digital Governance (Department for Budget Monitoring of supervised authorities), Ministry of

Finance (DG for Financial Services, Directorate of Supervised authorities, Department III for State Aid), Ministry of Migration Policy (DSAU).

Decentralised State Aid Units Network (in Greek): <https://www.minfin.gr/web/kentrike-monada-kratikon-enischyseon/diktyo-apokentromenon-monadon-kratikon-enischyseon-amke->

- Presidential Decree 142/2107, Article 2, par. 3c and Article 30.
- Ministerial Circular (in Greek): <https://www.minfin.gr/web/kentrike-monada-kratikon-enischyseon/thesmiko-plaisio-odegies-kemke> L 4314/2014, Article 15, para 5 (in Greek): [https://www.kodiko.gr/nomologia/document\\_navigation/102074/nomos-4314-2014](https://www.kodiko.gr/nomologia/document_navigation/102074/nomos-4314-2014)



## 9. SPAIN

KEY DIMENSIONS	MAIN CHARACTERISTICS
Legal	<ul style="list-style-type: none"> <li>The transparency requirements are directly applicable, but domestic arrangements for transparency are specified in the General Grants Act, 2003 and the Royal Decree 130/2019.</li> <li><i>Intervención General de la Administración del Estado</i> (IGAE) is the financial control office for the national public sector; it has advisory, coordination and enforcement roles</li> <li>The same arrangements apply to agriculture, forestry and fisheries</li> </ul>
Organisational	<ul style="list-style-type: none"> <li>The IGAE is custodian and administrator of the national State aid register, BDNS</li> <li>Awarding bodies are responsible for compliance and accountable to the IGAE for the award data in the BDNS</li> </ul>
Operational and technical	<ul style="list-style-type: none"> <li>The national State aid register BDNS is used in place of TAM</li> <li>BDNS, which is publicly accessible, has been in place since 2000 and was revamped in 2014 to accommodate new requirements</li> <li>There is no separate <i>de minimis</i> database; under domestic law all awards over €100 must be reported</li> </ul>
Other points to note	<ul style="list-style-type: none"> <li>The data in the BDNS go substantially beyond the TAM requirements; the BDNS enables a range of checks to be operated, including access to criminal court rulings which would exclude an applicant from eligibility, and cumulation and <i>de minimis</i> limits</li> </ul>

### 9.1. Summary

Spain responded to the transparency requirement introduced in 2016 by adapting its existing National Grants Database (BDNS) to cover all the information required by Annex III of the GBER. The database has been in operation since 2000 and is administered by the *Intervención General de la Administración del Estado*, IGAE,<sup>60</sup> although formal responsibility for compliance with transparency requirements lies with the authorities granting the aid.

The legal basis for State aid is currently provided by the General Grants Act of 2003 and Royal Decree 130/2019, which set out requirements for managing grants, harmonising management processes and the rights of citizens and civil society. Subsidies and aid measures were published in the Official Journals or Bulletins, as are the awards to beneficiaries, including the name of the beneficiary and the aid amount; under the 2014 amendment, measures and awards are published through the BDNS Portal.

<sup>60</sup> General Comptroller Office in the Ministry of Finance.

The Transparency Act of 2013 marked a major change in terms of pursuing a uniform and transparent approach, developed further in the 2014 General Grants Act amendment. These developments were largely audit-driven and aimed to address issues of fraud, improve public management and provide data for policy analysis. These new provisions required the publication of all aid measures from all authorities through an exhaustive, open data and searchable web site. They also required disclosure of the value of aid granted and the names of beneficiaries. The redesign of the system took place at the same time as the tabling of the Commission State aid modernisation programme, and the adoption of new EU State aid legislation.<sup>61</sup> All the EU requirements were taken into account by extending the scope of the information collected in the revamped system,<sup>62</sup> which was launched on 1 January 2016.

The overall structure of the system for reporting on awards exceeding €500,000 follows GBER requirements. Aid is accumulated by each awarding body and aid measure, and when the total grant-equivalent breaks the threshold, all the individual awards are displayed in the data grid. When the value does not exceed the threshold, the award is displayed in the 'regular awards' pages and data grids with national data attributes. The coverage of the National Grants Database is comprehensive, encompassing all kinds of State aid to any sector including agriculture and fisheries.

## **9.2. Legal arrangements**

### *9.2.1. Legal basis*

The transparency requirements in the GBER, FIBER and ABER are directly applicable with no need for legal transposition. The National Grants Database is currently regulated by Royal Decree 130/2019, which states that:

*“For the purposes of complying with the obligations of publicity and transparency under the terms of Articles 18 and 20 of Law 38/2003 of 17 November, the National Grants Database will operate as the National System for the Publicity of Subsidies and State Aids and will be the website which, on an exhaustive basis, will publish State aid and De minimis Aid at national level in compliance with the provisions of European regulations.”*

The current transparency arrangements have been in place from 1 January 2016 and are based on the domestic Transparency Act of 2013 regarding all aid activity provided by the different government levels. The legal basis also includes reporting aid for agriculture and fisheries.

In terms of enforcement, the General Grants Act, as amended in 2014, set up a sanctioning procedure for aid granting authorities that did not comply with data registry to the National Grants Database. The sanctions include financial penalties. Data registering is mandatory and it is a rules-based enforcement procedure.

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<sup>61</sup> EU Regulations 651/2014, 702/2014 and 1388/2014.

<sup>62</sup> See: [www.infosubvenciones.es](http://www.infosubvenciones.es) or [www.infosubvenciones.es/bdnstrans/GE/en/index](http://www.infosubvenciones.es/bdnstrans/GE/en/index) (English) or [www.infosubvenciones.es/bdnstrans/GE/en/concesiones/ayuda](http://www.infosubvenciones.es/bdnstrans/GE/en/concesiones/ayuda) (State aid pages).

### 9.2.2. Substantive provisions

The domestic rules add to the EU requirements in several ways. First, the scope of national rules is wider than EU regulations as it extends to any kind of beneficiary, natural person or corporation. Second, the scope of objectives covered is also wider encompassing any kind of aid (e.g. school and university scholarships, household aid, etc.). Third, the timing also differs as the awards are displayed on the website for the awarding year plus the following year for natural persons, the awarding year plus the four following years for corporations, and up to 10 years for State aid.

There are no minimum thresholds in domestic rules. Any aid larger than €100 must be transparently displayed through the website.

### 9.2.3. Enforcement

IGAE is the internal financial control office for the national public sector. As a control organization, the IGAE is in charge of verifying that the economic-financial activity of the national public sector conforms to the principles of legality, economy, efficiency and effectiveness. The control is performed by *ex ante* control of legal compliance, continuous financial audit, government financial audit and grants audit (on beneficiaries).

The Spanish National Commission on Markets and Competition (*Comisión Nacional de los Mercados y la Competencia* - CNMC) is regulated by Law 3/2013. The CNMC promotes and defends the proper functioning of all markets in the interest of consumers and businesses. It is a public body with autonomous legal status and is independent from government but subject to parliamentary control. The CNMC has no competences in the design nor the implementation of State aid schemes, nor over aid control.

## 9.3. Organisational arrangements

### 9.3.1. Institutional arrangements

Formal responsibility for ensuring compliance with transparency requirements lies with each administration/granting authority at national and subnational levels.<sup>63</sup> The General Comptroller Office (IGAE) is the administrator and custodian of the BDNS system and public website.<sup>64</sup> The aid granting authorities are the data owners, and accountable for the registration of award data in the system. The CNMC is responsible for competition goals. The Good Governance and Transparency Council<sup>65</sup> provides oversight of aid publicity.

The data and information acquired by BDNS on grants is broader and more detailed than required by EU regulations. It encompasses all types of aid, awarded by any public sector entity (even those in the grey boundaries between public and private sectors), to any beneficiary (even natural persons), and it is displayed with no constraints other than compliance with data privacy laws. BDNS is independent of the EU Cohesion Policy reporting systems.

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<sup>63</sup> Article 20(4) General Grants Act; and Article 10 *Real Decreto* 130/2019

<sup>64</sup> Article 20(3) General Grants Law

<sup>65</sup> [www.consejodetransparencia.es/en/](http://www.consejodetransparencia.es/en/)

Mandatory guidance is limited to: General Grants Act; Royal Decree 130/2019; and General Comptroller Executive Orders 7D/2015, 9D/2015 and 10D/2015. Regional and local governments may have additional mandatory guidance. Further, there is a 'FAQ file' published by the National Grants Database Team, 500 pages of handbooks and manuals and one hour of video tutorials.

The National Grants Database Team teach ten editions of a 12-hour course every year, plus two editions of a specific State Aid Transparency Course (seven hours). The team also maintain several information pages in different internet services such as Wikipedia, with specific State aid information.

Arrangements have not changed significantly to meet the requirements in place since July 2016. Minor adjustments have been made and new functions relating to the amended EU Regulation 1408/2013 (by 2019/316) were planned for April 2020, but are currently delayed by the COVID-19 pandemic.

The scale of resources involved in transparency compliance at the national General Comptroller Office (IGAE) includes the BDNS team of ten staff working on business design and support for users and authorities. On the IT side, five part time staff are employed (one project manager, one analyst and three programmers). The whole system covers 3,295 granting authorities with 7,345 users.

### *9.3.2. Scrutiny and control of specific compliance issues*

A number of dimensions are checked through the National Grants Database when awarding bodies make entries. These include access to criminal court rulings including on fraud, tax irregularities and embezzlement which would exclude an applicant from eligibility, the scope to check cumulation and *de minimis* limits.

#### *i Compliance with the Deggendorf principle*

There is no single centralised mechanism to prevent the award of State aid to firms subject to the Deggendorf principle. The compliance regime includes a disposition on the matter and the SANI form includes a commitment from competent authorities. Central Coordinators facilitate access to lists of State aid regimes with pending reimbursement obligations, and granting authorities check the company situation before granting the aid, and may also ask the company for information. The General Grants Act (Law 38/2003, Article 13.2) does not allow aid to be awarded if the potential beneficiary has pending dues on reimbursements for grants and subsidies.

#### *ii Cumulation*

The granting authority checks compliance with cumulation rules, either querying the National Grants Database through the web application, or using web services, embedding the process into their own systems.

#### *iii de minimis conditions*

Similar checks are made for cumulation and *de minimis* compliance. The latter is also checked through specific tailor-made reports in the National Grants Database.

iv Firms in difficulty

To prevent the use of aid to support firms in difficulty, a bankruptcy register is used.

v Single undertaking principle

Consistency with the single undertaking principle is not covered by the BDNS *per se*. Granting authorities may also check with the Corporate register and other public registers such as the Bankruptcy Register.

#### 9.4. Operational and technical arrangements

##### 9.4.1. Domestic State aid registers

The National Grants Database is the only aid register used in Spain. TAM is not used as the domestic system is in full compliance with Art 9 and Annex III of Regulation 651/2014. The register was revamped in 2014 and 2015 allowing changes and transparency requirements to be accommodated easily without any challenges. Approximately 2,500 person-hours have been accrued, from business and case analysis, requirements analysis, project management, interface design, software design and development, to implementation.

##### 9.4.2. Interoperability

The system for ensuring State aid compliance is not linked to other digital feeds beyond the measures and awards reported by granting authorities. The system has strong validation rules and controls to ensure compliance with the defined standards. The National Grants Database team also carries out data quality analysis, and reports to granting authorities any errors, omissions or other faulty data for correction.

##### 9.4.3. Lessons for e-government and the digital agenda

Standard IT solutions are used (e.g. web services, web application, XML, java). The main breakthrough was the 2014 amendment of the General Grants Law which made it mandatory to register aid calls in the National Grants Database prior to publishing them in the Official Journals.

The national authorities are generally satisfied with the system, although there is room for improvement. However, future improvements and changes have been delayed since 2017 due to a shift in priorities in the IT department.

#### 9.5. Other State aid reporting

##### 9.5.1. Links between systems for TAM and annual spending reports

There is no information available on any arrangements for linking the two types of reporting.

##### 9.5.2. De minimis compliance

There is no national *de minimis* register, as specified in the *de minimis* Regulations. While some regions have developed their own partial registers, the National Grants Database includes all relevant information about all aid (all the calls and awards of grants and other aid instruments), granted by all public sector bodies, including *de minimis* support.

### 9.5.3. Domestic reporting

The General Comptroller Office performs a yearly analysis on *de minimis* compliance, using the National Grants Database. When *de minimis* support is discovered, the observations are reported to the granting authority in charge of the award that has exceeded the threshold.

The National Commission on Markets and Competition (CNMC) is required to publish an annual public report on State aid granted in Spain. It also analyses the effects of public aid on effective competition in the market, performs *ex ante* and *ex post* assessments, compiles and publishes statistical data that contributes to learning and publishes best practices that respect competition and efficient economic regulation.

## 9.6. References

Overview: <https://www.youtube.com/watch?v=JYNHiaBouXY&t=122s> (live version).  
[https://www.youtube.com/watch?v=\\_NBvKHk2Ksg](https://www.youtube.com/watch?v=_NBvKHk2Ksg) (canned version)

### Legislation

- General Grants Act:  
<https://www.boe.es/buscar/pdf/2003/BOE-A-2003-20977-consolidado.pdf>
- Royal Decree regulating the National Grants Database:  
<https://www.boe.es/boe/dias/2019/03/30/pdfs/BOE-A-2019-4671.pdf>
- National Commission for Markets and Competition Foundation Act:  
<https://www.boe.es/boe/dias/2013/06/05/pdfs/BOE-A-2013-5940.pdf>

### Websites

- National Grants Database Portal:  
<https://www.infosubvenciones.es/bdnstrans/GE/en/index>
- Search pages for general awards:  
<https://www.infosubvenciones.es/bdnstrans/GE/en/concesiones>
- Search pages for State Aid Awards:  
<https://www.infosubvenciones.es/bdnstrans/GE/en/concesiones/ayuda>
- Wiki pages:  
[https://es.wikipedia.org/wiki/Ayudas\\_de\\_Estado\\_en\\_la\\_Uni%C3%B3n\\_Europea](https://es.wikipedia.org/wiki/Ayudas_de_Estado_en_la_Uni%C3%B3n_Europea)

### Other guidance

- HANDBOOK - SPAIN State Aid Transparency according to EU Commission Regulations  
[www.pap.hacienda.gob.es/bdnstrans/ayuda/pdf/StateAidTransparencyHandbook](http://www.pap.hacienda.gob.es/bdnstrans/ayuda/pdf/StateAidTransparencyHandbook)

Several handbooks and manuals are available, including a 150-page FAQ File, for use by granting authorities.

Further information can be requested from  
[bdns@igae.hacienda.gob.es](mailto:bdns@igae.hacienda.gob.es) or [planza@igae.hacienda.gob.es](mailto:planza@igae.hacienda.gob.es)





## 10. FRANCE

KEY DIMENSIONS	MAIN CHARACTERISTICS
Legal	<ul style="list-style-type: none"> <li>• GBER is directly applicable; there is no domestic State aid law</li> <li>• The SGAE (<i>Secrétariat général des affaires européennes</i>) has a general coordination role at the national level; the ANCT (<i>Agence Nationale de la Cohesion des Territoires</i>) is the main interface for subnational authorities and provides information and advice. Neither has an enforcement role</li> <li>• The same arrangements apply to agriculture, forestry and fisheries.</li> </ul>
Organisational	<ul style="list-style-type: none"> <li>• SGAE and ANCT have coordination and advisory roles</li> <li>• Awarding bodies are responsible for compliance</li> </ul>
Operational and technical	<ul style="list-style-type: none"> <li>• Awarding bodies input to TAM directly</li> <li>• There is no central register</li> <li>• There is no <i>de minimis</i> register</li> </ul>
Other points to note	<ul style="list-style-type: none"> <li>• Domestic transparency requirements go further than EU rules. All beneficiaries must declare aid exceeding €23,000 to the <i>préfecture</i> of the <i>département</i> where the head office is located; and municipalities with more than 3,500 inhabitants must publish details of awards exceeding €75,000. This information is publicly accessible.</li> </ul>

### 10.1. Summary

In France, EU State aid transparency rules are in addition to existing far-reaching domestic transparency requirements.

The General Secretariat for European Affairs (*Secrétariat général des affaires européennes*, SGAE), as the official intermediary between the European Commission and French authorities, is responsible for ensuring that all State aid awarding bodies are informed and follow applicable rules. It coordinates relations with national ministries in State aid affairs, while the National Agency for Territorial Cohesion (*Agence Nationale de la Cohesion des Territoires*, ANCT)<sup>66</sup> is the primary interface for subnational governments. It hosts a centralised website comprising State aid rules and schemes, organises workshops and seminars and drafts guidance documents.

EU State aid rules, including rules on transparency, are directly applicable in France. They are referred to in the legal Code that governs regional and local authorities (*Code Général des Collectivités Territoriales*, CGCT) and repeated in the text of each State aid scheme.

Compliance with EU transparency rules is ensured through a decentralised system. There is no national system for collecting information on awarded aid and each awarding authority is

<sup>66</sup> Formerly the *Commisariat Générale à l'Égalité des Territoires*, CGET

responsible for entering its own data on awarded aid in TAM. This applies to all transparency requirements falling under GBER, ABER, and FIBER.

Domestic transparency rules are separate from EU transparency rules and go beyond EU requirements. Several legal requirements provide that information on almost all public support to private beneficiaries needs to be available publicly, regardless of whether it constitutes State aid according to EU law. However, modes of publication are multiple and no centralised databases or registers exist. In practice this means that award information available on TAM is also available publicly through various domestic sources. The EU transparency rules have thus increased the overall time spent on making information available publicly.

## 10.2. Legal arrangements

### 10.2.1. Legal basis

i Legal basis of EU State aid transparency requirements:

EU State aid transparency requirements are directly applicable in France. They are referred to in the set-up of individual aid schemes.

The French General Secretariat for European Affairs (*Secrétariat général des affaires européennes, SGAE*) is responsible for ensuring that all State aid awarding bodies are informed and follow applicable rules. For example, in February 2019, an official letter from SGAE was sent to all Ministers and Prefects emphasising the importance of the rules, the arrangements for notification and highlighting relevant legal references and detailed instructions on applicable State aid rules and procedures.<sup>67</sup>

At sub-national level, aid schemes are typically provided for in regional development plans (SRDEII (*schéma régional de développement économique, d'innovation et d'internationalisation*)), which the Regions have to draw up.<sup>68</sup> These documents are binding for aid awarded by regional authorities as well as municipalities and their groupings.

EU State aid transparency requirements are an integral part of these documents; however, their integration differs between Regions. For example, in the Nouvelle Aquitaine Region the EU transparency requirements were repeated within the SRDEII document itself and regional authorities remind the municipalities and their groupings within the region of their transparency obligations. In Auvergne-Rhone Alpes, EU transparency requirements are not mentioned explicitly within the SRDEII, however, conventions signed between the Region and municipalities providing for the implementation of SRDEII measures include a clause stating that EU State aid law is applicable and that transparency requirements must be fulfilled.

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<sup>67</sup> La Secrétaire Générale des Affaires Européennes, Application des règles européennes de concurrence relatives aux aides publiques aux activités économiques. Paris, le 5 février 2019.

<sup>68</sup> See CGCT Article L4251-13.

ii Legal basis of domestic transparency requirements:

A wide range of domestic transparency requirements existed before 2016 and continue to exist. In general, these obligations are broader than EU transparency requirements because they also concern subsidies/aid outside the scope of EU rules on State aid and lower thresholds.

- Law No 2016-1321 of 7 October 2016 amended Article 10 of Law No 2000-321 of 12 April 2000 (Article 10) on the rights of citizens in their relations with administrations.
  - It requires all organisations that have received public aid of more than €23,000 to submit their budget, accounts, grant agreements and financial reports on the grants received to the Préfecture in which the organisation is registered; this information is publicly available.
- Decree n°2017-779 of 5 May 2017 provides for the practical implementation of the above law by specifying the information that must be published.
- The *Code Général des Collectivités Territoriales*, (CGCT) provides for the following :
  - Art L2313-1: for municipalities with more than 3,500 inhabitants, budgetary documents must be accompanied by a list of organisations for which the municipality has paid a grant of more than €75,000 or representing more than 50% of the income shown in the organisation's profit and loss account.
  - Art L4313-2: budgetary documents must be accompanied by an annex listing the organisations for which the region holds a capital share, has guaranteed a loan, has paid a grant of more than €75,000 or representing more than 50 percent of the income shown in the organisation's profit and loss account.

These obligations go beyond the framework of EU State aid and were introduced to strengthen citizen confidence in the public administration. In addition to these domestic transparency requirements, the EU Cohesion Policy regulations also contribute to transparency as all beneficiaries and amounts are published regardless of whether the support involves State aid.

#### 10.2.2. Substantive provisions

The EU State aid transparency rules are directly applicable and considered separate from other existing domestic transparency requirements.

In practice, however, information related to public support to businesses can be found on a multitude of websites in different formats and breakdowns. While EU transparency requirements concern the aid awarded, the national transparency obligations concern aid actually paid. In practice, this means that following EU transparency rules the full amount awarded will be published on TAM within the six-month limit. According to domestic transparency requirements, however, the awarded amount is published incrementally (and not cumulated) as it is paid out to the beneficiary, which might happen over several years. Moreover, the total amount paid might not be equal to the awarded amount as projects may be abandoned and payments interrupted. The published amounts related to the same undertaking and project might thus be different depending on whether the publication relates to EU or domestic transparency requirements.

#### 10.2.3. Enforcement

Enforcement of transparency requirements fall under general provisions for State aid compliance which is provided for by Article L1511-1-1 of the CGCT.

It stipulates that EU State aid law is directly applicable in France and in relation to enforcement provides for the following:

- The State shall notify the European Commission of draft aid or aid schemes that the regional and local authorities and their groupings wish to implement. In practice, the National Agency for Territorial Cohesion (ANCT, formerly CGET) coordinates this task and sub-national authorities need to send relevant information to ANCT using a functional email and a predefined excel sheet.
- Any local authority or grouping of local authorities that has granted aid to a business is under an obligation to recover it without delay if a decision of the European Commission or a judgment of the European Court of Justice so orders. State representatives (Prefects) have the authority of enforcement in case of non-compliance.
- Local and regional authorities and their groupings shall bear the financial consequences of convictions which could result for the State from the late or incomplete execution of recovery decisions.

### **10.3. Organisational arrangements**

#### *10.3.1. Institutional arrangements*

In France responsibility for transparency is decentralised. Each awarding authority is responsible for encoding award decisions in TAM. The encoding may be transferred to a third party, however, the awarding body remains ultimately responsible.

Coordination and support of awarding authorities is provided by the French General Secretariat for European Affairs (*Secrétariat général des affaires européennes, SGAE*), which attached to the Prime Minister's Office ensures coherence and the National Agency for Territorial Cohesion (ANCT, formerly CGET) which has a coordinating and advisory role.

In view of improving State aid compliance, the SGAE has requested that State aid contact persons be appointed in each department or directorate likely to deal with State aid matters in order to set up a network of State aid experts and working groups.

The ANCT runs a centralised website, *l'europe s'engage en France*,<sup>69</sup> where all relevant information on State aid is published while also being the centralised website for Cohesion Policy. One of the documents on this website is a national guide on transparency requirements. Moreover, the ANCT runs a working group which brings together relevant ministries, associations of local authorities, regional councils and the secretaries-general for regional affairs of the prefectures.

Regional authorities have far reaching competences in terms of economic development. They may grant aid themselves as well as strategically guide and approve the public support granted by local authorities based on regional strategic guiding documents on economic development, innovation

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<sup>69</sup> <https://www.europe-en-france.gouv.fr/fr/aides-d-etat>

and internationalisation (SREDII). French regional authorities cooperate closely on State aid matters and are in frequent exchange between each other.

Due to the decentralised nature of compliance with the transparency requirements it is difficult to evaluate the number of staff involved. As an indication, however, in the Nouvelle Aquitaine Region about thirty people have the right to submit information to TAM.

### 10.3.2. *Scrutiny and control of specific compliance issues*

In 2015, instructions on procedural requirements prior to an award decision were circulated to awarding authorities by the CGET, now ANCT.<sup>70</sup> According to these instructions and in order to ensure compliance, awarding authorities must:

- a) Ensure that the beneficiary has all the relevant information on legal requirements
- b) Ensure that the beneficiary signs a declaration to the effect that it complies with all requirements.

#### i Compliance with the Deggendorf principle

The awarding authority verifies on the Commission's website that the beneficiary is not subject to a request for recovery of unlawful aid.

#### ii Cumulation

In order to determine the aid ceiling of the single undertaking and thus the compatibility of the aid, the awarding authority must obtain from the business making the application for *de minimis* support a statement about any other *de minimis* aid received, or applied for but not yet received, during the current fiscal year, as well as the previous two. A template for this declaration has been provided by the CGET (now ANCT).

The awarding authority, based on the declaration provided by the business, must ensure that the granting of new *de minimis* support to an undertaking would not result in the total authorised ceiling being exceeded.

#### iii *de minimis* conditions

The instructions sent to awarding authorities by CGET (now ANCT) in 2015 entail detailed descriptions of the different possibilities for granting *de minimis* support as well as illustrative examples of cumulation calculations. During the award procedure all requirements are explicitly stated and explained, and the awarding authority sends a letter informing the beneficiary of the *de minimis* amount envisaged.

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<sup>70</sup> Circulaire relative à l'application du règlement n° 1407/2013 de la Commission européenne du 18 décembre 2013 relatif à l'application des articles 107 et 108 du traité sur le fonctionnement de l'Union européenne aux aides de minimis, <http://circulaire.legifrance.gouv.fr/index.php?action=afficherCirculaire&hit=1&retourAccueil=1&r=40085>

iv Firms in difficulty

With the request for support the business must provide various forms of identification information. Based on these the awarding authority can verify the single undertaking principle by consulting various business registers, tax declarations, business statutes etc.

v Single undertaking principle

With the request for support the business must provide various identification information. Based on these the awarding authority can verify the single undertaking principle by consulting various business registers, tax declarations, business statutes etc.

#### **10.4. Operational and technical arrangements**

##### *10.4.1. Domestic State aid registers*

France does not have a national register containing the amounts allocated to each business per aid scheme, but each awarding authority has its own database of awarded aid.

A list of all aid schemes in force (all sectors) is available on a central website for State aid.<sup>71</sup>

As France did not have a national register, it was simpler to connect to TAM.

##### *10.4.2. Interoperability*

There is no interoperability between domestic registers, different systems for domestic transparency obligations and EU State aid transparency requirements. Awarding authorities may, however, consult various sources manually in order to ensure State aid compliance. The reason for the lack of interoperability lies in different reporting requirements, e.g. difference between awarded amounts (TAM) and paid amounts (domestic transparency requirements, and annual spending reports).

##### *10.4.3. Lessons for e-government and the digital agenda*

Nothing specific to report.

#### **10.5. Other State aid reporting**

##### *10.5.1. Links between systems for TAM and annual spending reports*

There are no links between TAM and the annual spending reports. According to French authorities there can be no link, since the annual report traces the aid paid, whereas the TAM refers to aid awarded. Moreover, the annual report traces all aid, regardless of the threshold, whereas the TAM focuses on aid above a certain amount.

##### *10.5.2. De minimis compliance*

There is no *de minimis* register; according to French authorities such a register would be impossible considering the broad definition of a single undertaking.

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<sup>71</sup> <https://www.europe-en-france.gouv.fr/fr/aides-d-etat>

All existing registers are based on business registration numbers (SIRET and SIREN number) while the principle of single undertaking also includes links such as factual control over another business. A register therefore would not make it possible to confirm the *de minimis* threshold granted to a business following the definition of a single undertaking. A declaration by the beneficiary is therefore considered more effective because the beneficiary bears responsibility.

### 10.5.3. Domestic reporting

Domestic reporting focuses on the evaluation and effectiveness of support measures and are usually specific to sectors and policy programmes. However, these reports may also entail information about granted amounts to types of beneficiaries.

## 10.6. References

- Central website for State aid (<https://www.europe-en-france.gouv.fr/fr/aides-d-etat>) includes: National guide on State aid transparency: <https://www.europe-en-france.gouv.fr/fr/ressources/guide-pratique-sur-les-obligations-de-transparence-des-aides-detat>
- General Local Authorities Code (*Code Général des Collectivités Territoriales (CGCT)*), [https://www.legifrance.gouv.fr/affichCode.do;jsessionid=5A367AD520E463E38BD6A080DA07C08A.tplgfr35s\\_1?cidTexte=LEGITEXT000006070633&dateTexte=20200321](https://www.legifrance.gouv.fr/affichCode.do;jsessionid=5A367AD520E463E38BD6A080DA07C08A.tplgfr35s_1?cidTexte=LEGITEXT000006070633&dateTexte=20200321)
- Circulaire relative à l'application du règlement n° 1407/2013 de la Commission européenne du 18 décembre 2013 relatif à l'application des articles 107 et 108 du traité sur le fonctionnement de l'Union européenne aux aides de minimis, <http://circulaire.legifrance.gouv.fr/index.php?action=afficherCirculaire&hit=1&retourAccueil=1&r=40085>
- Law No 2016-1321 of 7 October 2016 amended Article 10 of Law No 2000-321 of 12 April 2000 (Article 10) on the rights of citizens in their relations with administrations and Decree No 2017-779 of 5 May 2017 on access in electronic form to the essential data of grant agreements.
- Decree n°2017-779 of 5 May 2017
- La Secrétaire Générale Des Affaires Européennes, Application des règles européennes de concurrence relatives aux aides publiques aux activités économiques. Paris, le 5 février 2019,
- [http://circulaires.legifrance.gouv.fr/pdf/2019/02/cir\\_44368.pdf](http://circulaires.legifrance.gouv.fr/pdf/2019/02/cir_44368.pdf)



## 11. CROATIA

KEY DIMENSIONS	MAIN CHARACTERISTICS
Legal	<ul style="list-style-type: none"> <li>• Transparency requirements are implemented through the State Aid Act, 2014 and the Aid Regulation, 2017.</li> <li>• The Ministry of Finance is responsible for State aid coordination; it has an information and advisory role, but has a mandatory role in approving aid schemes and checks aid reporting. There are no specific sanctions for non-compliance.</li> <li>• Arrangements for agriculture, forestry and fisheries are separate and the responsibility of the Ministry for Agriculture</li> </ul>
Organisational	<ul style="list-style-type: none"> <li>• State aid coordination is centralised in the Ministry of Finance.</li> <li>• Awarding bodies are responsible for compliance, but the Ministry of Finance checks the information received.</li> </ul>
Operational and technical	<ul style="list-style-type: none"> <li>• The TAM is used but not directly by the awarding bodies. The Ministry of Finance, as central authority collects data through a specialised software, as well as additional forms.</li> <li>• The central register was provided for in the 2014 State Aid Act. Information on awards over €500,000 submitted to the register by awarding bodies is encoded in the TAM by the Ministry of Finance after verification.</li> <li>• Only information on large awards is visible online; other aid is only visible to the Ministry of Finance and the respective aid granting authorities.</li> <li>• The central register includes <i>de minimis</i> support</li> </ul>
Other points to note	<ul style="list-style-type: none"> <li>• The Ministry of Finance is working to expand and automate the specialised data collection software, so that no additional manual data collection will be necessary (additional excel sheets etc.).</li> </ul>

## 11.1. Summary

The Republic of Croatia has established a national central State aid register on the website of the Ministry of Finance. The Ministry of Finance is the central monitoring and advisory body for all other State aid granting authorities.<sup>72</sup> Both large State aid and *de minimis* aid has to be reported to the Ministry of Finance, which then acts as intermediary between Croatian aid granting authorities and European institutions where necessary.

<sup>72</sup> <https://mfin.gov.hr/istaknute-teme/koncesije-i-drzavne-potpore/drzavne-potpore/455>

## 11.2. Legal arrangements

### 11.2.1. Legal basis

After the GBER and the SAM entered into force, Croatia directly implemented the standards set in those legal sources. While the GBER and SAM represent valid sources of law that are directly applied by the legal authorities in Croatia, for the practical regulation of adjunct questions, the existing legal framework was adapted.

The Republic of Croatia has regulated national State aid by introducing the State Aid Act (SAA)<sup>73</sup> and the Regulation (RA) on the submission of proposals for State aid, data on State aid and *de minimis* support and the register of State aid and *de minimis* support.<sup>74</sup> Combined with European law on State aid, these rules form the Croatian framework on State aid law, both with regard to the granting of aid, as well as the control of public authorities in the process.<sup>75</sup>

The SAA was introduced in 2014. It replaced the 2013 State Aid Act<sup>76</sup> in order to systematically implement new requirements on State aid regulation for EU Member States. The current version of the RA was introduced shortly after the last amendment to the SAA passed. Both were aimed at better defining the inter-governmental relations of various agencies and reforming transparency and information standards.

In addition to the mentioned sources, the Croatian guidelines on State aid policy (*Smjernice politike državnih potpora*), plus summaries on the previous development of aid granted to businesses in Croatia, contain the government's strategy on key goals on the provision of State aid in Croatia. While the SAA grants the Croatian government the right to define the content of the guidelines,<sup>77</sup> it simultaneously requires the guidelines to be in line with EU policy<sup>78</sup>. Guidelines are always issued for a three-year period, and the most-recently issued guidelines (*Smjernice politike državnih potpora za razdoblje 2020. – 2022, NN 123/19*) cover the period from 2020-2022.

### 11.2.2. Substantive provisions

The Croatian guidelines on State aid policy highlight that the most important role under the strategy to reach the Croatian targets on State aid is held by the aid granting authorities. Under the provisions of the guidelines, they must declare their proposals and request the opinion of the Ministry of Finance. The guidelines by nature primarily define the direction of actions; authorities therefore rely on the procedural rules of the *ius cogens* of the SAA and RA. As under Croatian law a clear norm hierarchy exists, European regulations apply directly and primarily, while the SAA takes priority in relation to the RA and the RA regulates various issues left open in the SAA.

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<sup>73</sup> SAA - Zakon o državnim potporama NN 47/14 , 69/17

<sup>74</sup> RA - Pravilnik o dostavi prijedloga državnih potpora, podataka o državnim potporama i potporama male vrijednosti te registru državnih potpora i potpora male vrijednosti NN 125/17

<sup>75</sup> Art. 2 para 1 nr. 9 SAA.

<sup>76</sup> Zakon o državnim potporama NN 72/13, 141/13

<sup>77</sup> Art. 7 para. 1 SAA.

<sup>78</sup> Art. 7 para. 2 SAA.

The SAA grants the authority to compile nationwide data and conduct the national part of the approval process on State aid to the Ministry of Finance.<sup>79</sup> Aid granting authorities (both national and regional) have to inform the Ministry of Finance in advance about their intention to apply State aid measures, regardless of whether the measure falls within the category of regular or *de minimis* State aid.<sup>80</sup> Furthermore, aid granting authorities have to inform the Ministry of Finance annually about the effectiveness of granted State aid within their jurisdiction.<sup>81</sup>

The RA follows the structure of the SAA and contains rules, both on regular State aid as well as *de minimis* State aid. It contains rules on the form, timeframes, methods of delivery of data on State aid, both regarding individual aid cases and aid schemes.<sup>82</sup> It furthermore defines the inner workings of the database on State aid and *de minimis* State aid.<sup>83</sup>

### 11.2.3. Enforcement

The Ministry of Finance took over the role of the controlling body on State aid cases in a national environment from the Agency for Market Competition in 2014. Since then the Ministry of Finance has full authority to conduct supervision of the application of State aid policy for both State aid and *de minimis* State aid.<sup>84</sup> While this role is centralised, the control of the use of funds in the context of concrete measures is decentralised. The granting authorities are responsible for how grants are used in individual cases, and report to the Ministry of Finance.<sup>85</sup> The Ministry of Finance has the authority to check all available data.

While aid granting authorities are aware of their responsibilities under the GBER, there are no specific control or enforcement mechanisms under the SAA that would allow the Ministry of finance to take a proactive role in monitoring the activities of aid granting authorities. However, under Croatian administrative law<sup>86</sup> there exists a possibility to initiate sector specific administrative review procedures, which however do not fall under the authority of the Ministry of finance.

## 11.3. Organizational arrangements

### 11.3.1. Institutional arrangements

Under Croatian State aid law, there is a clear distinction between the Ministry of Finance as central reporting authority and other bodies that can be aid granting authorities. Any institution

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<sup>79</sup> Art. 3 para 1 SAA.

<sup>80</sup> Art. 15 para 2 SAA.

<sup>81</sup> Art. 15 para. 3 SAA.

<sup>82</sup> Art. 8 para 13, art. 12 para. 3, art. 17 para 6, art SAA.

<sup>83</sup> Art. 15 para 3 SAA.

<sup>84</sup> Art. 3 para 1 nr. 1 SAA.

<sup>85</sup> Art. 4 para 1 nr. 4 SAA.

<sup>86</sup> Art. 28 para 1, Zakon o sustavu državne uprave 66/19.

established under public law or entity with public law authority to distribute public funds, under Croatian law must comply with the above-defined information requirements.

The SAA establishes a collaborative relationship between the central authority (the Ministry of Finance) and the aid granting authorities.<sup>87</sup> The role of the Ministry of Finance is therefore not just the collection of information but also the education of other bodies and the support of their preparations for the application of new State aid measures.<sup>88</sup> The Minister of Finance can create *ad hoc* committees or advisory bodies in order to ensure the timely and effective execution of State aid monitoring and compliance obligations towards the EU.<sup>89</sup>

The process of informing the Ministry of Finance about planned State aid measures is defined in detail under the RA. The aid granting authorities have to deliver proposals for State aid measures in electronic form in the internet application of the Register for State aid and *de minimis* State aid. In addition, all related documents as well as a signed cover letter of the head of the aid granting authority must be included.<sup>90</sup> Aid granting authorities have to complete the form available on the website of the Ministry of Finance<sup>91</sup> as this is required for the information to be published on the Ministry's website.<sup>92</sup>

### *11.3.2. Scrutiny and control of specific compliance issues*

The Croatian guidelines on State aid policy are the primary tool applied to ensure a vertical integration of State aid policy across the various public authorities. The Ministry of Finance works closely with the aid granting authorities to ensure that the goals set in the guidelines are achievable and clearly understandable to the aid granting authorities.<sup>93</sup> With regard to the treatment of (proposed) aid measures, the SAA makes a distinction between State aid that has to be reported to the European Commission and State aid exempt from reporting to the European Commission.

With regard to State aid that must be reported to the European Commission, the first step in the process requires the aid granting authority to inform the Ministry of Finance about the intention to implement such a measure and present the proposal for the measure.<sup>94</sup> Then the Ministry of Finance has 45 days to inform the body about their opinion on the measure with regard to State aid rules and the national guidelines.<sup>95</sup> As local authorities are autonomous from the central

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<sup>87</sup> Art. 5 para 1 SAA.

<sup>88</sup> Art. 5 para 2, 4 SAA.

<sup>89</sup> Art. 5 para 5 SAA.

<sup>90</sup> Art. 3 para. 1,2 RA.

<sup>91</sup> <https://mfin.gov.hr/istaknute-teme/koncesije-i-drzavne-potpore/drzavne-potpore/propisi-461/461>

<sup>92</sup> Art. 5 para 1 RA.

<sup>93</sup> Art. 7 para 1,2 SAA.

<sup>94</sup> Art. 8 para 1 SAA.

<sup>95</sup> Art. 8 para 2 SAA.

government, the Ministry of Finance only analyses the compatibility with State aid law when it comes to measures of municipalities, cities or regions.<sup>96</sup>

If the Ministry of Finance considers that the necessary requirements are met, it will without delay present the proposal to the European Commission and inform the aid granting authority about this. If the Ministry of Finance however considers the measure not to be compatible with the mentioned rules, it will inform the aid granting authority about necessary changes in their proposal and grant the authority a 30 day period to revise the proposal.<sup>97</sup> If the aid granting authority does not reply within this timeframe and after the Ministry of Finance have requested the changes a second time with an additional deadline, the Ministry of Finance considers that the aid granting authority has withdrawn their proposal.<sup>98</sup> It is important to note that aid granting authorities are forbidden from granting any aid without the previous consent of the Ministry of Finance.<sup>99</sup> Under the SAA there are however no sanctions defined for authorities that do not comply with this rule.

For State aid that falls outside the Commission notification requirement, the procedure is similar to that described above. However, it is sufficient for the Ministry of Finance to give a positive opinion for a measure to be legally introduced by the aid granting authority.<sup>100</sup> Furthermore, when there is a dispute between the Ministry of Finance and the aid granting authority about the legality of a measure under State aid law, the aid granting authority can request the Ministry to forward the case directly to the European Commission.<sup>101</sup>

#### i Compliance with the Deggendorf principle

Aid granting authorities have access to the State aid database, which gives them information on the status of aid granted and received. Furthermore, bank accounts of aid recipients will usually be frozen through the central financial agency (FINA) in order to seize debt owed to the government. Therefore, it will be difficult to effectively grant aid before previous debts (including illegal state aid) are paid off. However, there exist no centralized mechanisms, which would ensure that illegal state aid is recovered before new aid is granted.

#### ii Cumulation

Aid recipients must provide a signed statement that details the amount and sources of aid previously received. Furthermore, have aid granting authorities access to the aid database. However, there are automated mechanisms that inform authorities about potential cumulating issues.

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<sup>96</sup> Art. 8 para 3 SAA.

<sup>97</sup> Art. 8 para 4, 5, 6 SAA.

<sup>98</sup> Art. 8 para 8 SAA.

<sup>99</sup> Art. 8 para 12 SAA.

<sup>100</sup> Art. 9 para 1, 2 SAA.

<sup>101</sup> Art. 9 para 9 SAA.

iii de minimis conditions

The procedural treatment of *de minimis* State aid is defined based on the existing European law standards. In this regard the SAA simply refers to the existing rules of *de minimis* aid found in the respective regulations on this issue.<sup>102</sup> The Annual spending report on State aids conducted by the Ministry of Finance must also include *de minimis* aid<sup>103</sup>.

iv Firms in difficulty

Aid granting authorities have access to the State aid database, which gives them information on the status of aid granted and received. Furthermore, bank accounts of aid recipients will usually be frozen through the central financial agency (FINA) in order to seize debt owed to the government. Aid applications will usually require that bank accounts are not frozen and aid recipients will have to provide necessary paperwork on their current financial status.

v Single undertaking principle

Aid granting authorities have access to the State aid database, which gives them information on the status of aid granted and received. Especially for *de minimis* aid, recipients must provide detailed information on aid received for their undertaking.

## 11.4. Operational and technical arrangements

### 11.4.1. Domestic State aid registers

The SAA determines that the national register on State aid has to be established on the website of the Ministry of Finance.<sup>104</sup> Individual State aid above the €500,000 threshold is listed on the website of the Ministry of Finance in the transparency section.<sup>105</sup> Aid granting authorities also have to publish State aid programmes on their websites.<sup>106</sup> The register is controlled by the Ministry of Finance and contains both State aid as well as *de minimis* State aid within one unified database.<sup>107</sup> The register is based on an authentication system (token) and is available continuously, except when under maintenance.<sup>108</sup> Aid granting authorities have access to the register for control and monitoring purposes.

The Ministry of Finance conducts a visual and logical test of data received for the database.<sup>109</sup> In the case that the Ministry of Finance finds any issues, it will inform the aid granting authority

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<sup>102</sup> Art. 10 SAA.

<sup>103</sup> Art. 17 SAA.

<sup>104</sup> Art. 12 para 1 SAA.

<sup>105</sup> <https://mfin.gov.hr/istaknute-teme/koncesije-i-drzavne-potpore/drzavne-potpore/transparentnost-potpore/465>

<sup>106</sup> Art. 12 para 2 SAA.

<sup>107</sup> Art. 7 para 1, 2 RA.

<sup>108</sup> Art. 7 para 4 RA.

<sup>109</sup> Art. 8 para 2 RA.

immediately about this through the web application.<sup>110</sup> The aid granting authority has 10 days to review and correct their mistake.<sup>111</sup>

#### 11.4.2. Interoperability

The information on national State aid and *de minimis* aid is collected in a centralized database, which gives full access to all aid granting authorities and members of the Ministry of finance. Information is collected and entered into the TAM system by the Ministry of finance where applicable. The Ministry of finance bases the data entry on Excel sheets containing the necessary information, that were produced by the respective aid granting authorities, in addition to the data entry in the national database. While the Ministry of finance can check for logical or clerical errors, it holds the position that the supplied data is accurate and thus the data is entered into the TAM without additional review.

#### 11.4.3. Lessons for e-government and the digital agenda

Aid granting authorities and the Ministry of Finance communicate through the web application. In order to allow for an effective use of the application, the Ministry of Finance offers advice and information on their website, related to the register.<sup>112</sup> The analysis of the effectiveness of State aid is however sent to the Ministry of Finance *via* e-mail. The Ministry of finance has declared its intention to further develop the national database, so that data necessary for transparency reasons will be directly entered into the database. This system will then replace the current process that requires the delivery of additional Excel sheets.

### 11.5. Other State aid reporting

#### 11.5.1. Links between systems for TAM and annual spending reports

The Ministry of Finance informs the European Commission about the data received in the previous year, no later than the 30 June.<sup>113</sup> The Ministry of Finance furthermore creates a unified spending report that includes fishery and agriculture.<sup>114</sup> For the structure of the report and its content see: Croatian annual spending report on State aids conducted by the Ministry of Finance for the year 2017 (Godišnje izvješće Ministarstva financija o državnim potporama za 2017. Godinu).

#### 11.5.2. De minimis compliance

The national state aid register contains information on all State aid, including *de minimis* aid. While there is no special control mechanism on the compliance with *de minimis* provisions, aid

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<sup>110</sup> Art. 8 para 3 RA.

<sup>111</sup> Art.8 para 4 RA.

<sup>112</sup> Art. 5 RA.

<sup>113</sup> Art. 16 SA.

<sup>114</sup> Art. 17 SA.

granting authorities are aware of the limitations, have access to the national database and require detailed information on previously received aid from the receiving parties.

### 11.5.3. Domestic reporting

The Ministry of Finance must inform the Croatian government about the status of State aid through the above mentioned annual spending report on State aids, conducted by the Ministry of Finance no later than October of the following year.

## 11.6. References

- State aid act (SAA - Zakon o državnim potporama NN 47/14 , 69/17)
- State aid act 2013 ( Zakon o državnim potporama NN 72/13, 141/13)
- Regulation (RA) on the submission of proposals for State aid, data on State aid and *de minimis* support and the register of State aid and *de minimis* support (RA - Pravilnik o dostavi prijedloga državnih potpora, podataka o državnim potporama i potporama male vrijednosti te registru državnih potpora i potpora male vrijednosti NN 125/17).
- Guidelines on State aid policy (Smjernice politike državnih potpora) which contain the government's strategy on xxx. Guidelines are always issued for a 3 year period, and the last issued guidelines (Smjernice politike državnih potpora za razdoblje 2020-2022, NN 123/19)
- Annual spending report on State aids conducted by the Ministry of Finance for the year 2017 (Godišnje izvješće Ministarstva financija o državnim potporama za 2017. Godinu available under:  
<https://vlada.gov.hr/UserDocsImages//2016/Sjednice/2018/12%20prosinac/129%20sjednica%20VRH//129%20-%2019.pdf>)
- Jozipović, Š.: Die Anwendung des EU-Beihilferechts auf das internationale Steuerrecht, Springer, 2018, 121 f.
- <https://mfin.gov.hr>

## 12. ITALY

KEY DIMENSIONS	MAIN CHARACTERISTICS
Legal	<ul style="list-style-type: none"> <li>The transparency requirements are implemented under Law 115/2015</li> <li>The State aid coordination unit is in the Ministry for Economic Development (but reports to the Presidency of the Council of Ministers, Department for European Policies); it has an information and training function on transparency, but no enforcement role</li> <li>Separate arrangements apply for agriculture, forestry and fisheries where two registers (one for agriculture and one for fisheries) are managed by the Ministry of Agriculture</li> </ul>
Organisational	<ul style="list-style-type: none"> <li>State aid coordination is centralised in the Ministry for Economic Development, but <i>Invitalia</i> (an agency owned by the Ministry of Economy) is responsible for encoding in TAM</li> <li>Awarding bodies are responsible for compliance</li> </ul>
Operational and technical	<ul style="list-style-type: none"> <li>TAM is used but not directly by awarding bodies.</li> <li>A central register, now the NAR, was first set up in 2016. The NAR includes aid of any size. Awarding bodies encode data in the NAR. <i>Invitalia</i> does a bulk upload to TAM every 3-4 months</li> <li><i>De minimis</i> support is included in the NAR</li> </ul>
Other points to note	<ul style="list-style-type: none"> <li>The NAR is more than a register – it provides tools to enable awarding bodies to verify the eligibility of applicants by interfacing with the business register in real time and blocking awards that would exceed cumulation limits.</li> <li>The Italian authorities would welcome a higher level of interoperability between the NAR and SANI and TAM.</li> </ul>

### 12.1. Summary

Italy started a consultation process before the 2016 transparency obligations came into force. Public administrations were consulted, and their needs and suggestions gathered in a feasibility study on the potential creation of a national aid register.

In the first instance, Italy complied with the 2016 transparency obligations through the creation of a first (pilot) version of a register. This is referred to as the National Register (NR) to distinguish it from the later version the National Aid Register (NAR). All national, regional and local administrations awarding aid in excess of €500,000 were asked to register the aid on a platform, the NR, made available by the Directorate-General of the Ministry for Economic Development. The Ministry then published the information required by the regulations (aid, administration in charge, individual aid measure) on a webpage available to all citizens.

The National Aid Register (NAR) was established in 2017. The system represented an advanced version of the previous register, the NR, as it offered additional services for public administrations. From a transparency point of view, there were no changes. The NR already assured full compliance with the transparency requirements. In the NAR, the transparency section includes *all* individual aid awards with no distinction with regard to size of award (i.e. not just those over €500,000).

Before 2016, there was no single national system in place. In 2012 a national law<sup>115</sup> had introduced the obligation to publish aid award documents (the 'concession act'). The processable information resulting from this obligation is much more limited than the NAR (10-15 structured fields in open data format). At the content level, however, the detail is greater, since the award document itself (the concession act) can be accessed directly.

In Italy, responsibility for State aid is decentralised and the NAR distinguishes between two types of actor:

1. The responsible authorities (with jurisdiction over the legislation that establishes an aid scheme, including *de minimis* support). These authorities draft the legislation and are involved communicating it to the EU notification system SANI.
2. The granting entities, the administrations, both public and private, awarding individual aid measures.

The process follows a cascade approach. The responsible authority registers the measure first, up to the assignment of an identification code to the measure. It then passes it on to the granting entity, which could be the same or a different entity. The responsible authority gives the granting entity authorisation to operate it. If the same measure is implemented by several granting entities, each one operates on an individual aid measure, registering them in sequence.

Both types of actors have responsibility for transparency purposes: the first for the measures, regulations and financial resources involved; and the second for each individual aid award. The Ministry does not have a central authority. It ensures that the system works and adapts it to regulatory changes. The system is structured to maximise the certainty of who does what, with what authority, responsibility, and even who is the system user. This is detailed in the NAR regulation and in the operational guides for the NAR.

At national level no particular attention is paid to aid over the threshold, because information is requested on all aid (even very low amounts). Only when registering such aid on the TAM, is attention paid.

The NAR is separate from the Agriculture and Fisheries aid registers. The two registers are distinct from an administrative point of view, but in fact they are managed by the same ministry, the Ministry for Agricultural, Food and Forestry Policies. Initially there was a discussion on whether to keep three registers or to merge all of them into the NAR. Since the agriculture and fisheries systems had already been in use for years, it was decided not to merge them. For the *de minimis*

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<sup>115</sup> Law n. 190 of 6 November 2012, on the provisions for the prevention and repression of corruption and illegality in the public administration, successively updated with the legislative decree n. 33 of 14 March 2013 on the reorganization of the right to civic access and the obligations of publicity, transparency and dissemination of information by public administrations

obligations only, the three registers exchange information in real time. Communication is live, on request. If an administration asks for a record on a company, the interrogated register consults the other two and gives an updated response to the administration that requested it. As regards the transparency obligations, each register deals with its sector and there is no coordination between these three actors/registers.

## 12.2. Legal arrangements

### 12.2.1. Legal basis

The new obligations on transparency were addressed through the establishment of a National Aid Register (NAR), which covers all types of aid (including notified aid and *de minimis* support). The new provisions on the management and monitoring of public aid to companies through a national register were provided for by legislation.<sup>116</sup> The first, pilot version was the National Register (NR), which was set up to comply with the transparency requirements.

An Interministerial Decree<sup>117</sup> sets out the rules for the functioning of the National Aid Register (NAR), implementing European Delegation Law n.115. The NAR includes additional services for the public administrations compared to the NR and was intended as a tool to ensure the performance of checks on State aid. The NAR is the current version of the register.

Before 2016, national legislation<sup>118</sup> required the publication of any aid granted by a public administration. The legislation was updated in 2013 and remains active. This law obliged any public administration to publish information and award documentation (the concession act) for transparency purposes. The Italian legislation on transparency is much broader than the EU rules because its aim is to prevent corruption. While mandatory data required under the national rules was more limited,<sup>119</sup> Italian law allows every citizen to have access to individual aid award information. As such, the previous legislation required less data input, but was more 'content rich' because there was access to the award decision itself.

There is not much difference between theory and practice. Because the national obligations have been in place for some time, it is taken for granted that public administrations comply with them.

The National Aid Registry has become a 'control and sanctioning' tool. Failure to register an aid results in the granting act being void. Therefore, there is an obligation to register the individual aid measure. Trust is always assumed. The individual administrations (about 1,000 granting administrations actively operate in the register) are responsible for the information provided. It is impossible for the national ministry to check all award decisions in detail, unless there is an *ex-post* or sample check. It also falls outside its remit to do so.

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<sup>116</sup> European Delegation Law n.115 of 29 July 2015.

<sup>117</sup> Decree of the Ministry for Economic Development in agreement with the Ministry of Economy and Finance and the Ministry of Agriculture and Fisheries of n. 115 of 31 May 2017.

<sup>118</sup> Law n. 190/2012

<sup>119</sup> Amount, beneficiary, purpose, legislation at descriptive level, the reason for the aid and individual aid measure purpose, granting authority in terms of administration and office, with specific name of the person in charge of the procedure.

### 12.2.2. Substantive provisions

The national legislation expanded the EU transparency requirements in two ways:

- First, the National Aid Register has made the registration of *all* aid mandatory, regardless of the amount granted.
- Second, the transparency section collects information on awards linked to the *de minimis* obligation and publishes the Deggendorf list.<sup>120</sup>

A series of workshops and preliminary meetings was organised to consult public administrators ahead of 2016. The needs identified were included in a feasibility study carried out before the transparency requirements came into force. When the NAR was set up, the European legislation was already in place, so the register was modelled around it. For instance, in the link to the transparency section, additional information was collected to be compliant with the transparency obligations compared to what was originally provided for NAR purposes only.

### 12.2.3. Enforcement

The national State aid authority is the State aid coordination Office, which reports to the Presidency of the Council of Ministers, Department for European Policies.

Within the Department for European policies, the State aid coordination Office (also the Office, hereafter) coordinates the central administrations – where more branches of the central administration are involved – involving, where necessary, local government (the decentralized administrations). For each individual dossier and individual aid award, a binary system is in place. On the one hand, the awarding administration is responsible for the aid during all phases (award, payment, financial reporting and other reporting obligations). On the other hand, the Department for European policies has no exact responsibility, but it performs a facilitating role. Its role involves managing the governance of state aid in Italy. For each individual aid award, the State aid coordination Office has a pre-validation role within the SANI system. This allows the Department for European policies to verify the completeness of the documentation included in the State aid notifications, ahead of the validation of the Permanent representation of Italy to the EU and the subsequent communication to the Commission. The Department shaped its governance structure based on the governance mechanism of DG Comp towards the Member states.

The State aid coordination Office has enabled the Ministry of Economic Development to pursue some high-level activities (e.g. consultations with the regions), for which the Ministry would not have had the political authority. The Regions are mostly involved in the ‘ascending phase’, that is at the moment of defining the legal acts of the European Union on State aid matters, with the aim of clarifying the Italian position on each European Union act.

The Department for European policies, State aid coordination Office, has no role on transparency tout court. Compliance with the transparency requirements at EU level is fulfilled through the National Aid Register (NAR), which is managed by the Ministry for Economic Development. State Aid management in Italy is extremely decentralised. This makes it difficult to coordinate and monitor aid. The responsibility for granting aid lies with the individual authorities (intended as

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<sup>120</sup> For both *de minimis* and Deggendorf list obligations, the NAR collects information together with the Agriculture and Fisheries registers. For all other aid, the NAR operates separately from the Agriculture and Fishery Registers.

both actors mentioned above). Granting authorities also hold responsibility for populating the NAR. The Department for European policies, State aid coordination Office, has no sanctioning authority per se. The NAR established an inherent 'control and sanctioning' instrument, though. If an aid scheme is not registered in the NAR, then the award decision is legally void (should there be a complaint or inquiry), even though technically an aid award can be made. There is no administrative sanction or fine, but if the award decision document is void, there is a whole set of risks for the public administration (compensation claim by a company, damage to public revenue). Anybody affected by the failure to register could take action against the Administration with consequent tax damage for the State. The NAR provides tools to public administrations to verify in a transparent manner whether the preconditions for granting aid are respected. Because the system is decentralised, it is difficult to quantify the number of human resources involved.

## 12.3. Organisational arrangements

### 12.3.1. Institutional arrangements

Guidance is offered to public administrations at a normative and an organisational level:

- First, the website includes all EU and national published legislation (guidelines, FAQs).
- Second, the NAR guides the interactions between actors, defines responsibilities and clarifies the nomenclatures.

The NAR made it necessary for public administrations to make legal and organisational adjustments. For instance, on disbursement of aid, the awarding bodies are required to consult the register to verify the presence/absence of the recipient in the Deggendorf list. This in turn means that award bodies need to assign personnel to this.

The Ministry would have liked the NAR to come into play also in the preliminary phase, ahead of the award procedure, i.e. to eliminate the notification obligation. However, the EU systems – specifically SANI and its EC Repository (State Aid Cases) - are not open to interoperability between systems. The obligation to register aid could be made easier for administrations if the EU notification and NAR systems were interoperable. Public administrations would not then need to provide (to the NAR) information already provided during the EU notification phase.

### 12.3.2. Scrutiny and control of specific compliance issues

The national aid register, as a centralized system for registering all aid granted by public administrations in all sectors, addresses the key five compliance issues, namely compliance with the Deggendorf principle, cumulation, the *de minimis* conditions, aid to firms in difficulty and the single undertaking principle.

Given the decentralised nature of State aid responsibilities, however, it cannot directly monitor and control compliance with these obligations. The NAR provides tools for administrators, so that they can transparently verify these requirements.

In particular, the NAR offers company search (Chamber of commerce company registration '*visure*'); an aid search (for information on the risk of cumulation), a *de minimis* search (on which there is cooperation with other systems); and a Deggendorf search list.

The NAR interfaces with the business register in real time. A certificate is produced for each award, which reports the number of employees and information on the financial statements of the company. These are elements that help the administration to verify the size of the company and other requirements. The tool is not exhaustive per se, but it is a support for verifications. This provides a tool for the single undertaking identification, firm in difficulty and SME dimension/legal form control.

The system automatically blocks the award procedure if the cumulation ceiling has been exceeded; it is not possible to create a valid award if the ceiling has been exceeded. An exception to this was foreseen for *de minimis* borderline cases, where the information and amounts are taken from external systems (agriculture and fisheries registers) and it is therefore impossible to verify, at the moment of registering aid, if the information entered in the other two registers (SIAN, SIAP and the Business Register to assess the single undertaking principle) is true. The

granting authority takes full responsibility for ignoring the block and awarding aid over the threshold. Only for *de minimis* support is a forced registration mechanism allowed.

Regarding cumulation, the aid search interrogates NAR database and results in a record of all aid (*de minimis* and non-*de minimis*) granted by all administrations for any purpose, with structured information that can be processed. The aid search does not block registering awards, it only provides information on cumulation risks.

## **12.4. Operational and technical arrangements**

### *12.4.1. Domestic State aid registers*

The NAR includes all notified and exempted State aid related to any sector and *de minimis* support, apart from *de minimis* granted in the agriculture and fisheries sectors. In other words, it includes the generalist and SGEI *de minimis* support but not agriculture and fisheries *de minimis*. For mixed types of aid (e.g. agro-industry), the predominant sector is checked. In order to assess whether an aid fits into the NAR, the Ministry looks at the aid measure that gives rise to the individual aid measure, its scope, purpose and the sector.

The registry was designed to ensure the interoperability with other systems. The degree of detail differs between NAR and TAM. For example:

- the NAR distinguishes all size groups (from micro, to small, medium and large companies), while the TAM accepts only SMEs or large companies;
- on the type of instruments the NAR has a two level structure. This includes subsidies, with different levels of detail and loans, with different levels of detail. The TAM has a different list of instruments;
- on the TAM all objectives are included (for example also agriculture and fishing), while on the NAR only the relevant ones are included.

Some problems have already been identified by Italian stakeholders. For instance, on the TAM there is a map of codes with a description. The objectives are sometimes reported with the same description in different versions of the TAM. A machine-to-machine interoperability service between systems is therefore not possible.

Also, the definition of a project is not clear in the TAM. As a result, it is not possible correctly to identify the aid belonging to the same project, therefore the cumulation of aid to reach the €500,000 threshold is done considering all the aid granted to the beneficiary from 1 July 2016. There should be a new rule to limit the perimeter or time span of the project.

### *12.4.2. Interoperability*

The NAR is linked to the following databases:

- PA index, a database of all public administrations in Italy ([www.indicepa.gov.it](http://www.indicepa.gov.it)),
- business register, a database managed by the Italian Chambers of Commerce,
- CUP, the Italian National Unique Project Id,
- SIAN and SIAP registers (agriculture and fisheries registers),
- databases of other national and regional granting authorities.

The interoperability occurs through web services. Some administrations had already made the organisational changes required, while for others it was necessary to sign a memorandum of understanding to define the specific technical methods for the interoperability between systems. The NAR is both interrogated by these systems and it interrogates them. For instance, between the business register, SIAN and SIPA registers there is a continuous interaction in both directions. The CUP is different, because in this case the administrations can obtain the CUP through the register (this is a value-added service for administrations).

There is a bulk upload on the TAM every 3 to 4 months. The office responsible is the EU programming office at Invitalia, the Italian Agency for Attracting Investments. The amount of data sent every three to four months is significant. There is a semi manual data manipulation procedure. The office triangulates the data from the SANI system with the NAR data for each individual aid measure, to understand which data can actually be loaded to the TAM. When this cannot be done automatically, the individual authorities responsible are contacted.

A large part of this task could have been avoided if the Commission system had been open to machine-to-machine application cooperation. In practice, administrations are required to register the aid notified on the NAR after having registered it on the SANI. In the event of adjustments by the administration, some administrations often only update the SANI system, and not the NAR record. Misalignments are possible for material errors, but also due to failure to update the data. The NAR has no coordinating authority, so there is a problem with updating and correcting the data.

#### *12.4.3. Lessons for e-government and the digital agenda*

Advanced solutions were put in place at various times to ensure ease of use and value-added services. The NAR uses application cooperation via web services, plus all information in the register were made available through the links in the transparency and open data section. From a technical point of view the system is advanced, also for the flexibility it offers. A high degree of satisfaction is noted. The system was also conceived for a large number of users. Costs were about €2-3 million for three years of operation, including the costs of the Chamber of Commerce company registration documents ('visure').

### **12.5. Other State aid reporting**

#### *12.5.1. Links between systems for TAM and annual spending reports*

The single contact point for SARI and NAR/TAM is the same office (Directorate General of the Ministry for Economic Development), which is the interface with the representatives of the European Commission. The personnel are separate.

The NAR has no control over spending. It is up to the individual administrations to register the correct amounts on the SARI system. They are required to register aid, the individual aid measures in terms of amounts granted, and to update them (for withdrawals, restatements, etc.). The NAR does not verify the progress of expenditure, neither at individual level nor at cumulative level. Because of this, the rationalisation of databases SARI and NAR/TAM would be difficult. This could perhaps only be limited to the aid measures registry.

The way the systems work is that SARI reports that there is a new measure to be associated with a user of a national administration for the subsequent check on the progress of expenditure. The

competent office in the Directorate General of the Ministry for Economic Development has to make this association, thus enabling the Administration responsible for the aid measure to operate in the SARI system. The NAR helps to find useful information to make the correct association between the aid measure and the responsible administration, but the process is somewhat burdensome and entirely manual.

#### 12.5.2. *De minimis* compliance

At the regional level, some authorities had organised *de minimis* support registers themselves, but the coverage was limited to the regional territory, which made their scope limited. These registers still exist as databases, but they were progressively substituted by the national aid register. Nowadays, the verification of the limit of the *de minimis* ceiling is largely done through the NAR. From 2021, the self-certification obligation will cease, because three years have passed since the establishment of the NAR.

#### 12.5.3. Domestic reporting

The national legislation on transparency has no monitoring purpose. Each administration has its own website, where information is published on the transparency section. Then there are internal reporting systems to monitor the NAR performance.

The only pre-existing national reporting platform has been in place from 1996-1997. It has the objective of monitoring cumulative aid measures. The data collected through this platform feeds into the 'Annual report on interventions to support productive activities'.<sup>121</sup> The purpose of the platform is to monitor annual progress with data grouped by territory, company size, production sectors. The information and structure of this platform and the NAR are very similar to each other. The two systems will be integrated as the NAR can provide the disaggregated data on some classification levels.

### 12.6. References

- Report on the support measures to productive activities: [https://legge266.dgiai.gov.it/documenti/Relazione\\_2019.pdf](https://legge266.dgiai.gov.it/documenti/Relazione_2019.pdf) (chapter 4)
- Links to national legislation on state aid: [https://www.rna.gov.it/sites/PortaleRNA/it\\_IT/il\\_quadro\\_normativo\\_nazionale](https://www.rna.gov.it/sites/PortaleRNA/it_IT/il_quadro_normativo_nazionale)
- Link to the national legislation with anti-corruption purposes: <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:2012-11-06;190%21vig=>
- Links to the technical aspects of the NAR: [https://www.rna.gov.it/sites/PortaleRNA/it\\_IT/documentazione\\_tecnica](https://www.rna.gov.it/sites/PortaleRNA/it_IT/documentazione_tecnica)
- Link to the transparency webpage, with links to each transparency section: [https://www.rna.gov.it/sites/PortaleRNA/it\\_IT/trasparenza](https://www.rna.gov.it/sites/PortaleRNA/it_IT/trasparenza)

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<sup>121</sup> Report on the support measures to productive activities: [https://legge266.dgiai.gov.it/documenti/Relazione\\_2019.pdf](https://legge266.dgiai.gov.it/documenti/Relazione_2019.pdf) (chapter 4)



**13. CYPRUS**

KEY DIMENSIONS	MAIN CHARACTERISTICS
Legal	<ul style="list-style-type: none"> <li>• GBER is directly applicable so no domestic State aid law was required to implement the transparency requirement; however, the State Aid Control Law 2001 aligned Cyprus with EU State aid rules.</li> <li>• The Commissioner for State Aid Control provides information and advice, decides which aid is exempt from notification and manages TAM encoding. The Commissioner has enforcement powers, but there are no sanctions for non-compliance with the transparency requirements.</li> <li>• The arrangements are the same for agriculture, forestry and fisheries</li> </ul>
Organisational	<ul style="list-style-type: none"> <li>• State aid coordination is centralised in the Office of the Commissioner for State Aid Control. The Commissioner is an independent authority appointed for a six-year term</li> <li>• Responsibility for transparency lies with the Commissioner for State Aid Control</li> </ul>
Operational and technical	<ul style="list-style-type: none"> <li>• TAM is used. Awarding bodies provide information of <i>all</i> awards to the Commissioner for State Aid. The Commissioner's Office checks the data before encoding data in TAM</li> <li>• There is currently no central State aid register</li> <li>• There is currently no <i>de minimis</i> register</li> </ul>
Other points to note	<ul style="list-style-type: none"> <li>• A central State aid register is under development and due for completion by end 2020. This will include <i>de minimis</i> support and interoperability among the State aid / <i>de minimis</i> databases of awarding bodies</li> </ul>

**13.1. Summary**

A system of State aid control has been in force in the Republic of Cyprus since 2001, before its accession to the EU. The State Aid Control Law entered into force on 30 April 2001 and aligned Cyprus State aid policy with Community rules. This framework law incorporated fundamental State aid rules into the Cyprus legal system. Following the introduction of the legislation, the Office of the Commissioner for State Aid Control was established. The Office is led by an independent official, with a view to creating a proper framework for the effective control of State aid. The Commissioner for State Aid is an independent authority, appointed by the Council of Ministers, in consultation with the Parliamentary Committee on Foreign and European Affairs, for a six-year term.

The GBER is directly applicable in Cyprus, and so specific legislation was not required. All State aid must be notified to the Commissioner for State Aid. All competent authorities are required to

submit information on State aid to the Commissioner as regards the granting of state aid for monitoring, control of compliance and for the statistical analysis in the Commissioner's Annual Report. The Commissioner for State Aid Control is also responsible for the collection and processing of data for the annual reporting to the EU State Aid Scoreboard, as well as for the management of the e-Registries upon implementation. The notification of State aid measures to the EU Commission is a competency of the Commissioner for State Aid Control. The Office of the Commissioner manages TAM and verifies the information entered at national level. The Commissioner also issues guidance to the awarding bodies.

The requirements are the same for State aid for agriculture (under ABER) and fisheries (under FIBER) as with GBER, aside from the different thresholds set by the regulation.

Based on their internal rules or legislation, awarding bodies maintain their own registries of State aid and *de minimis* support awarded; these are used to assist the awarding bodies with project monitoring and compliance of the undertaking with approval for national thresholds on agriculture, fisheries and aquaculture. A Central State Aid registry is under development and is expected to be finalised before the end of 2020. Currently, the data on State aid are forwarded to the Commissioner's Office by the awarding bodies and uploaded on TAM by the staff of the Office. The data are checked by the Office before being uploaded on TAM.

Of particular importance is the amendment of the State Aid Control Laws of 2020 providing the legal basis for the implementation of the Central System of State aid and *de minimis* e-Registries. Specifically, the State Aid Control Laws amendment of 2020 provides for the management and monitoring from the Office of the Commissioner of the keeping by the Competent Authorities of the Central System of State Aid and *de minimis* e-Registries. This provision constitutes the legal basis for the implementation of the Central System of e-Registries. The Regulatory Administrative Act issued for the implementation of this provision regarding *de minimis* aid provides that the legal right to receive the *de minimis* aid is conferred on the undertaking at the moment of the issuance, by the e-Registry, of the Certificate for the Granting of the aid. This amendment establishes an obligation for the granting authorities to register in the Central System of e-Registries any State aid granted in Cyprus. Administrative sanctions are provided for infringements, i.e. the provisions discussed in later sections (articles 18, 18A and 21 of the State Aid Control Law) and administrative fines.

## **13.2. Legal arrangements**

### *13.2.1. Legal basis*

A system of State aid control has been in force in the Republic of Cyprus since 2001, before its accession to the EU. The State Aid Control Law entered into force on 30 April 2001 and aligned Cyprus State aid policy with Community rules. This framework law incorporated fundamental State aid rules into the Cyprus legal system, including rules equivalent to those of Article 107 TFEU. Following the introduction of the legislation, the Office of the Commissioner for State Aid was established, led by an independent official.

The GBER is directly applicable in Cyprus, so specific legislation was not required. Since 2001, all State aid, whether or not exempt from notification to the European Commission, must be notified

to the Commissioner for State Aid. According to the law, all competent authorities are required to submit information on State aid to the Commissioner, while the Commissioner is responsible for the collection and processing of the information and the management of the Registries. The Commissioner decides which State aid is exempt from notification and expresses an opinion on the State aid which should be notified to the Commission. The Office of the Commissioner manages TAM and verifies the information entered on the platform at national level.

In general, there is a satisfactory level of cooperation between the Commissioner and the awarding bodies, given the small number of authorities in the country.

The requirements are the same for State aid for agriculture (under ABER) and fisheries (under FIBER) as with GBER, aside from the different thresholds set by the regulation.

#### *13.2.2. Substantive provisions*

The national legislation adopted to incorporate the EU rules into the national framework reflects EU requirements and goes further in relation to transparency requirements, in that data on all State aids must be notified to the Commissioner's Office, in order to be checked for compliance with the provisions of the State Aid Control Law.

#### *13.2.3. Enforcement*

The Commissioner for State Aid is an independent authority. The Commissioner is appointed by the Council of Ministers, in consultation with the Parliamentary Committee on Foreign and European Affairs, for a six-year term.

According to the State Aid Control Law, no State aid can be granted without the Commissioner's prior approval or official opinion for non-exempted aid. More specifically, the Commissioner is authorised inter alia to investigate, assess and approve the granting of aid, regarding compliance with state aid rules and the procedure laid down on the State Aid Control Law, to monitor the implementation of the State aid provided (ex post control regarding: compliance with Commissioner's approval, notification to the EU Commission for approval, supervision – monitoring of the enforcement by the national authorities of a EU Commission recovery order) and to prepare and maintain an up-to-date Registry of State aid measures. At the same time, the Commissioner assesses all existing aid schemes and ad hoc measures, in order to decide whether they are compatible with the EU State aid rules.

According to Articles 18, 18A and 21 of the State Aid Control Law, the Commissioner has the power to recover State aid or to impose fines in cases of non-compliance, although these provisions have never been applied. There are no sanctions foreseen regarding the implementation of the transparency requirements (although this may be a case based on Article 21 of the State Aid Control Law for not providing information or data to the Commissioner).

### **13.3. Organisational arrangements**

#### *13.3.1. Institutional arrangements*

The responsibility for control of transparency and compliance with other State aid requirements is centralised and is the responsibility of the Commissioner's Office. The Commissioner is

responsible for the implementation of the transparency rules and the entry of all information in TAM.

Officers in all awarding bodies are in charge of the management of State aid measures, and are appointed as liaison officers by the Commissioner's Office as contact points for monitoring the implementation of the transparency rules.

The legal provisions on the implementation of State aid and the transparency rules are included in guidance sent to the awarding authorities by the Commissioner's Office after the introduction of the State Aid Law, as well as after its revisions. Furthermore, the Office organises seminars on State aid periodically, addressing officers of the awarding bodies, including the contact points in each authority.

No modifications of the State aid legislation were needed to meet the 2016 transparency requirements.

The resources involved in the implementation of State aid transparency rules include currently three officers in the Commissioner's Office who are responsible for managing State aid measures and the digital platforms.

#### *13.3.2. Scrutiny and control of specific compliance issues*

The arrangements for specific compliance issues involve a Written Declaration about any other *de minimis* support received by the beneficiary, in accordance with the current legislation. The Regulatory Administrative Act provides for the removal of the Written Declaration at the end of a transitional period of three years from the date of the enactment of the Regulatory Administrative Act. In other words, at the end of this period the Written Declaration will be replaced by the Central System of e-Registries. The Commissioner for State Aid has issued circulars and other documents addressed to the awarding bodies on several issues relevant to State aid (e.g. definition of cumulation, guidance on *de minimis* rule, guidance on firms in difficulty, etc).

##### **i Compliance with the Deggendorf principle**

The principle is a compatibility provision on the Decisions and the Official Opinions of the Commissioner. The granting authority is obliged to confirm that the undertaking is not subject to a recovery order for unlawful aid. Since 2001, there have been only two cases of recovery of unlawful aid by the European Commission in Cyprus.

##### **ii Cumulation**

Cumulation is checked on the basis of a Written Declaration submitted by the beneficiary as for *de minimis*. Further, cumulation is a pre-condition for compatibility on the Commissioner's Decisions and on the Official Opinions. The responsibility to check lies with the granting authority before granting the aid based on the beneficiary's application for coverage and any investigation, information or data at the disposal of the granting authority. In case of infringement the granting authority is obliged to recover the aid based on articles 18 - 18A (implementation in contravention with the Commissioner's Decision) and 18 B (for contravention with EU Commission decisions) of the State Aid Control Laws.

iii de minimis conditions

A Written Declaration about any other *de minimis* support received is required from beneficiaries under current legislation. The awarding bodies are responsible for checking the Declaration. Based on the current system, a proposed beneficiary bears the burden of accurate and truthful completion of the Written Declaration. Otherwise the beneficiary is subject to administrative sanctions (an administrative fine) by the Commissioner for State Aid Control and the granting authority is ordered (by the Commissioner) to recover the aid from the beneficiary plus a legal interest. The aforementioned Regulatory Administrative Act of 2020 for the implementation of the System of e-Registries preserves the administrative sanctions for the case the receiving of the aid based on the pre-mentioned behaviours constitutes an infringement of the relevant EU Regulations. The provisions for the Written Declaration remain in force for a transitional period of three years as of the date of the setting into force of the Regulatory Administrative Act.

iv Firms in difficulty

Documents proving that the applicant is not a firm in difficulty are requested. Affiliated companies are also subject to control, which takes place before the approval of the aid, (i.e. prior to the granting of aid), according to the legislation (i.e the pre-mentioned provisions of the State Aid Control Laws regarding Commissioner's Decisions and Official Opinions) .

v Single undertaking principle

The applicants for State aid are requested to provide information on the size of the company, data on the affiliated companies and data on the ownership structure of the company, prior to the granting of aid, according to the legislation (i.e the pre-mentioned provisions of the State Aid Control Laws regarding Commissioner's Decisions and Official Opinions).

### **13.4. Operational and technical arrangements**

#### *13.4.1. Domestic State aid registers*

In Cyprus, some additional State aid registries are in operation. These systems serve the needs of awarding bodies for project monitoring and compliance with approval of the beneficiary and for national thresholds on agriculture, fisheries and aquaculture. The Central State Aid registry is under development and is expected to be finalised before the end of 2020.

#### *13.4.2. Interoperability*

The interoperability between the Central State Aid Registry and other public databases is expected to be developed in the future. Currently, the data on State aid are forwarded to the Commissioner's Office by the awarding bodies and uploaded on TAM by the staff of the Office. The data are checked by the Office before being uploaded on TAM.

#### *13.4.3. Lessons for e-government and the digital agenda*

The Central State Aid Registry is expected to contribute to the detection of the award of unlawful aid. The awarding bodies will have access to the information on the aid received by any undertaking, before approving new aid, supported by the Registry. The data on aid awarded will

be digitally accessible to the Commissioner, instead of manually transmitted by the competent authorities.

The new registry will keep a history of each aid awarded. The operation of the Registry implies a lower administrative burden, especially for awarding bodies, since the information on the companies and the aid they received will be registered, facilitating the ex-post control of the aid provided. The Central State Aid Registry will include also State aid awarded under the *de minimis* rule.

### **13.5. Other State aid reporting**

#### *13.5.1. Links between systems for TAM and annual spending reports*

The following reporting is in place regarding the expenditure of State aid:

- The statistical report, as part of the Commissioner for State Aid Annual Report, submitted to the President of the Republic and published. The statistical report sets out aggregated data on the State aid funded, as communicated to the Commissioner's Office by the awarding authorities.
- Collection of aggregated data by the awarding authorities, as submitted in SARI.
- A Central Registry for *de minimis* operated until 2012. The awarding authorities were required to notify the relevant data in the system for the purpose of not exceeding the *de minimis* thresholds per beneficiary and the national thresholds as for agriculture, fisheries and aquaculture. However, this system was replaced by the establishment of a system of written declarations by beneficiaries to the awarding authorities, applying the alternative option under the Regulations (EU) for *de minimis* support.

#### *13.5.2. De minimis compliance*

The system for monitoring the *de minimis* rule was replaced in 2012 by a system of written declarations by the beneficiaries. For securing compliance with the *de minimis* rule, a written declaration about any other *de minimis* support received is required from beneficiaries; the veracity of this is checked during the control process. Specific guidance has been delivered by the Commissioner's Office regarding the implementation of *de minimis*. Moreover, the new Registry will incorporate the management of *de minimis* when it is finalised by the end of 2020. The legal basis for the implementation of the new Registry has been established by the State Aid Control Laws' amendment of 2020 which provide for the management and monitoring from the Office of the Commissioner of the keeping by the Competent Authorities of the Central System of State Aid and *de minimis* e-Registries. The Regulatory Administrative Act issued for the implementation of the provision, regarding *de minimis* aid provides that the legal right to receive the *de minimis* aid is conferred on the undertaking at the moment of the issuance, by the e-Registry, of the Certificate for the Granting of the aid.

#### *13.5.3. Domestic reporting*

Other domestic reporting on State aid issues, further to the reports referred in section 1.5.1, does not exist.

### 13.6. References

Law 30 (I) on State Aid Control, as revised in the period 2001-2009 (In Greek):

[http://www.publicaid.gov.cy/publicaid/publicaid.nsf/0E48A1C1ED659FE5C2257AC30034374A/\\$file/NOMOS%20KPATIKQN%20ENISXYSEQN.pdf](http://www.publicaid.gov.cy/publicaid/publicaid.nsf/0E48A1C1ED659FE5C2257AC30034374A/$file/NOMOS%20KPATIKQN%20ENISXYSEQN.pdf)

A consolidated version of the State Aid Control Laws as amended in 2020 (In Greek):

[http://www.publicaid.gov.cy/publicaid/publicaid.nsf/ADBA3CF3D3ED7761C22585A1003CAAF7/\\$file/ENOPOIHΜENO%20KEIMENO%20ΤΩΝ%20ΠΕΡΙ%20ΕΛΕΓΧΟΥ%20ΤΩΝ%20ΚΡΑΤΙΚΩΝ%20ΕΝΙΣΧΥΣΕΩΝ%20ΝΟΜΩΝ%20ΤΟΥ%202001%20ΜΕΧΡΙ%202020.pdf](http://www.publicaid.gov.cy/publicaid/publicaid.nsf/ADBA3CF3D3ED7761C22585A1003CAAF7/$file/ENOPOIHΜENO%20KEIMENO%20ΤΩΝ%20ΠΕΡΙ%20ΕΛΕΓΧΟΥ%20ΤΩΝ%20ΚΡΑΤΙΚΩΝ%20ΕΝΙΣΧΥΣΕΩΝ%20ΝΟΜΩΝ%20ΤΟΥ%202001%20ΜΕΧΡΙ%202020.pdf)

The Regulatory Administrative Act of 2020 (In Greek):

[http://www.publicaid.gov.cy/publicaid/publicaid.nsf/CC4CB812824D24E0C2258560002B75A5/\\$file/Οι%20περί%20Ελέγχου%20των%20Κρατικών%20Ενισχύσεων%20Κανονισμοί%20του%202020.pdf](http://www.publicaid.gov.cy/publicaid/publicaid.nsf/CC4CB812824D24E0C2258560002B75A5/$file/Οι%20περί%20Ελέγχου%20των%20Κρατικών%20Ενισχύσεων%20Κανονισμοί%20του%202020.pdf)

Circulars (in Greek):

- [http://www.publicaid.gov.cy/publicaid/publicaid.nsf/csac11\\_gr/csac11\\_gr?OpenDocument](http://www.publicaid.gov.cy/publicaid/publicaid.nsf/csac11_gr/csac11_gr?OpenDocument)
- [http://www.publicaid.gov.cy/publicaid/publicaid.nsf/0DD6D7AC7056ED5BC2257AC30035FB8D/\\$file/%CE%93%CE%A1%CE%91%CE%A0%CE%A4%CE%97%20%20%CE%94%CE%97%CE%9B%CE%A9%CE%A3%CE%97%2012211.pdf](http://www.publicaid.gov.cy/publicaid/publicaid.nsf/0DD6D7AC7056ED5BC2257AC30035FB8D/$file/%CE%93%CE%A1%CE%91%CE%A0%CE%A4%CE%97%20%20%CE%94%CE%97%CE%9B%CE%A9%CE%A3%CE%97%2012211.pdf)



## 14. LATVIA

KEY DIMENSIONS	MAIN CHARACTERISTICS
Legal	<ul style="list-style-type: none"> <li>• The transparency requirements were implemented through domestic regulation in 2016</li> <li>• The Ministry of Finance provides information and training on transparency; no sanctions have been imposed but there is scope to require recovery of aid if transparency requirements are not met</li> <li>• The same arrangements apply to agriculture, forestry and fisheries (but the Ministry of Agriculture assigns TAM user rights for aid to these sectors)</li> </ul>
Organisational	<ul style="list-style-type: none"> <li>• State aid coordination is centralised in the Ministry of Finance (and the Ministry of Agriculture)</li> <li>• Awarding bodies are responsible for compliance.</li> </ul>
Operational and technical	<ul style="list-style-type: none"> <li>• Awarding bodies input to TAM directly to quarterly deadlines (1 January, 1 April etc.) following the award</li> <li>• There is no central State aid register</li> <li>• A <i>de minimis</i> register was set up in 2019</li> </ul>

### 14.1. Summary

The Latvian government adopted a regulation in July 2016 which prescribes the procedures by which a State or local government institution (or legal persons authorised by these institutions) must publish information on State aid, and granting and revoking user rights of the TAM system.

The Ministry of Finance has organised trainings for ministries, municipalities and other aid grantors in September and October 2016 and in November 2018. The Ministry of Finance has published information regarding the transparency requirements on its webpage, including Frequently Asked Questions.

There were no other systems to collect information on State aid awards before 2016. In Latvia, most public financing was granted through EU funds. As the EU funds regulation requires information on EU funds beneficiaries to be published, the required information has been published on webpages of the responsible granting authorities. In addition, a single central IT system (KP VIS) is used for the implementation and monitoring of Cohesion Policy funds. Information on the aid granted is also available on an open data portal and on the web page [esfondi.lv](http://esfondi.lv).

In order to respect the transparency obligation under the new requirements, an additional obligation to publish information in one centralised system was imposed on the responsible authorities, regardless of the source of funding.

The formal responsibility for compliance is set out in the Cabinet of Ministers Regulation No.386 "Procedures on publishing information on State aid granted and on granting and revoking rights to use the electronic system". Moreover, every State aid scheme of individual aid that has been

implemented in the form of national law or regulation defines an authority that is responsible for publishing information in accordance with the transparency obligation.

The overall structure of the system for reporting on awards exceeding €500,000, as required under the GBER and other relevant guidelines and frameworks in Latvia is as follows:

- First, the responsible ministry, municipality or Parliament by national law or regulation adopts the State aid scheme or individual aid, which includes the transparency obligation and defines the responsible authority (usually the State aid granting authority) for fulfilling this obligation;
- Second, the responsible authority for the transparency obligation requests user rights for the Commission Transparency Aid Module (TAM) by sending an application to the Ministry of Finance or Ministry of Agriculture according to their division of competences;
- Third, after creating user rights in TAM, the responsible authority must publish information in TAM on every State aid award which reaches the transparency thresholds not later than 1 January, 1 April, 1 July or 1 October, whichever is closest to the date after the date when State aid was granted.

Arrangements for reporting aid for agriculture and fisheries (under ABER and FIBER) are the same as for the GBER and are set out in the same regulation.

## **14.2. Legal arrangements**

### *14.2.1. Legal basis*

The transparency requirements in the GBER were transposed into Latvian legislation through the adoption of the Cabinet of Ministers Regulation No.386 "Procedures on publishing information on State aid granted and on granting and revoking rights to use the electronic system" (adopted on 21 June 2016), which provides the legal basis. Similar domestic transparency did not exist in Latvia prior to July 2016.

The domestic legislation applies equally to the transparency obligation under ABER, FIBER and GBER, and defines the procedures for a State or local government institution or a legal person (authorised by these institutions) to publish information on State aid awards.

### *14.2.2. Substantive provisions*

The domestic legislation defines shorter deadlines to publish information in accordance with the transparency obligation, i.e., not later than in 1 January, 1 April, 1 July or 1 October, whichever is closest after the date when State aid was granted. Other national requirements are the same as in the EU State aid rules. Thresholds are the same as in the EU State aid rules.

### *14.2.3. Enforcement*

Under Article 9 of Law on Control of Aid for Commercial Activity, there are two Monitoring Institutions of Aid for Commercial Activity in Latvia, i.e., the Ministry of Finance and Ministry of Agriculture.

Under Article 10(1) of the Law on Control of Aid for Commercial Activity:

*“Every planned aid programme or individual aid project, as well as every planned amendment to existing aid programmes or individual aid projects prior to its implementation shall be submitted for the initial assessment to the Ministry of Finance, except changes of formal or administrative nature that cannot influence the assessment on compatibility of aid for commercial activities with the internal market of the European Union.”*

Therefore, every institution before implementation of an aid programme or individual aid project must respect the mandatory requirement to submit it to the Ministry of Finance for the initial assessment and follow the opinion provided.

The domestic legislation put in place a decentralised model, where the main responsibility is on the State aid granting institution for fulfilling the transparency obligation. In addition, the Ministry of Finance performs an advisory function in order to provide necessary clarifications on transparency issues.

No sanctions and/or fines have been implemented for not complying with the transparency requirements. Responsible authorities have been warned regarding the recovery obligation, if transparency requirements are not respected.

### **14.3. Organisational arrangements**

#### *14.3.1. Institutional arrangements*

In accordance with EU State aid rules and Cabinet of Ministers Regulation No.386, compliance with State aid requirements is decentralised in Latvia. The State aid granting institution is responsible for fulfilling the transparency obligation.

The responsible authority for fulfilling the transparency obligation (usually the awarding body) is defined in every State aid scheme. In case of practical issues, responsible authorities are free to ask for clarifications from the Ministry of Finance or Ministry of Agriculture.

According to the information provided by the Internal Audit Department of the Ministry of Finance, there are no distinct or additional requirements for domestic audit purposes in Latvia.

The Ministry of Finance and Ministry of Agriculture ensure permanent support to State aid granting institutions whenever necessary. In addition, the Ministry of Finance on its webpage ([www.fm.gov.lv](http://www.fm.gov.lv)) has published information regarding the transparency requirement, including Frequently Asked Questions.

The Government of Latvia adopted the Cabinet of Ministers Regulation No.386 in order to respect the transparency obligation.

It is not possible to provide a definitive number of resources involved in transparency compliance in practice, but TAM has been used by 37 active users, including the State aid control authority and State aid granting authority.

### 14.3.2. Scrutiny and control of specific compliance issues

#### i Compliance with the Deggendorf principle

Information regarding undertakings which are subject to an outstanding recovery order following a previous Commission decision declaring an aid illegal and incompatible with the internal market has to be published on the website of Ministry of Finance. So far, there have been no negative decisions for Latvia.

#### ii Cumulation

Cumulation provisions are defined in the relevant State aid scheme and individual aid, and a granting authority is responsible for checking whether these provisions are respected before granting new aid. If cumulation of State aid results in reaching transparency thresholds, a granting authority is responsible for publishing information in accordance with the transparency requirements. These practical aspects have been discussed with responsible authorities during training sessions.

#### iii de minimis conditions

The provisions of the *de minimis* Regulation are defined in the relevant State aid scheme and individual aid project. Since the Government of Latvia adopted the Cabinet of Ministers Regulation No.715,<sup>122</sup> an electronic system replaced *de minimis* declaration forms and ensured transparent and effective control on granted *de minimis* aid. In the case of cumulation of *de minimis* aid and other aid under the regulation, which stipulates transparency requirements, the granting authority responsible for fulfilling the transparency obligation is obliged to publish the sum of two mentioned aid awards in the TAM.

#### iv Firms in difficulty

In the Latvian legislation, this matter has been ensured by the provisions laid down in the State aid scheme or individual aid project for the firms in difficulty.

#### v Single undertaking principle

The single undertaking principle in Latvian legislation has been ensured by the provisions laid down in the State aid scheme or individual aid project.

## 14.4. Operational and technical arrangements

### 14.4.1. Domestic State aid registers

Domestic State aid registers are not in existence in Latvia. Since 1 July 2019, there has been an electronic *de minimis* system in place.

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<sup>122</sup> Ministru kabineta 2018. gada 21. novembra noteikumi Nr. 715 "Noteikumi par *de minimis* atbalsta uzskaites un piešķiršanas kārtību un *de minimis* atbalsta uzskaites veidlapu paraugiem" (in force since 1 July 2019)

#### 14.4.2. Interoperability

Latvia does not have a domestic TAM register. The *de minimis* electronic system has a link to the business registration system and insolvency register.

#### 14.4.3. Lessons for e-government and the digital agenda

None identified.

### 14.5. Other State aid reporting

#### 14.5.1. Links between systems for TAM and annual spending reports

Currently, in Latvia there is no link between the systems for TAM and annual spending reports. Moreover, there are currently no opportunities to combine/rationalise transparency award monitoring and annual report on spend.

#### 14.5.2. De minimis compliance

Since 1 July 2019, all granting authorities in Latvia have an obligation to use the *de minimis* electronic system.

#### 14.5.3. Domestic reporting

In Latvia there is no regular purely domestic reporting and analysis of State aid.

### 14.6. References

- Cabinet of Ministers Regulation No.386 (Ministru kabineta 2016. gada 21. jūnija noteikumi Nr. 386 "Kārtība, kādā publicē informāciju par sniegto komercdarbības atbalstu un piešķir un anulē elektroniskās sistēmas lietošanas tiesības") (in latvian) available: <https://likumi.lv/ta/id/283094-kartiba-kada-publice-informaciju-par-sniegto-komercdarbibas-atbalstu-un-pieskir-un-anule-elektroniskas-sistemas-lietosanas>
- Law on Control of Aid for Commercial Activity (in English) available: <https://likumi.lv/ta/en/en/id/267199-law-on-control-of-aid-for-commercial-activity>
- Cabinet of Ministers Regulation No.715 "Regulations Regarding Procedures for Accounting and Granting *de minimis* Aid and Samples of *de minimis* Aid Accounting Forms" (in English) available: <https://likumi.lv/ta/id/303512-noteikumi-par-ide-minimisi-atbalsta-uzskaites-un-pieskirsanas-kartibu-un-ide-minimisi-atbalsta-uzskaites-veidlapu-paraugiem>
- Link to the Latvia's single website for State aid transparency: [https://www.fm.gov.lv/lv/sadalas/komercdarbibas\\_atbalsta\\_kontrole/valsts\\_atbalsta\\_parredzamiba/parredzamibas\\_sistema/](https://www.fm.gov.lv/lv/sadalas/komercdarbibas_atbalsta_kontrole/valsts_atbalsta_parredzamiba/parredzamibas_sistema/)
- Link to the national *de minimis* electronic system: [https://www.fm.gov.lv/lv/sadalas/komercdarbibas\\_atbalsta\\_kontrole/de\\_minimis\\_atbalsta\\_uzskaites\\_sistema/](https://www.fm.gov.lv/lv/sadalas/komercdarbibas_atbalsta_kontrole/de_minimis_atbalsta_uzskaites_sistema/)



## 15. LITHUANIA

KEY DIMENSIONS	MAIN CHARACTERISTICS
Legal	<ul style="list-style-type: none"> <li>• Domestic legislation on State aid transparency dates back to 2005</li> <li>• The Competition Council is an independent body but it does not have authority over other parts of the public administration; it is coordinator rather than enforcer.</li> <li>• The same arrangements apply to agriculture, forestry and fisheries</li> </ul>
Organisational	<ul style="list-style-type: none"> <li>• State aid coordination is centralised in the Competition Council</li> <li>• Awarding bodies are responsible for compliance</li> </ul>
Operational and technical	<ul style="list-style-type: none"> <li>• Awarding bodies input to TAM directly</li> <li>• A central register covering all State aid has been in place since 2015; awarding bodies are required to encode all awards in the national register, as well as encoding those over €500,000 in TAM</li> <li>• <i>A de minimis</i> register was set up in 2005</li> </ul>
Other points to note	<ul style="list-style-type: none"> <li>• The national register does not contain all the data required by TAM (measure, beneficiary type, region); however, it is expected to be made public from 1 November 2020.</li> </ul>

### 15.1. Summary

The response to the 2016 transparency requirement has not been entirely straightforward, largely because the new requirements introduced additional administrative burdens for granting authorities in the implementation of State aid measures.

A national State aid register was already in place in Lithuania; this was modernised in 2015. Each case of individual aid must be encoded in the national register within 20 working days of the decision to award aid. Granting authorities can check the information in the Register, however the information is not available to the general public (this should change on 1 November 2020).

The key changes to existing approaches to gathering information on State aids resulting from the Transparency Award Module (TAM) were experienced at individual reporting and institutional cooperation levels. As only granting authorities can encode information into the TAM, they now demand information on individual aid awards from the institutions (mostly agencies) responsible for the implementation of their State aid measures. Also, the new transparency rules require greater cooperation between granting authorities in order to check whether the threshold for publishing information in TAM is reached.

As with all State aid compliance requirements, formal responsibility falls on the granting authorities.

The overall structure of the system for reporting on awards exceeding €500,000 as required under the GBER is as follows: each granting authority reports on State aid awards exceeding €500,000 granted under their State aid measures. The person in the granting authority responsible for a measure will usually also be responsible for encoding transparency information; another person (sometimes the same) will validate the encoded information.

The arrangements for reporting aid for agriculture and fisheries (under ABER and FIBER) is not separate from those for the GBER. The Ministry of Agriculture, which is responsible for all State aid measures relating to agriculture and fisheries, encodes information into TAM in the same manner as any other granting authority. There are no separate arrangements for reporting of aid awards in these sectors.

In summary, in reporting of aid over the threshold, each granting authority is responsible for checking the thresholds and encoding the information into TAM. This responsibility is provided for in legislation.<sup>123</sup> However, the inner workings of the reporting process can differ in each granting authority. This is not regulated at a national level and granting authorities can decide their own procedures.

## **15.2. Legal arrangements**

### *15.2.1. Legal basis*

The transparency requirements in the GBER and in the relevant guidelines are transposed into domestic legislation. As with all State aid requirements (this is not exclusive for transparency requirements) the Competition Council obliges granting authorities to transpose all the GBER or Commission requirements relevant to a State aid measure into the national legislation regulating the implementation of this measure. The granting authorities are obliged by a Government Resolution<sup>124</sup> to seek the opinion of the Competition Council when a measure constitutes State aid. During this process the Competition Council ensures that the transparency provisions are introduced into the national legislation.

Similar domestic transparency requirements were in place before July 2016. There was a requirement to provide information on individual aid awards into the State Aid Register; this obligation is also the subject of a Government Resolution.<sup>125</sup>

Regarding the practical application of the legal basis, there is no extensive national regulation on the implementation of transparency rules and each granting authority can have their own regulation on how they implement them. As with all State aid requirements there is a certain level of trust that the granting authority will fulfil its obligations arising from the EU law.

There is no separate legal basis reporting aid for agriculture and fisheries (under ABER and FIBER) separate from that for the GBER.

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<sup>123</sup> [http://kt.gov.lt/uploads/documents/files/teises\\_aktai/valstybes\\_pagalba/2017-04-18\\_1S-36.pdf](http://kt.gov.lt/uploads/documents/files/teises_aktai/valstybes_pagalba/2017-04-18_1S-36.pdf)

<sup>124</sup> See: <https://www.e-tar.lt/portal/lt/legalActPrint?documentId=b8f7bdf0da2f11e583a295d9366c7ab3>

<sup>125</sup> See: <https://www.e-tar.lt/portal/lt/legalAct/TAR.48E1A900E11A/asr>

### *15.2.2. Substantive provisions*

The domestic legal basis for implementing the transparency requirements (specific State aid measures) mirror the EU State aid rules (either GBER provisions or the guidelines/Commission decision provisions) and do not add additional transparency requirements (with exception of providing information into the national State Aid Register).

There is no lower threshold for providing information into the domestic State Aid Register, so even the smallest individual aid awards must be encoded. This requirement is obligatory for all granting authorities (at the national and regional level). However, the information collected in the State Aid Register is not publicly available at present so it does not directly contribute to the transparency objective.

### *15.2.3. Enforcement*

The Competition Council of the Republic of Lithuania is an independent body that does not have authority over any other parts of public administration (in the field of State aid) so its opinions and recommendations are not mandatory.

The Competition Council has no additional authority with respect to State aid transparency and compliance. It generally provides advice to granting authorities on the implementation of transparency and any other State aid requirements.

In the field of State aid (including transparency requirements) the Competition Council has no power to apply sanctions. Its function is that of a coordinator rather than enforcer.

## **15.3. Organisational arrangements**

### *15.3.1. Institutional arrangements*

For State aid rules in general, the responsibility for ensuring compliance is divided between granting authorities and the agencies that implement their State aid measures (evaluate applications, calculate the aid intensities, etc.). The provisions for compliance are foreseen in each State aid measure. When it comes to transparency requirements, the responsibility rests solely on the granting authority. The Competition Council is an advisory body that helps granting authorities with compliance by providing legal opinions and methodological assistance.

In terms of distinct or additional requirements for domestic audit purposes, there are audits that are conducted by the National Audit Office of Lithuania. For State aid measures financed from EU Structural Funds, the authority also audits compliance with State aid rules. However, the Competition Council is not involved in the audits and therefore is not aware of the exact procedures and how they fit with EU reporting requirements.

Specific State aid rules are applied after transposing them into national legislation for each State aid measure. There is no general legislation at the national level providing guidance for granting authorities on application of State aid rules, as the provisions of the TFEU and relevant regulations are directly applicable.

There have been arrangements made to meet the requirements in place since July 2016. Specifically, the Competition Council has amended its Rules on the Processing of State aid and *de*

*de minimis* aid data<sup>126</sup> which now contains basic information on the TAM. However, this document is not legally binding on the granting authorities.

The scale of resources involved in transparency compliance is not assessed on a regular basis. In the Competition Council, there are four employees who provide advisory support on transparency requirements. The Competition Council does not possess this information for granting authorities, but it can vary significantly between them.

### 15.3.2. Scrutiny and control of specific compliance issues

#### i Compliance with the Deggendorf principle

There are no centralised mechanisms for assuring compliance with the Deggendorf principle. It is for the granting authority and/or agency implementing the measure to verify if the award is in line with the *Deggendorf* principle.

#### ii Cumulation

There is a recommendation to the granting authority and/or agency implementing the measure to check the information on State aid and *de minimis* aid previously granted to the beneficiary in the State Aid Register (see Chapter II of the Competition Council Rules on the Processing of State aid and *de minimis* aid data).<sup>127</sup> Specific cumulation requirements are established for each State aid measure.

#### iii de minimis conditions

The respect of *de minimis* conditions is ensured during the stage of adopting the *de minimis* measures; the Competition Council evaluates each draft legal act that constitutes State aid or *de minimis* aid and verifies that all relevant conditions are met. Also, the State Aid Register was established and is used for this purpose: the algorithm in the State Aid Register ensures that the relevant thresholds of *de minimis* aid are respected.

#### iv Firms in difficulty

There are no centralised mechanisms preventing the use of aid to support firms in difficulty. It is for the granting authority and/or agency implementing the measure to verify that the beneficiary is not a firm in difficulty.

#### v Single undertaking principle

There are no centralised mechanisms for ensuring that the criteria for determining SME status or eligibility for *de minimis* support is consistent with the single undertaking principle. It is due to the granting authority and/or agency implementing the measure to verify the SME/ single undertaking status of the beneficiary. The granting authorities/agencies tend to use declarations received from the potential beneficiary for these purposes. Some information may be verified in the National Register of Legal Entities (for example, regarding shareholders).

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<sup>126</sup> [http://kt.gov.lt/uploads/documents/files/teises\\_aktai/valstybes\\_pagalba/2017-04-18\\_1S-36.pdf](http://kt.gov.lt/uploads/documents/files/teises_aktai/valstybes_pagalba/2017-04-18_1S-36.pdf)

<sup>127</sup> [http://kt.gov.lt/uploads/documents/files/teises\\_aktai/valstybes\\_pagalba/vp\\_nut\\_2015-11-13\\_1S-120.pdf](http://kt.gov.lt/uploads/documents/files/teises_aktai/valstybes_pagalba/vp_nut_2015-11-13_1S-120.pdf)

As there is no centralised mechanism in place, each State aid measure foresees a mechanism for compliance with State aid requirements.

#### **15.4. Operational and technical arrangements**

##### *15.4.1. Domestic State aid registers*

Since 2005 Lithuania has a national State Aid Register that includes information on all *de minimis* support and all State aid (State aid only since 2015).

If the TAM and the domestic register are compared, the information encoded in the State Aid Register does not fit the transparency requirements to the full extent. Changes to the Register were not planned (modernisation of the Register was completed at the end of 2014/ beginning of 2015 so no further changes were foreseen). Also, Lithuanian officials believed that it would be beneficial to have a single register (TAM) for all Member States for transparency purposes.

Lithuania's national State Aid Register has less information than required for transparency purposes (drop down list is not available to choose the State aid measure, no information on the beneficiary type, region). No recent additional harmonisation efforts have been made between the national State Aid Register and TAM. The cost of harmonisation has not been calculated.

##### *15.4.2. Interoperability*

Granting authorities and/or agencies implementing their measures use their own systems to ensure compliance with State aid rules. The State Aid Register is linked with the Register of Legal Entities and the Population Register in order to verify the beneficiaries. No additional data is collected from these registers.

In practical terms, data is input into TAM directly by the granting authorities on a case by case basis. The data is not filtered / cleaned / substantially manipulated for harmonisation before entry.

##### *15.4.3. Lessons for e-government and the digital agenda*

There were no examples identified where innovative or novel IT solutions were introduced to meet the transparency and other compliance requirements.

#### **15.5. Other State aid reporting**

##### *15.5.1. Links between systems for TAM and annual spending reports*

TAM reporting and SARI reporting is not linked in any systematic way. It may be that the same employees in the granting authorities are responsible for providing transparency information as well as information for the annual reports.

The same employees working in the Competition Council consult on TAM reporting and SARI reporting.

If transparency obligations did not have specific thresholds (there was an obligation to encode all information on granted State aid, not only awards exceeding €500,000), the information collected

in TAM could automatically be used for annual reporting (only a verification from the Member States would be necessary).

#### *15.5.2. De minimis compliance*

A *de minimis* register is used in part of the administration - the national State Aid Register comprises of two parts: State aid and *de minimis* aid. It is used by all granting authorities (both central and regional).

#### *15.5.3. Domestic reporting*

There is not thought to be any further domestic reporting on State aid issues in Lithuania.

### **15.6. References**

Lietuvos Respublikos konkurencijos taryba, Nutarimas dėl Lietuvos Respublikos konkurencijos tarybos 2015 m. lapkričio 13 d. nutarimo Nr. 1S-120/2015 „Dėl suteiktos valstybės pagalbos ir nereikšmingos (de minimis) pagalbos duomenų tvarkymo taisyklių patvirtinimo“ pakeitimo, 2017 m. balandžio 18 d. Nr. 1S-36 (2017), Vilnius

Lietuvos Respublikos Vyriausybė, Nutarimas dėl Lietuvos Respublikos Vyriausybės 2004 m. rugsėjo 6 d. nutarimo Nr. 1136 „Dėl valstybės pagalbos projektų ekspertizės atlikimo, išvadų ir rekomendacijų teikimo valstybės pagalbos teikėjams, valstybės pagalbos pranešimų ir kitos informacijos, susijusios su valstybės pagalba, pateikimo Europos Komisijai ir kitoms suinteresuotoms institucijoms taisyklių patvirtinimo“ pakeitimo, 2016 m. vasario 18 d. Nr. 148, Vilnius

Lietuvos Respublikos Vyriausybė, Nutarimas „Dėl Suteiktos valstybės pagalbos ir nereikšmingos (de minimis) pagalbos registro nuostatų patvirtinimo, 2005 m. sausio 19 d. Nr. 35, Vilnius

**16. LUXEMBOURG**

KEY DIMENSIONS	MAIN CHARACTERISTICS
Legal	<ul style="list-style-type: none"> <li>• GBER is directly applicable; there are no specific provisions on transparency</li> <li>• A Task Force in the Ministry of Economy checks data transmitted by awarding bodies and provides information and advisory support</li> <li>• The same arrangements apply to agriculture, forestry and fisheries</li> </ul>
Organisational	<ul style="list-style-type: none"> <li>• State aid coordination is centralised in a Task Force in the Ministry of Economy</li> <li>• Awarding bodies have responsibility for compliance</li> </ul>
Operational and technical	<ul style="list-style-type: none"> <li>• Awarding bodies input to TAM directly</li> <li>• There is no central register</li> <li>• There is no <i>de minimis</i> register</li> </ul>
Other points to note	<ul style="list-style-type: none"> <li>• A <i>de minimis</i> register is currently being set up.</li> </ul>

**16.1. Summary**

The Ministry for Economy as the responsible State aid authority responded to the new transparency requirements by organising meetings with all concerned ministries (e.g. all ministries with aid programmes in place).

These meetings served to provide information and explain the new transparency requirements as well as to grant access for those ministries to provide information directly to TAM.

**16.2. Legal arrangements***16.2.1. Legal basis*

There are no explicit domestic provisions for the EU transparency requirements, however, EU rules are considered as directly applicable given the reference to the GBER in the national laws.

The same is true for FIBER and ABER.

*16.2.2. Substantive provisions*

The absence of a domestic legal basis for transparency requirements has been criticised by the European Commission and Luxembourg provided assurance that the transparency requirements would be complied with through the following measures:

- The ministerial decision authorising an aid scheme explicitly states the transparency requirements.
- During the award procedure, beneficiaries are asked to consent to the fact that award information are published if above the thresholds.

### 16.2.3. Enforcement

The Ministry for Economy insisted with other ministries that all data submission be double checked as there was a high risk of providing erroneous data (typographical errors). In practice this means that a task force within the Ministry for Economy was set up to monitor data transmission by awarding authorities and provide assistance if needed.

## 16.3. Organisational arrangements

### 16.3.1. Institutional arrangements

Each awarding body is responsible for providing information to TAM individually. However, the Ministry for Economy monitors the process and provides assistance.

In terms of transparency requirements, the awarding authorities can choose whether to upload data in bulk or in real time; however, in practice the upload seems to happen in bulk every six months. If no data is uploaded by the awarding authority and the six-month deadline is approaching, the Ministry of Economy reminds the awarding authority of its obligations and ensures that the data is uploaded.

The Ministry of Economy has provided State aid checklists, systematically sends summaries from State aid steering group meetings at EU level and organises information and coordination meetings with awarding bodies whenever required.

### 16.3.2. Scrutiny and control of specific compliance issues

#### i Compliance with the Deggendorf principle

If a business in Luxembourg were to fall under the Deggendorf principle, the European Commission would inform the Ministry of Economy which would then circulate the information to all other ministries (awarding authorities) with a view to ensuring that no aid is awarded to that business.

#### ii Cumulation

Normally, beneficiaries are sector-specific so that each ministry (awarding authority) ensures that cumulation limits are not reached.

However, beneficiaries are required to state and declare all aid received, which allows the awarding authority to ensure cumulation limits even if more than one awarding authority is involved.

#### iii de minimis conditions

For *de minimis*, internal verifications are used in addition to the declaration.

#### iv Firms in difficulty

This is done through a self-declaration by the beneficiary during the aid request and an in-depth analysis of the financial data of the aid applicant by the granting authority.

v Single undertaking principle

This is done through a self-declaration by the beneficiary during the aid request and an in-depth analysis of the financial/work force data of the aid applicant (and its probable links to other undertakings) by the granting authority.

**16.4. Operational and technical arrangements**

*16.4.1. Domestic State aid registers*

No domestic State aid registers exists, however, a *de minimis* register is currently being set up.

*16.4.2. Interoperability*

Awarding authorities will have access to the centralised database.

*16.4.3. Lessons for e-government and the digital agenda*

None identified.

**16.5. Other State aid reporting**

*16.5.1. Links between systems for TAM and annual spending reports*

There are no links between systems for TAM and annual spending reports.

*16.5.2. De minimis compliance*

IT services are currently working to set up a centralised IT database, which will allow verification of *de minimis* categories and thresholds in real-time.

*16.5.3. Domestic reporting*

No information provided.

**16.6. References**

Latest modification of domestic law in response to GBER:

- Loi du 15 décembre 2017 relative à un régime d'aides à la protection de l'environnement et modifiant
- Loi du 17 mai 2017 relative à la promotion de la recherche, du développement et de l'innovation ;
- Loi du 20 juillet 2017 ayant pour objet la mise en place d'un régime d'aide à l'investissement à finalité régionale.

Summary of the legal basis for citizens and beneficiaries:

<https://guichet.public.lu/fr/entreprises/financement-aides/aides-environnement/industrie-services/conditions-generales-aides-envi.html>



**17. HUNGARY**

KEY DIMENSIONS	MAIN CHARACTERISTICS
Legal	<ul style="list-style-type: none"> <li>• The detailed national procedures to meet the transparency requirements were implemented through domestic law by government decree of 2011, as amended. It is common practice for the transparency requirements to be included in the text of the aid measure.</li> <li>• The State Aid Monitoring Office (SAMO) has a mandatory role in assessing all plans to offer aid, provides information and advice; in theory, aid payments can be suspended or repayment required for non-compliance</li> <li>• The same arrangements apply to agriculture, forestry and fishing</li> </ul>
Organisational	<ul style="list-style-type: none"> <li>• State aid coordination is centralised in SAMO, in the Ministry of Technology and Innovation</li> <li>• Awarding bodies are responsible for compliance</li> </ul>
Operational and technical	<ul style="list-style-type: none"> <li>• The TAM is used. Awarding bodies can choose whether to encode data themselves or send it to SAMO to upload. In practice, the latter option is used. Data must be sent to SAMO every four months</li> <li>• There is no central State aid register</li> <li>• There is no <i>de minimis</i> register for non-agricultural and non-fishery <i>de minimis</i> (any theoretical plan to introduce a general <i>de minimis</i> register would be difficult to implement because of the autonomy of local governments under Hungarian law)</li> </ul>

**17.1. Summary**

The State Aid Monitoring Office (SAMO) plays a central coordinating role in compliance with the transparency requirements in Hungary, but formal responsibility for compliance still lies with the granting authority.

The 2016 transparency requirements led to a centralisation of transparency information. Previously, a decentralised system existed (and still pertains) in which awarding authorities published some information on their own awards on their websites to comply with national rules (but there was no publication requirement under State aid law).

Awarding authorities are now obliged to upload award data to TAM directly or send it to the State Aid Monitoring Office (SAMO) which uploads it for them. The latter option is used in practice: granting authorities gather information on awards and periodically (four monthly) send the data to SAMO which uploads the data (in bulk) onto TAM. However, the TAM does not replace the internal systems of the aid grantors.

The overall structure is based on direct links between SAMO and awarding authorities (awarding authorities are required by law to report their TAM data to SAMO periodically; the four-month reporting required to SAMO is designed to ensure that the Commission six-month deadline is met).

Transparency compliance for ABER, FIBER and GBER are part of the same system.

## **17.2. Legal arrangements**

### *17.2.1. Legal basis*

The requirements specified in the GBER and relevant guidelines were translated into domestic legislation in the form of a Government Decree.<sup>128</sup>

This provides that granting authorities must send transparency information to the State Aid Monitoring Office (SAMO) three times a year (i.e. every four months).

Two possibilities exist to do this:

- Enter the information directly into the TAM (and send a report on the uploaded data to SAMO)
- Send the information to SAMO in an Excel sheet; SAMO then enters the data into the TAM.

For fiscal aid the government decree was not sufficient due to tax secrecy rules. As a result, the Tax Procedural Code<sup>129</sup> had to be amended. This amendment essentially imposes the same requirements as the Decree - the tax authority reports the data to SAMO for upload into TAM.

The Government Decree as such is not new; however, the transparency requirements did not exist before 2016. Previously obligations existed for granting bodies to publish non-repayable aid (grant) decisions, but there was no mechanism to do this centrally.

The two systems currently exist in parallel – in other words, data is entered into the TAM centrally to meet the EU State aid transparency requirements, and granting authorities must publish information on non-repayable aid, but this is not centralised.

The reporting system for the TAM is mandatory under the Government Decree. In practice, given the periodic nature of the task and the high workloads of awarding authorities it may happen that the awarding authority forgets to send the data. In those cases, the SAMO sends a friendly but firm reminder of their obligation.

The Government Decree and the Tax Procedural Code also apply to agriculture and fisheries.

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<sup>128</sup> Government decree 37/2011. (III. 22.) Korm. Rendelet az európai uniós versenyjogi értelemben vett állami támogatásokkal kapcsolatos eljárásról és a regionális támogatási térképről <https://net.jogtar.hu/jogszabaly?docid=A1100037.KOR>

<sup>129</sup> Act CL of 2017 of Parliament.

### *17.2.2. Substantive provisions*

The domestic legal basis in the Government Decree mirrors the EU State aid rules without adding requirements.

In practice, however, if an awarding authority provides data below the thresholds to SAMO on its own initiative then this information is also published via TAM.

The only difference with EU rules concerns the frequency of reporting. This has been lowered to four months (compared to the six-month time limit provided by the EU rules). Granting authorities need to provide transparency information to the SAMO, or upload it themselves to the TAM, three times a year. This increased frequency of reporting has been introduced in order to ensure compliance with the EU requirement of six months even in the case of unforeseen issues or delays.

The reporting requirement uniformly applies to all awarding bodies.

### *17.2.3. Enforcement*

The national competition authority in State aid matters is the State Aid Monitoring Office (SAMO), which is a dedicated body under the Ministry for Technology and Innovation. Its powers are mandatory; however, an advisory element also exists (i.e. SAMO helps aid grantors apply State aid rules in practice). In fact, all plans to grant State aid, regardless of type or whether the aid needs to be notified to the Commission (including *de minimis* support), need to be sent to the SAMO for verification. This applies to all public bodies including different line ministries, municipalities, the national development banks, etc. In fact, its relationship with aid grantors is comparable to the relationship between the European Commission and the Member States. Moreover, SAMO is also responsible for all interactions with the European Commission.

The SAMO uploads the transparency data onto TAM for the awarding bodies. Awarding bodies also have the option to upload the data themselves but this is not used in practice. In the latter case the SAMO has the role of a validator.

In theory the possibility of sanctions for non-compliance with transparency requirements exists. In case of non-compliance the payment of aid can be suspended, or repayment can be ordered by SAMO; however, in practice this possibility has not been used to date.

In a spirit of cooperation, any non-compliance issues are usually resolved without having to rely on sanctions. In this respect, it is helpful that the government decree clarifies the provision of relevant transparency information as an obligation.

Fines for late reporting are not provided for by the Government Decree.

## **17.3. Organisational arrangements**

### *17.3.1. Institutional arrangements*

The arrangements for transparency are centralised with the SAMO at its core. All other public bodies report to the SAMO. The awarding authority is responsible for gathering all relevant information from their own systems and sending this information to the SAMO (or, alternatively,

for uploading it themselves to TAM and informing the SAMO). There are no intermediate levels (e.g. national databases) between the granting authority and the SAMO.

The domestic auditing system and the system to comply with EU reporting requirements are separate. There might be specific requirements for audit, but they are not linked to State aid reporting requirements.

In terms of guidance, the Government Decree sets out the requirements. In addition, a website<sup>130</sup> provides detailed information and an Excel template is available to facilitate reporting.

The arrangements have not changed since 2016, but some operational improvements and adjustments of minor technical nature (e.g. new and improved Excel sheets) have been introduced. These have simplified daily operations significantly. For example, the SAMO has continuously updated and refined its list of bodies falling under the reporting requirement.

The SAMO has a total of 18 members of staff of which five work on transparency requirements, although this is not their only task.

In Hungary more than 100 aid measures need to be monitored for transparency, which requires significant time and effort but given that staff do not work on this exclusively it is difficult to put an absolute number of resources involved.

Work on transparency requirements peaks around the four-monthly deadline for submission of the data by granting authorities.

### *17.3.2. Scrutiny and control of specific compliance issues*

There are no centralised public registers for compliance issues – i.e. those related to the Deggendorf principle, cumulation, *de minimis* support, aid to firms in difficulty or the single undertaking principle. However, awarding authorities are legally required to verify that a beneficiary is eligible for aid and the SAMO assists them in ensuring that this obligation is complied with.

To a certain extent the awarding authorities rely on declarations by beneficiaries and award agreement include a clause on the accuracy of the declaration. In the case of incorrect declarations, the consequences are severe and sufficiently discouraging (e.g. granted amount needs to be reimbursed and the beneficiary is excluded from future procedures).

In addition to the declaration and the contractual agreement, awarding authorities have several options to verify the eligibility of beneficiaries. For example, some granting authorities run disclosure databases of aid awarded. Those can be consulted in case of doubt about the declaration by the beneficiary. Moreover, the awarding authority can consult other databases such as business registers and the beneficiary's accounts and financial indicators in order to verify its eligibility. Last, it can check that there are no ongoing bankruptcy procedures against the beneficiary.

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<sup>130</sup> See: [www.tvi.kormany.hu](http://www.tvi.kormany.hu)

## **17.4. Operational and technical arrangements**

### *17.4.1. Domestic State aid registers*

No centralised domestic register was in place before the TAM. It was thus cheaper to provide the information into TAM rather than develop a domestic system.

Several State aid registers exist, e.g. a major one for Structural Funds, for domestic funds as well as for agriculture. However, they are not interlinked and are separate from each other.

The domestic databases and TAM are separate. Awarding authorities submit information through an Excel sheet template. In order to fill in the Excel sheet, granting authorities rely on their own internal databases. There is no harmonisation between the grantors' own databases and TAM.

### *17.4.2. Interoperability*

There is no interoperability. Different systems might be used by administrators to check eligibility, but the systems are not connected.

The data is fed into TAM periodically and in bulk (in the case of aid grantors that report a larger number of entries) and manually/continuously (in the case of aid grantors that report few entries). The government decree sets the interval of four monthly data reporting in order to ensure that the six-month time limit is met.

If data on awards below the reporting thresholds is sent to the SAMO, it is also uploaded to TAM.

The SAMO checks the data and in case of errors contacts the granting authority to clarify the situation.

### *17.4.3. Lessons for e-government and the digital agenda*

No innovative or novel IT solutions to report.

## **17.5. Other State aid reporting**

### *17.5.1. Links between systems for TAM and annual spending reports*

There were no explicit links between the TAM and annual spending reports existed until the European Commission started to explore them. SAMO is now also looking at these links but this was not on their own initiative.

If TAM is functioning well the annual report may become superfluous as a large part of the relevant information is already provided through TAM.

### *17.5.2. De minimis compliance*

A *de minimis* register exists but it is incomplete since, for example, it does not extend to the municipal level. It is a learning process and not all awarding authorities have yet adopted the practice of communicating awards in the register and no sanctions exist where the register is not used.

It would make sense to have a more complete register, which would also be beneficial to awarding authorities. However, there are practical obstacles. Further investment would be required to include the municipalities, there are also technical issues, as well as some conflicts with the principle of municipal independence.

#### *17.5.3. Domestic reporting*

No purely domestic reporting exists concerning State aid. Domestic reporting rather focuses on monitoring and analysing spent amounts for specific sectors (e.g. research, environment, etc).

### **17.6. References**

- Government decree including the transparency requirements: 37/2011. (III. 22.) Korm. Rendelet az európai uniós versenyjogi értelemben vett állami támogatásokkal kapcsolatos eljárásról és a regionális támogatási térképről  
<https://net.jogtar.hu/jogszabaly?docid=A1100037.KOR>
- Website of the State Aid Monitoring Office: <https://tvi.kormany.hu/>

**18. MALTA**

KEY DIMENSIONS	MAIN CHARACTERISTICS
Legal	<ul style="list-style-type: none"> <li>• The GBER is directly applicable and is not transposed into domestic law</li> <li>• The State Aid Monitoring Board (SAMB) has a coordination and advisory role, and has the right to access all relevant information from awarding bodies</li> <li>• The same arrangements apply to agriculture, forestry and fishing</li> </ul>
Organisational	<ul style="list-style-type: none"> <li>• State aid coordination is centralised in the SAMB, an autonomous body within the portfolio of the Ministry of Foreign and European Affairs</li> <li>• Awarding bodies are responsible for compliance</li> </ul>
Operational and technical	<ul style="list-style-type: none"> <li>• The TAM is used. Awarding bodies submit information on awards over €500,000 (preferably quarterly) to the SAMB; the SAMB checks it and manually encodes it into TAM in batches where possible</li> <li>• There is no central State aid register</li> <li>• There is no <i>de minimis</i> register</li> </ul>
Other points to note	<ul style="list-style-type: none"> <li>• Awarding bodies must provide records of <i>de minimis</i> support to SAMB annually</li> </ul>

**18.1. Summary**

The State Aid Monitoring Board (SAMB) has overarching responsibility for State aid compliance in Malta.

In response to the transparency requirements applicable from 1 July 2016, the Maltese authorities ensured that all State aid guidelines refer to the transparency requirements and the SAMB created a dedicated section on the government website. This includes information on aid measures and a link to the public interface with TAM.

Prior to 2016 there was no centralised system to collect information on individual aid awards. Each awarding body had (and still has) its own internal system to collect award data.

From 2016, the main change involved requiring awarding bodies to report to the SAMB any awards exceeding €500,000. The records of such awards are checked by the SAMB and then published on TAM.

The reporting system applies to aid to agriculture and fisheries under ABER and FIBER, as well as support that falls under the GBER and other relevant guidelines.

## 18.2. Legal arrangements

### 18.2.1. Legal basis

There is no transposition of the transparency requirements into domestic legislation. Instead, the State Aid Monitoring Board (SAMB)<sup>131</sup> acts within the parameters of the authority vested in it under the Business Promotion Act and according to its rules of procedure – the State Aid monitoring Regulations.<sup>132</sup>

No transparency requirements were applicable under domestic provisions prior to July 2016. Awarding bodies published aid scheme guidelines and legal bases on their websites, but no information was provided, or required to be provided, on aid awards.

The provisions establishing the SAMB are set out in the Business Promotion Act. Furthermore, the State Aid Monitoring Regulations outline the notification obligations regarding State aid. The rules of procedure also establish the reporting obligations to SAMB by State aid awarding bodies. Awarding bodies are fully aware of the transparency requirements, and it is ensured that such requirements are adhered to.

SAMB relies on awarding bodies to provide them with the correct information on expenditure and transparency requirements, but the SAMB verifies the completeness and accuracy of the information provided. The SAMB also provides guidance to ensure that the awarding bodies comply with their obligations. There is considered to be a very good working relationship between the SAMB and all awarding bodies. The SAMB maintains regular contact with key State aid grantors and, in the case of EU Funds, with the relevant Managing Authorities and Intermediate Bodies (IB).

### 18.2.2. Substantive provisions

The State aid transparency requirements are considered directly applicable and not to require further transposition.

### 18.2.3. Enforcement

SAMB is the centralised body responsible for all State aid issues in Malta, by virtue of Articles 57 and 58 of the Business Promotion Act (Cap 325 of the Laws of Malta). In exercise of its powers, the SAMB has the right of access to all relevant information from the awarding bodies.

The terms of reference of the SAMB include: the assessment of proposed State aid measures in Malta; the provision of advice about the compatibility of proposed aid measures and amendments of existing ones with the applicable state aid *Acquis*; and assistance in the identification and implementation of appropriate capacity building on State aid. The SAMB may also establish and implement appropriate rules of procedure and methodological systems which lead to an effective State aid monitoring and reporting system.

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<sup>131</sup> <https://eufunds.gov.mt/en/SAMB/Pages/SAMBHome.aspx>

<sup>132</sup> State Aid Monitoring Regulations (Legal Notice 210 of 2004) - <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=9792&l=1>; Business Promotion Act (Cap 325 of the Laws of Malta) - <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8799&l=1>

The 'State Aid Monitoring Regulations' outline the procedures regarding the notification obligations for State aid, the treatment of non-notified aid and suspension provisions as well as the recovery of unlawful aid in line with the Procedural Regulation.<sup>133</sup>

### **18.3. Organisational arrangements**

#### *18.3.1. Institutional arrangements*

There is a centralised system that regulates all State aid issues in Malta. As the national central authority responsible for State aid, the SAMB gathers the necessary information on State aid measures. This process facilitates compliance with the provisions of applicable rules and Regulations from formulation stage through to actual implementation and monitoring of State aid schemes.

After having obtained approval from the SAMB or the European Commission (depending on the case), awarding bodies publish details of their State aid measures on their own websites; the SAMB publishes summary information on the national State aid website together with direct weblinks to the actual measures. Records of individual aid awards exceeding €500,000 are maintained by all the awarding bodies and are submitted to the SAMB. The SAMB then publishes this information on TAM, to which there is a link from the national State aid website.

All State aid measures (whether nationally funded or EU-funded) may be subject to audits carried out by entities such as the National Audit Office. The SAMB also holds technical bilateral meetings on a 'needs and request' basis, with other local entities responsible for auditing and certifying the implementation of funds.

The 'State Aid Monitoring Regulations' oblige all awarding bodies to submit information to the SAMB regarding any proposed State aid measure. The SAMB also provides assistance in the formulation by awarding bodies and IBs of scheme guidelines and manuals for potential applicants and beneficiaries with details on the implementation of such State aid measures. The SAMB has bilateral meetings as required with officials involved in the application of State aid rules in order to provide specific and focused guidance.

The SAMB also acts as the national contact point on State aid issues involved in EU funded projects. Moreover, there is a formal arrangement between the SAMB and the Managing Authority (MA) whereby the SAMB provides support, through expertise and advice, to the MA throughout the Programmes implementation period on issues relating to State aid emanating from related EU rules and national legislation. The SAMB also participates in the information sessions organised specifically by the respective MA for project calls in order to provide guidance and assistance with regards to State aid issues that may arise in the application process. During these information sessions participants are encouraged to discuss their ideas and projects with the SAMB in order to ascertain from an early stage whether their proposed project would involve any State aid implications.

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<sup>133</sup> Council Regulation (EU) No 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union.

The main change to meet the transparency requirements in place since July 2016 involved formally informing all the awarding bodies of the new transparency requirements (in 2016) and keeping them informed on all related issues. This led to the separate reporting of those individual aid awards that exceeded €500,000, in addition to the submission of data in relation to the annual State aid inventory. The national State aid website has also been updated to include information on certain State aid measures in order to meet the transparency requirements.

Each awarding body has a team of officers which liaise directly with the SAMB. At the SAMB two officials currently deal with transparency issues.

#### *18.3.2. Scrutiny and control of specific compliance issues*

There is no centralised mechanism to ensure compliance with specific compliance issues (namely: Deggendorf principle, cumulation limits, *de minimis* conditions, firms in difficulty and single undertaking criteria). However, each awarding body has its own internal system/database to ensure compliance with the above-mentioned key issues. In addition, awarding bodies have good working relationships with one another and co-operate in sharing details to ensure that all the relevant data is up to date. Potential aid beneficiaries are also asked to submit declarations on the above issues together with their applications for aid, in order to enable the awarding bodies to verify the data provided therein.

The SAMB also guides the awarding bodies so that the necessary checks are carried out to ensure that the above-mentioned compliance issues are addressed.

### **18.4. Operational and technical arrangements**

#### *18.4.1. Domestic State aid registers*

There is no domestic State aid register; only TAM is used.

#### *18.4.2. Interoperability*

Awarding bodies collect information on individual aid awards above €500,000 and then submit this data to SAMB in order for the latter to input the information in TAM. The SAMB encourages awarding bodies to submit such data on a quarterly basis, so that data is fed into TAM manually in batches (where possible).

Since awarding bodies submit information to the SAMB on individual aid awards exceeding €500,000 separately to data required for the annual State aid inventory, i.e. on a stand-alone form which is to be submitted in addition to the expenditure reported for the annual State aid inventory, data is already filtered when it reaches the SAMB. Once the relevant checks are carried out by the SAMB, the SAMB then uploads the information on TAM.

#### *18.4.3. Lessons for e-government and the digital agenda*

The Maltese authorities make use of TAM and are satisfied with this.

TAM could be improved by adding a field in which Member States could identify the project for which assistance was granted. Another improvement to TAM concerns a new aid award to a beneficiary that already appears in TAM due to a previous aid award. It should be possible for the

Module to automatically fill out certain details such as the type of enterprise, company number, etc. that have already been registered in the system.

## **18.5. Other State aid reporting**

### *18.5.1. Links between systems for TAM and annual spending reports*

TAM reporting takes place in addition to the expenditure reporting for the annual State aid inventory. The reporting for both types of data is made by the awarding bodies to the SAMB, which then passes on the information to the European Commission (through SARI and TAM), after having checked the relevant submissions.

The systems that are currently in place, make sure that the reporting and transparency obligations are fully complied with and, in particular, the information on aid granted is complete, accurate and timely.

The Maltese authorities consider that the annual reporting on State aid should be kept separate from transparency award monitoring.

### *18.5.2. De minimis compliance*

The Maltese awarding bodies have opted to comply with the monitoring obligation by obtaining *de minimis* declarations from the undertakings concerned. It is deemed that to maintain a timely updated central register would create an administrative burden.

Awarding bodies oblige potential applicants under a *de minimis* scheme to submit duly compiled State aid declarations regarding *de minimis* support applied for and received in the year when the aid is applied for and in the previous two fiscal years. Such information is checked with other bodies on a case-by-case basis.

Records of all *de minimis* support awarded under such schemes are submitted to the State Aid Monitoring Board annually.

### *18.5.3. Domestic reporting*

The SAMB carries out its own monitoring as a result of each new policy objective and each new aid measure having to undergo an *ex ante* assessment in order to determine compatibility with EU State aid rules. All schemes are checked in line with the requirements of the applicable State aid *acquis* by both the granting authorities and the SAMB.

## **18.6. References**

- <https://eufunds.gov.mt/en/SAMB/Pages/SAMBHome.aspx>
- State Aid Monitoring Regulations (Legal Notice 210 of 2004) - <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=9792&l=1>; Business Promotion Act (Cap 325 of the Laws of Malta) - <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8799&l=1>



## 19. THE NETHERLANDS

KEY DIMENSIONS	MAIN CHARACTERISTICS
Legal	<ul style="list-style-type: none"> <li>• The transparency requirements were transposed into a Dutch regulation in 2017.</li> <li>• The Interdepartmental Committee on State Aid Matters (ISO) has a coordination and information role, but no enforcement powers</li> <li>• Separate but similar arrangements apply to agriculture, forestry and fishing through the Ministry of Agriculture, Nature and Food Quality</li> </ul>
Organisational	<ul style="list-style-type: none"> <li>• ISO includes representation from national ministries and subnational authorities and is chaired by the Ministry of Economic Affairs (EZK). EZK coordinates contacts between national ministries; the Ministry of the Interior (BZK) coordinates contacts with provincial and municipal governments; and the Ministry of Infrastructure (I&amp;W) coordinates the regional public water authorities</li> <li>• Awarding bodies have responsibility for compliance</li> </ul>
Operational and technical	<ul style="list-style-type: none"> <li>• The TAM is used. Awarding bodies encode awards directly, with support from the BZK or I&amp;W if required</li> <li>• There is no central State aid register</li> <li>• There is no <i>de minimis</i> register</li> </ul>
Other points to note	<ul style="list-style-type: none"> <li>• A suggested improvement would be the integration of SANI and TAM: upon notification in SANI, a window would open to report the necessary details when a grant exceeds the threshold. This would harmonise the information provided, and reduce the administrative capacity required to use the different systems at all administrative levels involved.</li> </ul>

## 19.1. Summary

The Netherlands has a decentralised system in terms of administration and politics and is subdivided into national, regional and local entities. When it comes to the implementation and application of State aid (transparency) requirements, the ultimate responsibility for compliance lies with the granting authorities at each level. At the national level, ministries, ministerial agencies and independent administrative bodies grant and monitor their own State aid awards. The regional level comprises twelve provincial governments and 21 water boards (regional public water management authorities); the local level consists of 355 municipalities.

The State Aid Coordination Centre for Local and Regional Governments (*Coördinatiepunt Staatsteun Decentrale Overheden*, CSDO), which is part of the Ministry of the Interior and Kingdom Affairs (BZK), coordinates the State aid measures granted by regional and local authorities. The CSDO provides local and regional authorities with guidance on State aid

procedures and coordinates their notifications to the European Commission. These coordination tasks do not interfere with the autonomy of local and regional governments to design their own State aid measures, and therefore the ultimate responsibility to comply with EU State aid law lies with these granting authorities.

The main response in the Netherlands to the transparency requirements of State aid regulations, as introduced in 2016, is the introduction of a working group as part of the Interdepartmental Committee on State Aid Matters (*ISO*), as well as wider coordination efforts. The ISO is a central State aid coordination body composed of all Dutch ministries and representatives of the regional and local authorities who have to comply with the State aid rules. The ISO is chaired by the Ministry of Economic Affairs and Climate Policy (*EZK*) for competition policy in the Netherlands. The ISO committee meets monthly and includes representation from national and decentralised administrations. Among other tasks, it is concerned with the introduction of transparency requirements to all State aid granting bodies.

The primary responsibility to comply with the regulations lies with individual State aid granting entities, i.e. authorities at the relevant central or subnational level. The Ministry of Interior and Kingdom Relations (*BZK*) coordinates the contacts between the Commission and subnational governments, except for the water boards. The Ministry of Economic Affairs and Climate Policy (*EZK*) coordinates the contacts between ministerial departments at the national level. The implementation of the reporting requirements by the water boards is coordinated by the Ministry of Infrastructure and Water Management (*I&W*). The three ministries do not hold formal responsibility for compliance by subnational authorities and have no authority over their reporting of State aid awards.

Before 2016, there was no general national transparency obligation as regards State aid measures. However, in some policy areas aid measures were already published due to the importance of transparency in a specific case e.g. innovation.<sup>134</sup> The same applies to subsidy schemes, which were also published. In addition, aid measures that were granted on the basis of the Common Agricultural Policy were published due to requirements following from the relevant regulation. On request, (information about) aid measures could be published on the basis of the Public Access to Government Information which became operational in 1991 and continues to be in place. However, this Act only requires information about State aid measures to be published on request, and not in a systematic way. In all cases, the publication of information had to be balanced against the right to privacy. From 2016 onwards the requirements following from the General Data Protection Regulation also have to be taken into account.

The transparency requirements thus led to new approaches to gathering information on State aid grants. Each national and subnational government administration is now responsible for its own entries into the TAM system and needs to provide details of each grant exceeding the reporting threshold. The registrations in the TAM system by local and regional granting authorities are checked for basic misapplications and are subsequently published by the CSDO.

In and after 2016, the ISO, *Europa Decentraal* and the CSDO, which is part of the BZK Ministry, organised workshops, presentations and other information sessions to bring subnational

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<sup>134</sup> <https://www.rvo.nl/onderwerpen/innovatief-ondernemen/research-development/volg-innovatie>.

authorities up to date. Ongoing questions are addressed during ISO (interdepartmental committee) meetings. The BZK Ministry co-funds *Europa Decentraal*, which consults local and regional authorities on queries concerning European law and legislation, including State aid issues. *Europa Decentraal* was founded in 2002 with the aim to transfer knowledge on EU law and policy to subnational governments, and has become an important source of information on transparency requirements since 2016.<sup>135</sup>

In concrete terms, the coordination of State aid matters is a joint effort between representatives of various national and subnational administrations. In 2019, the ISO edited a GBER manual, which was prepared with representatives of the State aid working group (the EZK and BZK ministries, *Europa Decentraal*, and the Association of Provinces, IPO). The manual is intended as a guide for public authorities towards the application of the GBER. It takes the aid granting authority through a step-by-step checklist that assesses whether a proposed aid measure meets the GBER requirements, so that State aid is granted lawfully. The precise text of the GBER is binding, so in case of doubt the manual advises to consult the Commission Regulation, as last amended on 14 June 2017. The manual was published in August 2019 (Ministry of Economic Affairs & Climate Policy, 2019a).

The arrangements for reporting aid for agriculture and fisheries (under ABER and FIBER) are separate from those for the GBER but follow the same principles. The responsibility for ABER and FIBER lies with the granting authorities (including the Ministry of Agriculture, Nature, and Food Quality [LNV]). The Dutch permanent representation acts as the central contact point for the European Commission's DG Competition and DG Agriculture and Rural Development.

## 19.2. Legal arrangements

### 19.2.1. Legal basis

Although the European State aid regulations are directly applicable, the transparency requirements in the GBER and the relevant guidelines were also transposed into Dutch legislation when the legal terms were revised in 2017, albeit not at central level.

It is up to the granting authorities to specify this further, if desirable. For example at the EZK and LNV ministries, a separate article outlining the transparency requirements in GBER is now incorporated into national law (article 1.8)<sup>136</sup>. More specific national laws, for example the *Meststoffenwet* [Fertilizers Act] or the *Besluit stimulerend duurzame energie* [Stimulating Renewable Energy Decision], also have separate transparency articles.

The guidelines of the aid schemes of the EZK and LNV ministries thus outline the requirements for the 'publication of information relating to State aid awards' under a separate heading, in particular to inform potential beneficiaries about the regulatory context. In practice, all State aid granting agencies are responsible for reporting awards that exceed the threshold.

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<sup>135</sup> For more information (organisation structure, tasks, services), see: <https://europadecentraal.nl/wp-content/uploads/2013/02/Europa-decentraal-law-policy-institute-May-19-version-1-5-extern.pdf>.

<sup>136</sup> See Ministry of Economic Affairs & Climate Policy (2019b) for the most recent publication of the aid scheme terms and conditions.

Similar domestic transparency requirements did not apply before 2016. Although there was no transparency obligation, (some) aid measures and subsidy schemes were published. In addition, State aid grants could be published upon request, in line with the domestic *Freedom of Information Act* [Wob], but were not systematically made available to the public. Exceptions to this are aid measures following from the Common Agricultural Policy (CAP) and granted to the agricultural sector (e.g. EAFRD support), which were already in place before 2016. When the Commission announced the design of one overarching system to report awards exceeding the threshold, the Dutch authorities decided to wait for these measures.

Since European State aid regulations have direct effect, it is not necessary to transpose the transparency requirements into domestic guidelines in order to be legally binding. The guidelines of the national ministries' aid schemes are mainly a matter of comprehensiveness towards potential beneficiaries, i.e. to provide information on the procedures in place after potentially receiving aid that exceeds the threshold and to increase awareness regarding the details to be shared publicly. This should avoid unclear information and possible 'surprises' for beneficiaries who may be less familiar with State aid regulations. It is important to note that State aid recipients also have an interest and responsibility in the correct application of the State aid rules.

As regards the EZK and LNV ministries, the legal basis for reporting aid for agriculture and fisheries (under ABER or FIBER) is currently not separate from that for the GBER. The regulations for reporting aid in relation to GBER and ABER are defined in the same article (1.8). The regulations for transparency requirements under FIBER are defined in the guidelines for examination of State aid to the fishery and aquaculture sector, and do not have a separate domestic version.

#### *19.2.2. Substantive provisions*

The domestic legal basis for implementing the transparency requirements mirrors the EU State aid rules. Specifically, the Dutch domestic rules replicate them for domestic purposes. The reporting threshold is thus the same and applies to aid granting bodies at all administrative levels.

#### *19.2.3. Enforcement*

The Dutch competition authority (ACM) has no legal authority when it comes to distortion of competition or State aid regulations. Its competence lies in the assessment of fair competition issues that are unrelated to State aid. Therefore, it operates outside the scope of transparency and compliance requirements. Consequently, the ACM has no sanctions at its disposal regarding State aid.

### **19.3. Organisational arrangements**

#### *19.3.1. Institutional arrangements*

In the Netherlands, the responsibility for transparency and compliance with other State aid requirements is decentralised, in line with its political organisation as a decentralised unitary state. A large number of national and subnational units (ministries, national agencies, provinces, water boards, municipalities) have to comply with the same requirements, and thus have to register their respective grants that exceed the reporting threshold. The interdepartmental legislative agreement on State aid (Ministry of Economic Affairs & Climate Policy, 2017) prescribes that any aid granting authority must recognise an aid measure and, if necessary, notify it to the Commission for approval or give notice when it is exempt from the notification obligation. Where

applicable, the relevant granting authority must also register the case into TAM, deal with any monitoring requests from the Commission, and respond to complaints about that aid measure. Activities by coordinating authorities (e.g. regarding reporting, giving notice, monitoring, or handling a complaint) do not affect the responsibility of local and regional authorities.

In practical terms, each ministry has an Administrative Organisation (AO) for internal procedures relating to State aid matters. Among other things, each AO must assign responsibility to administrative units for the identification of aid measures and compliance with the EU State aid rules for these measures. Preferably, each measure is assessed on possible State aid aspects by an independent State aid expert, i.e. outside the unit responsible for the aid measure, by the legal affairs department within the respective ministry. The AO should at least ensure that, in case of doubt about the aid status of a measure, the minister and/or state secretary are informed.

Each aid granting authority is responsible for the (online) publication of its aid schemes and ad hoc State aid decisions, where necessary. The central government uses the central government website,<sup>137</sup> whereas local and regional authorities use their own websites or [www.overheid.nl](http://www.overheid.nl). On this latter website, all national or regional aid schemes are published. Each granting authority is also responsible for registering and publishing the relevant data on the TAM website. In the case of local and regional authorities, the BZK assists with the publication of aid measures on the TAM website. For water boards (regional public water authorities), the Ministry of I&W is responsible for assisting with the publication. In case multiple ministries are involved, the ministry that is responsible for the policy concerned is the coordinating ministry. Ministries are free to make alternative agreements, on the condition that they report this to the Dutch Permanent Representation of the Kingdom of the Netherlands to the European Union (PVEU). When multiple governmental organisations are co-financing the same subsidy scheme, each authority is responsible for correct publication of its own part.

At a central level, there are no provisions in place to control compliance by subnational authorities, although there is some insight into the application of the EU State aid rules and problems encountered by municipalities through the Coordination Unit on State Aid by Subnational Governments (CSDO) of the Ministry of the Interior and Kingdom Affairs. In addition, the knowledge centre *Europa Decentraal* handles around 350 State aid-related questions a year and offers a database of over 10,000 questions on EU law. At the same time, a systematic insight into the application of EU State aid rules by individual local and regional governments is absent.<sup>138</sup>

The Interdepartmental Committee on State Aid Matters [ISO] deals with the coordination of State aid issues relating to the European commitments or developments that require a common approach, among which the transparency obligations. When it comes to the

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<sup>137</sup> [www.rijksoverheid.nl/onderwerpen/staatssteun/documenten](http://www.rijksoverheid.nl/onderwerpen/staatssteun/documenten).

<sup>138</sup> Although in general terms, (academic) interest in the self-organisation of Dutch devolved governments to raise their profile in national and European arenas is increasing, see Figee, Gosselt & De Jong (2019). See Zwaan et al. (2018) on the adoption of EU State Aid regulations by Dutch municipalities.

implementation/application of State aid (transparency) requirements, the ultimate responsibility for compliance lies with the granting authorities at each level.<sup>139</sup>

The domestic audit authorities do not exercise any transparency requirements that are additional to EU reporting requirements for domestic audit purposes.

The guidance for aid granting bodies consists of information provision and awareness-raising events (workshops, presentations, user manuals) to bring subnational authorities up to date. These events are offered by the coordination units mentioned above (ISO, CSDO and *Europa Decentraal*), which usually consist of State aid experts of the BZK and EZK ministries. The ISO working group meetings are platforms for national and subnational government authorities (or their representatives) to report any issues to these experts. Questions that are raised during the meetings have resulted in explanatory statements that are available for consultation. In addition, the Commission's TAM user guide is referred to as guidance on entering data. Since July 2016, the arrangements to meet the requirements have not changed, but manuals and guidelines for aid granting authorities have been regularly updated or improved. For example, the annex to the ISO manual (Ministry of Economic Affairs & Climate Policy, 2019a) now provides a GBER checklist. The manual recommends including the completed checklist in the casefile when applying the exemption regulation. The same applies to updates of the terms and conditions of aid schemes towards beneficiaries.

From the number of ministerial departments, agencies and subnational government units, it can be assumed that compliance with transparency requirements involves a large amount of time and resources. This is partly due to the functionality of the EC systems (accessibility and processing time). Each unit will have different administrators that are tasked with TAM registrations and with entering, checking, ratifying, and sending the registrations to Commission. The Ministry of EZK, which oversees the aid schemes of its own ministerial departments (e.g. the Netherlands Enterprise Agency [*RVO*]), alone registers around 21,000 TAM entries for one of its larger schemes. Among other administrative levels, concerns about the added workload are shared, e.g. at interdepartmental working groups. Unlike ministries, subnational authorities (e.g. small municipalities) do not often have their own Directorate of Legal Affairs. The ministry does not, however, have insight into the scale of resources involved in compliance and the precise administrative capacity needed within the relevant units at subnational levels. Equally, the tasks for compliance with transparency requirements are often spread out among ministerial agencies, directorates, etc., which makes it difficult to express resource levels in precise amounts, staff numbers, or FTEs. Consequently, it would welcome the present study (or future studies on EU State aid) to address:

- what are the implications of the transparency requirements on administrative burden at responsible units (at central and subnational levels, perhaps also at the Commission itself)?
- how efficient and effective has the introduction of the transparency requirements proven to be?

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<sup>139</sup> If necessary, the central government can use the *Wet Nerpe* [*Nerpe Act*]. The relevant Minister can instruct the local or regional authority to implement correctly State aid provisions in their local measures or cases. Either the control competences in the Dutch 'Gemeentewet' or 'Provinciewet' [*Municipal and Provincial Acts*] or the *Wet Nerpe*, which provides the Dutch national authorities with a number of instruments to promote compliance with European law by public entities of all levels of governance in the Netherlands, is the legal basis for such an instruction.

- i.e. did they result in openness/transparency towards the Commission, businesses, other government levels?
  - i.e. to what extent is the DG COMP portal consulted and by whom?
- to what extent do the benefits of increased transparency justify the added administrative burden?

### *19.3.2. Scrutiny and control of specific compliance issues*

The administrative structures to ensure compliance are decentralised in the Netherlands: no central control is being exercised on specific compliance issues. This means that compliance with principles such as the Deggendorf formula, cumulation, etc. apply to subnational levels. From a central level, these principles are adopted in regulatory clauses, individual grants and communications, and the coordination units offer platforms to share good practice or ask questions about compliance. In addition, the web pages of *Europa Decentraal* outline that State aid that is awarded to a single project must be added up to determine the total amount of aid, and refer to the regulatory texts on cumulation. As mentioned in Section 1.1, the ministry that is responsible for the policy concerned is also responsible for coordination in case multiple authorities are involved.

To ensure the conditions of the *de minimis* regulation are respected, the Ministry of EZK has drafted a declaration for beneficiaries, in which they have to state that no other State aid has been received that may cause the prospective grant to exceed the *de minimis* threshold. The template of this declaration is available for other ministries, agencies and subnational authorities to use, although some use their own declaration forms. The declaration has been drafted following the working group meetings of the ISO, and thus has input from representative of various authorities. Although no centralised mechanisms are in place, the ISO consults central and subnational authorities on State aid scrutiny and control of specific compliance issues to ensure that compliance is achieved.

## **19.4. Operational and technical arrangements**

### *19.4.1. Domestic State aid registers*

There is no other domestic State aid register in the Netherlands outside the European registration systems. The rationale for using TAM rather than a domestic register was that no comprehensive domestic register existed. Setting up a separate register would imply a double administrative burden and costs, and TAM is a system that provides enough detail on the legitimacy and transparency of public spending.

### *19.4.2. Interoperability*

The systems for ensuring State aid (i.e. SANI, SARI and TAM) are not (automatically) linked to other domestic digital sources in the Netherlands (business registration systems, insolvency registers, *de minimis* database, tax records, etc.). State aid awards from the central government that require publication are published on the central government website.

In practical terms, the method to register aid award information into TAM is dependent on the type of aid scheme. It is periodically uploaded in batches for regular aid schemes, whereas more incidental or customised aid awards are fed into the system in real time. Input is done directly by

the involved aid granting authority. Before publication of the aid scheme, the EZK is taking stock of data that are going to be required for TAM entry, with the aim to ensure sufficient information is provided and to take preparatory measures for bulk upload.

#### *19.4.3. Lessons for e-government and the digital agenda*

The early stocktaking (i.e. before publication of an aid scheme) of data that are going to be required for TAM entry is an example of an IT solution that was introduced to meet the transparency requirements and to ensure a reliable process when collecting the necessary information. This exercise was introduced by the Netherlands Enterprise Agency (RVO), which is one of the agencies within the EZK Ministry. This streamlining process has led to a substantial reduction of administrative load. A point of improvement of the registration and reporting systems currently in operation would be the integration of SANI and TAM: upon notification in SANI, a window would open to report the necessary details when a grant exceeds the threshold. This would lead to harmonisation of the information provided, as well as to a reduction of the capacity required to use and manage the different systems at all administrative levels involved.

In terms of digital communication, the web pages of the central government and Europa Decentraal, provide key resources for information on transparency requirements, among other issues concerning European legislation. The main goal of Europa Decentraal is to offer knowledge on subnational operations in the European domain. More specifically, this form of knowledge sharing is offered to keep local and regional government employees up to date with European issues (State aid, but also public procurement, environmental policies, employment and social policy, culture and education, Cohesion policy regulations, and freedom of movement). Europa Decentraal is co-funded by the Ministry of Interior (BZK), the Association of Netherlands Municipalities (VNG), the Union of Water Boards (*Unie van Waterschappen*), and the Association of Provinces of the Netherlands (IPO), reflecting its situation between local and regional authorities, European legislation, and transposition of the latter into the Dutch aid practice.

### **19.5. Other State aid reporting**

#### *19.5.1. Links between systems for TAM and annual spending reports*

The arrangements for the two types of reporting (TAM and the annual publication of the State Aid Scoreboard) are not linked in the Netherlands. There are no direct opportunities to combine or rationalise the transparency of award monitoring and the annual report on spend.

#### *19.5.2. De minimis compliance*

There is no central *de minimis* register used in any part of the Dutch administration. As described above, beneficiaries must sign a declaration in which they state the obtained award does not lead to exceeding the *de minimis* threshold. One of the reasons for this 'soft system' is to avoid duplication of the administrative work. In addition, it avoids a possible time lag between aid awards, e.g. by different authorities to the same beneficiary. If a *de minimis* registration system were in place, periodic updates could miss out on the most recent information.

#### *19.5.3. Domestic reporting*

In the Netherlands legislation, State aid measures are evaluated on a regular basis to see if they were/are fit for purpose.

## 19.6. References

Figee, E.L., Gosselt, J.F. & De Jong, M.D. (2019) Listen to us: How Dutch subnational governments together use public affairs to create a favorable position in the national and European political arenas. *Journal of Public Affairs*, e1971.

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Ministry of Economic Affairs & Climate Policy (2019a) *Handleiding Algemene Groepsvrijstellingsverordening*. The Hague, Ministerie van Economische Zaken en Klimaat: [https://europadecentraal.nl/wp-content/uploads/2020/02/ISO\\_Handleiding\\_AGVV.pdf](https://europadecentraal.nl/wp-content/uploads/2020/02/ISO_Handleiding_AGVV.pdf).

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Zwaan, P et al. (2018) *Onbekend maakt onbemind? Een verkenning van de toepassing van EU-staatssteunregels door Nederlandse gemeenten*. Radboud University Nijmegen: Institute for Management Research.



**20. AUSTRIA**

KEY DIMENSIONS	MAIN CHARACTERISTICS
Legal	<ul style="list-style-type: none"> <li>• The GBER is directly applicable; there is no domestic State aid law</li> <li>• The Unit for EU State Aid Law has a general coordinating role and provided training on transparency; it has no enforcement role</li> <li>• Separate but similar arrangements apply to agriculture, forestry and fishing through the Ministry of Agriculture, Regions and Tourism</li> </ul>
Organisational	<ul style="list-style-type: none"> <li>• State aid coordination is centralised in the Unit for EU State Aid Law at the Federal Ministry for Digital and Economic Affairs (BMDW)</li> <li>• Awarding bodies are responsible for compliance</li> </ul>
Operational and technical	<ul style="list-style-type: none"> <li>• Awarding bodies input to TAM directly</li> <li>• There is no central State aid register</li> </ul>

**20.1. Summary**

The Unit for EU State Aid Law at the BMDW (Federal Ministry for Digital and Economic Affairs) has a general coordinating role on State aid compliance in Austria. In response to the transparency requirements introduced by the Commission, it provided circulars and training for the various funding agencies.

A basic system to collect information on available public funding sources had already been in place in the Federal Ministry of Finance since 2012. One of the most important consequences of the 2016 transparency requirement was that responsibility for data collection shifted more to the funding agencies themselves.

Formal responsibility for 'compliance' lies with the awarding bodies; these bodies input the data to TAM as required. Reporting of aid over the threshold is considered to work well. Awareness and knowledge regarding the obligations for State aid above €500,000 are anchored in the funding system and well understood.

Arrangements for reporting State aid in the agricultural and fisheries sectors are separate from reporting on State aid under the GBER. The Federal Ministry of Agriculture, Regions and Tourism is responsible for reporting State aid in these areas. Any changes to the relevant rules in either system are exchanged between the Federal Ministry for Digital and Economic Affairs and the Federal Ministry of Agriculture, Regions and Tourism.

## **20.2. Legal arrangements**

### *20.2.1. Legal basis*

The transparency obligations under the GBER are directly applicable. However, whenever any funding guidelines for Austrian funding agencies are revised, an explicit reference to the obligation is included in the relevant text.

There were no similar domestic transparency requirements before July 2016.

The role of “trust” in domestic relations to implement the requirements is no other than that of other law-based administrative procedures.

ABER and FIBER are also directly applicable and there is domestic transposition of their transparency requirements.

### *20.2.2. Substantive provisions*

The transparency obligations according to the GBER are directly applicable and there are no additional domestic rules.

### *20.2.3. Enforcement*

The Unit for EU State Aid Law is a coordinating body that provides an interface for State aid relations between funding bodies in Austria and the European Commission. It is responsible for the effective implementation of State Aid rules in Austria, provides information and gives advice to funding bodies on State aid compliance.

## **20.3. Organisational arrangements**

### *20.3.1. Institutional arrangements*

The Unit for EU State Aid Law in the BMDW, together with the funding agencies, are responsible for compliance with EU State aid law. There is a centralised coordination function (fulfilled by the Unit for EU State Aid Law) and decentralised implementation obligations (fulfilled by the awarding bodies).

The Austrian funding agencies (which are often outsourced or privately organised) are usually directly responsible to their supervisory authorities for the implementation of transparency obligations. The Unit for EU State Aid Law ensures smooth communication with the Commission services.

Documents published by the European Commission, such as guidelines and user manuals, are distributed to the funding agencies in a circular and must be used as a basis for interpretation by the agencies concerned. There are additional obligations for domestic purposes related to the budget, as well as for the purposes of Structural Funds support.

In the Unit for EU State Aid Law there is one staff member entrusted with State aid transparency and there is at least one staff member in each of the funding agencies concerned who is responsible for this area. Across Austria there are thought to be more than 100 people involved in State aid transparency.

### 20.3.2. *Scrutiny and control of specific compliance issues*

#### i Compliance with the Deggendorf principle

Checks are carried out directly by the relevant funding agency.

#### ii Cumulation

Checks are carried out directly by the relevant funding agency.

#### iii de minimis conditions

The Unit for EU State Aid Law supports awarding bodies in ensuring compliance. Schemes purporting to be based on the *de minimis* Regulation are checked for compatibility before being registered on the national database of support measures.

#### iv Firms in difficulty

Checks are carried out directly by the relevant funding agency.

#### v Single undertaking principle

The Unit for EU State Aid Law supports awarding bodies in ensuring compliance by providing advice on the SME classification of funding applicants as required.

## 20.4. Operational and technical arrangements

### 20.4.1. *Domestic State aid registers*

The BMDW Unit for EU State Aid Law maintains several registers of State aid structured according to notifiable, exempted and *de minimis* aid and according to different federal and Länder support schemes.

Registers for aid to transport, agriculture and fisheries are maintained by the relevant ministries.

Austria's national transparency database provides an overview of all Austrian public funding schemes available and therefore fulfils tasks other than those of the European Commission's TAM. It is based on a web-based transparency portal that gives citizens and businesses comprehensive information on the full range of benefits offered by the Austrian federal and Länder authorities. Domestic registers and TAM were introduced independently of one another and are therefore not harmonised. The main features of Austria's transparency database were already introduced in 2012 and therefore could not anticipate the categories and classifications used in TAM.

### 20.4.2. *Interoperability*

There are no institutionalised links between different systems, although the Austrian transparency database is to be gradually expanded to include State aid categories. "*De minimis*" support is monitored by the Unit for EU State Aid Law in the sense that the compliance of *de minimis* support measures is checked, but case-by-case responsibility lies with the awarding bodies.

In the main, data is recorded in TAM directly by the funding body and in real time. A "bulk upload" is only used in exceptional cases.

The Unit for EU State Aid Law has instructed awarding bodies to compare their respective data entries with each other with regard to compliance with the cumulation rules, in particular with regard to reaching the €500,000 threshold.

The Unit for EU State Aid Law does not exert any influence over the data input – i.e. it does not check or correct the entries made by the awarding bodies either ex ante or ex post.

#### *20.4.3. Lessons for e-government and the digital agenda*

In addition to the IT tools provided by the Commission (SANI, SARI and TAM), the introduction of further IT tools is not considered necessary.

### **20.5. Other State aid reporting**

#### *20.5.1. Links between systems for TAM and annual spending reports*

At the national level, there are no links made between the data collected for SARI and TAM.

Simplification of the obligations for both annual reporting and individual aid transparency would be welcomed. A one-time entry of both report data and aid of more than €500,000 under SARI would be worth considering.

#### *20.5.2. De minimis compliance*

The Unit for EU State Aid Law maintains a list of registered *de minimis* support measures for all local authorities. However, compliance with the obligations under the *de minimis* rule for individual cases is the responsibility of the funding agency concerned.

The Unit for EU State Aid Law does not maintain a register of individual awards falling under *de minimis*.

#### *20.5.3. Domestic reporting*

There is no purely domestic reporting and analysis of State aid.

### **20.6. References**

Unit for EU State Aid Law (*EU-Beihilfenrecht*): <https://www.bmdw.gv.at/Services/Internationale-Services/EU-Beihilfenrecht.html>

Transparency requirement: <https://www.bmdw.gv.at/Services/Internationale-Services/EU-Beihilfenrecht/EU-beihilfenrechtliche-Transparenzverpflichtung.html>

Reporting: <https://www.bmdw.gv.at/Services/Internationale-Services/EU-Beihilfenrecht/Berichterstattungen.html>

Overview of domestic public support schemes ("transparency portal"): <https://transparenzportal.gv.at/tdb/tp/situation/buerger/>

English description of transparency portal: <https://www.bmf.gv.at/en/topics/budget-economic-policy/transparency-portal.html>



**21. POLAND**

KEY DIMENSIONS	MAIN CHARACTERISTICS
Legal	<ul style="list-style-type: none"> <li>• The legal basis for State aid transparency is the 2007 Act on State aid</li> <li>• The Office of Competition and Consumer Protection (UOKiK) provides opinions on proposed aid and monitors State aid.</li> <li>• Separate but similar arrangements apply to agriculture and fishing through the Ministry of Agriculture; for forestry, responsibility depends on the legal basis of State aid approval.</li> </ul>
Organisational	<ul style="list-style-type: none"> <li>• State aid coordination is centralised in the State Aid Monitoring Department in UOKiK</li> <li>• Awarding bodies are responsible for compliance with transparency obligations through the systems managed by UOKiK</li> </ul>
Operational and technical	<ul style="list-style-type: none"> <li>• TAM is not used</li> <li>• A domestic register – SUDOP - was set up in 2016. All awards are encoded in SUDOP by awarding bodies through a reporting system, SHRIMP. SUDOP is publicly accessible</li> <li>• All awards, including <i>de minimis</i> support must be reported in SHRIMP</li> </ul>
Other points to note	<ul style="list-style-type: none"> <li>• SHRIMP is undergoing comprehensive revision; a new version is expected to be launched in 2020</li> </ul>

**21.1. Summary**

In 2016, Poland launched the State Aid Data Sharing System (*System Udostępniania Danych o Pomocy Publicznej* – SUDOP) as the main disclosure database and the most comprehensive source for providing information on subsidies (all types including *de minimis* support and aid within the SGEI framework) for undertakings in Poland, apart from the support in the agriculture and fishing sectors.

Information on SUDOP comes from entries submitted by awarding bodies into the SHRIMP System (State Aid Reporting and Monitoring System)<sup>140</sup> and from a database on aid measures updated by the administrator of the SUDOP System in accordance with data submitted through SANI.

Formal responsibility for compliance lies with the entity granting aid. The President of the Office of Competition and Consumer Protection (*Urząd Ochrony Konkurencji i Konsumentów* – UOKiK) gives an opinion on aid measures, but this is not binding on awarding bodies. The main purpose of

<sup>140</sup> Pursuant to Article 32 of the Act on procedural issues concerning State aid (Journal of Laws of 2007 No. 59, item 404, as amended).

the opinion is to ensure the compliances of the aid with EU law by indicating the consequences associated with granting unlawful or incompatible aid. The opinion is also intended to prevent notification of aid measures that are incompatible with the internal market and therefore have no chance of being approved by the Commission.

The President of UOKiK has a wide range of competences under the Act. These include:

- preparations for notification of draft aid schemes, drafts of individual aid and individual aid for restructuring;
- co-operation with entities preparing aid schemes, aid granting authorities, entities applying for aid and aid beneficiaries with respect to State aid;
- representing Poland in proceedings before the Commission and the Courts of the European Union;
- carrying out proceedings regarding State aid recovery;
- monitoring the State aid granted to undertakings.

Aid schemes falling within block exemptions require the opinion of the President of UOKiK to proceed. The President of UOKiK states whether the scheme meets the conditions of the GBER and proposes possible changes. Entities proposing aid measures that provide for the granting of assistance under block exemptions, or entities providing individual assistance under the block exemptions, must immediately inform the President of UOKiK, by means of a summary information form regarding assistance under the block exemptions. The President of UOKiK provides the information to SANI.

There is a separate system for collecting information on State aid granted in agriculture or fisheries, organised by the Ministry of Agriculture. Awarding bodies are required to provide information on assistance offered in the following month: *de minimis* support by the 7th day after the award; and other measures by the 30th day of the following month. Data are entered directly into the Public Aid Registration System (*System Rejestracji Pomoc Publicznej – SRPP*). As with SUDOP, this system was established before the latest transparency obligations were introduced.

## **21.2. Legal arrangements**

### *21.2.1. Legal basis*

The legal basis for domestic transparency arrangements is Article 11(a)(2) of the Act of 30 April 2004 on the procedural issues concerning State aid.

The competences of the President of UOKiK in the field of State aid are set out in the Act on the procedural issues concerning State aid.<sup>141</sup>

In accordance with Article 31 of the Act, the President of UOKiK is responsible for monitoring State aid in Poland (other than State aid in agriculture or fishery sector). Monitoring of state aid includes collecting, processing and forwarding information on the granted aid.

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<sup>141</sup> Article 1 of the Act of 30 April 2004.

Article 32 of the Act provides that each entity granting aid is required to prepare and send to the President of UOKiK reports on State aid granted other than State aid in agriculture or fishery sectors. Reports are sent electronically via the SHRIMP application – a special system dedicated to reporting and monitoring State aid. Each entity granting aid applies to the President of UOKiK for access to the SHRIMP application immediately it has competence to grant aid.

#### *21.2.2. Substantive provisions*

The legislation requires awarding bodies to enter details of aid awards made into the domestic system SHRIMP (State aid reporting and monitoring system). Awarding bodies must report aid awards within 7 days of making an award. Awarding bodies must also update the report if the value of the aid changes, and this within 7 days of becoming aware of the change. This information is publicly accessible in SUDOP.

#### *21.2.3. Enforcement*

The powers of UOKiK are mandatory in some areas- drafts of aid schemes, including those that provide for granting aid covered by block exemptions, as well as drafts of individual aid and drafts of individual aid for restructuring, are by law subject to an opinion from UOKiK (although ultimate responsibility lies with the entity granting aid).

UOKiK is responsible for:

- carrying out proceedings regarding preparations for notification of draft aid schemes, drafts of individual aid and individual aid for restructuring;
- co-operating with entities preparing aid schemes, aid granting authorities, entities applying for aid and aid beneficiaries with respect to State aid;
- representing Poland in proceedings before the Commission and the Courts of the European Union;
- carrying out proceedings regarding State aid recovery;
- monitoring the State aid granted to undertakings

The President UOKiK may, by way of decision, impose a financial penalty of up to around €10,000 for failure to comply with information requirements to prepare replies to European Commission questions, information concerning State aid already received or obstructing an audit.

### **21.3. Organisational arrangements**

#### *21.3.1. Institutional arrangements*

The UOKiK leadership team is small, comprising of the President and a Vice-President<sup>142</sup> appointed by the Prime Minister. Nevertheless the Office is an independent body as the President is not a member of the Polish government. UOKiK also has nine regional branches situated in large

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<sup>142</sup> One oversees the consumer protection division, including the trade and product safety inspectorates and the other oversees competition protection.

cities throughout Poland. These branches are not separate bodies and act under the supervision of the UOKiK President.

There is a Department for State Aid Monitoring in UOKiK. The main role of the Department is ensuring legal compliance of aid measures, cooperating with the European Commission and entities preparing aid schemes, aid granting authorities, entities applying for aid and aid beneficiaries with respect to State aid. It carries out initial assessment of the compatibility of aid measures and individual aid awards with the Internal Market. It also judges the need for such measures to be notified to the European Commission. The Department drafts documents and prepares information for the purposes of representing Poland in State aid cases heard by the European Commission, the EU Court of Justice and the General Court. The Department is responsible for monitoring State aid granted in Poland.

It prepares an annual report on State aid including relevant qualitative and quantitative data as well as an overall impact assessment of the aid granted on the state of competition in the market. UOKiK has a relatively decentralised structure, as apart from the headquarters in Warsaw, it also contains nine regional branches situated in large cities throughout Poland. These branches are not separate bodies and act under the supervision of the UOKiK President.

Support and awareness-raising has been provided through seminars and training. Poland has conducted training for regional and local government on the design or implementation of aid measures, as well as promotion and dissemination of knowledge on State aid rules. The State aid unit in UOKiK has become more proactive in providing training courses, developing internet-based information, newsletters, etc.

### 21.3.2. *Scrutiny and control of specific compliance issues*

#### i Compliance with the Deggendorf principle

Verification of compliance with the *Deggendorf* principle is not available through SHRIMP. Responsibility for checking compliance with the *Deggendorf* principle lies with the granting authority. Information on recoverable aid is provided on the UOKiK website. This is not removed until the beneficiary has repaid all of the amount due, which enables granting authorities to ensure that entities which have not repaid aid do not receive any new aid.

#### ii Cumulation

Applicants must ensure that the application form is accompanied by documents prepared in accordance with the relevant legislative provisions.<sup>143</sup> The applicant is required to state whether the aid will be used for a project that has already received other aid for the same eligible costs. If so, the applicant must provide detailed information on the other aid received, including nominal and gross amount, a project description, location, the list of eligible costs, implementation stages and the start and end date. The awarding body may verify some of the information declared by the beneficiary by using the SUDOP database.

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<sup>143</sup> Article 37(6) of the Polish Act of 30 April 2004 on procedural issues concerning State aid, Journal of Laws 2016, item 1808.

iii de minimis conditions

UOKiK monitors *de minimis* aid. Draft aid schemes that provide for *de minimis* aid are subject to submission to the President of the Office, who may present any reservations regarding transparency of the principles of granting aid within 14 days.

Entities providing *de minimis* aid must issue beneficiaries with *de minimis* declaration forms according to the model specified in law.<sup>144</sup> Data on *de minimis* support granted must be reported to UOKiK in SHRIMP within seven days from the date of its granting. As well as the declarations, awarding bodies can also check SUDOP for other *de minimis* support.

iv Firms in difficulty

This must be verified by awarding bodies before aid is granted. UOKiK does not collect data on the financial condition of firms.

v Single undertaking principle

This must be verified by awarding bodies before aid is granted. UOKiK does not collect data on connections between undertakings.

## 21.4. Operational and technical arrangements

### 21.4.1. Domestic State aid registers

Poland operates its own State aid register - SUDOP<sup>145</sup> which was launched in 2016. It provides information on all State aid (including *de minimis* support and aid within the SGEI framework), apart from support for agriculture and fishing; in these sectors the responsible authority is the Ministry of Agriculture which has its own database – SRPP).

SUDOP is open access, without prior user registration. Data can readily be searched, extracted and downloaded in csv or pdf file formats. Due to the transparency obligation, the information should be available within 6 months from the date the aid was granted and for aid in the form of tax advantage –within 1 year from the date the tax declaration is due. In SUDOP all data is available within 8 days after aid was granted, if the awarding body fulfils its reporting obligations. SUDOP contains three search engines:

1. Searching for aid measures
2. Searching for beneficiaries of selected aid measures
3. Searching for aid granted to a particular beneficiary

Aid measures in SUDOP includes the following information:

1. Aid number - SA reference number
2. Type of aid measure change and the number of aid measure changed
3. Type of aid measure, form of assistance

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<sup>144</sup> Regulation of the Council of Ministers of 20 March 2007 on aid certificates *de minimis* and *de minimis* aid in agriculture or fisheries - [https://www.uokik.gov.pl/wzory\\_formularzy\\_pomocy\\_de\\_minimis.php](https://www.uokik.gov.pl/wzory_formularzy_pomocy_de_minimis.php)

<sup>145</sup> <https://sudop.uokik.gov.pl/home>

4. Name of measures/ name of beneficiary
5. Awarding body
6. Legal basis
7. Website address containing the full text of the aid measure
8. Period of validity.
9. Available form(s) of aid
10. Available objective(s) of aid
11. Size of beneficiary
12. Sector of activity of the beneficiary
13. Region and status of the region
14. Annual budget of the aid measure / total ad hoc

Total amount of financing from EU funds and name of EU fund. The above information is consistent with the notification sent to the European Commission via the Sani2 system.

The search of aid measure is done by defining one or several filters, such as:

- Aid number – SA reference number
- Legal basis - the Act(s)
- Objective(s) of aid
- Form(s) of aid
- Period of validity

The second search engine allows users to find beneficiaries of selected aid measures. It is also possible to restrict searching for beneficiaries operating in a selected industry, region or entrepreneur of a given size. Moreover, search may be restricted to a specific form or specific objective of aid, period or date of granting or aid amount. As a result the search engine shows all aid cases that meet the selected criteria. The user may export the search results to a file in the pdf or csv format or view detailed information about the selected case of aid.

The third search engine allows users to find all aid given to selected beneficiary defined by its tax identification number (NIP). The cases of aid may be limited to a period of time or limited to *de minimis* aid, which enables rapid verification of the available limit for *de minimis* aid. The search result is displayed as a summary of cases in one of two possible file formats: pdf or csv. In the report, each case contains information about a specific aid such as: awarding body, date of granting, legal act, number of aid measure, amount, form and objective of aid.

SUDOP was established in 2016. Data on granted aid is updated daily, taking into account all changes introduced in the SHRIMP. New measures, schemes and individual aid are entered into the system by the administrator after their notification or approval by the Commission.

#### *21.4.2. Interoperability*

All data available in the SUDOP, in particular regarding beneficiaries of a given measure, all cases of aid granted to the selected beneficiary, can be downloaded in “csv” file format, which allows their further processing or aggregation.

#### *21.4.3. Lessons for e-government and the digital agenda*

No information available.

## 21.5. Other State aid reporting

### 21.5.1. Links between systems for TAM and annual spending reports

Not relevant. Poland operates a domestic system and does not enter data into the TAM. Based on the data collected in SHRIMP, the President of UOKiK prepares an annual report on public aid for the (Polish) Council of Ministers. The report breaks the state aid into various categories (type, objective of aid, form of aid, legal basis, type of body granting aid, region, type and size of beneficiary, source of aid). The report contains a list of all individual aid and information on all measures in force in a year to which the report relates. SARI is completed on the basis of data gathered in SHRIMP.

### 21.5.2. De minimis compliance

Poland operates a *de minimis* register based on information from SHRIMP. Awarding bodies can access the data to verify the *de minimis* support already received.

### 21.5.3. Domestic reporting

UOKiK issues an annual report on *de minimis* use in Poland, based on information from SHRIMP as well as an annual report on State aid. UOKiK considers an annual report on *de minimis* in Poland important due to the relatively high level of funding involved. The report breaks the use of *de minimis* into various categories (type, form of aid, legal basis, type of body granting aid, region, type and size of beneficiary, source of aid).

## 21.6. References

- Procedural provisions (preparation for notification, representation before European courts, recovery of aid, monitoring of assistance - national level):
  - Act of 30 April 2004 on the procedural issues concerning State aid together with implementing regulations (amended in 2019). *Ustawa z dnia 30 kwietnia 2004 r. o postępowaniu w sprawach dotyczących pomocy publicznej* (Dz. U. z 2020r. poz. 708):
- SUDOP web page
  - <https://sudop.uokik.gov.pl/>
- SHRIMP web page
  - <https://shrimp.uokik.gov.pl/>



## 22. PORTUGAL

KEY DIMENSIONS	MAIN CHARACTERISTICS
Legal	<ul style="list-style-type: none"> <li>• In Portugal only the legal bases of State Aid schemes incorporate the GBER provisions, including transparency provisions. No autonomous national State Aid Law applies.</li> <li>• The Directorate-General for European Affairs (DGAE) has a general coordination and information role, but no powers of enforcement</li> <li>• For agriculture, fisheries and aquaculture, national responsibility for the coordination of issues related to transparency also rests with the DGAE / Ministry of Foreign Affairs, although slightly different procedures are followed.</li> </ul>
Organisational	<ul style="list-style-type: none"> <li>• State aid coordination is centralised in the DGAE but involves a network of contact points in each of the sectoral ministries and the two autonomous regions</li> <li>• Awarding bodies are responsible for compliance</li> </ul>
Operational and technical	<ul style="list-style-type: none"> <li>• Awarding bodies input to TAM directly</li> <li>• There is no centralised State aid register</li> <li>• A <i>de minimis</i> register was set up in 2002</li> </ul>
Other points to note	<ul style="list-style-type: none"> <li>• The central register of <i>de minimis</i> aid is considered good practice. A modernisation project has recently been implemented, with the aim to improve the data collection and reporting system for <i>de minimis</i> support</li> </ul>

### 22.1. Summary

There has generally been a very positive response to the new transparency requirements in Portugal. Portugal is one of the Member States that has registered the highest number of entries in the Transparency Award Module.

Before the transparency requirement was introduced in 2016, there were no systematic provisions for reporting State aid exceeding a certain amount in Portugal. With the entry into effect of the transparency obligations, the relevant mechanisms (e.g. for wide information dissemination and alerts etc.) were used for the first time in the context of these obligations.

Prior to 2016 (as well as currently), there were information collection systems within the scope of support granted under the Structural Funds, in order to comply with the relevant transparency requirements under the ESIF, as well as domestic databases.

The central register of *de minimis* aid, ensuring compliance with the ceilings for aid granted under the *de minimis* regime, has existed in Portugal since 2002.

Portugal has a decentralised system of State aid control, including for implementing the transparency requirements. The Directorate-General for European Affairs (*Direcção-Geral dos Assuntos Europeus, DGAE*) of the Ministry of Foreign Affairs (*Ministério dos Negócios Estrangeiros,*

MNE) is the coordinating body, but it is a decentralised coordination, meaning that the main responsibility for ensuring compliance with State aid rules lies with sectoral bodies. The system operates through a network of contact points for State aid, which integrates all sectoral Ministries and the two Autonomous Regions. Within this networked, decentralised system, the ultimate responsibility for the fulfilment of transparency requirements lies with the awarding bodies / sectoral Ministries. At the same time, the coordinating body (DGAE) has the task of checking, in cooperation with the relevant Ministries, whether there are “gaps” in transparency reporting and coordinates responses to the “compliance checks” launched by the Commission.

It is the common practice of the awarding bodies that manage large aid schemes in Portugal to report in TAM all aid they grant, even that below €500,000, although there is no specific domestic legal basis underpinning this practice.

In the area of agriculture and fisheries the Commission has indicated that, since transparency requirements are fulfilled under ESIF, there is no need to report in TAM. The exception to this are measures authorised by the Commission in the context of the COVID-19 crisis.

## **22.2. Legal arrangements**

### *1.2.1. Legal basis*

There are no specific, purely domestic, legal basis / legal documents regarding the transparency requirements, other than the legal basis of the aid schemes. The legal basis of any aid scheme within the scope of the GBER includes references to the GBER, and therefore, indirectly, to the transparency requirements, as part of the GBER. There is thus no specific legislation on transparency obligations, apart from such references within the legal basis of the aid schemes, making an indirect link to the transparency requirements.

Prior to 2016, there were no systematic provisions for reporting aid exceeding a certain amount, therefore relevant transparency requirements started being applied from 2016, although there are some national databases where subsidies of any given amount to individual beneficiaries are reported.

### *1.2.2. Substantive provisions*

There is no specific domestic legal basis for implementing the transparency requirements.

It is the common practice of the awarding bodies in Portugal that manage large aid schemes to report in TAM all aid they grant, even that below €500,000, but there is no specific domestic legal basis underpinning this practice.

### *1.2.3. Enforcement*

The Portuguese Competition Authority (*Autoridade da Concorrência, AdC*)<sup>146</sup> is an organisation tasked with ensuring fair commercial competition in Portugal. It has substantial independence from the government and other state bodies, its mission being to ensure compliance with the competition rules in Portugal. However, the Competition Authority does not have a specific role

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<sup>146</sup> <http://www.concorrenca.pt/vEN/Pages/Homepage-AdC-vEN.aspx>

with respect to State aid transparency and compliance. The responsibility for overall coordination in these matters lies with the Directorate-General for European Affairs (DGAE) of the Ministry of Foreign Affairs (MNE).

Article 65 of the Competition Act<sup>147</sup> makes a reference to the AdC's competences in the area of State aid, namely the possibility to analyse any aid or projected aid and formulate to the Government or any other public body recommendations for eliminating any negative impact on competition, and monitor the execution of its recommendations. However, the AdC's powers in this matter are very limited.<sup>148</sup> The Ministry of Foreign Affairs, in coordination with the network of contact points for State aid, is responsible for State aid issues, including transparency-related matters.

The Directorate-General for European Affairs (DGAE) does not have any sanctioning powers, therefore no penalties are used. Rather, DGAE: controls all the information regarding State aid, in relation to the cases that exist in Portugal; disseminates all the information coming from the European Commission; organises training actions, most of them in collaboration with the European Commission, and also awareness raising actions; advises the Ministries regarding specific aid measures, upon their request; performs the alert function, e.g. issuing alerts regarding compliance with transparency obligations.

The primary responsibility for fulfilling transparency obligations lies with the awarding bodies and the corresponding Ministries (i.e. the Ministries upon which they depend). Such arrangements have proven effective, as seen in the significant number of entries fed into TAM.

## **22.3. Organisational arrangements**

### *1.3.1. Institutional arrangements*

Portugal has a decentralised system of State aid control, including with regards to implementing the transparency requirements.

Overall, the decentralised system, at the core of the institutional framework for State aid in Portugal, aims to:<sup>149</sup>

- a. respect the autonomy and capacity of initiative of Ministries, Autonomous Regions and Local Authorities;
- b. increase awareness on State aid matters and disseminate knowledge;
- c. ensure compliance with the rules respecting the responsibilities of the entities involved in awarding aid;
- d. ensure compliance with transparency and reporting obligations.

The Directorate-General for European Affairs (*Direcção-Geral dos Assuntos Europeus, DGAE*) of the Ministry of Foreign Affairs (*Ministério dos Negócios Estrangeiros, MNE*) is the coordinating

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<sup>147</sup> Lei n.º 19/2012, de 8 de maio (Aprova o novo regime jurídico da concorrência), Artigo 65.º Auxílios públicos.

<sup>148</sup> Synnott A (ed) (2016) The Public Competition Enforcement Review. Law Business Research Ltd, London.

<sup>149</sup> Carranca and Oliveira (2018b) Mensagem Global sobre as regras de auxílios de Estado e a necessidade do seu cumprimento. DGAE, 20 November 2018, Beja.

body, but it is a decentralised coordination, meaning that the main responsibility for ensuring compliance with State aid rules lies with sectoral bodies. The system operates through a network of contact points for State aid (*rede de pontos focais*), coordinated by DGAE, which integrates all sectoral Ministries and the two Autonomous Regions. Within this networked, decentralised system, the ultimate responsibility for the fulfilment of transparency requirements lies with the awarding bodies / sectoral Ministries. At the same time, DGAE, as the coordinating body, has the task of checking, in cooperation with the relevant Ministries, whether there are “gaps” in transparency reporting and coordinates responses to the “compliance checks” launched by the Commission.

DGAE has an overview of State aid cases in Portugal, is administrator of SANI, SARI, eSAWiki and the Transparency Module, and coordinates preparing annual reports.

The DGAE keeps an updated database of all documents concerning all schemes and individual aid, which is a key instrument for monitoring and controlling notifications, procedures and deadlines.

**Figure 1: Institutional framework for State aid in Portugal**



Source: Carranca and Oliveira (2018b) *Op. cit.*<sup>150</sup>

DGAE is the national transparency coordinator. It is responsible for managing the system of users (local administrators in the Ministries and Autonomous Regions); disseminating relevant information through the network of contact points; coordinating the national position regarding transparency policy; and promoting compliance with transparency requirements. However, the responsibility for the data input lies with the awarding bodies and/or the contact points (without MNE intervention).<sup>151</sup>

The awarding bodies enter the data into TAM and comply with the reporting obligations. However, in case of any failure or problem, the focal point in the relevant sectoral Ministry relevant serves as the MNE’s interlocutor. In case of any non-compliance, a failure to report or any other issues it is the relevant sectoral Ministry, in cooperation with the awarding body, who provides a response.

<sup>150</sup> REPER – the Portuguese Permanent Representation to the European Union; RAA – the Autonomous Region of the Azores; RAM – the Autonomous Region of Madeira.

<sup>151</sup> Carranca and Oliveira (2018a) Construção de casos, notificações, trocas de informações até à Decisão, Relatórios Anuais, transparência. DGAE, 20 November 2018, Beja.

There is no comprehensive centralised control over the input of data into TAM, as it is not feasible to control each and every entry in an exhaustive way. Therefore it is the awarding bodies who have the ultimate responsibility for the input of data.

The system is based on a network of focal points that covers all Ministries and Autonomous Regions. The network of focal points for State aid matters, chaired by the State Aid Coordination Unit and involving all Ministries and Autonomous Regions, ensures the sharing of expertise, dissemination of information, advice and guidance from the Commission on a regular basis. Its role includes ensuring compliance with transparency obligations.

Guidance from the Commission on the transparency requirements for the awarding bodies as well as specific training and awareness raising initiatives are disseminated through this network. A dedicated webpage was recently created, within the scope of the MNE website,<sup>152</sup> to fulfil the obligations set out in the guidelines and in the GBER. DGAE, as the national transparency coordinator, pursues the objective of disseminating relevant information through the network of contact points. Awareness-raising is pursued, among other things, through seminars, training and information sessions targeting all relevant actors (including the local authorities).<sup>153</sup>

Prior to 2016, transparency requirements were complied with under ESIF and there existed a few national databases containing information on subsidies. With the entry into effect of the transparency obligations, the relevant mechanisms (e.g. for wide dissemination of information and alerts) started being used in the context of these obligations. The role of the DGAE as the body providing an overall coordination for State aid issues has been maintained.

In terms of resources involved in transparency compliance, it is difficult to provide an exact figure as there are no staff specifically dedicated to this task. Within the bodies responsible for transparency compliance, staff engaging with this task also work on other tasks.<sup>154</sup> Generally, there has been no increase in human resources due to transparency requirements, with no Ministry or central body recruiting staff specifically for this purpose. Arrangements were made in terms of data communication with the European Commission in order to avoid situations that would cause an excessive administrative burden. Despite this, however, the issue of administrative overload has emerged, and it appears desirable to be able to recruit more staff in order to facilitate fulfilment of the various reporting requirements associated with State aid, including (but not confined to) the transparency requirements. Greater simplification of reporting obligations would be very much welcome.

There are no additional requirements specifically for domestic audit purposes. For the purpose of compliance with transparency obligations, there is no audit other than that required in terms of compliance with the ESIF and State aid rules, therefore no separate / complementary audit activity of specifically domestic remit is carried out.

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<sup>152</sup> <https://www.portaldiplomatico.mne.gov.pt/sobre-nos/gestao-e-transparencia/documentos-legais>

<sup>153</sup> E.g. awareness sessions on State Aid, November 2018, Beja and Lamego (among others).

<sup>154</sup> A very rough estimation based on around one person per Ministry involved in the task would give around 20 people at national level, but this is merely an estimate.

### 1.3.2. Scrutiny and control of specific compliance issues

Scrutiny and control of specific compliance issues under the GBER and the other relevant guidelines is ensured in the context of the existing institutional arrangements – namely, within the scope of the decentralised network wherein the awarding bodies / Ministries must verify the concrete requirements concerned. Compliance under the *de minimis* regime is ensured through the Central register of *de minimis* aid, with the overall responsibility for compliance lying with the Agency for Development and Cohesion (AD&C).

Overall, there are no major problems with regards to compliance with the issues concerned. Notwithstanding some shortcomings in the legal basis of specific aid measures in the past (of which the European Commission is aware), the situation has improved and currently the errors detected in legal bases are being addressed (e.g. the Deggendorf rule, support to firms in difficulty etc).

#### i Compliance with the Deggendorf principle

Ensured in the context of the existing institutional arrangements and by adequate specific provisions in the legal bases of aid measures or aid schemes.

#### ii Cumulation

Ensured in the context of the existing institutional arrangements (i.e. no specific centralised mechanism for cumulation compliance).<sup>155</sup>

Cumulation under the *de minimis* regime is ensured through the Central register of *de minimis* aid, with the overall responsibility for compliance lying with the Agency for Development and Cohesion (and IFAP in the agriculture and fisheries sector). The central register is very useful to check cumulation with State aid granted under other State aid instruments such as GBER.

#### iii de minimis conditions

Compliance under the *de minimis* regime is ensured through the central register of *de minimis* aid, with the overall responsibility for compliance lying with the Agency for Development and Cohesion (AD&C, *Agência para o Desenvolvimento e Coesão, I.P.*). All issues related to *de minimis* aid (including e.g. the registration of aid under the *de minimis* regime, consistency with the single undertaking principle under the *de minimis* regime or cumulation ceiling under *de minimis*) are dealt with by the AD&C.

For *de minimis* aid granted in the agricultural domain, there is a central register of *de minimis* aid in the sector of primary production of agricultural products.<sup>156</sup> There is also a central *de minimis* register for the fisheries sector.<sup>157</sup> Both registers are managed by IFAP (Agriculture and Fisheries Financing Institute, *Instituto de Financiamento da Agricultura e Pescas*).

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<sup>155</sup> Although there are no specific centralised mechanisms for compliance with the cumulation rules, there have been no issues of cumulation breaches due to absence of a centralised control over cumulation.

<sup>156</sup> <https://www.ifap.pt/minimis-agricultura>

<sup>157</sup> <https://www.ifap.pt/minimis-pescas>

iv Firms in difficulty

Ensured in the context of the existing institutional arrangements and by adequate specific provisions in the legal bases of aid measures or aid schemes.

v Single undertaking principle

Ensured in the context of the existing institutional arrangements. Compliance under the *de minimis* regime ensured through the Central register of *de minimis* aid.

## 22.4. Operational and technical arrangements

### 1.4.1. Domestic State aid registers

There are some national databases outside the scope of ESIF (concerning, for example, tax incentives, and subsidies to cinema and audiovisual)<sup>158</sup>.

### 1.4.2. Interoperability

In practical terms, in the areas of agriculture and fisheries, once the transparency requirements within the scope of the ESIF have been fulfilled, there is no reporting of data in the TAM.

For all other support, two modes of data entry are used: manual mode and bulk upload. Bulk upload is used for inputting data on aid under the business incentive schemes, covered by the Specific Regulation of the Competitiveness and Internationalisation Domain (*Regulamento Específico do Domínio da Competitividade e Internacionalização*),<sup>159</sup> including the Business Innovation and Entrepreneurship Incentive Scheme, SME Qualification and Internationalisation Incentive Scheme, and RTD Incentive Scheme.

The awarding body carries out cumulation checks on the granted aid (almost all of which is co-financed by ESIF).

The practice of the awarding bodies that manage large aid schemes in Portugal is to input into TAM all the support they grant, even that below €500,000. Therefore, there is no specific centralised verification mechanism for the data entered into the platform, as reporting of all support granted serves as a security mechanism ensuring the cumulation rules are complied with. This way, the European Commission always has the possibility to carry out a compliance check. So far, the Commission has not identified any direct compliance issues. The issue that deserves the Commission's particular attention is the identification of possible situations in which payments have been made both before and after 2016 under the aid schemes that existed before the transparency requirements came into effect. So far, there have been no specific situations of non-compliance for any regime in this respect.

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<sup>158</sup> This is a non-exhaustive list

<sup>159</sup> Portaria (Ordinance) no. 57-A/2015 of 27 February 2015: <https://dre.pt/application/file/a/66622102> (with subsequent amendments by Portarias no. 181-B/2015, 328-A/2015, 211-A/2016, 142/2017, 360-A/2017, 217/2018, and 316/2018), also Decreto-Lei (Decree-law) no. 6/2015 of 8 January 2015: <https://dre.pt/application/file/a/66108378> (the national framework for business incentive schemes).

### 1.4.3. Lessons for e-government and the digital agenda

No specific examples of IT solutions considered innovative or novel and introduced to meet the transparency and other compliance requirements have been identified. At the same time, there is interest in this topic, which is seen relevant.

There are no examples of IT solutions ensuring harmonisation of domestic registers with TAM or with other domestic digital sources.

At the same time, the central register of *de minimis* aid is considered good practice. A modernisation project has recently been implemented, with the aim to improve the data collection and reporting system for *de minimis* aid.

## 22.5. Other State aid reporting

### 1.5.1. Links between systems for TAM and annual spending reports

There is no internal link between the SARI and TAM systems. These two platforms have different objectives. At the same time, it is in principle possible to use data reported in SARI to cross-check with data reported in TAM, although this is not done at the national level.

In institutional terms, there are parallels in terms of distribution of responsibilities in the context of annual spending reporting and transparency compliance. The annual report is coordinated by DGAE which distributes the processes to the Ministries and Autonomous Regions; the awarding bodies or the network contact points enter the data and finalise the cases; the consolidated report is submitted to the Commission, after signature (DGAE) and validation (Portuguese Permanent Representation to the EU, REPER).<sup>160</sup>

While the two platforms have different objectives, the main concern is the overall excessive (and increasing) administrative burden related to the compliance with the different State aid reporting requirements. TAM was introduced as a tool that would eventually promote an overall reduction in reporting obligations – instead, it has been observed that reporting obligations and the associated administrative burden have increased steadily. There is therefore a need for an increased human resources in order to fulfil the various reporting requirements (including e.g. in terms of input and verification of the records in the SANI, SARI and TAM platforms).

### 1.5.2. De minimis compliance

In order to ensure compliance with the ceilings for aid granted under the *de minimis* aid, the central register of *de minimis* aid (*Registo Central de Auxílios Minimis*) is used in Portugal,<sup>161</sup> which allows the control of aid cumulation and its monitoring. This is considered to be a distinctive approach. The responsibility for the definition, maintenance and control of cumulation lies with the AD&C (Agency for Development and Cohesion, IP).<sup>162</sup> In the agriculture and fisheries sector, the responsibility lies with IFAP (*Instituto de Financiamento da Agricultura e Pescas*).

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<sup>160</sup> Carranca and Oliveira (2018a) *Op. cit.*

<sup>161</sup> <https://minimis.adcoesao.pt/>

<sup>162</sup> Decree-Law no. 140/2013, of October 18, article 3, no. 2 (d).

The central *de minimis* register makes it possible to verify that the cumulation rules are not violated in relation to specific cases. Any *de minimis* aid granted is entered into the register, which automatically calculates the cumulated aid granted to a given beneficiary and indicates whether or not the ceiling has been exceeded.<sup>163</sup>

The register is generally considered useful, although some actors have raised concerns regarding the associated administrative burden (wherein the respect of the formalities related to the register can be a burden for the bodies granting support of very small amounts).

In terms of guidance, there exists the central *de minimis* Register User Support Manual (latest update from 2018).<sup>164</sup>

As mentioned, for *de minimis* aid granted in the agricultural domain, there is a central register of *de minimis* aid in the sector of primary production of agricultural products,<sup>165</sup> for *de minimis* aid granted in the fisheries sector – a central *de minimis* register concerning fisheries.

### 1.5.3. Domestic reporting

There is no purely domestic analysis / reporting specifically in relation to the issue of transparency. More generally, studies have been conducted covering the topic of the effectiveness of public aid, co-financed by the ESIF, but not specifically in relation to the issue of transparency.

## 22.6. References

### 1.6.1. Institutional websites:

Ministry of Foreign Affairs (*Ministério dos Negócios Estrangeiros*):

<https://www.portaldiplomatico.mne.gov.pt/>, <https://www.portugal.gov.pt/pt/gc21/area-de-governo/negocios-estrangeiros>, including the webpage covering the State aid transparency requirements: <https://www.portaldiplomatico.mne.gov.pt/sobre-nos/gestao-e-transparencia/documentos-legais>

Agency for Development and Cohesion (*Agência para o Desenvolvimento e Coesão*):

<https://www.adcoesao.pt/>; webpage covering State aid / transparency requirements: <https://www.adcoesao.pt/content/auxilios-de-estado>

Central register of *de minimis* aid (*Registo central de auxílios de minimis*):

<https://minimis.adcoesao.pt/>; also <https://www.adcoesao.pt/content/auxilios-de-minimis>

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<sup>163</sup> The central register comprises a set of information, provided by the entities that communicate / award the aid, necessary to control the support limit. This information is subject to some previous validations. On the basis of this information it is possible to identify at all times and always before a final decision on the allocation of support is adopted, company-to-company (using the Tax Identification Number), the support granted under the *de minimis* rule in Portugal, in accordance with Community legislation.

<sup>164</sup>

[https://www.adcoesao.pt/sites/default/files/aux\\_estado\\_e\\_minimis/12\\_manualdeapoioaoutilizador\\_registocentraldeauxiliosdeminimis\\_julho2018.pdf](https://www.adcoesao.pt/sites/default/files/aux_estado_e_minimis/12_manualdeapoioaoutilizador_registocentraldeauxiliosdeminimis_julho2018.pdf)

<sup>165</sup> <https://www.ifap.pt/minimis-agricultura>

Agriculture and Fisheries Financing Institute (*Instituto de Financiamento da Agricultura e Pescas, IFAP*); including webpages on *de minimis* aid in the agriculture and fisheries sectors: <https://www.ifap.pt/minimis-agricultura> and <https://www.ifap.pt/minimis-pescas>

The Portuguese Competition Authority (*Autoridade da Concorrência*): <http://www.concorrencia.pt/vPT/Paginas/HomeAdC.aspx>

### 1.6.2. Presentations:

Presentations from the awareness sessions on State aid, promoted by the DGAE and AD&C:

- 20 November 2018, Beja: <https://www.adcoesao.pt/content/consulte-apresentacoes-da-sessao-sobre-auxilios-de-estado-realizada-em-beja> (in PT)
- November 27, Lamego: <https://www.adcoesao.pt/content/ja-estao-disponiveis-apresentacoes-da-sessao-de-auxilios-de-estado-realizada-em-lamego> (in PT)

Selected presentations:

- Carranca and Oliveira (2018a) Construção de casos, notificações, trocas de informações até à Decisão, Relatórios Anuais, transparência. Maria Adelaide Carranca, Carlos Pardellas Oliveira, Direção Geral dos Assuntos Europeus Ministério dos Negócios Estrangeiros. Sessão de sensibilização em Auxílios de Estado, 20 November 2018, Beja: [https://www.adcoesao.pt/sites/default/files/noticias/6.1dgae\\_mnemensagemglobal\\_beja\\_2parte.pdf](https://www.adcoesao.pt/sites/default/files/noticias/6.1dgae_mnemensagemglobal_beja_2parte.pdf) (in PT)
- Carranca and Oliveira (2018b) Mensagem Global sobre as regras de auxílios de Estado e a necessidade do seu cumprimento. Maria Adelaide Carranca, Carlos Pardellas Oliveira, Direção Geral dos Assuntos Europeus, Ministério dos Negócios Estrangeiros, Sessão de sensibilização em Auxílios de Estado, 20 November 2018, Beja: [https://www.adcoesao.pt/sites/default/files/noticias/1.dgae\\_mensagemglobalsobreael\\_b\\_eja\\_1parte.pdf](https://www.adcoesao.pt/sites/default/files/noticias/1.dgae_mensagemglobalsobreael_b_eja_1parte.pdf) (in PT)
- Agência para o Desenvolvimento e Coesão (2018): Regulamento *de minimis*. Sessão de sensibilização em Auxílios de Estado, 27 November 2018, Lamego: [https://www.adcoesao.pt/sites/default/files/noticias/5.1lamego\\_nl\\_adc\\_minimis.pdf](https://www.adcoesao.pt/sites/default/files/noticias/5.1lamego_nl_adc_minimis.pdf) (in PT)

### 1.6.3. Legislation

Portaria 32/2012, de 31 de Janeiro, Diário da República n.º 22/2012, Série I de 2012-01-31 (Establishes the organic structure of the Directorate-General for European Affairs): <https://dre.tretas.org/dre/289032/portaria-32-2012-de-31-de-janeiro>

Portaria no. 57-A/2015 of 27 February 2015, Diário da República nº 41/2015, 1º Suplemento, Série I de 2015-02-27 (with subsequent amendments by Portarias no. 181-B/2015, 328-A/2015, 211-A/2016, 142/2017, 360-A/2017, 217/2018, and 316/2018) (Specific Regulation in the Domain of Competitiveness and Internationalisation): <https://dre.pt/web/guest/legislacao-consolidada/-/lc/view?cid=117339276>

Decreto-Lei no. 6/2015 of 8 January 2015, Diário da República, 1ª série – Nº 5 – 8 de janeiro de 2015 (the national framework for the business incentive schemes): <https://dre.pt/application/file/a/66108378>

Resolução do Conselho de Ministros n.º 27/2009, Diário da República, 1ª série – Nº 56 – 20 de Março de 2009 (proceeds to the creation of a central register of *de minimis* aid and attributes to the Financial Institute for Regional Development (IFDR) the responsibility for controlling the accumulation of financial support granted under the *de minimis* rule):

[https://www.adcoesao.pt/sites/default/files/aux\\_estado\\_e\\_minimis/e\\_rcm\\_27\\_2009\\_20\\_mar\\_ifdr\\_minimis\\_0.pdf](https://www.adcoesao.pt/sites/default/files/aux_estado_e_minimis/e_rcm_27_2009_20_mar_ifdr_minimis_0.pdf) [not currently in force]

Decreto-Lei n.º 140/2013 de 18 outubro, Diário da República, 1ª série – Nº 202 – 18 de outubro de 2013 (defines the mission and competences of the Agency for Development and Cohesion and determines that it is responsible for defining and keeping updated the central register of *de minimis* aid and exercising control over the cumulation of financial support – Article 3(2), d):

[https://www.adcoesao.pt/sites/default/files/aux\\_estado\\_e\\_minimis/i\\_dl\\_140\\_2013\\_18outubro.pdf](https://www.adcoesao.pt/sites/default/files/aux_estado_e_minimis/i_dl_140_2013_18outubro.pdf)

Additional references:

Decreto-Lei n.º 10/2003 de 18 de janeiro (Creates the Competition Authority):

<https://dre.pt/pesquisa/-/search/176336/details/maximized>

Lei n.º 19/2012 de 8 de maio (approves the new legal regime for competition – Portuguese Competition Act, revoking Laws 18/2003 of June 11<sup>166</sup>, and 39/2006 of August 25, and proceeding to the second amendment to Law No. 2/99 of January 13):

[http://www.concorrenca.pt/vPT/A\\_AdC/legislacao/Documents/Nacional/Lei\\_19\\_2012-Lei\\_da\\_Concorrenca.pdf](http://www.concorrenca.pt/vPT/A_AdC/legislacao/Documents/Nacional/Lei_19_2012-Lei_da_Concorrenca.pdf) (PT),

[http://www.concorrenca.pt/vEN/A\\_AdC/About\\_Us\\_mission\\_and\\_functions/Documents/Law%2019-2012%20-%20Portuguese%20Competition%20Act.pdf](http://www.concorrenca.pt/vEN/A_AdC/About_Us_mission_and_functions/Documents/Law%2019-2012%20-%20Portuguese%20Competition%20Act.pdf) (ENG)

Decreto-Lei n.º 125/2014 (approves the updated statutes of the Competition Authority):

[http://www.concorrenca.pt/vPT/A\\_AdC/legislacao/Documents/Nacional/D.L.%20n125-2014%20-%20Estatutos%20da%20AdC.PDF](http://www.concorrenca.pt/vPT/A_AdC/legislacao/Documents/Nacional/D.L.%20n125-2014%20-%20Estatutos%20da%20AdC.PDF)

#### 1.6.4. Other sources:

Synnott A (ed) (2016) *The Public Competition Enforcement Review*. Law Business Research Ltd, London.

Berger C (2017) How to Ensure State Aid Compliance at Local and Regional Level. *European State Aid Law Quarterly*, 2017, no. 3, pp. 476-481.

DGAE/QEF (2019) Information on the Portuguese aid measures covered by GBER Article 9(1) (a) and (b):

[https://www.portaldiplomatico.mne.gov.pt/images/pdf/Aux%C3%ADlios\\_estatais/C%C3%B3pia\\_de\\_%C3%8Dndice1\\_corrigido.pdf](https://www.portaldiplomatico.mne.gov.pt/images/pdf/Aux%C3%ADlios_estatais/C%C3%B3pia_de_%C3%8Dndice1_corrigido.pdf)

Manual de Apoio ao Utilizador do Registo Central de Auxílios *de minimis* (the Central *de minimis* Register User Support Manual):

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<sup>166</sup> Lei n.º 18/2003, de 11 de junho (approves the legal regime for competition) – revoked by Lei n.º 19/2012

[http://www.adcoesao.pt/sites/default/files/aux\\_estado\\_e\\_minimis/12\\_manualdeapoioaoutilizad  
or\\_registocentraldeauxiliosdeminimis\\_julho2018.pdf](http://www.adcoesao.pt/sites/default/files/aux_estado_e_minimis/12_manualdeapoioaoutilizad<br/>or_registocentraldeauxiliosdeminimis_julho2018.pdf) (July 2018 update)

Contributo das autoridades portuguesas à consulta pública relativa ao primeiro projeto do novo Regulamento de auxílios *de minimis* que altera o Regulamento nº 1998/2006, Maio de 2013:  
[https://ec.europa.eu/competition/consultations/2013\\_de\\_minimis/pt\\_authorities\\_pt.pdf](https://ec.europa.eu/competition/consultations/2013_de_minimis/pt_authorities_pt.pdf).

**23. ROMANIA**

KEY DIMENSIONS	MAIN CHARACTERISTICS
Legal	<ul style="list-style-type: none"> <li>• Transparency obligations are met through Government Ordinance 77/2014 and Order 437/2016 of the Competition Council</li> <li>• The Competition Council has a general coordination, information and training role; it must issue an opinion on all plans to offer aid; it can impose fines for failure to report information</li> <li>• Transparency arrangements are separate for agriculture, forestry and fisheries, which is the responsibility of Ministry for Agriculture and Rural Development; only <i>de minimis</i> aid is reported in the central register, RegAS</li> </ul>
Organisational	<ul style="list-style-type: none"> <li>• State aid coordination is centralised in the Competition Council, an independent authority appointed by the President of Romania for up to two five-year terms</li> <li>• Awarding bodies are responsible for compliance</li> </ul>
Operational and technical	<ul style="list-style-type: none"> <li>• TAM is not used</li> <li>• A central register – RegAS – was set up in 2016. RegAS covers all types of support, including all <i>de minimis</i> support, but not aid for agriculture and fisheries. Awarding bodies encode awards in RegAS. Where awards exceed €500,000, these are automatically uploaded from RegAS to the national website. Only information on awards over €500,000 is publicly available</li> </ul>
Other points to note	<ul style="list-style-type: none"> <li>• RegAS allows awarding bodies to connect their internal databases with it, but none have finalised this to date</li> <li>• The Competition Council is planning an upgrade of RegAS for which funds are being sought. This is required due to the volume of data and the need to improve functionality and reliability</li> </ul>

**23.1. Summary**

Romania responded to the 2016 transparency requirements through changes to the National State Aid Registry, RegAS. Additional functionality was introduced to RegAS enabling awards exceeding €500,000 to be automatically exported from the database and published on the national State aid website.<sup>167</sup> This has applied since 1 July 2016.

<sup>167</sup> See: <https://regas.consiliulconcurentei.ro/transparenta/index.html>

The National State Aid Registry (RegAS) was launched at the beginning of 2016. It contains all State aid and *de minimis* support awarded in Romania.

The formal responsibility for the technical administration of the registry, including extraction of the information for publication, lies at central level with the Romanian Competition Council (RCC). Responsibility for the data input into the registry lies with the Granting Authorities, i.e. authorities managing State aid and *de minimis* aid schemes.

Reporting aid for agriculture and fisheries is the responsibility of the Romanian Ministry of Agriculture and Rural Development. Only *de minimis* aid for agriculture and fisheries is encoded in the national registry.

Every granting authority has the legal obligation to upload information to RegAS as provided for under domestic legislation on the State aid registry. A specific application of the registry allows information on aids exceeding €500,000 to be automatically exported to the national transparency website.

## **23.2. Legal arrangements**

### *23.2.1. Legal basis*

The legal basis for the transparency measures of State aid in Romania consists of two legal acts:

- a. The Government Emergency Ordinance (GEO) no. 77/2014<sup>168</sup> regarding national procedures in the field of State aid, as well as for amending and completing the Competition Law no. 21/1996 – the national State aid law.
- b. The Romanian Competition Council President's Order no. 437/2016 for implementing the Regulation regarding the State aid registry.<sup>169</sup>

Although there were no specific legal domestic requirements for transparency before 2016, the State aid granting authorities published the information on their websites as part of various documents, but not specifically for transparency purposes.

The Romanian granting authorities are legally obliged to upload data into RegAS. They must also comply with the deadlines in the domestic legislation for entering data into the register. However, the accuracy of the register directly depends on the compliance of the awarding bodies in entering the information into the register.

Aid for agriculture and fisheries (under ABER and FIBER) should be reported by the Romanian Ministry of Agriculture and Rural Development. According to GEO 77/2014, art 49/2, for State aid and *de minimis* aid in agriculture and fisheries, the Ministry of Agriculture and Rural Development is the national contact authority in relation to the European Commission.

### *23.2.2. Substantive provisions*

Domestic rules replicate the EU State aid rules for domestic purpose, and do not exceed the EU requirements.

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<sup>168</sup> OUG nr. 77 din 3 decembrie 2014 privind procedurile naționale în domeniul ajutorului de stat, precum și pentru modificarea și completarea Legii concurenței nr. 21/1996

<sup>169</sup> ORDIN nr. 437 din 21 iunie 2016 pentru punerea în aplicare a Regulamentului privind Registrul ajutoarelor de stat

### 23.2.3. Enforcement

The enforcement is based on the responsibilities assigned on two levels:

- Central national level. The Romanian Competition Council (RCC) is the central body responsible for State aid at the national level, which coordinates the policy in this field.
- Sectoral/ horizontal/ local granting authorities' level.
  - The mandatory power consists of the legal obligation for all granting authorities to request a formal opinion from RCC on compliance with the EU State aid rules before adopting legal acts establishing State aid measures.
  - The advisory power consists in the RCC opinion (advisory) issued on draft normative/administrative acts analysing whether State aid could be involved.

The RCC has several competences in respect of the transparency requirements. RCC organises and maintains the register of State aid and *de minimis* aid granted in Romania. Data which trigger the requirements for transparency imposed by the European Commission (awards over €500,000) are exported automatically from the Register to the national transparency website.

The responsibility for the completeness and correctness of the data input into RegAS lies with the granting authorities; the RCC has the competence to apply fines, between RON 5,000 and RON 40,000,<sup>170</sup> for delays. According to the RCC, fines have not been imposed to date. The reason is that it was considered necessary to allow some time (even a few years) to the granting authorities to learn and get used to the State Aid Registry. Moreover, the gaps or the delays regarding the completeness are at a reasonable level, according to RCC.

## 23.3. Organisational arrangements

### 23.3.1. Institutional arrangements

Responsibility for transparency is centralised at the level of the RCC. The RCC is responsible for collecting the data and ensuring the publication complying with the specific requirements (awards over €500,000).

In addition, the granting authorities (which includes a large range of authorities, from line ministries to local authorities), could be seen as the 'first line' because they have the responsibility for uploading data in RegAS.

The relationship between the two levels is set by the legislation on two key State aid processes:

- Formal opinion asked by granting authorities for any State aid scheme initiated
- Coercive/punitive measures undertaken by RCC for noncompliance with data reporting in the RegAS.

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<sup>170</sup> Approximately €1,000 to €8,000.

For domestic audit purposes, the Romanian Audit Authorities have access to RegAS for verifications related to specific beneficiaries. On request, the audit authorities receive specific access permission, while the granting authorities become RegAS users automatically as a State aid provider.

The granting authorities are obliged to follow the specific instructions for using the National State Aid Registry, according to the RegAS Regulation. In addition, they have available a RegAS User Guide. RCC also offered training to granting authorities. Training courses were delivered every year since 2016, addressing the needs of the granting authorities, either new users or dealing with staff turnover. The territorial units of RCC were also trained so that they could offer support to users at a local level. RegAS Regulations are compulsory for all its users.

The above institutional arrangements were set up in order to comply with the requirements in place since July 2016.

Compliance with the transparency requirements involved significant resources for the creation of the National State Aid Registry, which was funded with EU funds. The system design enables automatic export of data to the website to be made public and minimises the human resource requirements for operation. Three persons from the State aid department of RCC have responsibilities related to transparency, but having also other responsibilities, the overall workload is less than three full time equivalent jobs. RCC has to cover the costs for the website maintenance, while the IT system is operated by the Special Telecommunications Service of Romania.

At the granting authority level it is difficult to make an estimate of resources because, as in the case of RCC, transparency is only one task among a range of tasks the relevant departments deal with.

### *23.3.2. Scrutiny and control of specific compliance issues*

#### *i Compliance with the Deggendorf principle*

The Deggendorf principle is provided in the national State aid law, as well as in the text of State aid measures. Furthermore, the national register does not allow for an aid award to be entered if a recovery order by the granting authority is entered in the register for the beneficiary in question.

Each State aid measure endorsed by RCC contains provisions concerning the prevention of aid for the undertakings which are subject to the Deggendorf principle.

#### *ii Cumulation*

The national register contains information on aid awards uploaded by every granting authority.

The mechanism for automatic data exports also takes into account the unique identification code of the beneficiary.

#### *iii de minimis conditions*

The national register contains information on aid awards uploaded by each granting authority. In this respect, the system has information filters for the *de minimis* Regulation to be respected.

iv Firms in difficulty

Each State aid measure endorsed by RCC contains provisions concerning the prevention of aid for the undertakings which are in difficulty, if the related European legislation forbids such an aid.

v Single undertaking principle

RegAS helps grantors to see the information uploaded in the system for the undertakings which received aid in the past. Such information includes the structure of the 'single undertaking unit' to which the beneficiary belongs, if that information was uploaded by the previous grantor.

In addition, granting authorities have their own domestic procedures/guidelines for the purpose of ensuring compliance with EU State aid rules.

### **23.4. Operational and technical arrangements**

#### *23.4.1. Domestic State aid registers*

Romania has implemented the National State aid Register – RegAS - which contains all types of State aid (horizontal, sectoral) and *de minimis* aid, except for aid in the sector of agriculture and fisheries.

The development and exploitation of the RegAS database offers State aid providers the possibility of *ex-ante* verification of the eligibility of beneficiaries of State aid / *de minimis* support and helps to reduce the time involved for granting authorities to verify compliance with State aid legislation.

RegAS is populated by granting authorities for national and EU funded State aid, enabling amounts allocated to beneficiaries, activities and economic sectors to be identified. It also allows the integration in a single database of allocations granted on the basis of the *de minimis* Regulations, regardless of the budgetary source.

The data uploaded in the National State Aid Register includes information on the aid beneficiary (name, national identifier, size, aid location, main activity), date of aid award, information on the aid measure (name and text of the measure, code of the measure, NACE code of the aided activity, aid category/sub-category, aid objective).

The RegAS is not a public database. The user institutions of the RegAS system are:

- a) the Competition Council, including its territorial structures;
- b) awarding bodies for State aid and *de minimis* measures;
- c) administrators and sub-administrators of State aid and *de minimis* measures;
- d) institutions with a role in the control and monitoring of State aid and *de minimis* support using EU funds;
- e) other institutions.

RegAS was created to respond to the transparency requirements of 2016. At present it is fully compliant with the data required.

### 23.4.2. Interoperability

RegAS includes a *de minimis* database and also allows for the grantors to interconnect their databases with it. Although several users started the procedures for interconnection, at present none of them have been finalised.

There are no manual filtering or cleaning operations, the systems do the filtering automatically based on the data entered by the granting authorities.

### 23.4.3. Lessons for e-government and the digital agenda

No outstanding, innovative IT solutions could be identified from the discussion with the RCC. However, RegAS does not fully satisfy the needs of the RCC which is planning an upgrade for which funds are being sought. The upgrade is needed because the increase of the volume of data, requiring resizing of the server capacity, optimisation of the functions and improved system reliability.

## 23.5. Other State aid reporting

### 23.5.1. Links between systems for TAM and annual spending reports

Romania is not using TAM.

In the scenario of a fully uploaded/accurate National State Aid Register, it might be feasible to generate reports on aid expenditures. However, high accuracy was not expected from the beginning having in view that art. 32 (4) of the Romanian Competition Council President's Order no. 437/2016 for implementing the Regulation regarding State aid registry states, "the reports generated by RegAS do not confer legal certainty".

### 23.5.2. De minimis compliance

The National State Aid Register RegAS includes at national level data about *de minimis* aid awarded.

There are no other *de minimis* registers in the public administration. However, *de minimis* aid data is managed by the funding programmes operators; it is collected, stored and processed for monitoring and evaluation purposes.

### 23.5.3. Domestic reporting

The CC Reports on Competition for the period 2006-2018 are available online and comprise a section on State aid.<sup>171</sup>

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<sup>171</sup> For 2006-18 see: <http://www.consiliulconcurentei.ro/ro/publicatii/rapoarte-anuale.html>. The CC Reports on State Aid for the period 2007 – 2015 are published at: <http://www.ajutordestat.ro/?pag=139>

### **23.6. References**

Romanian Competition Council President's Order no. 437/2016 for implementing the Regulation regarding State aid registry:

[http://www.renascce.eu/documente/Ordin%20reg%20RegAS\\_1338ro.pdf](http://www.renascce.eu/documente/Ordin%20reg%20RegAS_1338ro.pdf)

Romanian national transparency website:

<https://regas.consiliulconcurentei.ro/transparenta/index.html>

RegAS user guide: <https://regas.consiliulconcurentei.ro/docs/Ghid%20utilizare%20RegAS.pdf>



## 24. SLOVENIA

KEY DIMENSIONS	MAIN CHARACTERISTICS
Legal	<ul style="list-style-type: none"> <li>• The legal basis is the 2004 State Aid Monitoring Act. The provisions on reporting are provided for in a decree last amended in 2014</li> <li>• The State Aid Monitoring Department (SAMD) has a general coordination and advisory role and is responsible for collecting and processing State aid data. It has no enforcement role</li> <li>• State aid for agriculture, forestry and fisheries is managed by the Ministry of Agriculture, Forestry and Food</li> </ul>
Organisational	<ul style="list-style-type: none"> <li>• State aid coordination is centralised in the SAMD in the Ministry of Finance</li> <li>• Awarding bodies are responsible for compliance</li> </ul>
Operational and technical	<ul style="list-style-type: none"> <li>• The TAM is used but not directly by awarding bodies; data on awards exceeding €500,000 is encoded in TAM by the SAMD using the central State aid register</li> <li>• The central State aid register has been in place since 2014. All awards must be encoded in it within 15 days for <i>de minimis</i> and 30 days generally. The central register itself is not in the public domain</li> <li>• The central State aid register includes <i>de minimis</i> support</li> </ul>
Other points to note	<ul style="list-style-type: none"> <li>• Information on all awards exceeding €0.10 has been collected since 2002. The current register includes interoperability with the companies register. The scope of data collected is wider than TAM (not only regarding award size)</li> <li>• The ministry website is being upgraded and will include revamped access to data on large awards – a ‘more specialised’ TAM</li> </ul>

## 24.1. Summary

General responsibility for State aid control in Slovenia lies with the State Aid Monitoring Department (SAMD) in the Ministry of Finance.

The current centralised system of reporting State aid in a domestic register, including *de minimis* support, was provided for in a 2014 decree on data reporting.<sup>172</sup> However, Slovenia has collected data on all aid awards (from €0.10 upwards), including *de minimis* support since 2002.

<sup>172</sup> Decree on data submission and on the reporting of State aid and *de minimis* aid, Official Gazette of the Republic of Slovenia, No 61/04, 22/07, 50/14: <https://www.uradni-list.si/glasilo-uradni-list-rs/vsebina/118141#!/Uredba-o-spremembi-Uredbe-o-posredovanju-podatkov-in-porocanju-o-dodeljenih-drzavnih-pomoceh-in-pomoceh-po-pravilu-de-minimis>

Formal responsibility for State aid compliance rests with the granting authorities. However, the Ministry of Finance has several specific responsibilities under the 2004 State Aid Monitoring Act.<sup>173</sup> In particular, to:

- consider, evaluate and forward the notifications of State aid to the European Commission,
- consider, evaluate and give an opinion on State aid which may fall within a block exemption and on *de minimis* aid,
- collect, process and monitor data on State aid and on aid granted under the *de minimis* rule and keep records of such data,
- prepare an annual report,
- advise State aid administrators.

All State aid must be reported to the SAMD by awarding bodies within strict time limits: 15 days for *de minimis* support and 30 days for State aid generally. This data is integrated into a national register from which data is entered into the TAM by the SAMD.

In practice, State aid falling under the EU transparency obligations represents a small fraction of aid in Slovenia (estimated at 2 percent of the total).

State aid for agriculture and fisheries is managed by the Ministry of Agriculture, Forestry and Food. To date there has been no aid above the reporting thresholds in these sectors.

## **24.2. Legal arrangements**

### *24.2.1. Legal basis*

The overarching legal basis for State aid control in Slovenia is the 2004 State Aid Monitoring Act. The provisions on reporting are provided for in a decree.

Together these documents require awarding bodies to provide structured information to populate the national State aid register and within specified time limits.

### *24.2.2. Substantive provisions*

When a scheme is approved by the Commission, or by the Ministry of Finance, in the case of measures falling under the GBER an ID number is allocated to it. The codes used enable administrators to differentiate between the type of measure (notified aid, GBER measures and *de minimis* support). Several Slovenian ID numbers may correspond to the same SA number in SANI. This information facilitates the scrutiny of reported aid – for example, whether it is granted within the approved lifetime of the measure.

Awarding bodies must report on aid awarded within specific deadlines – 30 days in general and 15 days for *de minimis* support.

Information on all State aid (apart from data covered by the GDPR) is published on request.

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<sup>173</sup> State Aid Monitoring Act 2004, Official Gazette 37/04: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO3849>

### 24.2.3. Enforcement

Reporting of State aid to the national register is provided for by legislation, but this legislation does not provide for any specific penalties for breaching these rules.

The Ministry of Finance can order granting authorities who exceed the *de minimis* ceiling to recover the support.

The National Competition Authority (the Slovenian Competition Protection Agency, CPA) is responsible for anti-trust and merger policy and does not have a role in State aid enforcement.

## 24.3. Organisational arrangements

### 24.3.1. Institutional arrangements

Data entry into the TAM is undertaken by the SAMD using data in the national register. The scope of the national register is much wider than the EU transparency requirements, which are estimated to account for just 2 percent of reporting.

The national register is populated by awarding bodies who can bulk upload data to the national register or enter it manually. Excel sheets and instructions for this purpose are provided on the Ministry of Finance website.<sup>174</sup>

The SAMD comprises 11 staff, of which two are involved in implementing transparency compliance.

### 24.3.2. Scrutiny and control of specific compliance issues

Compliance with the State aid rules is the responsibility of the awarding bodies.

#### i Compliance with the Deggendorf principle

The Ministry of Finance must publish on its website details of any awards subject to the Deggendorf principle. The national register includes data on problematic aid cases, including the Deggendorf list. Awarding bodies have the scope to request a check on the national register on aid already received. There have been no such cases in Slovenia to date.

#### ii Cumulation

Awarding bodies can check on the national register on aid already received. In addition, signed declarations are sought from potential beneficiaries.

#### iii de minimis conditions

For *de minimis* support, awarding bodies must request a check on the national register in order to determine whether there is scope for further *de minimis* support. Because of the potential 15-day time lag in reporting *de minimis* support, signed declarations are also required from potential

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<sup>174</sup> See: [http://mf.arhiv-spletisc.gov.si/si/delovna\\_podrocja/drzavne\\_pomoci/porocanje/index.html](http://mf.arhiv-spletisc.gov.si/si/delovna_podrocja/drzavne_pomoci/porocanje/index.html)

beneficiaries. In the rare cases where *de minimis* has been exceeded, the Ministry of Finance will order the last awarding body to recover the aid.

iv Firms in difficulty

Awarding bodies can check in the Slovenian Company Register (AJPES database); in addition, signed declarations are required from potential applicants.

v Single undertaking principle

Signed declarations from the potential beneficiary of State Aid are required under which inquiries for *de minimis* in last 3 years is made by the State Aid Monitoring Department in the Ministry of Finance. Awarding bodies also perform random checks in the AJPES database and other available information databases to check if the potential beneficiary provided the correct information in their signed declarations.

## **24.4. Operational and technical arrangements**

### *24.4.1. Domestic State aid registers*

Slovenia operates a comprehensive national register into which awarding bodies are obliged to enter specified data, going beyond TAM requirements, namely:

- identification number of the granting authority
- number and title of the State or individual aid or *de minimis* aid scheme
- identification number and tax number of the beneficiary (if the beneficiary is not a company or sole proprietor on the register of undertakings, the name, surname, address and code of the beneficiary's municipality must be indicated)
- date of the legal instrument under which the State aid is paid (contract)
- date of payment of the aid to the recipient
- code number of the aid instrument published on the Ministry's website
- code of the category of assistance according to the list published on the Ministry's website
- legal basis
- form of support
- amount of expenditure which is the basis for determining the amount of aid in € (gross amount)
- State aid amount in € (net state aid amount)
- amount of eligible costs,
- value of the whole investment, if it is an investment.

Data entered into this register is in turn used by SAMD to populate TAM. The central register itself is not in the public domain.

#### 24.4.2. Interoperability

In addition to the information on reported aid, data from the AJPES (registry of all companies in Slovenia) is imported. This includes:

- Company size
- Sector
- Registered address
- Region
- Status (operational or bankrupt/ceased trading)

There are also plans to connect the State aid register to the business results of enterprises (balance sheets and profit/loss accounts).

#### 24.4.3. Lessons for e-government and the digital agenda

At central government level the reorganisation and development of the web pages is in process. This will include also different lists / directories including the publication of beneficiaries of larger State aid with special filters and so on. The Slovenian authorities are developing a 'more specialised' TAM.

### 24.5. Other State aid reporting

#### 24.5.1. Links between systems for TAM and annual spending reports

The system for TAM and annual spending reports are linked in the Central State Aid Register, which includes granted and paid aid. Data from this register is also used for annual reporting exercises which is done centrally by the SAMD in the Ministry of Finance.

#### 24.5.2. De minimis compliance

Awards of all sizes are reported in the domestic register. For *de minimis* support, awarding bodies must request a check on the national register in order to determine whether there is scope for further *de minimis* support. In the rare case where *de minimis* has been exceeded, the Ministry of Finance will order the last award body to recover the aid.

#### 24.5.3. Domestic reporting

Slovenia operates a comprehensive domestic register. Data collected is used for annual reports for government ministries, the Budgetary Control Office, Managing authorities for 'on the spot' checks, and specific reviews.

### 24.6. References

- Močnik, I (2019) Monitoring of State Aid in Slovenia, *presentation to DG COMP Transparency Steering Group*.
- Ministry of Finance State Aid website: <https://www.gov.si/podrocja/finance-in-davki/drzavne-pomoci/>

- State Aid Monitoring Act 2004, Official Gazette 37/04: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO3849>
- Decree on data submission and on the reporting of State aid and *de minimis* aid, Official Gazette of the Republic of Slovenia, No 61/04, 22/07, 50/14: <https://www.uradni-list.si/glasilo-uradni-list-rs/vsebina/118141#!/Uredba-o-spremembi-Uredbe-o-posredovanju-podatkov-in-porocanju-o-dodeljenih-drzavnih-pomoceh-in-pomoceh-po-pravilu-de-minimis>

**25. SLOVAK REPUBLIC**

KEY DIMENSIONS	MAIN CHARACTERISTICS
Legal	<ul style="list-style-type: none"> <li>• The transparency requirements are implemented through the State Aid Act 2015 (Act No. 358/2015 Coll.)</li> <li>• The Antimonopoly Office of the Slovak Republic has a general coordination role, can impose fines of up to €35,000 for non-compliance with the State Aid Act, including failure to publish State aid and <i>de minimis</i> award data</li> <li>• Reporting arrangements for agriculture, forestry and fisheries are the same, but the legal basis for the requirements differs</li> </ul>
Organisational	<ul style="list-style-type: none"> <li>• State aid coordination is centralised in the Antimonopoly Office of the Slovak Republic, an independent authority of the State</li> <li>• Awarding bodies have responsibility for State aid compliance</li> </ul>
Operational and technical	<ul style="list-style-type: none"> <li>• The TAM is used but not directly by awarding bodies; data on awards exceeding €500,000 is encoded in TAM by the Antimonopoly Office of the Slovak Republic manually on a quarterly basis using the central State aid register.</li> <li>• A central State aid register – SEMP – was set up in 2016 to meet the transparency requirements. Awarding bodies must encode in the SEMP awards exceeding €500,000 within six months of the award; SEMP is publicly available</li> <li>• SEMP includes <i>de minimis</i> support which must be reported by awarding bodies within five working days.</li> </ul>
Other points to note	<ul style="list-style-type: none"> <li>• Under the State Aid Act reporting on awards below €500,000 is not required unless it is <i>de minimis</i> support</li> </ul>

**25.1. Summary**

Slovakia adopted the State Aid Act in 2015 in order to ensure compliance with EU legislation in the field of State aid, including transparency requirements. The Act came into force on 1 January 2016 and established a new register for State aid – the System for Evidence and Monitoring Aid (SEMP). It is a central State aid information system for awarding bodies and administrators of aid schemes in the country covering all sectors. It is managed by the Antimonopoly Office of the Slovak Republic (the National Competition Authority).

The previous system, managed by the Ministry of Finance of the Slovak Republic, covered only *de minimis* aid. The Ministry of Finance collected information from aid beneficiaries and providers

and uploaded it into the system. The old system was replaced by SEMP, which consists of three parts:

- a content management system – available only to the Antimonopoly Office of the Slovak Republic (the aid coordinator);
- a secured portal – available for State awarding bodies (bodies managing State aid schemes); and
- a public portal.

Currently, each awarding body is responsible for entering relevant data on State aid and *de minimis* aid awarded into SEMP. Non-compliance with transparency requirements can be sanctioned by the National Competition Authority.

All State aid awarded must be registered by the awarding body in the SEMP. The requirements in terms of responsibility and structure of data are stipulated in the State Aid Act (§ 12 and 13). They are intended fully to comply with the State aid transparency requirements in EU legislation.

The structure of reporting in agriculture and fisheries (under ABER and FIBER) is the same; the only difference is the legal basis.

Based on the data contained in the SEMP system, the Antimonopoly Office of the Slovak Republic uploads data in TAM on a quarterly basis. Despite the initiative of the Antimonopoly Office of the Slovak Republic, the SEMP system is still not connected with TAM and data must be uploaded manually due to technical problems.

## **25.2. Legal arrangements**

### *25.2.1. Legal basis*

The main legal framework for State aid in Slovakia is Act 358/2015 on ‘the modification of some relations in the field of State aid and *de minimis* aid’<sup>175</sup> (the State Aid Act). It was passed in order to respond to the new EU regulations and guidelines, and obligations stemming from them. The State Aid Act came into force on 1 January 2016 and for the first time addressed State aid transparency requirements.

### *25.2.2. Substantive provisions*

National legislation mirrors relevant provisions in the EU State aid rules. The State Aid Act sets rules for State aid transparency, which are covered by a specific chapter entitled ‘Central Register’. The articles of the State Aid Act refer directly to relevant EU Regulations. The provisions apply for all sectors and all State awarding bodies (including ESIF).

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<sup>175</sup> Zákon č. 358/2015 Z. z. o úprave niektorých vzťahov v oblasti štátnej pomoci a minimálnej pomoci a o zmene a doplnení niektorých zákonov (zákon o štátnej pomoci).

### 25.2.3. Enforcement

The Antimonopoly Office of the Slovak Republic is the National Competition Authority. It is an independent central state administration body in charge of protection and promotion of competition, and coordination of State aid.

In the context of State aid, the role of the Antimonopoly Office of the Slovak Republic is primarily one of coordination. Its key activities are: issuing standpoints on aid schemes and ad hoc aid measures; registration of *de minimis* schemes; methodological guidance; cooperation with awarding bodies and the Commission; and elaboration of an annual report on State aid. It does not have a control function in the area of the State aid, except with respect to *de minimis* aid. The Antimonopoly Office of the Slovak Republic can impose sanctions for non-compliance with the State Aid Act, including failure to publish the award of *de minimis* and State aid. The maximum fine is €35,000; however, sanctions have not been imposed to date.

## 25.3. Organisational arrangements

### 25.3.1. Institutional arrangements

The Antimonopoly Office of the Slovak Republic has exclusive power (competence) in the area of protection and promotion of competition, and coordination of State aid in Slovakia. In line with the provisions of the State Aid Act, individual providers are solely responsible for State aid, including transparency and compliance. National legislation stipulates how to comply with the transparency requirements (§ 13). In practice, an awarding body enters State aid awards and *de minimis* aid awards into the SEMP information system.<sup>176</sup>

Based on the data contained in the SEMP system, the Antimonopoly Office of the Slovak Republic uploads data in TAM on a quarterly basis. Despite the initiative of the Antimonopoly Office of the Slovak Republic, the SEMP system is still not connected with TAM and data must be uploaded manually due to technical problems.

### 25.3.2. Scrutiny and control of specific compliance issues

#### i Compliance with the Deggendorf principle

The Deggendorf principle is fully reflected in primary national legislation (the State Aid Act) and in consequence in each State aid and *de minimis* aid scheme, as well as in *ad hoc* aid. The Antimonopoly Office of the Slovak Republic publishes a list of firms which are subject to the Deggendorf principle on its official website.

#### ii Cumulation

According to the State Aid Act, individual awarding bodies are responsible for compliance with respecting the aid ceiling before State aid is awarded to an undertaking. The SEMP information system is primarily used for this purpose. Rules for aid cumulation from various public resources are defined in each State aid and *de minimis* aid scheme and are subject to *ex ante* verification

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<sup>176</sup> *Centrálny register – Systém pre evidenciu a monitorovanie pomoci* (Central register - System for evidence and monitoring of aid).

also in the case of *ad hoc* aid (based on statements from beneficiaries and confirmation from awarding bodies).

### iii de minimis conditions

Awarding bodies are obliged to submit drafts of *de minimis* aid schemes to the Antimonopoly Office of the Slovak Republic for assessment of compliance with the *de minimis* rules. If a scheme is fully in line with the rules, the Antimonopoly Office of the Slovak Republic gives a positive opinion (standpoint). The opinion (standpoint) of the Antimonopoly Office of the Slovak Republic is binding on awarding bodies.

As a result, awarding bodies are responsible for the compliance of awards with the conditions of the *de minimis* Regulation.

In the case of *ad hoc* aid, a provider is obliged to officially request the opinion (standpoint) of the Antimonopoly Office of the Slovak Republic on compliance with the *de minimis* Regulation. The opinion (standpoint) of the Antimonopoly Office of the Slovak Republic is binding on awarding bodies.

Where an award might exceed the threshold for *de minimis*, the SEMP system does not allow the award to be entered and informs the user that the ceiling is exceeded.

### iv Firms in difficulty

All State aid schemes as well as *ad hoc* State aid measures include provisions that firms in difficulty cannot be supported. The awarding body verifies the compliance of firms with the conditions before awarding the aid.

### v Single undertaking principle

Verification of the single undertaking principle is performed by an awarding body in the following ways:

- statement of aid beneficiary on size of company and being a part of a group of companies, which form a single company
- use of public registers
- use of report no. 15 of the SEMP information system (not publicly available, but awarding bodies have access to the report).

## **25.4. Operational and technical arrangements**

### *25.4.1. Domestic State aid registers*

In Slovakia, there is a single domestic State aid register for providers from all sectors – the SEMP information system. This goes beyond TAM requirements insofar as all State aid above €500 000 must be recorded (while other aid awards can be recorded in the system) and *de minimis* aid must be recorded.

### *25.4.2. Interoperability*

The SEMP information system was developed in order to meet State aid transparency requirements defined in EU legislation. The State Aid Act is the legal basis for development of the

central register of aid awarded in Slovakia. The SEMP system in some respects goes beyond data collected in TAM.

The SEMP information system and TAM are not interconnected; data from the national system are manually uploaded into TAM. Data are uploaded to TAM by the Antimonopoly Office of the Slovak Republic on quarterly basis.

#### *25.4.3. Lessons for e-government and the digital agenda*

The Antimonopoly Office of the Slovak Republic submitted a request to connect the SEMP information system with TAM. However, to date the systems are not connected, due to technical difficulties.

### **25.5. Other State aid reporting**

#### *25.5.1. Links between systems for TAM and annual spending reports*

There are no links.

#### *25.5.2. De minimis compliance*

The SEMP information system covers also *de minimis* aid. According to the State Aid Act, providers are obliged to register *de minimis* aid in the system.

#### *25.5.3. Domestic reporting*

There is no specific domestic reporting.

### **25.6. References**

Act no. 358/2015 Coll. on the State Act (<https://www.epi.sk/zz/2015-358>)

Official website of Antimonopoly Office of the Slovak Republic  
(<https://www.antimon.gov.sk/protimonopolny-urad-slovenskej-republiky/>)

SEMP information system – public interface (<https://semp.kti2dc.sk/>)

Official website of aid coordinator ([www.statnapomoc.sk](http://www.statnapomoc.sk))



**26. FINLAND**

KEY DIMENSIONS	MAIN CHARACTERISTICS
Legal	<ul style="list-style-type: none"> <li>• Transparency requirements are outlined in the Law on the application of certain European State aid provisions</li> <li>• The State aid unit in the Ministry for Employment and the Economy plays a coordinating and advisory role, but has no role in enforcement</li> <li>• The Law also covers aid for Agriculture, Forestry and Fisheries, but responsibility for these areas falls to the Ministry for Agriculture</li> </ul>
Organisational	<ul style="list-style-type: none"> <li>• The State aid unit is the main interface with the Commission and supports awarding bodies in reporting and other obligations, as required</li> <li>• Awarding bodies are responsible for compliance</li> </ul>
Operational and technical	<ul style="list-style-type: none"> <li>• Awarding bodies input to TAM directly</li> <li>• There is no central State aid register (at present)</li> <li>• There is no <i>de minimis</i> register</li> </ul>
Other points to note	<ul style="list-style-type: none"> <li>• There are proposals for a central government State aid register covering all awards except for agriculture, forestry and fisheries and tax measures; aid awarded by municipalities would also be excluded.</li> </ul>

**26.1. Summary**

The State aid unit of the Ministry for Employment and the Economy is the main operational body for State aid compliance. It has a coordination, advisory and information role and is the main interface with the Commission. In addition, it prepares the decisions of the State Aid Advisory Board which must offer an opinion on proposed government aid. This opinion concerns the appropriate legal basis for aid (notification or GBER) and is non-binding. The Board is chaired by the Ministry for Employment and the Economy, but all ministries are represented. Municipalities are not obliged to seek its opinion.

Responsibility for compliance generally, including reporting large awards, rests with the awarding body. The State aid unit issues access codes for the TAM and supports awarding bodies with technical or other queries, but does not check or audit their entries.

There are no central registers at present, but there are proposals to develop a database of central government awards; this would exclude agriculture, forestry and fisheries, and tax measures.

## **26.2. Legal arrangements**

### *26.2.1. Legal basis*

State aid control in Finland is provided for in legislation dating from 2001, as amended to take account of the transparency requirements and other more recent provisions.<sup>177</sup> The legislation is essentially ‘informative’ – it outlines the obligations that are directly applicable in EU State aid law, but does not add to them in substantive terms. This legislation also refers to agriculture, forestry and fisheries and support under the ABER and FIBER, but these fall under the responsibility of the Ministry of Agriculture.

### *26.2.2. Substantive provisions*

National legislation outlines the obligations under EU State aid law but does not embellish them with national requirements other than the obligation to seek the opinion of the State Aid Advisory Board. In addition, general guidance is available from the Ministry for Employment and the Economy<sup>178</sup> and can be complemented with specific advice.

### *26.2.3. Enforcement*

The law does not contain enforcement provisions. When granting authorities (other than municipalities) propose to offer aid, the State Aid Advisory Board, which is supported by the State aid unit, must give an opinion as to whether the aid complies with the rules and whether it should be notified to the Commission or reported under the GBER. Formally, however, this opinion is not binding on granting authorities. That said, the overall impression is that granting authorities are keen to comply because of the consequences of not doing so.

## **26.3. Organisational arrangements**

### *26.3.1. Institutional arrangements*

State aid compliance is coordinated by a specific unit in the Ministry of Employment and the Economy and comprises two to three staff.<sup>179</sup> The unit is within a department dealing with other competition issues – including public procurement, consumers and competition law.

The State aid unit is an interface between granting authorities and the Commission. It provides advice and support to granting authorities, including on using the TAM, and undertakes the background work for the State Aid Advisory Board opinions on the legality and appropriate legal basis for proposed government aid schemes; municipalities do not require the opinion of the Board.

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<sup>177</sup> See Law on the application of certain European State aid provisions, Laki eräiden valtion tukea koskevien Euroopan unionin säännösten soveltamisesta, 28.3.2001/300:

<https://www.finlex.fi/fi/laki/ajantasa/2001/20010300>

<sup>178</sup> EU:n valtiontukisäännöt:

[https://tem.fi/documents/1410877/2851861/EUn\\_valtiontukisaannot\\_lokakuu2014.pdf/2a030b24-77d7-4979-a898-55b027ea3ae1/EUn\\_valtiontukisaannot\\_lokakuu2014.pdf?t=1465373156000](https://tem.fi/documents/1410877/2851861/EUn_valtiontukisaannot_lokakuu2014.pdf/2a030b24-77d7-4979-a898-55b027ea3ae1/EUn_valtiontukisaannot_lokakuu2014.pdf?t=1465373156000)

<sup>179</sup> <https://tem.fi/eu-n-valtiontukisaantely>

The State Aid Advisory Board has a wider remit than compliance. It is chaired by the Ministry for Employment and the Economy, but all ministries are represented on it. As well as offering formal opinions on government proposals for State aid, it also acts as a coordinating body, improving transparency, information sharing, administrative cooperation, etc. and considering issues such as evaluation and value-for-money.

Specifically regarding TAM reporting, access codes are provided by the State aid unit to the granting authorities that require them; the granting authorities input the data directly. The State aid unit will provide support as needed, contacting the TAM support unit in DG COMP if required. The State aid unit does not check or audit the inputs of the granting authorities.

#### 26.3.2. *Scrutiny and control of specific compliance issues*

The State aid unit provides general guidance on compliance on its website and can be contacted for advice on specific issues. However, responsibility for compliance rests with the granting authorities.

##### i. Compliance with the Deggendorf principle

Finland has only had four recovery decisions since its accession to the EU. As and when these arise, a letter is sent to granting authorities informing them of the situation.

##### ii. Cumulation

This is generally complied with by asking applicants to declare what other funding has been received.

##### iii. *de minimis* conditions

There is no domestic *de minimis* register. *De minimis* is complied with through declarations from undertakings. There is specific guidance on *de minimis* compliance.

##### iv. Firms in difficulty

This is the responsibility of granting authorities, but there is specific guidance available on how to assess whether an undertaking is in difficulty.

##### v. Single undertaking principle

This is the responsibility of granting authorities, but there is specific guidance available on the single undertaking principle.

### **26.4. Operational and technical arrangements**

#### 26.4.1. *Domestic State aid registers*

There is no domestic register at present, however this had been the subject of some discussion prior to the COVID-19 crisis which has delayed the process. The legislative proposal under consideration would cover all government aid (of any size, including *de minimis*), except agriculture, forestry and fisheries, and tax measures; it would also exclude awards by municipalities.

#### 26.4.2. Interoperability

Some granting authorities use a bulk upload to report into TAM, but whether this is used largely depends on the number of entries made and whether this sufficient to make it worthwhile.

#### 26.4.3. Lessons for e-government and the digital agenda

Nothing specific to report.

### 26.5. Other State aid reporting

#### 26.5.1. Links between systems for TAM and annual spending reports

The Commission checks on TAM reporting last year used SANI data to assess whether reporting awards over €500,000 was likely to have been compliant. However, this is considered to have been quite a blunt instrument to use and created substantial work in contacting granting authorities to cross-check reporting. Perhaps there are ways in which the systems could be linked better to avoid this burden.

#### 26.5.2. De minimis compliance

There is no register at present, but see above. Once implemented, this will help with cumulation checks and improve coordination and transparency, but it will not be a comprehensive *de minimis* (or State aid) register. For it to be more extensive – and include the municipalities and tax measures especially – would be politically difficult. Also, to check cumulation for *de minimis* purposes it must be compiled in real time which would also be burdensome.

#### 26.5.3. Domestic reporting

Some ministries report awards on their website, including those below €500,000 – for example, the Ministry of Maritime Transport - but there is no requirement to do so. There is an increasing emphasis on transparency domestically, but this is more from an evaluation perspective than a compliance issue.

### 26.6. References

- Law on the application of certain European State aid provisions, Laki eräiden valtion tukea koskevien Euroopan unionin säännösten soveltamisesta, 28.3.2001/300: <https://www.finlex.fi/fi/laki/ajantasa/2001/20010300>
- Website of the State aid unit: <https://tem.fi/eu-n-valtiontukisaantely>
- Guidance: EU:n valtiontukisäännöt: [https://tem.fi/documents/1410877/2851861/EUn\\_valtiontukisaannot\\_lokakuu2014.pdf/2a030b24-77d7-4979-a898-55b027ea3ae1/EUn\\_valtiontukisaannot\\_lokakuu2014.pdf?t=1465373156000](https://tem.fi/documents/1410877/2851861/EUn_valtiontukisaannot_lokakuu2014.pdf/2a030b24-77d7-4979-a898-55b027ea3ae1/EUn_valtiontukisaannot_lokakuu2014.pdf?t=1465373156000)

**27. SWEDEN**

KEY DIMENSIONS	MAIN CHARACTERISTICS
Legal	<ul style="list-style-type: none"> <li>• Transparency requirements are implemented through the 2013 Law on application of the State aid rules, complemented by an Ordinance in 2016</li> <li>• Swedish Agency for Growth Policy Analysis, <i>Tillväxtanalys</i>, plays a coordinating and advisory role on reporting requirements to TAM and SARI</li> <li>• Arrangements for Agriculture, Forestry and Fisheries are similar and also fall under the Ministry of Enterprise and Innovation and <i>Tillväxtanalys</i></li> </ul>
Organisational	<ul style="list-style-type: none"> <li>• The Ministry of Enterprise and Innovation is the main interface with the Commission; coordination of reporting requirements is mainly done by <i>Tillväxtanalys</i>, an agency under its supervision</li> <li>• Awarding bodies are responsible for compliance</li> </ul>
Operational and technical	<ul style="list-style-type: none"> <li>• Awarding bodies input to TAM directly</li> <li>• There is no central State aid register</li> <li>• There is no <i>de minimis</i> register</li> </ul>
Other points to note	<ul style="list-style-type: none"> <li>• <i>Tillväxtanalys</i> was commissioned by the government in 2010 to develop a micro database on State aid awarded to businesses by authorities, state-owned companies and foundations. This is mainly used for national evaluations of growth policy initiatives</li> <li>• Greater interoperability between TAM and SARI would be welcomed by <i>Tillväxtanalys</i></li> </ul>

**27.1. Summary**

Under the Swedish Law on the application of the EU State aid rules<sup>180</sup> awarding bodies (i.e. state or municipal authorities or other organisations that award State aid) in Sweden have responsibility for:

- providing information for the publication and reporting of aid measures; and
- keeping a record of the aid measures.

In 2016, the law was amended and supplementary provisions were made in the form of an ordinance (2016:605) and an authority regulation (MTSF 2016:2) implementing the new transparency requirements. Under the new provisions, awarding bodies are obliged to contact the Swedish Agency for Growth Policy Analysis (*Tillväxtanalys*) to gain access to TAM in order to

<sup>180</sup> Section 12a of the Swedish Law on the application of the EU's State aid rules (2013:388)

report data to the Commission. Once they have been granted access by *Tillväxtanalys*, the aid awarding authorities report decisions on State aid directly to TAM.

The formal responsibility for compliance is at the level of the awarding bodies, which assess their support schemes to understand which decisions require reporting. In Sweden, there is no centralised system in place to collect information on State aid awards. However, the data on award decisions (alongside other public data) is and has been available on request from the individual awarding authorities in line with the principle of public access to information.<sup>181</sup> Most public authorities (more than half) have online registers, but these registers contain more general data, as well as the State aid awards. The individual awarding authorities are also responsible for contacting *Tillväxtanalys* to gain access to TAM and SARI. Furthermore, the aid awarding authorities are required to provide information to the Government for the annual reports, which are submitted to the Commission through SARI.

Under ABER and FIBER, the requirements are similar to GBER, but with respect to reporting there are specific arrangements to ensure that there is no need to publish items covered by ABER and the rural development programme multiple times.

## **27.2. Legal arrangements**

### *27.2.1. Legal basis*

The Swedish Law on the application of the EU State aid rules (2013:388) provides the basis for State aid, including reporting responsibilities. Essentially, it specifies that aid awarding authorities are required to:

- provide information for the publication and reporting of the aid measures; and
- keep a record of the aid measures.

In 2016, the Law (2013:388) was amended and supplementary provisions were made in the form of the ordinance (2016:605).

Furthermore, an authority regulation (MTFS 2016:2) was made which stipulates that those aid awarding authorities which are obliged to publish information on aid are required to contact *Tillväxtanalys* to gain access to TAM.

Although there is no centralised system in place to collect information on State aid awards, the data on award decisions is and has been available on request from the individual awarding authorities in line with the principle of public access to information. While the practices of registering public data vary between the public authorities, most authorities (more than half) have online registers in place. However, as noted earlier, these registers are not exclusively dedicated to State aid but contain also other public data.

*Tillväxtanalys* also has a micro database (MISS) of State aid awarded to companies, but this focuses on specific sectors and agencies. The micro database was developed at the request of the Government (the Ministry of Enterprise, Energy and Communications, now Ministry of Enterprise

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<sup>181</sup> <https://www.regeringen.se/49bb7e/contentassets/2c767a1ae4e8469fbfd0fc044998ab78/public-access-to-information-and-secrecy-act>

and Innovations) in 2010. The purpose of the database was partly to serve as a tool for reporting of State aid in accordance with the EU law and WTO rules, and as a basis for evaluations of growth policy initiatives for domestic audit purposes.<sup>182</sup>

Overall, the system in place is perceived to work well in Sweden and the relevant aid awarding authorities report according to the requirements. Some level of support has also been provided by *Tillväxtanalys*. Furthermore, through the monitoring exercises of the Commission, it has been possible to address any technical or practical problems on what aid decisions should be published etc.

Under ABER and FIBER, the requirements are similar to GBER, but with respect to reporting there are specific arrangements to ensure that there is no need to publish items covered by ABER and the Rural Development Programme multiple times.

#### 27.2.2. Substantive provisions

In Sweden, there has not been a need to add new structures in response to the EU State aid rules on transparency requirements. The regulations introduced in 2016 simply specify the responsibilities for data input and reporting. All the procedures are in accordance with EU rules and the legal basis applies to all aid awarding authorities.

#### 27.2.3. Enforcement

The Swedish Competition Authority (*Konkurrensverket*) is responsible for ‘safeguarding and increasing competition and supervising public procurement in Sweden’.<sup>183</sup> However, it does not have a direct role in State aid matters, including in transparency and compliance procedures.

### 27.3. Organisational arrangements

#### 27.3.1. Institutional arrangements

The national legislation in place provides the framework for State aid. The Government has a role in guiding and regulating to ensure that the aid awarding authorities fulfil the requirements (i.e. what should be awarded and how). Furthermore, any dialogue with the Commission takes place through the Ministry of Enterprise and Innovation.

Compliance with State aid requirements is decentralised and the main responsibility is at the level of the aid awarding authorities. Many of the aid awarding authorities are regulated by the government. *Tillväxtanalys* functions as the ‘go-between’ agency and provides some level of support and access to the Commission’s State aid databases.

The responsibilities are set out as follows<sup>184</sup>:

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<sup>182</sup> Tillväxtanalys (2012) Mikrodatabas över statligt stöd till näringslivet, Working Paper 2012:06  
[https://www.tillvaxtanalys.se/download/18.1d7fbce414d2f83fc76a08cb/1431507105013/WP\\_PM\\_2012\\_06.pdf](https://www.tillvaxtanalys.se/download/18.1d7fbce414d2f83fc76a08cb/1431507105013/WP_PM_2012_06.pdf)

<sup>183</sup> <http://www.konkurrensverket.se/en/omossmeny/about-us/>

<sup>184</sup> Sveriges Kommuner och Regioner  
<https://skr.se/ekonomijuridikstatistik/juridik/euratt/moderniseringenvastatstodsreglerna.2950.html>

The Ministry of Enterprise and Innovation (*Näringsdepartementet*):

- provides guidance to government authorities on State aid;
- notifies aid to the Commission for a possible pre-approval;
- reports GBER aid measures from the different authorities in SANI2;
- provides annual reports to the Commission on awarded aid.

Swedish Agency for Growth Policy Analysis (*Tillväxtanalys*):

- *Tillväxtanalys* uses two databases, namely TAM and SARI. Each aid awarding authority is required to go through *Tillväxtanalys* to gain access to the databases. *Tillväxtanalys* has information and guidance available online regarding the reporting requirements under TAM and SARI.

Aid awarding authority (state authorities, municipalities):

- awards aid and keeps a register of awarded aid (there is no overarching regulation as to how the data should be registered). The aid awarding authority is responsible for ensuring that the State aid rules are applied correctly, including reporting under the transparency requirements. The register is kept for at least ten years after the aid has been paid out.

There are no distinct or additional requirements for domestic audit purposes. The Swedish National Audit Office (*Riksrevisionen*), which operates under the Parliament's control, carries out audits of all State finances.

In terms of reporting, no authority has the task to monitor the overall picture of State aid. *Tillväxtanalys* may conduct follow up work and analyses of the situation but primarily with a focus on specific sectors and areas of expenditure. This is part of its overarching role in the evaluation and analysis of Swedish growth policy. This type of follow-up and reporting work was also carried out prior to 2016.

In terms of resources at *Tillväxtanalys*, there are three persons working on a part-time basis concerning transparency issues. These staff members also work with other State aid questions, including annual reporting.

#### *27.3.2. Scrutiny and control of specific compliance issues*

The five compliance issues (compliance with the Deggendorf principle; cumulation; *de minimis* conditions; firms in difficulty; and single undertaking principle) are all considered in the legislative structures. Those who decide on a State aid scheme are responsible for regulating it and ensuring that all the criteria are met (e.g. whether *de minimis* is the legal basis or not before the aid scheme is implemented).

### **27.4. Operational and technical arrangements**

#### *27.4.1. Domestic State aid registers*

TAM is the only centralised register that is used for transparency reporting. However, the data on award decisions is also available on request from the individual awarding authorities in line with the principle of public access to information. In more than half of the public authorities, this data is available publicly in the form of online registers.

The rationale for using TAM rather than developing a centralised domestic register is because TAM is seen as functional and it covers all sectors in a standardised format. TAM is viewed to be the most efficient way to fulfil the transparency requirements.

*Tillväxtanalys* was requested in the Government's Terms of Reference for the budget year 2010 to develop a micro database concerning State aid awarded to businesses by authorities, state-owned companies and foundations. The database was established for reporting to the EU and WTO, but also for providing a basis for national evaluations of growth policy initiatives for individual companies.<sup>185</sup> Since the changes in 2016 the database is mainly used for the latter purpose.

#### 27.4.2. Interoperability

Data feeding procedures to TAM can vary between the different aid awarding authorities. The authorities refer to the Commission guidance on what to report in TAM<sup>186</sup> and how the information should be presented in TAM. The procedures on how and when to upload the data to TAM is also decided by each aid awarding authority. In most cases, data is submitted on a case by case basis, but sometimes also in batches (bulk upload).

#### 27.4.3. Lessons for e-government and the digital agenda

None identified.

### 27.5. Other State aid reporting

#### 27.5.1. Links between systems for TAM and annual spending reports

State aid transparency reporting takes place through TAM and annual reporting through SARI. At *Tillväxtanalys*, the same staff members work for TAM and for SARI. Furthermore, information and guidance on the requirements of TAM and SARI are available on the same webpage of *Tillväxtanalys*. However, the IT systems are not interoperable and more interoperability between the two systems would be welcomed by the Swedish authorities. At present, for example, two separate logins are required to access the systems, which suggests that there are relatively straightforward ways to introduce simplification.

#### 27.5.2. De minimis compliance

Sweden does not have a central *de minimis* register. The reason for this is the demanding administration related to the collection and registration of all *de minimis* aid, ensuring data accuracy as well as the cost implications.

As noted earlier, each aid awarding authority collects information on the aid decisions. Furthermore, *Tillväxtanalys* collects micro data on State aid through its own micro database. However, this does not entail any responsibilities for following up and controlling *de minimis* aid. The micro database provides information on which authority has awarded aid; which companies

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<sup>185</sup> Ministry of Enterprise and Innovation (2009) Regleringsbrev för budgetåret 2010 avseende Myndigheten för tillväxtpolitiska utvärderingar och analyser inom utgiftsområde 24 Näringsliv <https://www.esv.se/statsliggaren/regleringsbrev/?RBID=12112>

<sup>186</sup> E.g. Commission's staff paper: encoding information in the Transparency Award Module for State aid.

received the aid; the aid amount; and the reason for awarding the aid. The database does not indicate whether this aid was awarded in accordance with the *de minimis* rule or not.<sup>187</sup>

### 27.5.3. Domestic reporting

All state agencies have reporting responsibilities such as annual reporting responsibilities. This wider reporting can also apply to State aid schemes. Moreover, there are requirements to evaluate the effectiveness of different economic incentives, but these can be limited in their focus (e.g. specific sectors or aid schemes).

## 27.6. References

### Legal basis:

- Law (2013:388) on the application of the European Union's State aid rules [*Lagen (2013:388) om tillämpning av Europeiska unionens statsstödsregler*] <http://rkrattsbaser.gov.se/sfst?bet=2013:388>
- Regulation (2016:605) on the application of the European Union's State aid rules [*Förordningen (2016:605) om tillämpning av Europeiska unionens statsstödsregler*] <http://rkrattsbaser.gov.se/sfst?bet=2016:605>
- Tillväxtanalys (2016) Requirements for the submission of information on State aid (MTFS 2016 :2) [*Myndigheten för tillväxtpolitiska utvärderingar och analysers författningssamling*] <https://www.tillvaxtanalys.se/download/18.62dd45451715a00666f20317/1586366204878/MTFS%202016-2%20F%C3%B6reskrift%20om%20uppgiftsl%C3%A4mning%20statsst%C3%B6d.pdf>
- Proposition (2015/16:156) of amendments to the Law on the application of the European Union's State aid rules [*Ändringar i lagen om tillämpning av Europeiska unionens statsstödsregler*] <https://www.regeringen.se/rattsliga-dokument/proposition/2016/04/prop.-201516156/>
- Regulation (2016: 1048) with instructions for the Agency for Growth Policy Evaluations and Analyses [*Förordning (2016:1048) med instruktion för Myndigheten för tillväxtpolitiska utvärderingar och analyser*] <http://rkrattsbaser.gov.se/sfst?bet=2016:1048>

### Information on transparency reporting:

- Ministry of Enterprise and Innovation <https://docplayer.se/33095995-Workshop-nya-transparenskrav-for-statligt-stod-stockholm-den-10-juni-naringsdepartementet.html>
- Ministry of Enterprise and Innovation (2009) Regleringsbrev för budgetåret 2010 avseende Myndigheten för tillväxtpolitiska utvärderingar och analyser inom utgiftsområde 24 Näringsliv <https://www.esv.se/statsliggaren/regleringsbrev/?RBID=12112>
- Sveriges Kommuner och Regioner <https://skr.se/ekonomijuridikstatistik/juridik/euratt/moderniseringenavstatstodsreglerna.2950.html>

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<sup>187</sup> Regeringen's skrivelse 2016/17:79 (2017) Riksrevisionens rapport om statliga stöd till innovation och företagande [https://www.regeringen.se/48fc39/contentassets/bfa9799f56264dc9893e1b00a03bd9f4/riksrevisionens-rapport-om-statliga-stod-till-innovation-och-foretagande-skr-2016\\_17-79.pdf](https://www.regeringen.se/48fc39/contentassets/bfa9799f56264dc9893e1b00a03bd9f4/riksrevisionens-rapport-om-statliga-stod-till-innovation-och-foretagande-skr-2016_17-79.pdf)

- Swedish Board of Agriculture <https://etjanst.sjv.se/asken/faces/jbstod/searchJbstod.jsp>
- Tillväxtanalys, State aid information <https://www.tillvaxtanalys.se/om-oss/statsstod.html>
- Tillväxtanalys, reporting in TAM: <https://www.tillvaxtanalys.se/om-oss/statsstod/tam.html> Tillväxtanalys, reporting in SARI: <https://www.tillvaxtanalys.se/om-oss/statsstod/sari.html>

**Public access to information in Sweden:**

- <https://www.regeringen.se/49bb7e/contentassets/2c767a1ae4e8469fbfd0fc044998ab78/public-access-to-information-and-secrecy-act>

**Micro database:**

- Tillväxtanalys (2012) Mikrodatabas över statligt stöd till näringslivet, Working Paper 2012:06 <https://www.tillvaxtanalys.se/publikationer/pm/pm/2012-04-23-mikrodatabas-over-statligt-stod-till-naringslivet----ett-verktyg-for-att-folja-upp-och-utvardera-tillvaxtpolitiska-insatser-i-enskilda-foretag.html>



**28. UNITED KINGDOM**

KEY DIMENSIONS	MAIN CHARACTERISTICS
Legal	<ul style="list-style-type: none"> <li>• The transparency requirements are transposed into UK law through the 2018 Withdrawal Act; prior to Brexit there was no specific legislation, the GBER being directly applicable</li> <li>• The Department for Business, Energy and Industrial Strategy (BEIS) plays a lead role for the UK, but the three devolved administrations play information and coordinating roles in their jurisdictions. None has any powers of enforcement</li> <li>• Similar but separate arrangements apply to agriculture, forestry and fisheries and are the responsibility of the relevant (devolved) departments for the sectors</li> </ul>
Organisational	<ul style="list-style-type: none"> <li>• State aid coordination is a hybrid of UK-wide coordination by BEIS and subnational coordination within Northern Ireland, Scotland and Wales by devolved administrations.</li> <li>• Awarding bodies are responsible for compliance</li> </ul>
Operational and technical	<ul style="list-style-type: none"> <li>• The TAM is used. The encoding process varies. In principle awarding bodies are responsible for their own TAM uploads. However, in the devolved administrations the State aid teams typically encode award data based on reporting from the awarding bodies</li> <li>• There is no central State aid register</li> <li>• There is no <i>de minimis</i> register</li> </ul>

**28.1. Summary**

The UK has responded to the transparency requirements introduced in 2016 by replicating EU requirements under the 2018 Withdrawal Act for the duration of the transition period; previously, the transparency requirements under the GBER and other provisions were directly applicable in the United Kingdom. Prior to July 2016, there were no systems in place for collecting information on State aid awards.

Within the UK, formal responsibility for compliance with the transparency requirements lies with granting authorities i.e. the public authorities making the awards. Granting authorities can include government departments, the Devolved Administrations in Scotland, Wales and Northern Ireland, non-departmental public bodies, local authorities etc.. Granting authorities must complete the TAM system for awards exceeding €500,000.

At UK level, the Department for Business, Energy and Industrial Strategy (BEIS) provides guidance in the form of a State Aid Manual. Within the Devolved Administrations, State aid teams coordinate the process for public bodies granting aid:

- The Scottish Government State Aid Team co-ordinates the process for Scottish public bodies. Scheme administrators are asked to complete a transparency reporting form (an

Excel spreadsheet) and forward details by e-mail to the Scottish Government State Aid Team within one month of the date of granting.

- In Northern Ireland, the Department for the Economy State Aid Unit co-ordinates input of information regarding Northern Ireland GBER payments over €500,000 and commissions returns on a quarterly basis from known GBER aid providers in Northern Ireland.
- In Wales, the Welsh Government's State Aid Team requests that those providing support under either the Welsh Government's registered GBER schemes, or the Welsh Local Government Association registered schemes (used by local authorities) notify them within one month of aid being provided.

Aid for agriculture and fisheries in England is dealt with by the Department for Environment Food & Rural Affairs (DEFRA).

In summary, in the UK, responsibility for reporting of aid over the threshold lies with the granting authorities, using the TAM system.

## **28.2. Legal arrangements**

### *28.2.1. Legal basis*

The GBER applies in the UK by virtue of retained EU law under the Withdrawal Act 2018. Until Brexit, the GBER was directly applicable in the United Kingdom. Before July 2016, domestic transparency requirements did not apply systematically at UK level, although individual schemes maintained their own databases.

BEIS does not make a distinction between transparency and any other provisions that are conditions of compatibility, and public authorities are advised of this. Awareness raising is ongoing, and some authorities have been late in uploading details of awards, but BEIS has not encountered any refusal to comply.

### *28.2.2. Substantive provisions*

The domestic legal basis in the UK for implementing the transparency requirements replicates the EU requirements; this is currently the Withdrawal Act 2018.

### *28.2.3. Enforcement*

The National Competition Authority (the Competition and Markets Authority) has no legal authority with regard to State aid. There are no specific domestic provisions for enforcement of the transparency requirements.

## **28.3. Organisational arrangements**

### *28.3.1. Institutional arrangements*

Responsibility for transparency and compliance with other State aid requirements is decentralised in the UK. It lies with granting authorities, which can include government departments, non-departmental public bodies, the Devolved Administrations, local authorities, etc.. Awarding bodies are responsible for their own transparency uploads to TAM.

Within the Devolved Administrations, State aid teams coordinate the process for public bodies granting aid. For example, in Scotland, the Scottish Government State Aid Team co-ordinates the process for Scottish public bodies. Scheme administrators are asked to complete a transparency reporting form (an Excel spreadsheet) and forward details by e-mail to the Scottish Government State Aid Team within one month of the date of granting.<sup>188</sup> The Scottish Government State Aid Team then feeds the data into TAM. In Northern Ireland, the Department for the Economy State Aid Unit co-ordinates input of information into TAM regarding Northern Ireland GBER payments over €500,000 and commissions returns on a quarterly basis from known GBER aid providers in Northern Ireland.

At UK level, BEIS will pursue transparency questions with these authorities when such questions are raised. Competition authorities have no role, and there are no distinct or additional requirements for domestic audit purposes.

Guidance for awarding bodies is provided in the UK State Aid Manual, a BEIS publication, as well as additional *ad hoc* BEIS guidance. The guidance is not mandatory. The Devolved Administrations provide guidance for public bodies on their websites.

Since July 2016, the requirement to complete TAM has been built into aid schemes.

In terms of resources, two persons in BEIS State aid unit work on transparency issues. The scale of staff resources in the DAs working on transparency issues is not known but will be less than in BEIS. In addition, each State Aid scheme will have resource allocated to ensure that uploads are done in a timely fashion.

### 28.3.2. *Scrutiny and control of specific compliance issues*

In terms of preventing the award of State aid to firms subject to the Deggendorf principle, the UK has only ever been subject to a recovery order seven times. Receiving a recovery order would therefore be a significant event, upon which HM Government would immediately act. In the event of a recovery order, the relevant granting authorities would be notified, so that no further aid is given until the order is complied with.

To ensure that the total amount of aid offered does not exceed the cumulation ceiling, BEIS are clear with aid administrators that they must ensure that cumulation rules are complied with to avoid exceeding aid intensities/notification thresholds etc. Within the DAs, additional checks may apply. For example, in Scotland, where aid is given under one of the block exemptions by a public body, additional information is required from that body in their annual reporting on their aid schemes. In some instances, public bodies have cover to give the same kind of aid under both a block exemption and a separately approved scheme, in which case the aid must be reported under one or the other to ensure it is not double counted.

To ensure the conditions of the *de minimis* Regulation are respected, granting authorities are required to obtain confirmation from aid recipients of other *de minimis* aid granted to them (described in chapter 4 of the UK State Aid Manual).

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<sup>188</sup> See: <https://www.gov.scot/publications/state-aid-guidance/pages/transparency-requirements/>

To prevent the use of aid to support firms in difficulty, granting authorities are responsible for applying the UID test.

Guidance/legal advice to public authorities helps to ensure that, where applicable, the criteria for determining SME status or eligibility for *de minimis* support is consistent with the single undertaking principle.

## **28.4. Operational and technical arrangements**

### *28.4.1. Domestic State aid registers*

In the UK, only TAM is used. There are no UK-wide domestic registers.

### *28.4.2. Interoperability*

There are no domestic systems for ensuring State aid compliance, only TAM is used. Therefore there are no links with other domestic digital data sources.

In practical terms, data is fed into TAM by encoders within the granting authorities. Some encode in batches, others in real time. Data cleaning/manipulation depends on the practices within the individual granting authority.

### *28.4.3. Lessons for e-government and the digital agenda*

No information provided.

## **28.5. Other State aid reporting**

### *28.5.1. Links between systems for TAM and annual spending reports*

TAM encoders are often also the users for SARI and thus complete the annual reports.

### *28.5.2. De minimis compliance*

*De minimis* registers are not used in order to minimise the administrative burdens on granting authorities.

### *28.5.3. Domestic reporting*

No purely domestic reporting and analysis of State aid awarded takes place at UK level.

## **28.6. References**

European Union Withdrawal Act (2019):

<http://www.legislation.gov.uk/ukpga/2018/16/contents/enacted>

UK State Aid Manual: <https://www.gov.uk/government/publications/state-aid-manual>

Transparency reporting form for public authorities in Scotland:

<https://www.gov.scot/publications/state-aid-guidance/pages/transparency-requirements/>

Northern Ireland Department for the Economy State Aid Unit GBER Declaration of Support:

<https://www.economy-ni.gov.uk/publications/gber-transparency-form>

Information required by Welsh Government from public bodies granting awards over €500,000 under registered GBER schemes in Wales: <https://gov.wales/sites/default/files/publications/2019-09/160223-transparency-notes-en.pdf>



## ANNEX B: CASE STUDIES

### 1. CZECHIA<sup>189</sup>

#### 1.1. National context

In Czechia the Office for the Protection of Competition (OPC) provides guidance for the fulfilment of the transparency obligations. However, in legal and practical terms reporting in the TAM is the responsibility of awarding bodies. Guidance is sent to awarding bodies when they notify the coordinators of their intention to introduce measures involving State aid. There is no national register for State aid generally, but there is a *de minimis* register, which is partially publicly available, and accessible in its entirety to registered users.

#### 1.2. Experience with current reporting requirements

The coordinating bodies (the OPC and the Ministry of Agriculture) set up organizational guidelines for the registration and notification of measures in TAM system in the ‘Transparency Methodology’<sup>190</sup>. This also sets out the basic administrative and technical requirements for the obligation of transparency, including the recommendations of the coordinating bodies in individual areas.

Issues encountered by users include:

- **problems logging into TAM** via EU login account,
- issues related to **what counts towards the €500,000 threshold**
- questions and **uncertainties regarding one State Aid measure offered by multiple awarding bodies** (more precisely, a provider and entity/entities that administer/pay financial resources),
- questions regarding entry into force of the provisional act and subsequent periods for recording in TAM
- questions related to the register itself, how to register and approve aids and how to enter new users into TAM.

There are also **interpretation problems in the cumulation of support** for the same supported activity. OPC recommends that aid providers comply with at least the minimum requirements of the European Commission, namely the cumulation of acts granting aid to the same beneficiary and for the same eligible costs for the same objective within the same project.

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<sup>189</sup> Based on interviews with the State aid units in the Office of Competition Protection and the Ministry for Agriculture.

<sup>190</sup> See: Úřad pro ochranu hospodářské soutěže, Ministerstvo zemědělství (2019): Metodika k plnění povinnosti transparentnosti (zápis údajů do elektronického systému Evropské komise). [http://eagri.cz/public/web/file/518245/Methodika\\_k\\_plneni\\_povinnosti\\_transparentnosti.pdf](http://eagri.cz/public/web/file/518245/Methodika_k_plneni_povinnosti_transparentnosti.pdf) . [http://www.uohs.cz/download/Sekce\\_VP/VP\\_update/Methodika\\_k\\_plneni\\_povinnosti\\_transparentnosti\\_leden-2019.pdf](http://www.uohs.cz/download/Sekce_VP/VP_update/Methodika_k_plneni_povinnosti_transparentnosti_leden-2019.pdf)

There is **no perceived added value from the reporting requirements** since the State aid Coordinating bodies do not handle data in any way and are not aware of the possible handling of data by other ministries of state administration or self-government.

### 1.3. Perspectives on the harmonisation of transparency requirements

The obligation of transparency is stated across the various rules in the field of state aid. The Communication on transparency<sup>191</sup> and **especially the lack of a full text of the rules following the amendments, may make transparency requirements confusing for some awarding bodies**. The inconsistency of the limit of the amount of support (based for example on a particular regulation or sector), which must be registered in the TAM system, does not help with coherence.<sup>192</sup> To rationalise the approach, it is suggested:

To publish the full text of the regulations, including the revision made by the above communication.

- **To unify the limits for individual regulations in line with the GBER (except for the lower limits for aid in the field of agriculture and fisheries).**
- **To tie the aid ceiling only to aid granted to the same beneficiary for the same eligible costs and to the same objective within the project.**

In short, the obligation of transparency should be stated uniformly in all existing regulations (taking into account the aid ceiling and the revised wording). It would also be appropriate for there to be **a single Methodological Guide to the obligation of transparency, which would further interpret the obligation in detail**. However, due to the specific nature of the regulations, the Czech State aid coordinating bodies do not recommend the obligation of transparency to apply to Short-term export credits, aid for railways, banking or public service broadcasting.

For SGEI rules, the existing transparency requirements set out in the 2012 SGEI Commission Decision are considered to be sufficient.

### 1.4. Removal of reporting thresholds

The **selection of awards over the threshold does not represent a significant administrative burden compared to the removal of the threshold** for notifying aid to the TAM system altogether.

Removal of the threshold would result in a significant increase in the registration of aid in the TAM system and an increase in the administrative burden for all aid providers. Awarding bodies would probably not be able to cover this from existing resource requirement, which would be particularly difficult in the current economic situation.

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<sup>191</sup> Commission Communication amending the Commission Communication on EU guidelines on the application of State aid rules in relation to rapid deployment of broadband networks, on the Regional State Aid Guidelines 2014-2020, on State aid to films and other audiovisual works, Guidelines on State aid for risk finance investments and on Guidelines on State aid to airports and airlines (2014 / C 198/02)

<sup>192</sup> See Transparency Methodology pp17-18.

The current system, where only awards above a limit are recorded and the total amount of spend annually, is considered to be sufficient.

The Czech authorities also note that the Commission itself withdrew from the idea of reporting each individual aid in the case of the Temporary Framework for State Aid Measures to Support the Economy in the context of COVID-19.

### 1.5. Role of investment in digitalisation

**Investing in digital technologies to remove administrative burdens for aid providers would have to take place at the level of aid providers** in order for new technologies to be compatible with their administrative systems. The coordinating bodies are not able to say whether there would be an interest in providers and financial opportunities to invest in digital technologies in order to meet the obligation of transparency.

If funding for digital technologies at the level of the EU were to lead to greater compatibility with granting authority administrative systems and the simplification of transparency compliance, the Czech State aid coordinating bodies would support this investment.

### 1.6. Links with other reporting requirements

It is not entirely clear how a connection to *de minimis* aid register would work. It is not considered desirable to connect the *de minimis* register, introduced in the Czech Republic 10 years ago, to any other system. The *de minimis* register now has a clearly defined purpose, and aid providers would only be confused if they were to register other types of aid in it.

Moreover, under the *de minimis* Regulation support is monitored nationally, and each Member State undertakes individual monitoring of *de minimis* support and the compatibility of the Member States' systems with the TAM system would not be ensured.

If the time aspect set for the registration of support according to individual systems was compatible and the SARI or TAM system would allow the entry of data of the same nature, **it would be possible to register within one EC application**. For example, it would be easier if there were, say, a 30 June deadline for each system for reporting on the previous year.

### 1.7. Other points to note

As part of the ongoing revision of the European Commission's information systems, the Czech Republic would welcome their extension in the form of a data collection tool on the implementation of the 2012 SGEI Commission Decision and the 2012 SGEI Commission framework. This would replace the original summary report on the implementation of the decision or framework, which is treated differently by each Member State, both in terms of the scope of the data submitted and the format.

The use of these rules, especially the decision of the SGEI Commission 2012, is relatively extensive in the Czech Republic. The related fulfilment of the reporting obligation stipulated by the above regulations is then associated with the collection of a large amount of data (the number of subsidies is currently approaching eight thousand), which providers supply and which must be subsequently processed into the Czech Republic report to the European Commission.

Ensuring a data collection system would not only reduce the administrative burden on Member States and close gaps resulting from Member States' differing approaches to the compilation of summary reports, but would also provide the European Commission with direct access to individual aid data and thus room for data processing its needs (monitoring of support, processing of variously focused statistics according to specific purposes monitored by the European Commission – e.g. for the purposes of revision of regulations, etc.).

## 2. GERMANY<sup>193</sup>

### 2.1. National context

In Germany, transparency requirements have been decentralised and generally awarding authorities are responsible for compliance. At Federal level, a database existed before 2016 and continues to exist where federal ministries may publish award information. This database is, however, in addition to TAM and there is no obligation on Federal ministries. Practice varies at *Land* level. Some regional ministries have centralised data submission to TAM (e.g. Mecklenburg-Vorpommern) while others have authorised awarding authorities to upload the data themselves (e.g. Bayern).

### 2.2. Experience with current reporting requirements

Overall, there are no major issues with current transparency requirements, however, a number of legal, organisational/administrative and technical obstacles have been identified.

From a *legal perspective*, it is **not always easy to understand which amounts to report and when reporting should take place**. A typical example concerns projects that are implemented in several parts. Awarding authorities sometimes doubt whether several parts of the project need to be reported individually or should be aggregated. Moreover, legal uncertainty may occur. There has been a legal dispute between Germany and the European Commission on whether a scheme on the redistribution of costs linked to the production of renewable energy production (SA.33995 (EEG 2012)) constitutes State aid given that no subsidies are paid directly from public budgets (it is rather a redistribution mechanism). Further to the judgement of the European Court of Justice of March 28, 2019 (C-405/16 P) transparency reporting on TAM has been halted.

In terms of *administration and organisational issues*, some **experience is required to fulfil reporting requirements**. In view of staff movements and changing responsibilities within awarding authorities, continuity in ensuring compliance with transparency requirements has sometimes been challenging. New administrators find it difficult to understand the added value of EU induced transparency requirements given existing domestic reporting requirements such as to the Court of Auditors.

Some awarding authorities, (such as the federal office for Economic Affairs and Export Control) are dealing with many individual award decisions, which means significant **administrative burden to treat the data and upload**. The Federal Office for Economic Affairs and Export Control (BAFA) receives up to 2500 applications a year by 30 June under one compensation scheme linked to electricity costs. These are then processed, evaluated and notifications are sent out by Christmas. No money is actually paid out, but a discount amount is calculated by the granting authority, which, can quickly amount to very large sums. In the following year datasets are uploaded in bulk, however, additional work is required for the datasets to be accepted by the system.

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<sup>193</sup> This write-up reflects the perspectives of Freistaat Bayern (Land government) Bundesamt für Wirtschaft und Ausfuhrkontrolle, Referat Kraft-Wärme Kopplung, Referat Besondere Ausgleichsregelung, (Federal office) in coordination with Bundesministerium für Wirtschaft und Energie, Referat EB3 Beihilfekontrollpolitik (State aid control policy, Federal government).

Another **problem with TAM entries is how to identify them after upload**. The TAM system allocates a TAM number automatically, however, it is not possible to include a local dataset number which would allow finding the uploaded dataset with the number of the original dataset. The consequence is that after upload the information provided to TAM becomes useless to the granting authority.

From a *technical* point of view **the responsiveness of the TAM module could be improved**. When entering information in one field there is a time lag until information can be entered into the next field. Given that several fields must be filled in, the whole process becomes somewhat cumbersome. Moreover, frequent error messages and failed uploads occur when trying to upload large datasets.

Apart from fixing these technical problems it could be helpful to **improve communication within the system** by for example including status messages (is it still uploading, has it stopped unsuccessfully, upload finished, etc.).

Another obstacle concerns the **harmonisation of file numbers between SANI and TAM**. It has happened in the past that a wrong SA number was added in TAM as a new file number was generated in SANI following an extension of an aid measure, which was then not taken into account in TAM. A system allowing to identify links between numbers would help avoid such errors.

The **following measures could mitigate these issues**:

- **Higher thresholds for reporting.** The €500.000 threshold means that many awards have to be reported. If the threshold were higher this would ease administrative burden.
- **Fewer fields/details to report.** For example, TAM requires information on whether the beneficiary is an SME or a large enterprise. In some aid programmes, however, this distinction is not made. Reporting to TAM thus requires additional information, which might not be straight forward to provide. Another example concerns the NACE codes, which are sometimes not known to awarding authorities.
- **Scope to select multiple choices.** There is limited flexibility when selecting the objective of the aid. The TAM system only allows a single entry, however the aid granted would require the selection of multiple objectives (e.g. industrial research, and experimental development).

Finally, **transparency requirements are not seen as having improved other aspects of public administration**. It is rather the other way round. Domestic administrative practices are relied on to gather and supply the information required under transparency requirements. They are perceived to be an additional requirement to what exists at domestic level.

### **2.3. Perspectives on the harmonisation of transparency requirements**

The harmonisation of transparency requirements would not necessarily facilitate reporting. There are reasons for differences in reporting requirements, so harmonisation might actually complicate compliance. Moreover, different administrations are responsible for compliance with the different legal bases. **Differences between the different legal bases are not causing difficulties.**

## 2.4. Removal of reporting thresholds

**Removing the thresholds is seen as not helpful.** On the contrary, a potential removal of the thresholds is expected to significantly increase the administrative burden. In many funding schemes and in particularly during the COVID-19 crisis many small grants have been awarded. If they all had to be reported it would have been difficult to manage.

In the case of Combined Heat and Power Generation plants, for example, many individual aid decisions with low amounts are granted. If all of these had to be reported on TAM the administrative burden would significantly increase (according to estimates the volume would increase from around 150 entries at present under this scheme, to up to 5000 if thresholds were removed). Efforts to filter data, i.e. remove award decisions below the transparency threshold, is seen as significantly lower than the additional efforts that uploading all data to TAM would entail.

In any case, the system allows uploading of awards below the threshold – for renewable energy support the amounts are usually above the threshold and all awarding decisions are reported even if they are occasionally below the threshold.

## 2.5. Role of investment in digitalisation

**Additional investments could focus on making the tool more user-friendly and intelligent.** The TAM system has been designed for all types of aid, which means many options and long drop-down menus. It would be a simplification if the system could limit choices based on previous choices.

Moreover, the responsiveness and reliability of the system could be improved. However, it is not clear and seems unlikely that additional investments in digital technologies could provide alternatives to manually entering data.

## 2.6. Links with other reporting requirements

Given that other existing databases are very different in terms of content and objectives, linking different systems would be difficult to imagine. Moreover, trying to adapt data reporting requirements to make them compatible would create more administrative burden than simplification. For example, given that no *de minimis* register exists in Germany there cannot be a link with TAM.

A better link between transparency requirements and SARI could, however, be interesting. A harmonisation between the two tools could focus on the following:

- **Harmonisation of deadlines for reporting.** It may, for example, make it easier if reporting deadlines for SARI and TAM were at the same time once a year.
- **Harmonisation of what is reported.** Currently, amounts *awarded* need to be reported under TAM while amounts *paid* need to be reported through SARI. It may make it easier if both systems were to focus on paid amounts.
- **Harmonisation of SARI and TAM could also lead to more coherence of reported amounts.** Awards reported through TAM cannot be changed even if modifications have taken place and different amounts were actually paid than initially awarded. Harmonising TAM and SARI would enable the same amounts to be reported through both systems.

## **2.7. Other points to note**

Less is more. According to one interviewee the TAM system requests too many details. For the sake of transparency, it could be useful to have less detail to increase visibility and readability.

### 3. ESTONIA

#### 3.1. National context

Estonia responded to the 2016 transparency requirements by using the existing national State aid register created in 2009. This covers all State aid (except State aid in the fields of agriculture and fisheries) and all *de minimis* support. The domestic register contains more information than required by the transparency requirements (e.g. including also eligible costs, payments, etc.). The Estonian register reports all awards with no threshold. It also has a logging system showing who, when and what data has been entered or changed. The domestic register is used by the State aid unit to encode information in TAM manually, usually within a day of it being entered in the domestic register.

#### 3.2. Experience with current reporting requirements

There have been **no general obstacles** (technical, legal, organisational or administrative) to implement the transparency requirements and reporting individual awards under GBER and the relevant State aid Guidelines.

Nevertheless, there have been some specific difficulties encountered, e.g. with **taxation measures** in the beginning of the year individual awards from the last year must be encoded and the number of beneficiaries is high. As all data is entered manually, there is a significant workload during this period. Other difficulties/**challenges are connected to interpretation of cumulation**. Many rules on how to interpret/cumulate transparency requirements are currently under discussion with no concrete well-defined outcome; decisions are taken on case-by-case basis.

From a detailed technical perspective, it would be **useful to allow publishing block of entries**. Currently each aid line must be opened and published separately. It is possible to delete 10 entries in a block, but it is not possible to publish 10 entries in a block. In Estonia this arises because the bulk upload facility cannot be used owing to incompatibilities with the domestic register. The **most useful additional line to be added to TAM could be the title/name of the project**. Finally, currently it is not possible to save the entries if some fields are unfilled. There could be an **option to save the current stage of the entry, then pause the work and finally publish the entry when everything is filled**.

The **transparency requirements based on TAM have not been of any particular value** for other activities in Estonian public administration. There are no evaluations or audits based on the transparency requirements as Estonia mostly uses the national State aid and *de minimis* aid register created in 2009. The national register covers all State aid (except State aid in the fields of agriculture and fisheries) and all *de minimis* aid awards. The domestic register contains more information than required by the transparency requirements (e.g. including also eligible costs, payments, etc.). The Estonian register reports *all* awards with no threshold. It also has a logging system showing who, when and what data has been entered or changed. It is also possible to create various reports with additional information (e.g. create the list of all measures from a particular aid grantor with the number of beneficiaries under each measure; obtain information about the residual amounts available under the *de minimis* limit, etc.).

Based on the feedback from Ministry of Finance<sup>194</sup>, there is too **little awareness of TAM** within the society as well as within Estonian public administration system. When information is needed, the domestic register is usually used (by all groups, including aid grantors, beneficiaries, the public etc). According to the senior official responsible for TAM in the Ministry of Finance, there is little public knowledge of TAM (although an Estonian investigative TV series *Pealtnägija* ('Eyewitness') has referred to TAM); it is also thought there is little knowledge of TAM outside the Ministries of Finance and Agriculture and Rural Development.

### 3.3. Perspectives on the harmonisation of transparency requirements

**A harmonised transparency requirement for all State aid Guidelines would likely facilitate the publication of aid awards.** It has not been a problematic area in Estonia, but in principle this would be the right approach. According to the legislation, comprehensive website about the aid awards must be created by the Member States, but the current webpage of TAM is created by the Commission. The guidelines on how to use TAM have been written down in a working document, but this document has not been legalised. It might be argued that the current TAM platform has no legal basis.

Estonia supports the idea of a fully standardised text, identical across all legal bases, or even a single transparency requirement communication, which could help Member States understand what they must publish and how. Also applying more similar threshold in different fields could be an improvement. Currently the transparency requirements do not apply to aid awards granted under SGEI Guidelines, but Estonia register is covering them as well. It could be unified. Estonia also supports the suggestion that Railway Guidelines, Banking communication and Public service broadcasting communication could follow the transparency logic. At the same time Estonia does not support application of transparency provisions to Short-term export credit communication because of the specificity of the communication. While granting aid to cover marketable risks is not allowed, the insurance of temporarily non-marketable risks is not State aid.

### 3.4. Removal of reporting thresholds

Removal of the individual aid reporting threshold **would facilitate reporting** under the transparency requirement since there is no need to select the aid awards, but it would also mean much heavier workload (e.g. even a small country like Estonia has to publish in the national register up to 100 entries in a day. **Until machine-to-machine systems and solutions are available, Estonia would not support this idea.** In principle, the proposal is right, but in practice (and mostly for technical reasons) it would be too hard to create/build up an efficient working system. It would be also a heavy financial burden for the Member States. Estonia tried to go this way (M2M solution) two years ago with its own system, but the idea was abandoned due to the high cost of the required IT developments – some basic principles of the current the national register would also have to be amended. If the Commission were to remove the individual aid reporting thresholds under the transparency requirement, then it should bear the cost of all technical developments.

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<sup>194</sup> The formal responsibility for compliance with TAM lies within two Ministries – the Ministry of Finance (all fields except agriculture and fisheries) and the Ministry of Rural Affairs (agriculture and fisheries). The Ministry of Finance encodes, finalises and publishes awards exceeding €500,000 as required under GBER and relevant Guidelines.

In the first instance, it would make sense to have an overview of how much TAM is actually used in the Member States and based on that it would be easier **to evaluate if the required investments are worthwhile**. If some Member States already have difficulty in entering correct data under current thresholds, then new system will create even more problems. On the other hand, if no Member States have any difficulty in implementing and following the current system, it might make sense to consider removing the individual aid reporting threshold under the transparency requirement provided that the Commission would bear the cost of all technical developments.

### **3.5. Role of investment in digitalisation**

A proposal to consider for developing the current system (in the sense of investing in digital technologies) is to **improve the translation function**. TAM provides translation into English for the titles of aid measures, names of aid beneficiaries and names of Granting authorities. In Estonian to English, this translation is in many cases highly misleading and even confusing. For this reason, Estonia is proposing to abandon the translation function for the names of aid beneficiaries. The name of the beneficiary is official name registered in the Commercial register and is not translated in the official documents. As the translation of titles of aid measures could be helpful in case of search (adding also value for the transparency), this could remain for the periodic verification of the translation in co-operation with Member States.

### **3.6. Links with other reporting requirements**

In Estonia the national register which also covers *de minimis* support is used for all domestic monitoring and reporting purposes.<sup>195</sup> Thus, Estonia itself has no desire to have another similar system developed by the Commission.

### **3.7. Other points to note**

Nothing further to report.

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<sup>195</sup> The Ministry of Finance submits an overview of all State aid and *de minimis* aid granted in Estonia to the Government of the Republic once a year. The purpose of this overview is to provide transparency of public expenditure (the report is based on expenditures). It covers all State aids and all *de minimis* aids. After approval by the government, the overview is published on the homepage of Ministry of Finance. This provision has been in force since 2008, long before the introduction of TAM.



## **4. SPAIN**

### **4.1. National context**

Spain operates a national State aid register – called BDNS - and does not use the TAM. All awards including *de minimis* support are reported. The database has been in operation since 2000 and is administered by the National Audit Office (Intervención General de la Administración del Estado - IGAE) although formal responsibility for compliance with transparency requirements lies with the authorities granting the aid. A strong feature of the Spanish system is the comprehensive coverage going beyond EU requirements and encompassing all types of beneficiaries and kinds of aid to any sector including agriculture and fisheries.

### **4.2. Experience with current reporting requirements**

Spain has not encountered any serious obstacles in complying with transparency requirements. The transparency system has also proved to be useful for other activities of the public administration. In particular, the data is used by the Tax Agency. From 2019, the Independent Fiscal Authority uses BDNS data for its Spending Review. Several commercial companies providing economic intelligence (e.g. the ORBIS global database of firms) download data from the public portal for analysis, studies and dissemination. The media also uses the data extensively.

### **4.3. Perspectives on the harmonisation of transparency requirements**

Spanish authorities consider that differences in reporting requirements between aid measures approved under different legal bases complicate aid administration, and that harmonised transparency requirements for all State aid Guidelines (apart from those for agriculture and fisheries) would facilitate the publication of aid awards. A single, common point of reference for transparency requirements would be useful in this respect.

The application of the transparency requirements to all State aid by Member States would be seen as an improvement from a Spanish perspective. Given that Spain already collects this data, it would be easy to implement and lead to considerable simplification of the querying process and the feeding system to the public website. At present, with so many different regulations, the SQL query that feeds the public website is rather complex with multiple joins, table manipulations and maintenance requirements.

### **4.4. Removal of reporting thresholds**

The removal of reporting thresholds is viewed as a positive proposal by Spanish authorities. No obstacles or operational difficulties would be expected because the BDNS register already publishes information on all aid cases regardless of aid amount. Moreover, the removal of thresholds by the Commission would facilitate reporting and reinforce the position of the BDNS position in front of granting authorities.

### **4.5. Role of investment in digitalisation**

For Spain, the current standard technologies used for transferring data from the Member State to the Commission seem to be sufficient. The national authorities are generally satisfied with the system. Although there is room for improvement, changes have been delayed since 2017 due to a shift in priorities in the IT department.

Spanish authorities consider that one way to reinforce transparency would be to establish a genuinely pan-European system that integrates the national systems e.g. by allowing a public search for grants to any single company across different Member States.

#### **4.6. Links with other reporting requirements**

A closer linking of aid reporting under transparency rules to annual expenditure reporting is viewed positively by Spanish authorities. However, there are operational challenges because it implies the definition and development of a library of common interfaces, data dictionaries etc.

#### **4.7. Other points to note**

Spain welcomes all changes that improve the comprehensiveness and comparability of the data published in the TAM among the Member States.

## 5. ITALY<sup>196</sup>

### 5.1. National context

Italy has a central State aid register, the NAR, into which granting authorities encode awards made. This covers all aid (except agriculture forestry and fisheries), including *de minimis* support. TAM is used to fulfil the transparency requirements. This is done by Invitalia, an agency owned by the Ministry of Economy, which undertakes a bulk upload from the NAR to the TAM every three to four months.

### 5.2. Experience with current reporting requirements

There are no obstacles to the implementation of the transparency requirements. Nonetheless, two difficulties have been encountered.

First, **problems with transmitting data** concerning more than 30 percent of the entries uploaded on the TAM. The problems are essentially linked to the lack of consistency between the European systems (SANI2/TAM), which hinders the coherence between NAR and SANI data. Inconsistencies between the NAR regimes and the SANI2 regimes (replicated on the TAM) lead to problems in uploading NAR data on the TAM. The latter rejects the registration of the aid itself. Such inconsistencies only appear after the bulk upload of information on the TAM and require a timely correction of errors by the aid awarding administration on the NAR. An automatic upstream check, allowing for inconsistencies to be immediately identified and fixed before any aid registration, would be of considerable help in tackling this problem.

This problem is of practical and technical nature, as without an upstream check of the regimes data it becomes difficult to identify an error. In fact, the error has to be identified among more than 1,000 individual aid acts for each bulk upload. A further difficulty is to identify and contact all the administrations, which have entered inconsistent data between what is specified on the SANI2 system and what is registered on the National Aid Register.

The creation of a Web Service system enabling the verification of the existence of the regime (identified through the SA Code) and its dimension as entered in the SANI2 system for a given SA Code (with particular reference to the objective and instrument) would solve the problem.

The second difficulty concerns the **lack of an applied definition of 'project'** for the determination of the €500,000 threshold and the absence of a time limit for the cumulation of aid to reach such threshold. For these two reasons, all aid registered on the NAR for each company (including *de minimis*, exempted, notified and SGEI) is cumulated from 1 July 2016.

This problem is of an interpretative nature, as the concept of "project" or "activity" does not facilitate the identification of aid that falls within the calculation for cumulation purposes. Therefore, all aid for each company is considered, which increases the amount of aid to be sent and the amount of error to be identified (and administrations to be contacted).

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<sup>196</sup> Based on the interviews with the State aid coordination Office – EU policies department at the Presidency of the Council of Ministers; the Ministry for Economic Development; and *Invitalia*.

The definition of a timeframe for the cumulation of all aid, which leads to the €500.000 threshold (for example, 3 years) would be of help.

The **NAR has all the necessary information for domestic purposes**. The NAR is useful for cross-cutting analyses to other European countries and to back up the decisions of the awarding administrations.

### 5.3. Perspectives on the harmonisation of transparency requirements

Transparency, as defined in the different legal bases and in the GBER regulation, provides for obligations that are slightly different from one another. This results in the awarding administration having to publish the information on aid in a certain way or another (on the website). In the Italian case, the transparency obligations have been aligned to a very high standard, namely that of the national aid register (which includes information on the company, its size, nature of the aid, date of award, date of disbursement, data for the calculation of the cumulation, etc.).

**The NAR standard is higher than the obligations deriving from the European regulations.** For Italy, everything that falls below this standard, is not relevant. What is fundamental is that the core elements of transparency (as it is currently defined for EU purposes) will not be modified, otherwise the NAR would have to be modified accordingly. This would be a paradox, since the tool goes beyond what is required for EU purposes. The NAR has a high transparency threshold, which will remain in force even if the Commission were to lower the obligations. **What is important is that the type of data collected is not suddenly changed.** E.g. if among the data the Commission were also interested in collecting qualitative data this would not improve transparency in any way and indeed it would represent an issue, because the register should be modified in a sense not foreseen until now.

A separate issue relates to the transparency obligations provided for by the national and regional legal systems, which provide for different obligations each having a different content (e.g. publication in the Official journal and/or on the administration and/or company websites).

### 5.4. Removal of reporting thresholds

**It would not make sense to require all awards to be reported**, irrespective of their size. There are some types of aid, very widespread, which are addressed to micro-enterprises and have very small amounts. Such aid should perhaps not even be categorised as aid. Obviously, there is no specific intention to grant such small amounts, but as these belong to general aid schemes, it may happen that smaller companies receive small amounts. In this case, a reflection should be made if such awards should be considered aid. It is not useful for transparency obligations to go in the direction of reporting all awards. Italy does so, but perhaps minimum amounts of aid would not deserve to be taken into consideration at all.

Instead, **there should be a careful reflection on fiscal aid** where the amount of aid is only known after the presentation of the tax return and after such tax return is processed by the financial administration. In this case, the very nature of the tax aid causes difficulties. The simplified monitoring of automatic aid that the exemption regulation foresees could be even more simplified.

The first is a substantial (theoretical) problem (*what should be considered aid*), the second (*monitoring of automatic aid*) concerns simplification. To date, each Member State decides how to deal with these two issues in an independent way.

The National Aid Register currently publishes all individual aid, but the publication on the TAM system is burdensome as the information entered on the NAR is not always consistent with the data entered on SANI2 (see above). Consequently, data manipulation is needed to check all individual cases and contact the awarding administrations. Should this activity be applied to all aid irrespective of a threshold, it would entail a substantial increase of the burden for the National Aid Register. This would not be the case only if the TAM system also accepted the upload of aid inconsistent with the regime included in SANI2 (which would be achieved through the removal of the check on instruments and objectives on the TAM). Aid exceeding the €500,000 threshold currently represents about 3 percent of the total awards registered on the NAR and 54 percent of the total aid granted.

### **5.5. Role of investment in digitalisation**

No additional technological investment would be worthwhile without addressing the data on the aid regimes registered in SANI2. As mentioned above, this change to the current system would allow checking the information before the administrations can register aid on the NAR. Without being able to compare the regimes registered in SANI2 with those on the NAR, the amount of error for the upload of data on the TAM through Web Service would be substantial and it would result in an increase of the administrative burden, not a simplification.

### **5.6. Links with other reporting requirements**

There is no consistency between the two (*i.e. transparency requirements and monitoring and reporting mechanisms*). Transparency has the aim of ensuring that a company does not receive more than it can be granted, while monitoring for SGEI, SANI purposes takes place for policy purposes, *i.e.* to monitor how much the member state spends in a given policy area (for example in research and innovation). It would be of little use to burden the individual companies with an additional element (transparency), if the same information can be drawn simply from adding together other available data (for policy purposes).

In any case, the NAR already holds the information on all aid. Therefore, it would link in directly to other monitoring and communication systems. For instance, the National Aid Register already checks the *de minimis* ceiling for single undertaking (as per Regulation 1407/2013), so the one envisaged would not be a necessary modification.

The ideal flow would be that, once a scheme is entered on SANI2, this information is transmitted to the NAR, so a guided registration of the scheme is possible. The administrations would not have to select the same information twice and it would be possible to ensure data consistency. With this modification, it would be possible to register the help on the TAM via Web Service as the information would be consistent between the two systems.

Reporting of individual aid awards under transparency requirements could not be linked more closely to annual expenditure reporting for domestic purposes and/or for State aid scoreboard reporting, if the thresholds remain those indicated for TAM and SARI since the two do not

overlap. In any case, the availability of services in application cooperation towards SANI2 and SARI would allow to respond at national level by integrating all systems.

#### **5.7. Other points to note**

In the first place, for member countries with a National Aid Register, it would be extremely helpful to have an electronic connection with the SANI system in order to refer with certainty to the regimes registered on SANI and to facilitate the overall compliance with the obligations and upload on the TAM. Currently, the delays and upload errors on the TAM originate from material errors on behalf of the awarding authorities, having registered regimes on the NAR reporting the wrong SANI code of the regime. The SANI code of the regime registered on the NAR does not therefore reconcile with that registered on the TAM. If a direct electronic connection with the SANI system was established, the administrations would not have to enter the data twice and there would be no misalignment of information due to registration errors.

Secondly, it would be useful to review, with the aim of achieving certainty, the method of calculating the €500,000 threshold envisaged for recording one or more aid measures on the TAM. This consideration is totally unrelated to an assessment of whether this threshold should be changed or not.

Currently, the threshold can be reached by a project that repeatedly receives aid, even in different years. It would be simpler and more straightforward to include in the TAM the aid granted to companies that cumulate more than €500,000 in a year.

Alternatively, adding a timeframe for the cumulation of aid or a deterministic definition of the concept of “project” or “activity” would allow to calculate the cumulation with data present in the NAR in an algorithmic way (for example, through the location of aid, period, objective, instrument, etc.).

## 6. THE NETHERLANDS

### 6.1. National context

The Netherlands have a decentralised system in terms of administration and politics. Therefore, transparency requirements have also been decentralised and awarding authorities are responsible for implementation of State aid (transparency) requirements and ensuring responsibility for compliance (at each level). The Netherlands is subdivided into national, regional and local entities. At the national level, ministries, ministerial agencies and independent administrative bodies grant and monitor their own State aid awards. The regional level comprises 12 provincial governments and 21 water boards (Regional Public Water Authorities); the local level consists of 355 municipalities.

The main response to the transparency requirements of State aid regulations, as introduced in 2016, is the introduction of a working group as part of the Interdepartmental Committee on State aid Matters [ISO], as well as wider coordination efforts. The ISO committee meets monthly and includes representation from all Dutch ministries and decentralised administrations. Among other tasks, it raises awareness of the implementation of transparency requirements to all State aid granting bodies. The primary responsibility to comply with these regulations lies with individual State aid granting entities, i.e. authorities at the relevant central or decentral level. The Ministry of Interior and Kingdom Relations [BZK] coordinates the contacts between the Commission and subnational governments, except for the water boards. The Ministry of Economic Affairs and Climate Policy [EZK] coordinates the contacts between ministerial departments at the national level. The implementation of the reporting requirements by the water boards is coordinated by the Ministry of Infrastructure and Water Management [I&W]. The three ministries do not hold formal responsibility for compliance by subnational authorities and have no authority over their reporting of State aid awards. However, the Netherlands has a national *Act on Public Entities' Compliance with European Regulation* ('Wet Naleving Europese regelgeving publieke entiteiten'). Subject to certain conditions, a responsible minister can give instructions to a subnational authority on compliance with state aid.

### 6.2. Experience with current reporting requirements

In concrete terms, the coordination of State aid matters is a joint effort between representatives of various national and subnational administrations. In 2019, the ISO edited a GBER manual, which was prepared with representatives of the State aid working group (the EZK and BZK ministries, Europa Decentraal, and the Association of Provinces, IPO). The manual is intended as a guide for public authorities towards the application of the GBER. It takes the aid granting authority through a step-by-step checklist that assesses whether proposed measures meet the GBER requirements, so that State aid is granted lawfully. The precise text of the GBER is binding, so in case of doubt the manual advises to consult the Commission Regulation, as last amended on 14 June 2017. The manual was published in August 2019 (Ministry of Economic Affairs & Climate Policy, 2019).

The arrangements for reporting aid for agriculture and fisheries (under ABER and FIBER) are separate from those for the GBER but follow the same principles. The responsibility for compliance lies with the granting authorities. The Dutch permanent representation acts as the

central contact point for the European Commission's DG Competition and DG Agriculture and Rural Development.

The obstacles to implementing transparency requirements identified by the Netherlands are of technical, legal, and organisational / administrative nature:

- **Technical:** when the TAM threshold is exceeded under an ad hoc award and notification is obligatory the information currently has to be entered into two separate systems (SANI-2 and TAM). It would be practical to automatically create a **draft publication in TAM**. This would only be relevant for *ad hoc* individual aid measures subject to both the SANI-2 notification obligation and the TAM obligation. Of course, this would still have to be checked by the granting authority. In addition, the system is not very user-friendly. The process of starting and saving a new notification and publication is often slow and the system freezes regularly. In case of a bulk upload, the system immediately finalises the upload, which means that no more checks can be done.
- **Legal:** the TAM system exists to be transparent about individual grants of aid to businesses by a granting authority. **It is not intended as a cumulation tool** (nor provided for in EU guidelines, communications and regulations). It is therefore important that the EC – when checking whether the TAM threshold had been exceeded and therefore a TAM publication is necessary – only checks *"for the same beneficiary and the same eligible costs for the same objective under the same project by the same granting authority"*.
- **Organisational/administrative:** The Netherlands have a decentralized system in terms of administration and politics; tasks, powers and responsibilities are roughly divided into three levels: State, province and municipality. Each granting authority, at each level, is responsible for meeting the transparency obligations (see Dutch country profile, section 3.1 'organisational arrangements'). With different authorities at each level being responsible for complying with the transparency obligations, officials at each level are in charge of entering TAM. Collecting and entering all information takes a lot of time. This is experienced as a **heavy administrative burden**. It is important that the European Commission continues to bear in mind that Member States have their own institutional set-up and also takes this into account when introducing administrative obligations for Member States.

The technical obstacles would be alleviated when the various systems of the European Commission (State aid Notification Interactive-2 (SANI-2) and the Transparency Aid Module (TAM)) were more streamlined. In addition, improvements could be made to the systems to **improve the speed of data entry**.

It might also be possible to devise a system whereby not every individual grant of aid above a certain threshold (the €500,000, €60,000 or €30,000 transparency thresholds) has to be made transparent, but **where it is shown how many companies have received a total amount of State aid for a certain activity** and in a certain sectors in a given year (e.g. under a given aid scheme of the granting authority). And within that system, only individual grants to individual companies would be made transparent from (for example) €1 million onwards.

The legal obstacles would be alleviated by increasing the thresholds and the reporting time from 6 to 12 months.

At this moment, the advantages of making TAM data transparent outweigh the administrative burden of introducing the data, i.e. the disadvantages of the transparency obligation. However,

the transparency obligations are perceived as an additional administrative burden. Also, the findability of the (public version of) TAM could be better and more widely communicated.

The **TAM data collected in the Netherlands are not actively used for other purposes**, but there is no formal overview. It would be interesting to know whether authorities or other entities such as research agencies use this type of data and for what purpose. The Ministry can make inquiries about this, but it would take time to collect this information.

In the Netherlands, **transparency is guaranteed in other ways** than through the State aid transparency requirements only. If an evaluation or audit of a specific aid measure is being carried out, consultation of TAM is not required, but the data are usually requested directly from the granting authority (from that authority's own administrative systems). Most of the Dutch provinces have their own public website for publishing their individual aid awards.

### 6.3. Perspectives on the harmonisation of transparency requirements

In principle, **a harmonised transparency obligation would bring more clarity and certainty**. The Netherlands is thus in favour of a transparency obligation that is the same for all EU aid guidelines, communications or regulations and is in favour of an explanation by the Commission as to how Member States can concretise this harmonised obligation. It should be noted, however, that the Netherlands is not in favour of lowering the transparency threshold under the GBER. This means that a threshold of €500,000 or higher must be safeguarded.<sup>197</sup>

### 6.4. Removal of reporting thresholds

The removal of individual aid reporting thresholds is not seen as helpful, because **this would add to the administrative burden**. The thresholds ensure that not every small individual grant needs to be reported but that only the larger amounts need to be made transparent. On the contrary, the thresholds help to alleviate the TAM obligation somewhat, which is already perceived as administratively heavy. In 2014, when the transparency obligation was introduced in the various EU aid frameworks, the Netherlands actively advocated the introduction of a higher threshold than proposed by the Commission at the time. From the point of view of EU competition control or EU State aid control and the effect of State aid on the potential distortion of the EU internal market, there is no reason to make every (smaller) individual aid grant transparent.

In line with the above, operational difficulties would arise since more data volumes would have to be processed. The administrative workload would be further increased, which especially burdens small administrations. The impact on the internal market would be limited, particularly for small aid grants. A transparency obligation for all aid would therefore not contribute to the underlying objectives of State aid and competition law.

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<sup>197</sup> Article 9(1)(c) of the GBER refers to individual aid awards exceeding 500,000 EUR. On the contrary, all relevant guidelines and Communications refer to exemption from transparency provisions for individual aid awards below 500,000 EUR. For coherence reasons, we encourage Member States to encode all individual aid awards for which the amount granted equals or exceeds 500,000 EUR.

## 6.5. Role of investment in digitalisation

A high amount of additional investment does not seem necessary, since the digital technology is already there. The Netherlands supports new initiatives at the European Commission level that could facilitate TAM reporting and reduce the administrative burden. It should be noted that changes to the systems and new initiatives are first to be discussed with the member states before they are (automatically) introduced.

## 6.6. Links with other reporting requirements

The Netherlands is not in favour of linking the transparency obligation with the monitoring of *de minimis* aid, nor does it see how this link could be made. It concerns a different (permitted) monitoring mechanism and also serves other purposes. In the case of *de minimis* aid, it is important that Member States retain the possibility of checking the cumulation of *de minimis* aid in excess of the permitted *de minimis* ceiling by means of a *de minimis* declaration filled in by the involved company.

When considering domestic needs, it is important that the Commission continues to keep in mind that decentralised Member States have granting authorities at different levels - not only the central level - that have own responsibilities and powers.

It could be **helpful to streamline the different reporting systems of the European Commission**. However, TAM deals with the publication of information relating to the granting State aid (the maximum amount of aid), whereas SARI deals with the annual expenditure (cash expenditure). It might also be possible to devise a system whereby not every individual grant of aid above a certain threshold (the €500,000, €60,000 or €30,000 transparency thresholds) has to be made transparent, but in which it is shown how many companies have received a total amount of State aid per activity and sector (e.g. under a certain aid scheme of the granting authority). And within that system, only individual grants of aid to individual companies should be made transparent from (for example) €1 million onwards.

## 6.7. Other points to note

The Netherlands has doubts about the effectiveness of the transparency obligations. NL proposes to investigate whether a national publication of the aid amount in combination with a short public notification to the European Commission would be sufficient to fulfil the transparency obligations. In addition, the Netherlands would propose to consider raising the transparency thresholds. This would reduce the administrative burden at the various administrative levels.

In short, applying the transparency requirements to all existing State aid that can be granted by Member States is not seen as an improvement. It would further increase the administrative burden and would not contribute to the underlying objectives of State aid and competition law. See 6.3 and 6.4 for a more detailed explanation.

### Reference:

Ministry of Economic Affairs & Climate Policy (2019) *Handleiding Algemene Groepsvrijstellingsverordening*. The Hague, Ministerie van Economische Zaken en Klimaat: [https://europadecentraal.nl/wp-content/uploads/2020/02/ISO\\_Handleiding\\_AGVV.pdf](https://europadecentraal.nl/wp-content/uploads/2020/02/ISO_Handleiding_AGVV.pdf)





## 7. POLAND<sup>198</sup>

### 7.1. National context

Poland operates a national State aid register – SUDOP - and does not use the TAM. All awards (excluding agriculture, forestry and fisheries which operate under a similar but separate system run by the Ministry of Agriculture), including *de minimis* support are encoded through a reporting interface – SHRIMP.

Poland is in the process of setting up a new version of SHRIMP. The current SHRIMP system is over 15 years old and has become increasingly unreliable and prone to disruptions. UOKIK (the Office of Competition and Consumer Protection) would like to make the system more user-friendly and accessible and also to strengthen its coherence and links with other systems and this requires significant modifications. The new system should be available for users by the end of 2020. However, some elements will rely on changes to legislation, for instance in terms of expanding the scope of data to be included in reports. The key changes being introduced include:

- A more 'user-friendly' model with tools and guidance and searchable lists of data to choose from in reporting tasks so that data is recorded properly. There will also be additional tools for administrators in UOKIK to help users in reporting tasks and to facilitate the management of users.
- The new system will also be more interoperable, increasing connectivity with other systems. For instance, this will give the possibility to connect with Poland's Central Register and Information on Economic Activity (a central national register of enterprisers and traders), to download the name of the beneficiary during the reporting process. The main reason for this additional tool is to avoid potential errors in reporting. Award bodies completing their reports will be able to insert the identification number from the Central register and the entities name will be uploaded automatically. There will also be an interface with the systems of awarding bodies. This will make the submission of reports faster, for instance where some awarding bodies have multiple aid cases to manage.
- The new system will also be more reliable as it will contain tools for the preliminary verification of entered data as reports are compiled.
- There will also be changes in the scope of reports presented by awarding bodies. This will include adding the information on location of investment (currently UOKIK only collect data on the location of headquarters of a given beneficiary) and making the legal basis more detailed. UOKIK are also planning to technically link aid awards which are connected under the same agreement/decision/other legal act (see below).

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<sup>198</sup> Based on interviews with Department of State Aid Monitoring, Office of Competition and Consumer Protection (UOKIK): Marta Grodzka-Ruta (Head of Unit), Beata Grzegorzewska and Paweł Prokopiuk (Specialists).

For UOKIK, the **strongest features of their system** are:

- The collection of data on all aid cases regardless of aid amount or objective, including *de minimis* support and public service compensation;
- Data are entered into the data base within 7 days after State aid is granted (so the database is updated on a regular basis);
- As noted above, the new electronic reporting system will be more transparent and stable than the previous one, interoperable, user friendly and it will prevent the potential reporting errors;
- The system is centralised, managed and conducted by one public institution.

## 7.2. Experience with current reporting requirements

Poland has **not encountered any serious obstacles in implementing the transparency requirements**. It has a centralised database managed by one institution and this has facilitated the process. One challenge was to design and establish a single website where all aid cases, all submitted reports from awarding bodies are published. Establishing this took some time.

No serious difficulties were experienced but Poland needed some time to design the single website and to hire a software company that would create it. One point to underline is that if Poland were obliged to select and publish only data on State aid granted for specific project/aided activity whose aid amount exceeded some limit there would be legal and organisational obstacles:

- In Poland there is no single database on projects which could be used for reporting purposes.
- Poland uses the Commission's interpretation of an 'integrated project', i.e. "a group of single projects inserted in a common structure, roadmap or programme aiming at the same objective and based on a coherent systemic approach". Thus, a given project could be financed under different schemes and the relevant aid could be granted by different granting bodies. Moreover, the aid designed for one project could be reported at different times (aid granted for example in the form of tax allowance is usually reported in the moment when the advantage is transferred to a beneficiary – when the precise aid amount is known). In Poland, there are some tax breaks (for instance in Special Economic Zones) and at the stage of approving these the associated amounts are not known. Thus, the amounts associated with this type of aid are reported as part of annual declarations.
- Creation of a single, comprehensive database of projects in Poland would help but this would be very difficult or even impossible to implement. In the new system being put in place, Poland plans to link aid cases which refer to one specific project by obliging awarding bodies to include in reports a granting act (an act conferring the advantage to a given beneficiary), for instance a number/symbol of an agreement/decision/other legal act, making clear the technical connection to aid cases linked to the same project.

However, this would still not be sufficient for the verification of aid granted for the same project if aid is granted by different awarding bodies.

In terms of other uses, the data are used the most often by beneficiaries in order to check aid amounts already used. They are also useful for evaluation of aid measures and for other analyses.

### **7.3. Perspectives on the harmonisation of transparency requirements**

Poland does not perceive any substantial differences between reporting requirements between aid measures approved under different legal basis, between state aid guidelines and GBER. This is not seen as a problem.

### **7.4. Removal of reporting thresholds**

Poland **already publishes in the SUDOP system information on all aid cases regardless of aid amount** and this is not problematic.

### **7.5. Role of investment in digitalisation**

For Poland, the current technology (a specific file - spreadsheet) used for transferring data from the Member State to the COM seems to be sufficient. One thing to note is that if **Poland was obliged to export data into the TAM system it would be very laborious to prepare a proper file to upload**. This is because Poland has a slightly different list/set of codes of objectives (Poland does not divide objectives into the GBER objectives and the notified aid objectives if they have the same name) and different list/codes of aid instruments (the Polish list is more detailed). Due to these differences, Poland would be unable to upload data into the TAM without some modifications and converting the data would require substantial work. UOKIK also wonders whether and how to correct wrong data on TAM and complete missing reports, avoiding potential duplication of data.

### **7.6. Links with other reporting requirements**

Poland only uses the SHRIMP system for domestic reporting purposes and for State aid scoreboard reporting. Poland is aware that **some countries want to expand the scope of reported data so that TAM and SARI requirements are closely aligned but Poland is not concerned about this as it does not use TAM**. In Poland reports are submitted by awarding bodies on a regular basis, 7 days after aid is granted, so UOKIK does not have to wait long. When the reporting period is passed, UOKIK selects all individual aid cases from the database and administrators then check the coherence of the data (e.g. if the aid objective is compliant with the aid measure etc.). The new system being introduced will help with this check by extending the scope of data to be included by awarding bodies making the report and providing guidance and searchable lists of data to choose from. If errors are detected UOKIK asks the awarding bodies to check this. UOKIK then orders data under different headings (e.g. total aid under different aid measures, objectives, instruments) and then completes SARI.

### **7.7. Other points to note**

As Poland is not a TAM user, it is difficult to indicate desirable and undesirable changes to the COM system. However, UOKIK staff recall looking at the test version of TAM, and discovering that it did not accept uploaded data if the aid grantor did not have a profile in TAM (even though the

data file was uploaded by the national administrator, not the aid grantor). UOKIK is not sure whether this issue still exists but it would be a serious problem because the number of awarding bodies in Poland is high (around 5,000) and fluctuates continuously, which means new aid grantors appear all the time (some of them are temporary aid grantors, granting aid only within their projects).

Poland welcomes all changes that improve the timeliness and comparability of the data published in the TAM among the Member States. Potential incomparability results primarily from differences in interpretation of regulations, for instance whether some domestic support constitutes State aid or not. There are specific issues stemming from this, e.g. related to different interpretations among Member States of awarding bodies for Cross-Border Cooperation OPs - which organisation has reporting responsibilities and responsibilities for recovering aid from beneficiaries etc.

## 8. ROMANIA

### 8.1. National context

Romania responded to the 2016 transparency requirements through changes to the National State Aid Registry, RegAS, instead of using the TAM. Additional functionality was introduced to RegAS enabling awards exceeding €500,000 to be automatically exported from the database and published on the national State aid website.<sup>199</sup> This has applied since 1 July 2016. The National State Aid Registry (RegAS) was launched at the beginning of 2016. It contains all State aid and *de minimis* support awarded in Romania.

The formal responsibility for the technical administration of the registry, including extraction of the information for publication, lies at central level with the Romanian Competition Council (RCC). Responsibility for the data input into the registry lies with the Granting Authorities, i.e. authorities managing State aid and *de minimis* aid schemes.

Reporting aid for agriculture and fisheries is the responsibility of the Romanian Ministry of Agriculture and Rural Development. Only *de minimis* aid for agriculture and fisheries is encoded in the national registry.

Every granting authority has the legal obligation to upload information to RegAS as provided for under domestic legislation on the State aid registry. A specific application of the registry allows information on aids exceeding €500,000 to be automatically exported to the national transparency website

### 8.2. Experience with current reporting requirements

The main obstacles for the implementation of the transparency requirements and reporting are administrative, including a mix of organisational and technical factors. These obstacles lead to gaps and delays in uploading data regarding State aid granted.

The organisational factors affecting the capacity of the granting authorities to report data on time include the staff turnover and high workloads. Granting authorities must follow the instructions for using the National State Aid Registry according to the RegAS Regulation. To support the granting authorities, RCC has provided training since 2016, addressing their needs either because there were new users or because existing users had new staff.

The technical factors affecting the implementation of the transparency requirements are linked to the large volume of data to be uploaded for some granting authorities, which generates an additional administrative burden. Although RCC allows awarding bodies to connect their internal databases with the RegAS, no interconnections have been established to date.

According to RCC, the transparency measures have proved to be useful for audit purposes. Additional benefits could be ensured if data were uploaded fully accurately and on time in the National State Aid Register, such as aid expenditure reports, *de minimis* thresholds verification. The system has information filters for the *de minimis* Regulation to be respected.

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<sup>199</sup> See: <https://regas.consiliulconcurentei.ro/transparenta/index.html>

High levels of accuracy were not anticipated given that “the reports generated by RegAS do not confer legal certainty”.<sup>200</sup>

Although RCC has the competence to impose fines for the delays and gaps in uploading data, they have not been applied to date. RCC considered it was necessary to allow time to the granting authorities to learn and get used with the State Aid Registry.

Romania did not adopt TAM because it already had invested in RegAS. According to the RCC, TAM is not considered at present an alternative to RegAS.

### **8.3. Perspectives on the harmonisation of transparency requirements**

RCC view is that a fully standardised text, identical across all legal bases, or even a single transparency requirement communication, would help Member States to better understand what they have to publish.

Even though the transparency requirements do not apply to SGEI, short-term export credit communication, railway guidelines, banking communication, broadcasting, a specificity of the Romanian system is that all aid awards over €500,000 (regardless of the aid objective) granted after 1 July 2016, once entered into RegAS are automatically exported to the national transparency webpage. Therefore, the extension of the transparency requirements to “all existing State aid that can be possibly granted by Member States” is not in case of Romania an additional improvement.

### **8.4. Removal of reporting thresholds**

In Romania the reporting is based on uploading data in RegAS.

RCC view is that a lower threshold for the transparency requirements would not facilitate reporting but it would increase the burden in the case of the Member States which do not have an automatic transfer of the data to the public website.

This is not the case for Romania - RCC would not be affected because the transfer is automatic. However, this change would involve increasing the capacity of the system to process a larger volume of data.

RCC confirmed that currently RegAS does not have the required capacity. Further developments would be needed. The analysis undertaken for further developments did not consider this new requirement, therefore this possibility would need to be analysed and financial resources identified to implement it if it were taken forward.

### **8.5. Role of investment in digitalisation**

In principle, additional investments would ensure/facilitate export of data from RegAS to national transparency website. The issue of optimizing/speeding up data upload into the Register remains a need to be addressed.

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<sup>200</sup> Article. 32 (4) of the Romanian Competition Council President’s Order no. 437/2016 for implementing the Regulation regarding State aid registry

#### **8.6. Links with other reporting requirements**

The transparency requirement could be linked to the monitoring of *de minimis* support. In this case the reporting procedures, (such as reporting forms) would need to be revised and a simplification of the reporting layout needed.

The RCC view is that the link between the aids awarded under the transparency requirements and the annual expenditures will just increase the burden on the grantors/authorities and will not improve the monitoring/reporting of aid (the payments may suffer corrections in time or the aid may even be cancelled).

In terms of possibly interconnecting RegAS to TAM, a matching of the State aid objectives under TAM and the aid objectives declared by the Commission under SARI (used by RegAS) would be helpful.

#### **8.7. Other points to note**

No further points to report.

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