EUROPEAN REGIONAL AID AND SUBSIDY CONTROL: A POLICY TOOL UNEVENLY APPLIED?

Rona Michie

EoRPA Report 24/4, European Regional Policy Research Consortium
ISBN 978-1-914241-75-8: University of Strathclyde Publishing, November 2024

The European Regional Policy Research Consortium (EoRPA) is funded by twelve national government ministries and agencies responsible for regional policy in Austria, Finland, France, Germany, Italy, Netherlands, Norway, Poland, Portugal, Sweden, Switzerland and the United Kingdom. It is managed and run by EPRC and produces comparative research and knowledge exchange on regional policy in 30 European countries.

This paper should be cited as: Michie, R (2024) *European Regional Aid and Subsidy Control: A Policy Tool Unevenly Applied?*, EoRPA Report 24/4, EoRPA Regional Policy Research Consortium, European Policies Research Centre, University of Strathclyde, Glasgow and EPRC Delft

European Policies Research Centre
School of Government and Public Policy
University of Strathclyde
40 George Street
Glasgow G1 1QE
T +44(0) 141 548 4898
T +44(0) 141 548 3061
E eprc@strath.ac.uk
W https://eprc-strath.org/

Stichting EPRC Delft
Faculty of Architecture and the Built Environment,
Technische Universiteit Delft
Julianalaan 134
2628 Delft
T +31 (0) 15 27 86093
E info@eprcdelft.eu
W http://www.eprc-strath.eu/

TABLE OF CONTENTS

1 INTRODUCTION

The last year has been marked by contrasting developments in EU State aid and specifically regional aid, as well as important evolution in UK subsidy control. On the one hand, there has been significant activity by countries amending their regional aid maps to respond to various triggers. On the other, regional aid is arguably becoming less relevant in the EU context, and less widely used. A succession of temporary EU-level frameworks has provided the broader context for the granting of vast amounts of crisis aid in response to Covid-19, the Ukraine war and the energy crisis. Now, the EU-level aid focus has moved on to how best to support green transition. The resulting regulatory spider's web is incredibly complex. At the same time, changes in the regulatory margins around transparency may be giving rise to a disproportionate administrative burden for public authorities.

Within this context, this report outlines the main changes which have taken place over the last 18 months and explores MSs responses/views on developments. The report is structured as follows: Section 2 provides an overview of some of the challenges currently facing public authorities managing State aid in Europe. Section 3 outlines the ongoing changes to the regional aid maps; Section 4 discusses feedback to GBER revisions, and Section 5 describes the updates to the de minimis regulation, together with an update on developments in domestic State aid governance. Section 6 examines some of the challenges presented by the Commission's definition of 'undertakings in difficulty', as highlighted by several EoRPA countries. Section 7 takes a look at recent experience with subsidy control in the UK post-Brexit. Section 8 then closes with a brief look at the proposals potentially influencing the future EU approach to State aid.

2 DIFFICULT CHALLENGES FOR AID CONTROL IN EUROPE

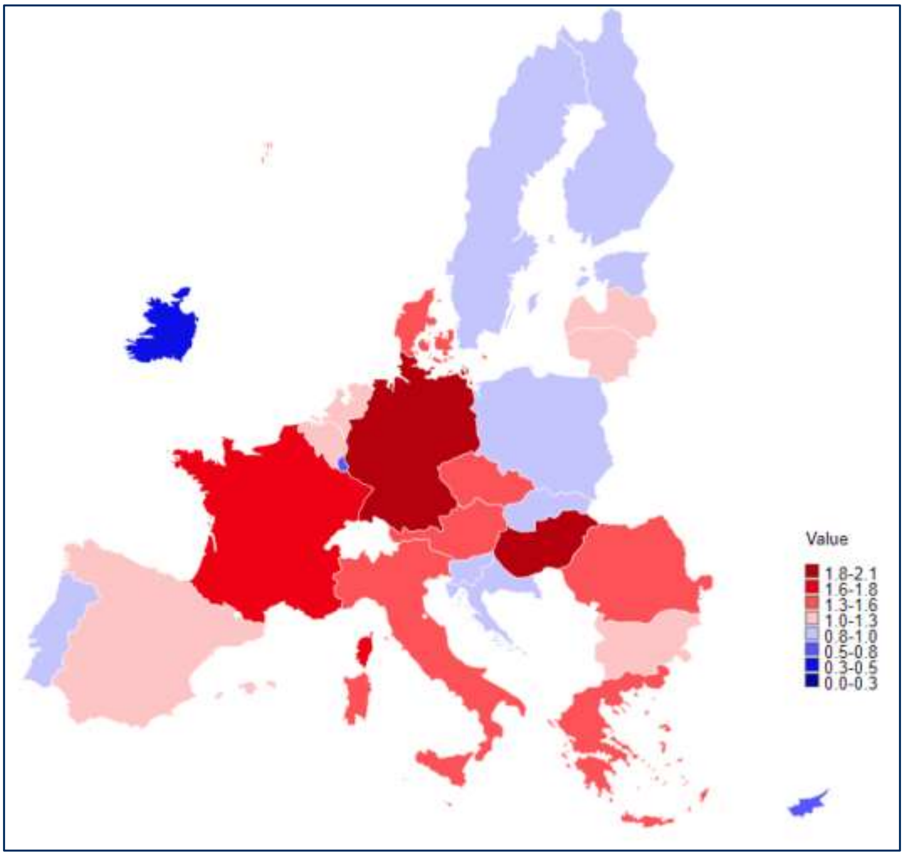
There is tension between the policy objectives of managing aid supporting the green transition and supporting those regions adversely affected by it, along with the regions which continue to be affected by long-term challenges. The vast amounts of aid channelled under a succession of temporary crisis frameworks has also led to tensions between larger and smaller countries. This is taking place against a backdrop of an aid regime which is found to be operationally very challenging, where public authorities are dealing with ongoing change to the regulatory context, transition periods between old and new provisions, and uncertainty over the future. This brings difficult practical and technical challenges which strain capacity to the point that some provisions are seen as 'unimplementable'.

EoRPA countries report a range of issues at different scales which are currently commanding attention relating to State aid and subsidy control. Managing different policy objectives has required **a balance to be found between the challenges of supporting green transition** and investing/incentivising investment in the necessary technologies, **while also supporting weaker**

regions, some of which will be adversely impacted by the transition. At the same time **weaker regions continue to be affected by persisting challenges**, including those linked to rurality and/or peripherality, especially demographic challenges (e.g. depopulation, ageing population, migration, skills shortages) and the continued need for (re)investment in infrastructure.

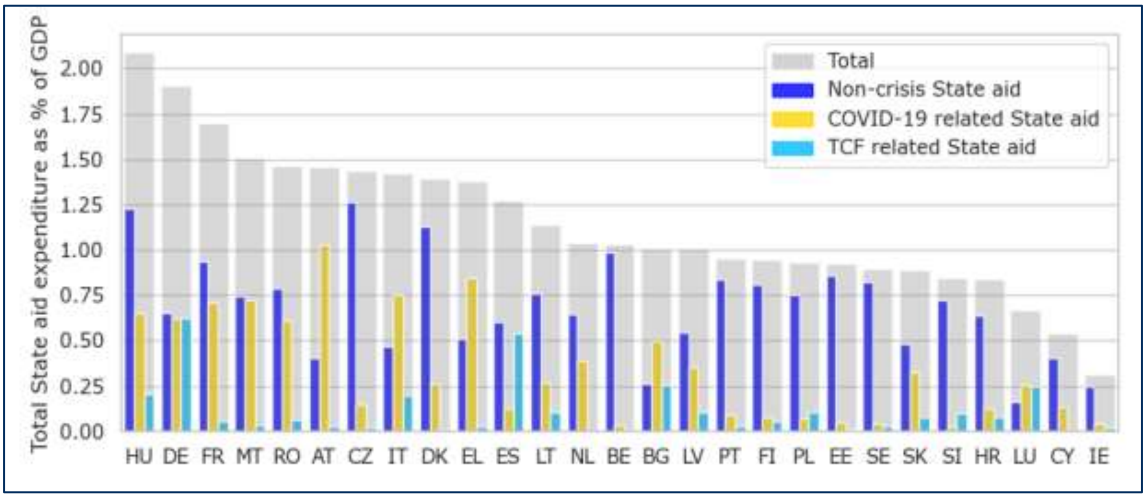
Under the Temporary Crisis and Transition Framework (TCTF) vast amounts of aid have been channelled into crisis support over the last few years. Although this has somewhat overshadowed other forms of aid, these remain important tools (in some countries). The proportion of aid targeting the crises has now fallen, and in 2022, total State aid across all categories fell strongly. Amounts spent vary widely across Member States (see **Error! Not a valid bookmark self-reference.**, Figure 2 and In nominal terms, in 2022, the highest amounts were spent by Germany, at €73.67 billion, representing around 32 percent of total State aid expenditure in the EU27. France followed with €44.79 billion (19.6 percent), with Italy third with €26.61 billion (12 percent), Spain with €17.12 billion (7.5 percent), the Netherlands with €9.92 billion (4.4 percent) and Austria at €6.52 billion (3 percent).).

Figure 1: Total State aid expenditure by MS as a % of national 2022 GDP



Source: https://competition-policy.ec.europa.eu/document/download/0b2037c5-c43f-4917-b654-f48f74444015_en

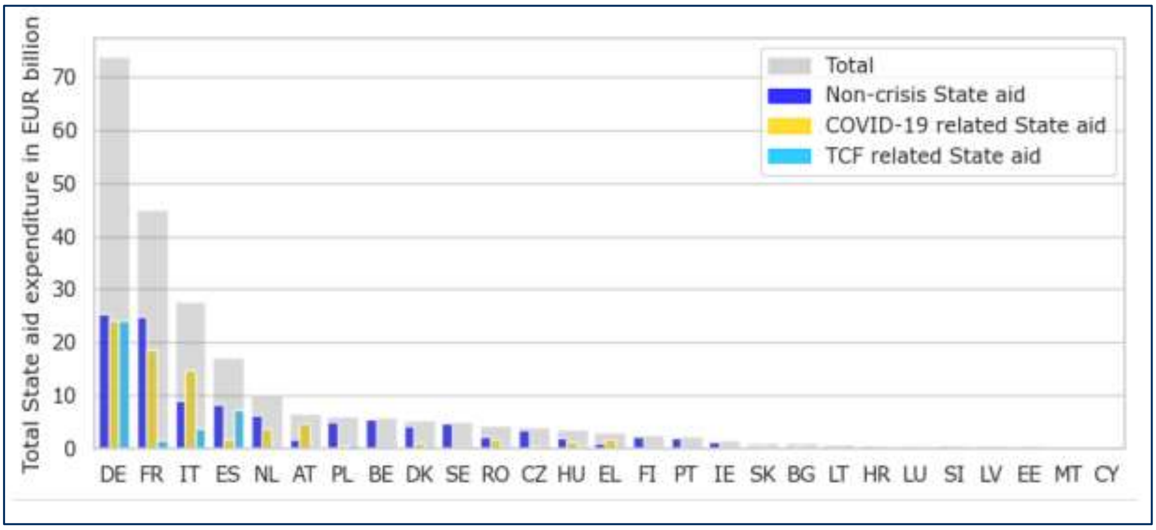
Figure 2: Total State aid expenditure by MS as a % of GDP (2022)



Source: https://competition-policy.ec.europa.eu/document/download/0b2037c5-c43f-4917-b654-f48f74444015_en

In nominal terms, in 2022, the highest amounts were spent by Germany, at €73.67 billion, representing around 32 percent of total State aid expenditure in the EU27. France followed with €44.79 billion (19.6 percent), with Italy third with €26.61 billion (12 percent), Spain with €17.12 billion (7.5 percent), the Netherlands with €9.92 billion (4.4 percent) and Austria at €6.52 billion (3 percent).[1]

Figure 3: State aid expenditure by MS (EUR bn) (2022)



Source: https://competition-policy.ec.europa.eu/document/download/0b2037c5-c43f-4917-b654-f48f74444015_en

[1] European Commission (2024) State Aid Scoreboard 2023, https://competition-policy.ec.europa.eu/document/download/0b2037c5-c43f-4917-b654-f48f74444015_en

The different financial 'fire power' available among Member States, aligned with the possibilities available within the TCTF, have caused controversy. Smaller countries have joined together to **call for a reassertion of Single Market principles and the reintroduction of a level playing field**. Accusations of 'aid matching', 'forum shopping' and a 'race for subsidies' have been contentious, and in March 2024, nine countries (CZ, EE, FI, IS, IE, LV, PL, PT SE) submitted a joint letter to the European Commission on the need to discuss and reflect on EU State aid rules for long-term competitiveness (see Box 1). Italy has also supported these points and raised concerns that changes related to the Green Deal could exacerbate the issues, especially with delays to the associated Sovereignty Fund.[2]

Box 1: *"It is important that temporary relaxation of state aid rules does not turn into a new paradigm of rules"*

The letter to the European Commission prepared by Sweden and signed by seven additional countries recommends:

- a cautious and evidence-based approach to changes to the State aid regime
- revisions being based on thorough problem analysis and impact evaluation
- safeguards to preserve a level playing field
- consistency with EU policies and tools serving the digital and green transition, including Cohesion Policy or Member States' national recovery and resilience plans.

The letter highlights:

- The **need to avoid triggering a subsidy race** between Member States. It notes the negative experience of companies '**forum shopping**' between MSs for aid under the TCTF.
- Temporary crisis frameworks have led to major differences in aid levels among Member States, which **risks exacerbating inequalities, also along geographical lines**
- '**Matching aid' risks the integrity of the Single Market**, as it is intended to influence the beneficiary to choose to locate and retain their investment in the granting MS over all other locations.

Potential alternatives to the loosening of state aid rules are suggested, including: clear and predictable framework conditions; simplification of regulatory burdens; faster permitting procedures; enhanced innovation capacity; skilled workforce; fewer barriers on the Single Market; a large trade network with third countries; well-functioning capital markets.

Source: https://www.euractiv.com/section/economy-jobs/news/smaller-eu-countries-revolt-against-state-aid-spree/

[2] https://europa.today.it/economia/meloni-vertice-ue-fondo-sovranita-aiuti-stato.html; https://www.ilsole24ore.com/art/aiuti-stato-ecco-cosa-chiedera-meloni-scholz-AEFbZufC

These broader tensions sets the backdrop to an environment which has been **operationally very challenging (and increasingly so)**, where public authorities are dealing with ongoing change to the regulatory context, a transition period between the old and new provisions, and uncertainty over the future - both of the specific frameworks and the wider policy itself. They are dealing with difficult practical and technical challenges which place a heavy strain on capacity (both workload and knowledge), to the point that **some provisions are seen as 'unimplementable'**. Meanwhile, in the UK, where a separate subsidy control regime has been developed since Brexit which is facing teething problems of its own (see Section 7).

3 ONGOING CHANGES TO THE REGIONAL AID MAPS

EU Member States, Norway, Iceland and the UK all have new regional aid maps in place, approved under the 2022-27 Regional Aid Guidelines (RAG). Many of the new maps were not approved until well into 2022. For some countries, the process of drawing up a new regional aid map had been wholly determined by the guidelines, while for others, particularly those countries where coverage was reduced post-2021, the process was both technically challenging and politically sensitive.

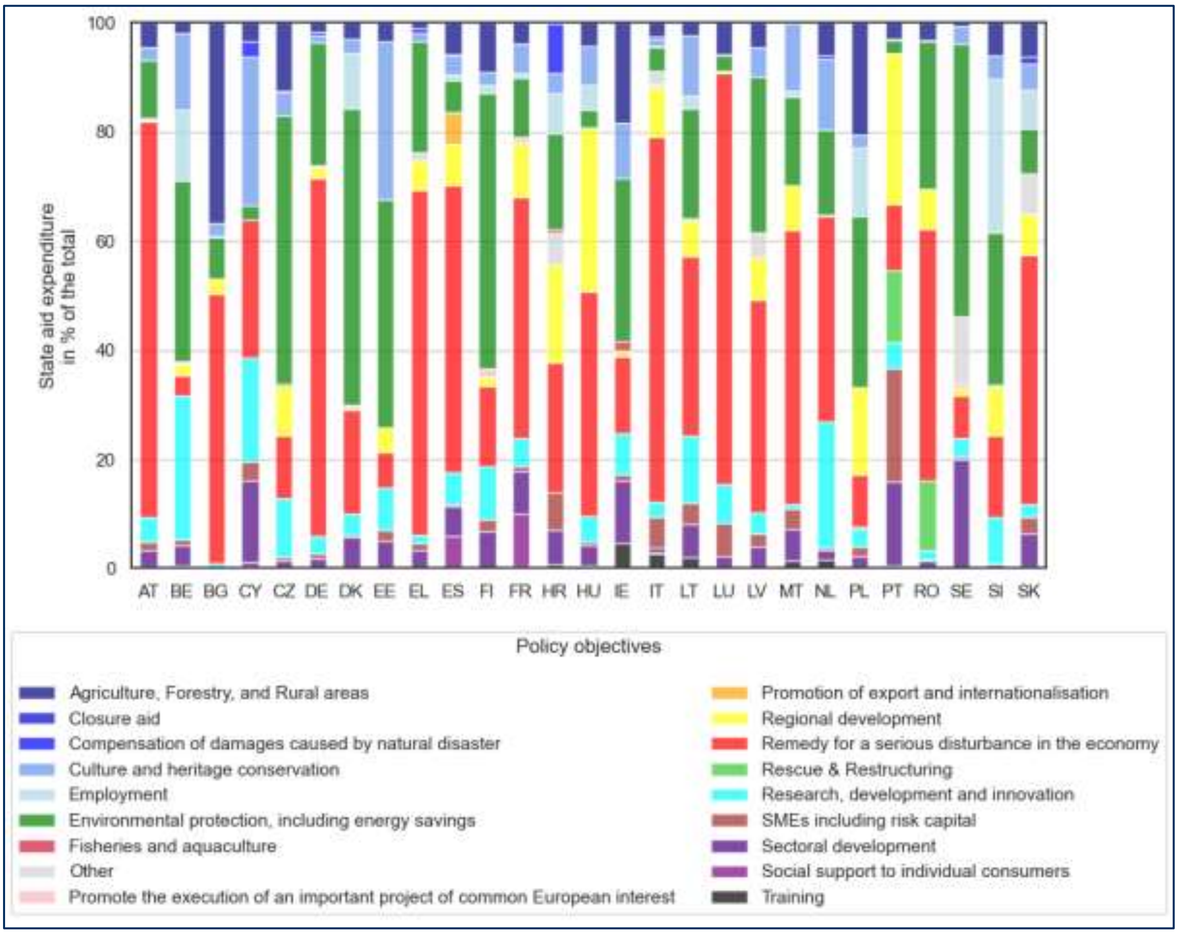
Significant activity (with 29 amendments having already been submitted relating to 21 maps), despite decreasing relevance of the maps for some Member States. Amendments relate to:

- *Use of the population reserve in 3 countries - AT (including for JTF areas), NL (JTF areas), SE*
- *Increasing aid intensities in JTF regions in 14 countries - BG, CZ, EL, ES, HR, HU, IT, LT, LV, PL, PT, RO, SI, SK*
- *Responding to the mid-term review in 10 countries - BE, BG, DE, ES, EL, FI, FR, IT, PT, SK*
- *Increased aid intensities for investments covered by the STEP Regulation in 3 countries by August 2024 - BG, NL, ES*
- *Further amendments are planned in several countries.*

The regional aid maps remain an important feature of regional policy in many Member States. However, in some their relevance has decreased in recent years partly due to the lower aid intensities available (e.g. DK) or owing to budgetary constraints or wider antipathy towards the use of regional investment aid. In some countries, the regional aid map has largely been perceived as a means to enable subnational authorities to support firms in disadvantaged regions rather than being an instrument of national regional aid. In the Netherlands, where this is currently the case, there is, however, an ongoing debate about whether to revert to using the map for national policy purposes too.

Looking at the priority given to aid for regional development, at EU level, environmental aid was the largest area of aid spending among the non-crisis objectives in 2022 (€41.51 billion) followed by **regional development (€13.91 billion – i.e. 12 percent of non-crisis aid, or 6.1 percent of total aid)**. The importance of aid for regional development varies across countries – it is the top objective in Portugal, and the second most used objective in Croatia, Hungary, Italy and Spain (see Figure 4).[3]

Figure 4: State aid expenditure by MS by policy objective (2022)



Source: https://competition-policy.ec.europa.eu/document/download/0b2037c5-c43f-4917-b654-f48f74444015_en

New maps approved under the 2022-27 Regional Aid Guidelines (RAG) are now in place in all EU Member States, Norway, Iceland and the UK (Northern Ireland).[4] For some countries, the

[3] European Commission (2024) State Aid Scoreboard 2023, https://competition-policy.ec.europa.eu/document/download/0b2037c5-c43f-4917-b654-f48f74444015_en

[4] As agreed under the Northern Ireland Protocol (part of the Withdrawal Agreement), the UK must notify a regional aid map in respect of Northern Ireland. A map was notified on 14 December 2021 and approved on 17 May 2022. The territory of Northern Ireland (which consists of one NUTS2 region) has been assigned 100 percent population coverage, and the entire territory has been designated as a non-predefined 'c' area.

process of drawing up a new regional aid map was wholly determined by the Regional Aid Guidelines, while for other countries, particularly those where map coverage has been reduced, the process was both technically challenging and politically sensitive. Many of the new maps were not approved until well into 2022.

It is possible to amend the maps during the period, with several possible 'triggers':

- to **add to population coverage**, if the national coverage ceiling has not already been reached;
- to respond to the European Commission's 2023 **mid-term review**;
- to respond to the **Just Transition Fund** (JTF) Regulation, increasing aid intensities in JTF territories or using the population reserve (or part of it) to add JTF areas to the map;
- to respond to the new **STEP** (Strategic Technology Platform for Europe) Regulation.

Many countries have already amended their maps (Table 1), with 28 amendments made to 20 maps so far (and up to 3 amendments in some countries (Spain, and Slovakia imminently). No changes have yet been made in 10 countries (CY, DK, EE, FI, IE, IS, LU, MT, NO, UK (Northern Ireland)).

Table 1: Regional aid maps and amendments (up to July 2024)

Country	Map case number(s)	Amendment date	Purpose	Amendments case number
Austria	SA.64462	21/11/ 2022	Use of pop reserve incl for JTF	SA.104081
Belgium	SA.101923	08/12/2023	Mid-term review	SA.110069
Bulgaria	SA.64724	29/09/2023	Mid-term review	SA.108623
		25/07/2024	Increased aid intensity JTF areas/STEP	SA.114536
Croatia	SA.64581	15/3/2023	Increased aid intensity JTF areas	SA.106113
Cyprus	SA.100726			
Czechia	SA.63452	06/01/2023	Increased aid intensity JTF areas	SA.104844
Denmark	SA.102201			
Estonia	SA.100251			
Finland	SA.102379	07/2024	Mid-term review	Not yet available
France	SA.100838 ('a' areas)	20/11/2023	Mid-term review	SA.109458
	SA.101498 ('c' areas)			
Germany	SA.64020	30/10/2023	Mid-term review	SA.109329
Greece	SA.100372	14/07/2022	Increased aid intensity JTF areas	SA.103501
		16/10/2023	Mid-term review	SA.109322
Hungary	SA.63934	12/05/2023	Increased aid intensity JTF areas	SA.107119
Iceland	88048			
Ireland	SA.101399			
Italy	SA.100380 ('a' areas)	19/06/2023	Increased aid intensity JTF areas	SA.107312
	SA.101134 ('c' areas)	18/12/2023	Mid-term review	SA.109349
Latvia	SA.100587	24/02/2023	Increased aid intensity JTF areas	SA.105992
Lithuania	SA.64485	21/04/2023	Increased aid intensity JTF areas	SA.106647
Luxembourg	SA.101785			
Malta	SA.100839			

Netherlands	SA.100273	13/02/2023	Use of pop reserve for JTF areas	SA.105305
		22/07/2024	STEP	SA.114647
Norway	87798			
Poland	SA.64284	16/02/2023	Increased aid intensity JTF areas	SA.105494
Portugal	SA.100752	27/04/2023	Increased aid intensity JTF areas	SA.106697
		12/10/2023	Mid-term review	SA.109212
Romania	SA.100199	20/02/2023	Increased aid intensity JTF areas	A.105733
Slovakia	SA.64151	17/02/2023	Increased aid intensity JTF areas	SA.105438
		16/10/2023	Mid-term review	SA.109293
Slovenia	SA.100677	13/02/2023	Increased aid intensity JTF areas	SA.105436
Spain	SA.100859	09/03/2023	Increased aid intensity JTF areas	SA.106039
		13/12/2023	Mid-term review	SA.109336
		26/07/2024	STEP	SA.114955
Sweden	SA.100245	29/04/2024	Use of population reserve	SA.112034
United Kingdom (NI)	SA.101066			

Source: *https://competition-policy.ec.europa.eu/state-aid/legislation/modernisation/regional-aid/maps-2022-2027_en and https://competition-cases.ec.europa.eu/search?caseInstrument=SA*

3.1 Population reserves being used

Countries were able to keep a 'reserve' of national population coverage, consisting of the difference between the population coverage ceiling allocated by the Commission and the coverage used for 'a' and 'c' areas in the maps. The population reserve can be used to add new 'c' areas until the national coverage ceiling is reached, using the most recent socioeconomic data from Eurostat or national statistical offices. Ten countries (AT, DK, EL, FI, FR, IE, IT, NL, SE, SI) held back a proportion of their population coverage, thus establishing a population reserve. The reserves are generally very small, averaging under one percent.

Three countries have so far notified amendments to their regional aid maps to use the population reserve: Austria, Netherlands and Sweden. The remaining countries report that no changes to the population reserve are planned. In both Austria and Netherlands, the use of population reserves was (at least in part) linked to JTF areas:

- **Austria** expanded coverage of the non-predefined 'c' areas in the regional aid map, enlarging existing coverage and adding new areas with a total population of 163,577 inhabitants. Austria's population reserve totalled 163,891 inhabitants; the remaining reserve therefore now numbers just 314 inhabitants (0.004 percent of the population). The additional coverage enlarges several previously-notified areas, plus adds a new area as a territory to receive support from the JTF (local administrative units in Traunviertel and in the district of Kirchdorf an der Krems in Steyr-Kirchdorf).

- **Netherlands** amended the map to use their entire population reserve of 239,771 inhabitants (1.37 percent of the population), by adding several new non-predefined 'c' areas to the initial map. The new areas (Ijmond, Zeeuws-Vlaanderen, West Noord-Brabant, Zuid-Limburg) have been identified as territories for support from the JTF.

- **Sweden** proposed to enlarge one predefined 'c' area (sparsely populated area) and enlarge one non-predefined 'c' area under Criterion 1 (unemployment condition, based on the same unemployment rates as used in the initial Decision). The new rural municipalities include: Forshaga, Grums, Kils and Kristinehamn of the county Värmland; Degerfors of the county Örebro; Munkedals and Tanums of the county Västra Götaland; and Tingsryd of the county Kronoberg.[5] The remaining population reserve consists of 41,681 inhabitants for predefined 'c' areas and of 5,696 inhabitants for non-predefined 'c' areas.

Finland has used their population reserve when responding to the Commission's mid-term review of the regional aid maps, as part of the amendments made to the non-predefined 'c' areas (see Section 3.3). **France** also confirms plans to use the population reserve during the period, in line with parallel reforms being carried out at national level of other territorial zonings targeting vulnerable territories.

3.2 Map amendments respond to transition needs

The second possible reason to amend the regional aid map relates to the Just Transition Fund (JTF). In RAG 2022-27 the Commission acknowledged the European Green Deal with three concessions:

1. higher rates of award for JTF projects in 'a' regions (an additional 10 percentage points)
2. the inclusion of JTF areas under Criterion 5 without further justification (RAG 2022-27, para 175)
3. the potential to authorise aid for diversification into new products or processes by large firms in 'c' areas that concern JTF projects (they are otherwise no longer eligible).[6]

According to paragraph 187 of the RAG, regional aid maps can be updated once a Territorial Just Transition Plan has been approved by the Commission. Fourteen countries have done this within their 'a' regions, allowing them to make use of the increase of maximum aid intensities for territories located in 'a' areas that have been identified for support from the JTF (BG, CZ, ES, GR, HR, HU, IT, LT, LV, PL, PT, RO, SK, SI). Two countries (AT, NL) made amendments concerning use of the population reserve (or part of it) to add JTF areas to the regional aid map (non-predefined 'c' areas) (see Section 3.1 above).

---

[5] Regeringskansliet (2024) Regionalt investeringstöd kan beviljas I fler landbygdsområden, Pressmeddelande, 24 May 2024

[6] RAG 2022-27, para 14. Aid for diversification into new products not previously produced or for a fundamental change in production processes is not now otherwise eligible under the RAG, although it was anyway subject to notification previously. This change does not affect the eligibility of diversification of activities – ie those involving a different 4-digit NACE code which fall within the GBER.

3.3 Impact of the mid-term review on aid maps

A third justification for amending the regional aid maps is to respond to the Commission's mid-term review. The RAG provided for a mid-term review of the maps in 2023, by which time regional GDP data for 2020 would be available, allowing the early impact of COVID-19 to be included.[7] The Commission published details in June 2023.[8]

- **New 'a' areas** for the period 1 January 2024-31 December 2027 were announced in Belgium (Hainaut) and Spain (Murcia), i.e. NUTS 2 regions whose average GDP per capita in 2019-21 was less than or equal to 75 percent of the EU-27 average (excluding Northern Ireland).

- **Several existing eligible 'a' areas are now entitled to a higher maximum aid intensity** due to a decline in GDP, in France, Greece, Portugal, Slovakia and Spain.

- Following the establishment of Hainaut as a new 'a' area, the **non-predefined 'c' area coverage of Belgium was adjusted from 23.33 percent to 16.82 percent** from 1 January 2024-31 December 2027.

- The non-predefined 'c' coverage did not change for all other Member States. Murcia in Spain moved from being a predefined 'c' area (former 'a' area) to being an 'a' area once more.

- Due to the updated data, and subject to specified conditions, **Member States could propose various amendments to their maps** for the period 2024-27, such as:
    - **the list of their non-predefined 'c' areas**
    - **an increase of the maximum aid intensity** of existing non-predefined 'c' areas
    - an **increase of maximum aid intensity for NUTS3 regions affected by population loss** (on the basis of updated population density data encompassing the period 2010-2019).

Member States had until 15 September 2023 to notify the Commission of amendments to their regional aid maps based on the mid-term review (these were not mandatory).

Ten countries made map amendments in response to the mid-term review (see Table 2):

[7] Regional Aid Guidelines 2022-2027, para 194

[8] European Commission (2023) Communication from the Commission amending paragraph 188, Annexes I and IV to the Guidelines on regional State aid regarding the mid-term review of the regional aid maps for the period 1 January 2022 to 31 December 2027 (2023/C 194/05); OJ C 194; 2.6.2023. https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52023XC0602(01)

- amendments were submitted by the countries with new 'a' areas (BE, ES) and with existing eligible 'a' areas which were now entitled to a higher maximum aid intensity due to GDP decline (ES, FR, GR, PT, SK) (see Table 3);

- Italy and Finland replaced non-predefined 'c' areas with new areas. In Italy, the new areas (population 293,823) replace areas with a population of 293,854 inhabitants (a difference of only 31, which will be added to the existing population reserve of 2,775 inhabitants). In Finland, after a politically challenging review of the regional aid map, some sub-regions in the NUTS 3 region of Etelä-Pohjanmaa were dropped from the regional aid map, in order to add remaining municipalities of the Kotka-Hamina sub-region in southeastern Finland. The added municipalities belong to a border region with Russia. The reason behind the amendment was the weakened economic situation due to the closure of the border with Russia, combined with ongoing structural change to the economic structure of the region. Hundreds of jobs were lost in the value chain as Stora Enso, a major forestry company, closed their production plant in the region. The amendments also concerned use of the population reserve. The new map was approved by the Commission in July 2024 and entered into force on 1 October 2024.

- Germany increased the maximum aid intensity in two existing non-predefined 'c' areas. One of these involved an increase in maximum aid intensity from ten to 15 percent in the NUTS 3 region of Saarlouis due to a fall in GDP to below the EU-27 average. The other relates to population loss, as discussed below.

- Germany and Bulgaria increased the maximum aid intensity for NUTS3 regions experiencing population loss. Germany's second change involved an increase in maximum aid intensity from 15–20 percent in the NUTS3 region of Saalfeld-Rudolstadt which had experienced population loss of more than ten percent in the period 2010-19. The Bulgarian authorities proposed to increase the aid intensities for four NUTS3 regions experiencing population loss of more than 10 percent over the period 2010-2019. Three of the NUTS3 regions (BG321 Veliko Tarnovo, BG323 Ruse, BG325 Silistra) are located in a NUTS2 'a' region (BG32 North Central) and one NUTS3 region (BG414 Pernik) is located in a NUTS2 'c' region (BG41 South West).

Table 2: Map amendments responding to mid-term review

Reason for change	MS/region
Fall in GDP below 65% of EU-27 average ('a' areas)	Greece Slovakia
Fall in GDP below 75% of EU-27 average ('a' areas)	Belgium France Portugal Spain
Fall in GDP below 100% of EU-27 average ('c' areas)	Germany (Saarlouis (partially))
Population loss	Bulgaria ('a' areas of Veliko Tarnovo, Ruse and Silistra; 'c' area of, Pernik) Germany (Sallfeld Rudolstadt, a non pre-defined 'c' area)

Changes to non-predefined 'c' areas	Italy (replacing LAU in Piemonte and Toscana with LAU in Abruzzo, Veneto, Lazio, Marche, Piemonte, Toscana and adding a new contiguous area in Lombardia under Criterion 3) Finland (replacing some sub-regions in the NUTS 3 region of Etelä-Pohjanmaa with remaining municipalities of Kotka-Hamina sub-region in southeastern Finland). This also entailed use of the population reserve.

Source: *https://competition-policy.ec.europa.eu/state-aid/legislation/modernisation/regional-aid/maps-2022-2027_en and https://competition-cases.ec.europa.eu/search?caseInstrument=SA*

Table 3: Table of 'a' areas with GDP falling below 65/75% of EU-27 average

Reason for change	MS	Region	%
Fall in GDP below 65% of EU-27 average ('a' areas)	Greece	Notio Aigaio	64.00
		Kriti	52.67
		Dytiki Makedonia	53.33
	Slovakia	Zapadne Slovensko	64.67
Fall in GDP below 75% of EU-27 average ('a' areas)	Belgium	Hainaut	74.33
	France	Martinique	73.00
	Portugal	Madeira	71.67
	Spain	Murcia	70.67

Source: *https://competition-policy.ec.europa.eu/state-aid/legislation/modernisation/regional-aid/maps-2022-2027_en and https://competition-cases.ec.europa.eu/search?caseInstrument=SA*

Looking ahead, there is uncertainty in **Norway** about how migration might affect the eligibility of some regions which are currently eligible for support on the basis of population. Migration into the country and a requirement for migrants to be distributed across the country means that the populations of some more remote areas of the country, which previously experienced population decline, have increased. However, the extent to which this will be a sustained growth is unknown and the incoming populations have placed demands on the host regions in terms of housing and services, so the loss of eligibility for support in the future could pose a considerable challenge.

3.4 New STEP Regulation brings further change

The final justification for map changes relates to the **new STEP Regulation**. On 31 May 2024, the European Commission adopted an amendment to the RAG to allow Member States to provide higher amounts of regional aid to investment projects covered by the Strategic Technology Platform for Europe (STEP).[9] The aim of the STEP initiative is to support the development and

[9] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:C_202403516

production of critical technologies relevant to the EU's green and digital transformation (see Box 2).

Box 2: STEP Regulation objectives

The Strategic Technologies for Europe Platform (STEP) objectives are outlined in Article 2 of Regulation EU 2024/795:

a) supporting the **development or manufacturing of critical technologies** throughout the Union, or **safeguarding and strengthening their respective value chains** […] in the following sectors:

- digital technologies, including those contributing to the targets and objectives of the Digital Decade Policy Programme 2030, multi-country projects [….] and deep tech innovation;
- clean and resource efficient technologies, including net-zero technologies as defined in the Net-Zero Industry Act;
- biotechnologies, including medicinal products on the Union list of critical medicines and their components;

(b) addressing **shortages of labour and skills critical to all kinds of quality jobs** in support of the objective set out in point (a), in particular through life-long learning, education and training projects, including the European Net-Zero Industry Academies established pursuant to the relevant provision of the Net-Zero Industry Act, and in close cooperation with social partners and education and training initiatives already in place.

Source: https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=OJ:L_202400795

The change in the RAG allows Member States to amend their regional aid maps to increase level of regional aid for investment projects covered by STEP from 1 March 2024, up to:

- 10 percentage points in 'a' regions
- 5 percentage points in 'c' regions.

Amendments must be notified by 16 September 2024.

By August 2024, three countries had submitted map amendments in response to the STEP initiative: Bulgaria, Netherlands and Spain. As provided for in the regulatory changes, **Bulgaria** and **Spain** increased maximum aid intensities for eligible investments by 10 percentage points in 'a' areas and 5 percentage points in 'c' areas, while the **Netherlands** increased maximum aid intensities in 'c' areas by 5 percentage points. In the Netherlands, this concerns the provinces of Friesland, Drenthe, Flevoland, and Groningen, as well as the regions of Achterhoek, Kop van Noord-Holland, and Groot-Rijnmond.

Looking ahead, further map amendments relating to the STEP Regulation are also anticipated in **Austria**, **Greece, Slovenia** and **Slovakia**. Austria notified the application of higher maximum aid intensities for STEP projects in August 2024, applying for an examination under the so-called ‘simplified procedure’, and a Commission decision hoped for during October. Greece has also notified the Commission of the increase in aid intensity rates.

3.5 Issues of concern

Several issues have been raised, relating to the timing and usefulness of the mid-term review (several countries), the issue of aid differentials at borders (AT), and the relevance of regional aid more generally (SE).

Reflecting on the mid-term review of the maps, as reported in 2023’s briefing, several countries have noted that the **availability of updated data had had only limited impact** on their maps (e.g. DK, IE, NL). In addition, the **timing of the review** itself was found to be premature (DK, FI, SE) in view of only a limited number of awards having been made so far on the basis of the existing maps. Although a further mid-term review of the regional aid maps for the 2024-27 period is planned, many countries currently foresee no further changes. Reasons include:

- the fact that the map is little used (e.g. DK) often due to the low aid intensities now available (e.g. EE), and with countries increasingly having to use instead other aid frameworks such as GBER (e.g. PT)
- the map is already carefully balanced (IE)
- the importance given to stability over time (NO).

For **Austria**, the main issue of concern regarding regional aid is the fact that in several Austrian regions the aid differential in relation to ‘a’ regions of bordering Member States has increased beyond the maximum allowed of 15 percentage points, due to JTF or STEP provisions. A higher aid differential can be found, for example, between the NUTS3 region ‘Weinviertel’ and ‘Western Slovakia’, between the NUTS3 region ‘West- und Südsteiermark’ and Slovenia, as well as between the NUTS3 region ‘Unterkärnten’ and Slovenia.

In **Sweden** more generally, a decrease in demand for subsidies has been noted. According to Tillväxtverket’s annual report[10], selective regional investment support awards decreased between 2022-23 (from SEK 538.5 to SEK483.4). There are potentially several factors behind the decrease, but these are likely to include the uncertain global situation, rising inflation and higher interest rates which mean that companies have decided to wait before implementing

[10] Tillväxtverket (2024) Uppföljning av regionala företagsstöd, stöd till projektverksamhet och stöd till kommersiell service, Budgetåret 2023

planned investments.[11] Policymakers therefore view that even if the regional aid map covered more areas, this would not necessarily lead to more aid decisions.

4 GBER REVISED TO SUPPORT GREEN TRANSITION

GBER was amended in 2023 with the intention of improving the ability of MSs to support green transition projects. However, feedback indicates that at least some countries have found that the changes are adding complexity to an already very challenging field. Introducing more definitional issues and imposing an additional administrative burden may make it more difficult, rather than easier, to support green transition projects.

Last year's briefing reported that the **European Commission had amended the General Block Exemption Regulation (GBER)[12] in March 2023, to give more flexibility to support green transition sectors**. The revisions extended GBER until the end of 2026, and also:

- increased and streamlined aid possibilities for environmental protection and energy projects (including renewable energy, decarbonisation projects, green mobility and biodiversity, renewable hydrogen and energy efficiency);
- exempted training aid from notification below €3 million;
- block exempted aid measures set up by Member States to regulate energy prices;
- increased the notification thresholds for environmental aid as well as for Research, Development and Innovation aid; and
- aligned the GBER with the new Regional Aid Guidelines, the CEEAG, the Risk Finance Guidelines, the Research, Development and Innovation Framework and the Broadband Guidelines.

The GBER provisions are very widely used by Member States: in 2022, GBER represented 65 percent of all active aid measures (82 percent when combined with ABER and FIBER, and 93 percent of all *new* measures excluding crisis measures).[13]

[11] Tillväxtverket (2024) Uppföljning av regionala företagsstöd, stöd till projektverksamhet och stöd till kommersiell service, Budgetåret 2023

[12] The General Block Exemption Regulation (GBER) allows Member States to implement a wide range of public support measures without prior notification to the Commission, in areas such as research and development, environmental protection or support to SMEs.

[13] European Commission (2024) State Aid Scoreboard 2023, https://competition-policy.ec.europa.eu/document/download/0b2037c5-c43f-4917-b654-f48f74444015_en

At the same time, the Commission's guidelines for environmental protection and energy (CEEAG) have sought to align State aid rules with the achievement of Green Deal goals.[14] CEEAG involves a substantial revision to the existing rules, extending the types of investment to include 'decarbonisation aid', aid for clean mobility, aid to support transition to a circular economy, among others, and adding new eligible aid instruments. CEEAG explicitly link the Green Deal and regional policy agendas, by offering scope for higher rates of award to be granted in designated 'a' areas and 'c' regions for various eligible investments:

- aid for the improvement of the energy and environmental performance of buildings
- aid for clean mobility
- aid for resource efficiency and for supporting the transition towards a circular economy
- aid for the prevention or the reduction of pollution other than from greenhouse gases.

Concerns have been expressed about the greater complexity introduced by these changes. For example, Ireland notes that the changes, and the need for alignment, have introduced greater complexity, definitional issues and a significant administrative burden. Changing established models is challenging and has implications for the provision of guidance etc. The introduction of new clauses can have a major impact operationally and can entail significant additional work for aid providers. Austria notes that the numerous amendments to GBER in the past few years have caused substantial additional complexity, to the point that they find it to be hardly implementable. Hungary also notes that the modification of existing aid measures requires changes to domestic legislation but also requires a new approach and adequate preparations from aid providers.

Despite the changes, France considers that the regulations on state aid for environmental protection (GBER and CEEAG) still provide an unsuitable framework for supporting decarbonisation projects, at a time when Member States are being called upon to step up their efforts to achieve the objective of climate neutrality by 2050 by decarbonising their economies.

[14] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.C_.2022.080.01.0001.01.ENG&toc=OJ%3AC%3A2022%3A080%3ATOC

5 DE MINIMIS SUPPORT & DOMESTIC STATE AID GOVERNANCE

The de minimis provisions are highly valued in those MSs where they are widely used. The increased threshold of €300,000 has been positively received - with some reservations. The new transparency requirements are still under discussion in most countries, with decisions on whether to use an EU-level or national database in future being informed by current practices. There is wide concern over the potential administrative burden, especially for awarding bodies (the number of potentially affected awarding bodies varies widely between countries). At the same time, MSs recognise potential opportunities in the new arrangements. There are examples of interoperability from current practice which could support better monitoring and more efficient processes.

Relevant to the frequent objections to the complexity of current EU State aid provisions, several Member States (Sweden and Slovenia) have taken action to try and increase efficiency in domestic State aid governance. This section describes their experience so far.

5.1 Amendments to de minimis

In December 2023, following a call for evidence issued the previous year, the Commission adopted two regulations amending the general de minimis regulation, along with the SGEI de minimis regulation (for Services of General Economic Interest, such as public transport and healthcare).[15] The de minimis rules, which allowed exemptions from State aid control for awards up to €200,00, had been set in 2006 and were due to expire on 31 December 2023. Previously, to meet transparency requirements and prevent aid cumulation above the threshold, Member States could choose to work with a register or obtain a self-declaration from beneficiaries.

The 2023 amendments introduced the following main changes:

- Reflecting inflation, an **increase in the ceiling per company to €300,000** over three years.
- The introduction of an **obligation for Member States to register de minimis aid** in a central register set at national or EU level from 1 January 2026, thereby reducing reporting obligations for companies. The information must be uploaded within 20 working days following the grant of the aid and must be accurate. Records must be kept for 10 years from the date aid was granted. Member States using a national register must, by 30 June, provide Commission with data on de minimis aid granted for

[15] https://ec.europa.eu/commission/presscorner/detail/en/ip_23_6567

the previous year. If the Commission requests information on the awarding of de minimis aid to an undertaking, this must be provided within 20 working days.

- The introduction of **safe harbours for financial intermediaries** to further facilitate aid in the form of loans and guarantees, no longer requiring a complete pass on of the advantages from financial intermediaries to end beneficiaries

The **increased ceiling has been broadly welcomed** and viewed positively, although a number of countries had proposed a range of higher thresholds (e.g. BE, DE, FR, RO). For Ireland, a degree of parity with the levels available under the new Subsidy Control Act in the neighbouring UK (now a third country) had been an important issue.

A number of elements proposed by MSs during the consultation period were not taken up:

- France and Portugal had requested the retention of a period of **three sliding tax years** as the reference period for verifying aid ceilings, but this was not adopted (now three sliding calendar years). Portugal argues that this could penalise companies which can now more easily reach the maximum limit of €300,000.

- Although the flexibility in de minimis is appreciated, several countries highlight that the very large amounts required to support green transition/JTF projects make **other State aid frameworks such as GBER more relevant**.

In Norway, the increase in the levels of de minimis aid that can be awarded have not yet been codified by the Norwegian authority. For the first six months of 2024, de minimis aid was allowed under the transitional provisions in the previous regulation. As of 1 July, the new regulation had still not adopted in the EEA agreement. However, as the new regulation is retroactive, any de minimis aid provided within the limits of the new regulation will be compliant.[16]

5.2 The new transparency requirements

The **monitoring provisions related to transparency are more controversial** and were opposed by several Member States, particularly relating to SGEI.[17] Previously, registers of aid granted were not obligatory and awarding bodies were responsible for compliance. Some MSs used registers, others relied on declarations by beneficiaries. Widely expressed concerns note the additional administrative burden for aid granting authorities.

[16] If the unlikely event takes place that the regulation is not adopted in the EEA agreement, the risk of unlawful aid is still very low, as de minimis aid is already deemed as not affecting trade.

[17] For example, see the response of the Dutch authorities to the revision of the de minimis state aid rules for Services of General Economic Interest Regulation (HT.6507). (2023). Ministry of Economic Affairs and Climate. Retrieved on 25 June 2024, from https://www.eerstekamer.nl/overig/20230823/bijlage_3_rijksreactie_iso_op/document.

In 2020, **national registers operated in nine Member States** (EE, HR, IT, SI, SK, LT, ES, PL, RO), with new registers expected to become operational during the course of that year also in Greece and Cyprus.[18] In some countries, the existence of registers was underpinned by national legislation (e.g. ES, IT, PL, RO, SK). The scope of these national registers differed: in Spain, Poland and Romania, for example, the central registers included aid of all sizes. In all nine countries, de minimis support was included in the national register. The main difference lay in whether or not support for agriculture, forestry and fisheries was included. Slovakia was unusual in not requiring comprehensive reporting in the national register – awarding bodies *could* report all awards, but were only obliged to report those over €500,000 and de minimis support. Six countries that did not have central registers nevertheless maintained **de minimis registers** (BG, CZ, GR, LV, LU, PT), though few of these were in the public domain.

Figure 5: National State aid registers (as at 2020)

MS	Set-up date	Scope	Public
EE	2009	All aid except agriculture, forestry and fishing, but including all de minimis	Yes
HR	2014	All aid including de minimis, except agriculture, forestry and fishing	No, only >€500k
IT	2017	All aid including de minimis, except agriculture, forestry and fishing	Yes
SI	2014 (data being collected since 2002)	All aid awards above €0.10	No
SK	2015	All sectors, but only reporting on >€500k and de minimis support are obligatory	Yes
LT	2015 (de minimis since 2005)	All State aid and de minimis	From 2020
ES	2000	All types of intervention, going beyond State aid per se, above €100	Yes
PL	2016 (de minimis since 2006)	All general aid including de minimis	Yes
RO	2016	All aid except agriculture, forestry and fishing, but including all de minimis	No, only >€500k
No central aid register, but maintenance of de minimis registers in BG, CZ (since 2010), GR, LV, LU, PT (since 2002).			

Source: Wishlade F, Michie R and Mendez C (2020) Fact-finding study on the implementation of the transparency requirements under the GBER and relevant guidelines, Final Report to European Commission, DG Competition.

As **transitional provisions** (Article 7), public authorities can continue to use the old de minimis regulation for six months (i.e. until 30 June 2024). Until the central Member State or EU registers are set up and cover a period of three years, Member States can continue to grant de minimis aid providing they inform the undertaking in written or electronic form of the amount of the aid, expressed as a gross grant equivalent and its de minimis character, referring directly to

[18] Wishlade F, Michie R and Mendez C (2020) Fact-finding study on the implementation of the transparency requirements under the GBER and relevant guidelines, Final Report to European Commission, DG Competition. https://competition-policy.ec.europa.eu/document/download/721f1254-18d1-4530-8e3a-b3f21cf348f2_en?filename=kd0120640enn.pdf

the general or SGEI de minimis Regulations. Before granting the aid, the Member State must obtain a 'de minimis declaration' from the undertaking, in written or electronic form, outlining any other de minimis aid it has received to which the general or other de minimis regulations apply over any period of three years.[19]

A number of countries with existing central aid registers, or existing de minimis registers, have indicated their plans to continue using these or modify them for continued use (e.g. CZ, EE, IT, LT, SI, SK, PL, PT):

- **Portugal** intends to continue using the national de minimis register which has been in place since 2002.
- **Poland** will also continue to use its own domestic State aid register, supported by two databases that support cross-checking and provide a safety net if one database encounters issues.
- In **Italy**, use of the existing National Register of State Aid which has been operational since 2017 is seen to have several advantages thanks to the interoperability functions with managing bodies' own information systems (see Box 3).[20,21,22]
- **Lithuania** has maintained a national register for State aid and de minimis aid since 2005. In 2021, an online register (KOTIS) was introduced to record, manage, and provide data on the amount and conditions of State aid or de minimis aid granted to individual undertakings. Information is publicly accessible. Given that the KOTIS user interface is efficient, user-friendly, and well-coordinated, there are currently no plans to modify the system or transition to a centralised EU system.
- **Slovakia** will continue to use the Central Register. In the event that the European Commission enables mass recording of data from the Central Register to the EU's central register (as is the case when recording State aid in the TAM (Transparency Aid Module)), the aid coordinator will also record de minimis aid in the EU's central register.

The **amendments which will be required to existing systems** to encompass the new provisions (e.g. new counting of reference periods, new thresholds) have been highlighted by Czechia and Slovenia). In **Czechia**, the register will also be revised to contain functions to record aid granted to financial intermediaries,[23] and to record NACE codes from 1 January 2026. In

[19] https://ec.europa.eu/regional_policy/policy/how/improving-investment/training_en
[20] https://www.rna.gov.it/sites/PortaleRNA/it_IT/comunicazioni
[21] https://www.rna.gov.it/sites/PortaleRNA/it_IT/comunicazioni
[22] https://www.invitalia.it/cosa-facciamo/affianchiamo-la-pa-per-gestire-i-fondi-europei-e-nazionali/registro-nazionale-degli-aiuti
[23] Within the meaning of Article 4(7) of Regulation No 2023/2831 of 13 December 2023 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid.

Romania, the plan is to create a new register to replace the existing one. Although the government and granting authorities have welcomed the creation of a new register, a period of longer than six months has been requested to set up the required institutional framework at national level.

As discussed above in the case of Italy, interoperability between national aid registers and other datasets has been useful to help improve checking and compliance (see Box 3).

Box 3: The use of national central registers: improving compliance through interoperability

Member States have used central and de minimis national registers to help with assessing compliance issues. Where there is no centralised register, awarding bodies have been responsible for checking compliance. Existing processes can be both decentralised and diverse, and as a result, little may be known about how these checks are carried out.

Among countries with national registers, there are some interesting examples of interoperability between domestic systems which are considered to have improved compliance checking:

- In **Estonia,** checks are wholly or partially automated. For example, aid to a beneficiary on the Deggendorf list (i.e. where illegal or incompatible aid has not yet been repaid) 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, and 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**, several dimensions are checked through the national BDNS register 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 provides scope to check cumulation and de minimis limits.

- In **Italy** the national NAR register does not directly monitor or control eligibility criteria, but provides tools for administrators to 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. The system automatically blocks the award procedure if the cumulation ceiling has been exceeded.

- In **Romania** the national RegAS register 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.

- 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 SEMP register 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.

Source: Wishlade F, Michie R and Mendez C (2020) Fact-finding study on the implementation of the transparency requirements under the GBER and relevant guidelines, Final Report to European Commission, DG Competition.

Among MSs currently without a central register or de minimis register, responses so far have been varied.

Several countries have so far indicated that they are likely to use an EU-level register (AT, DE, EL, FI, NL, SE), although formal decisions are still pending, and there are reservations. **Germany** views the decision to use the EU-level register as being in line with their commitment to deepening the single market. The Federal Government strongly advocates therefore for a **user-friendly and unbureaucratic design for the EU-level register**. This would include a clear designation of the company (more than by name alone) to ensure legally secure use of the register. Any solution to this issue should be as uniform as possible for natural persons, companies, municipalities, associations, etc. For support schemes especially, uploads in batches or automatic syncing with national economic support databases should be technically supported. **Austria** expresses the hope that a central EU register will operate similarly to other existing tools such as SARI and TAM.

In **Finland,** high use of de minimis aid means that the decision on this is an important one. **Sweden** have also highlighted the potential work involved with the new register **requiring information as detailed as that required by the Transparency Aid Module (TAM)**. At the same time, the new register is also likely to include **many more beneficiaries and awarding bodies**. According to a recent State Office report, it would be an unnecessary cost for the state to develop a separate register when the Commission already has one in place. However, the report also notes that there may be other motives for developing a national register. A national register could for example collect more detailed data than the State aid rules require and could enable more in-depth analyses of State aid to be carried out.[24]

Other countries were still undecided (e.g. BE, FR, IE, NL). Ireland (with five awarding bodies) has noted that the issue of the transparency register requirements has been hugely challenging and represents a major change. Concerns about the **administrative burden** are

[24] Statskontoret (2024) Bättre stöd för statsstöd, Förslag till en samlad myndighetsfunktion för statens arbete med vägledning, rapportering, kvalitetssäkring och registerföring av statsstöd, 2024:6

also shared by Netherlands and Belgium. There have been significant concerns about the administrative burden in Belgium. For example, according to the Association of Flemish Cities and Municipalities (VVSG), it is not evident that a mandatory register will have additional value, and will most likely increase the administrative burden for local governments. "*Local authorities do not have sufficient information about the ownership and control structures of beneficiaries and therefore have to rely on self-declarations to provide de minimis aid on an adequate basis. The company applying for the aid is the only one that can be 100% certain which aid has been obtained by which aid granting authority. A declaration on honor is therefore the only way to have legal certainty, as there can never be 100% certainty that all de minimis aid granted by national, regional or local authorities has been correctly and completely recorded in the register*."[25]

Hungary and Norway foresee setting up national registers. Hungary anticipates setting up a national register but foresees that workload will increase for aid providers, and specifically Managing Authorities, following the transition period, as they all employ the de minimis rules extensively. In **Norway**, the changes have been viewed positively, as a useful development which will be helpful in ensuring transparency and monitoring the overall levels of State aid awarded. In particular, the amount of support awarded linked to the Covid pandemic (on top of the usual support) means it has been challenging for businesses and even the awarding bodies to keep track of the overall amounts of State aid given. Work is starting on the process and it is expected to be up and running by 2026, with usable information from 2029. A proposed new regulation on the State aid register has been undergoing interministerial consultation; the draft will also be subject to a public consultation. Certain issues may be sensitive. For example, received aid in the form of the Regionally Differentiated Social Security Contribution (RDSSC) is reported in intervals. The draft regulation proposes to report the exact amounts, from which it will be possible to calculate the exact wage sums for the undertaking. This may be a sensitive issue which could be raised during the consultation.

5.3 Changes to domestic State aid governance

Challenges associated with implementing the new de minimis rules link to wider concerns at the complexity of State aid governance within Member States. This is reflected in new developments in Sweden and Slovenia), which have taken action to try and increase efficiency in domestic State aid governance.

A March 2024 report by Sweden's State Office has analysed and made proposals on how the government should design the organisation of 11 tasks related to guidance, reporting, quality assurance and register of State Aid. The aim is to reduce vulnerability and increase

[25] https://www.vvsg.be/nieuws/europese-commissie-introduceert-nieuwe-de-minimisverordeningen

effectiveness with regard to State Aid, ensuring that Sweden meets the EU's requirements.[26] The report's recommendations are currently being reviewed by the Government. According to the report findings, **the current organisation of State Aid data is vulnerable and ineffective**. Many of the issues are, at least partly, linked to the way that data is organised. Currently, four authorities are (either directly or indirectly) responsible for one or more of the 11 State Aid tasks, leading to duplication of work and making it difficult for the authorities to develop competences in State Aid matters and provide guidance for public administration.[27] The analysis also shows that the authorities, municipalities and regions that provide State Aid often lack or have difficulty in maintaining knowledge of State Aid rules e.g. those who know the rules try gather knowledge on their own, requiring resources and involving duplication of work, while others are not aware that they are providing State Aid, running the risk of double financing.[28] The report recommendations suggest that:

- **Guidance to authorities, municipalities and regions is key in reducing vulnerabilities and increasing efficiencies**. Greater knowledge can reduce the risk of illegal State Aid, increase the quality of registers and strengthen the use of legal State Aid as a tool to achieve political objectives.

- Government should form a **'joint function' bringing together the different tasks related to reporting, quality assurance and the register,** to ensure synergies and economies of scale. The guidance task should form the basis of this. However, the report does not recommend including supervisory tasks as part of the joint function.

- **The 'joint function' should be based at the procurement authority**, which already proves guidance to municipalities and regions on procurement and State Aid and is known by the public actors. The report estimates that the new proposed function would require 8 staff members at a cost of SEK 12 million per year. The new function should be fully developed and ready to carry out the tasks by 1 January 2026.

The Swedish Competition Authority would continue to be responsible for supervisory tasks, including the tasks that enable the EC supervision of State Aid rules, and the rules on foreign subsidies. In addition, the report recommends that the Competition Authority takes responsibility for the whistleblowing function for State Aid from the Government Offices.

In a similar vein, improvements to the governance and management of State aid have been pursued in **Slovenia** for nearly the last decade, in part to deal with the challenges presented

[26] Statskontoret (2024) Bättre stöd för statsstöd, Förslag till en samlad myndighetsfunktion för statens arbete med vägledning, rapportering, kvalitetssäkring och registerföring av statsstöd, 2024:6

[27] Statskontoret (2024) Bättre stöd för statsstöd, Förslag till en samlad myndighetsfunktion för statens arbete med vägledning, rapportering, kvalitetssäkring och registerföring av statsstöd, 2024:6

[28] Statskontoret (2024) Bättre stöd för statsstöd, Förslag till en samlad myndighetsfunktion för statens arbete med vägledning, rapportering, kvalitetssäkring och registerföring av statsstöd, 2024:6

by the extensiveness, and perceived inconsistency, of the EU regulatory framework. Alongside performance measurement proposals, the Ministry of Finance proposals have included:

- Elaboration of a smaller number of better coordinated aid measures (aid schemes)
- Development of high-quality legal bases for the granting of State aid that contain clearly defined conditions and objectives.
- Greater use of reciprocal forms of State aid, as this entails greater responsibility and commitment on the part of recipients for the effective use of aid funds.
- Consistently review the conditions for granting State aid and prevent the granting of State aid to companies in difficulty, tax debtors and companies that do not regularly pay salaries and contributions.
- Determining the minimum amount of aid with the aim of reducing disproportionate administrative burdens that outweigh the benefits of granting extremely small amounts of aid.
- Determining the target size of companies that should (preferably) receive State aid, with the aim of eliminating or reducing aid for companies without employees and incentives for recruitment by recruitment agencies.
- Before any allocation of State aid, it would be useful to check whether the potential recipient has (already) received State aid over a longer period and what impact the aid granted up to that point has had.
- Consistent monitoring of the effectiveness of State aid on the basis of pre-defined targets and indicators with the aim of at least reducing, if not eliminating, ineffective aid schemes or ineffective support measures.

However, despite these proposals spanning the period from 2016, change has proved very difficult to effect, and the Ministry has determined that there are still no significant changes regarding compliance with the recommendations.

6 'UNDERTAKINGS IN DIFFICULTY' DEFINITION REMAINS CHALLENGING

Several EoRPA countries report challenges with the definition of 'undertakings in difficulty'. This includes in the context of supporting high-tech/R&D/green transition-oriented SMEs under Cohesion policy programmes, and issues related to the Commission's interpretation of 'own funds'. Specific issues within this very complex and technically challenging area which have been highlighted by EoRPA countries include the definition of 'own funds', the narrowness of the definition of an 'undertaking in difficulty' and the application of the 'equity ratio test'.

Several EoRPA countries report challenges with the definition of 'undertakings in difficulty'. This includes in the context of supporting high-tech/R&D/green transition-oriented SMEs under

Cohesion policy programmes, and issues related to the Commission's interpretation of 'own funds'. The area is very complex and technically challenging, but several specific issues have been highlighted among EoRPA countries:

Definition of 'own funds': Germany reports that in consultations with stakeholders, the current definition of 'undertaking in difficulty' and its interpretation by the Commission come up frequently. These are considered not to reflect business realities, resulting in companies being classed as 'undertakings in difficulty' without an economic justification. Within the definition of 'undertaking in difficulty' the Commission interprets 'own funds', solely by looking at whether funds can be classed as equity under the accounting rules, thus excluding hybrid forms of funding (mezzanine capital such as subordinate loans, typical dormant investments and convertible loans). Germany argues that this mezzanine capital is – from an economic point of view – equity and these instruments – depending on their specific design – are a key form of financing both for growing companies after the initial three years and for established SMEs.

The Commission's decision to approach these instruments from a pure accounting perspective and not to consider that they are used as a substitute for equity results in companies' exclusion from public funding under the GBER. This happens to companies that are not in fact in economic difficulty and is out of step with the needs of SMEs. Social enterprises, in particular, but also other innovative start-ups and established SMEs, are affected negatively by this in terms of their future prospects.

Germany therefore identify compelling reasons for considering hybrid forms of financing (mezzanine capital) such as subordinate loans, typical dormant investments and convertible loans as forms of 'own funds' within the meaning of the definition of an 'undertaking in difficulty' and advocate that the situation be remedied by including this commonly-used form of financing in the definition of 'own funds'.

Too narrow a definition. Austria considers that for some aid categories, especially RD&I, the concept of the present definition of an 'undertaking in difficulty' is too narrow. Enterprises in their seed and start-up phases which are typically characterised by challenges in their financing are excluded from the scope of application of the definition only within the first three years after they had been founded. For technology-oriented young enterprises that are confronted with a higher performance risk this period should be extended to five years or beyond. Austria hope that Commission services will take into consideration this point when drafting the future 'Guidelines for Rescuing and Restructuring Aid for Enterprises in Difficulty'. Italy also notes concerns about the definitions, for example, different usage of the term 'limited liability company' in a European sense or by individual countries, as well as noting the difficulties imposed by the stringency of the definition given that many SMEs in the Italian economic system are traditionally undercapitalized.

Application of the equity ratio test: In the Netherlands, many ERDF projects are rejected despite positive assessments by the Advisory Committee because applicants are classified as companies in difficulty. This determination is based on a specific equity ratio test - if a company's other equity components exceed half of its share capital plus share premium in negative value, it is deemed a company in difficulty under GBER rules and thus ineligible for ERDF subsidies. This test focuses solely on equity ratios and does not consider absolute equity values or the liquidity of the company. As noted above by Austria, one exception to this test is if the company has been in existence for less than three years at the time the subsidy is granted, this test does not have to be carried out and a subsidy can be granted. However, in the 2021-27 programme the TRL level of the projects is higher than in the 2014-20 ERDF programming period, which means that project applicants are often further along in the innovation stage and have been in existence for more than three years.

This is found to have several adverse effects on the implementation of Cohesion policy programmes in the Netherlands - it distorts the ratio between start-ups (with a relatively higher risk profile) and already existing SMEs in the programme, and innovations that have already been initiated are not eligible for a subsidy for the roll-out of the innovation. The SMEs with demonstrably sufficient financial and operational resources are important for the progress and rapid start of the programme.[29]

7 SUBSIDY CONTROL IN THE UK - TWO YEARS ON

A new subsidy regime has now been in place in the UK since 2023. The new system relies on self-assessment and publication of schemes and awards on a central database which should enable interested parties to challenge the lawfulness of awards granted (within a one-month window).

Although it is quite early to assess how well the system is working, commentators have noted that while larger awards may proceed more quickly than under the EU regime, the administrative burden associated with smaller awards may be higher. In addition, 'teething problems' have been noted with the subsidy database, in terms of levels of awareness of the requirements and quality of the information being uploaded.

A new subsidy regime has now been in place in the UK for several years. How does it compare to what went before, and how is it working?

[29] Memo to Koen de Langhe, DG Regio, from all four Dutch Management Authorities (Stimulus, Kansen voor West, SNN, OpOost) from January 15, 2024. Topic: succession annual meeting November 2023 - Semi-trailer examples of project rejections based on the applicant's qualification as a company in difficulty (OIM)

7.1 What has changed?

In brief, the UK's new subsidy control regime is **faster and more permissive** than the EU's State aid control regime.[30] The regime is the domestic implementation of the TCA chapter on subsidy control.[31] The system is one of **self-assessment,** which assumes subsidies are lawful so long as awarding authorities have considered the subsidy principles set out in the Subsidy Control Act 2022.[32] Interested parties can challenge the lawfulness of awards within a short one-month window.[33] A central register of aid granted is intended to provide transparency and support such challenges.[34] (See also 2023's EoRPA Briefing on EU regional aid for more detail.)

Table 4: Simplified comparison - EU and UK aid/subsidy regimes

	EU	UK
General premise	In principle, State aid is prohibited	Subsidies are lawful
Thresholds for permissible aid	De minimis Regulations - €300,000 per single undertaking (as defined) over a three-year rolling period	Minimal Financial Assistance (MFA) - slightly higher threshold of £315,000 over a three-year period (c.€373,000)*
Aid umbrella frameworks	Over 80 block exemptions. Around 97% of subsidies under the EU State aid regime are awarded under block exemptions.[35]	Streamlined routes for RD&I, local growth and energy. Maximum subsidy amounts significantly lower than GBER, and narrower scope (11 categories vs c.58).
Transparency requirements	Beneficiaries of aid over a threshold (e.g. €100,000 under GBER) must be notified on the Commission's Transparency Aid Module (TAM). New requirement for national or EU-level register for de minimis aid.	National database for all subsidy schemes and awards (over £100,000 for MFA and awards under subsidy schemes) Large awards (over £10m over 3 years) must be referred to State Aid Unit.
Challenges	Interested parties can complain to the Commission (no deadline) and challenges can be brought before national courts	One month from publication on national database
Compliance assessment	EC approves/does not approve	SAU provides non-binding advice when asked, cannot block or approve subsidies

*Notes: * @0.84 exchange rate 8/09/2024 Source: author's elaboration*

Similar to the EU's de minimis regulations, there is a threshold for permissible aid (Minimum Financial Assistance) set at £315,000 over a three-year period. Streamlined routes have been established as mechanisms for aid for RD&I, local growth and energy, where subsidies or

[30] Rose A (2024) Is it time for Parliament to amend the Subsidy Control Act 2022? UK Subsidy Control Insider (UKSCI), Lexxion, May 2024

[31] https://assets.publishing.service.gov.uk/media/608ae0c0d3bf7f0136332887/TS_8.2021_UK_EU_EAEC_Trade_and_Cooperation_Agreement.pdf

[32] Rose A (2024) Is it time for Parliament to amend the Subsidy Control Act 2022? UK Subsidy Control Insider (UKSCI), Lexxion, May 2024

[33] Stephan, A (2024), Will the New UK Subsidy Control Regime Help 'Level Up' the Economy? Mod Law Rev., 87: 172-201. https://doi.org/10.1111/1468-2230.12835

[34] https://searchforuksubsidies.beis.gov.uk/

[35] Rose A (2024) Is it time for Parliament to amend the Subsidy Control Act 2022? UK Subsidy Control Insider (UKSCI), Lexxion, May 2024

awards that meet the criteria, thresholds and conditions do not need to be assessed against subsidy control principles and cannot be challenged on subsidy control grounds.[36] However, **maximum awards amounts are lower and the scope is narrower** than under GBER, meaning that many subsidy decisions that previously benefited from GBER will have to carry out self-assessment (arguably a more uncertain process) (see Figure 6).[37]

Figure 6: Comparison of UK streamlined routes and EU GBER Maximum Subsidy Amounts

	UK Streamlined Route Maximum Subsidy Amount	Equivalent EU GBER Maximum Subsidy Amount **(New Green Deal Maximum)**
Research, Development and Innovation Streamlined Route[134]		
Feasibility studies[135]	GBP 3 million	EUR 7.5 million **(EUR 8.25 million)**
Industrial research and experimental development projects	GBP 3 million	Industrial: EUR 20 million **(EUR 35 million)** Experimental: EUR 15 million **(EUR 25 million)**
SME innovation services	GBP 500,000.	EUR 5 million[136] **(EUR 10 million)**
SME Process and Organisation Innovation	GBP 500,000.	EUR 7.5 million **(EUR 8.25 million)**
SME Equipment and Instruments	GBP 500,000.	EUR 20 million **(EUR 35 million)**
Energy Usage Streamlined Route[137]		
Energy demand reduction	GBP 3 million	EUR 15 million[138] **(EUR 30 million)**
Green heat networks	GBP 15 million	EUR 15 million **(EUR 50 million)**
Related skills training development	GBP 1 million	EUR 2 million **(EUR 3 million)**
Local Growth Streamlined Route[139]		
SME business development projects	GPB 400,000 (grants) GPB 600,000 (debt finance)	EUR 7.5 million **(EUR 8.25 million)**
Employment of workers with disabilities	GBP 5 million	EUR 10 million[140] **(EUR 11 million)**
Employment of disadvantaged workers	GBP 5 million[141]	EUR 5 million **(EUR 5.5 million)**

Source: Stephan, A. (2024), Will the New UK Subsidy Control Regime Help 'Level Up' the Economy?. Mod Law Rev., 87: 172-201. https://doi.org/10.1111/1468-2230.12835

Although the first of the seven 'subsidy control principles' set out in the Act against which public authorities must assess their proposed subsidies states that 'subsidies should pursue a specific policy objective in order to remedy an identified market failure or address an equity rationale (such as **local or regional disadvantage**, social difficulties or distributional concerns), no area designation process or assisted areas map were initially foreseen under the new regime. However, individual subsidy schemes have since been introduced by public authorities to

[36] https://assets.publishing.service.gov.uk/media/63bc4545e90e0730242b741f/local-growth-streamlined-route-guidance.pdf; Stephan, A (2024), Will the New UK Subsidy Control Regime Help 'Level Up' the Economy? Mod Law Rev., 87: 172-201. https://doi.org/10.1111/1468-2230.12835

[37] Stephan, A (2024), Will the New UK Subsidy Control Regime Help 'Level Up' the Economy? Mod Law Rev., 87: 172-201. https://doi.org/10.1111/1468-2230.12835

target specific geographical locations (e.g. Freeports, Investment Zones, Levelling Up Fund areas). In addition, in Scotland, the three enterprise agencies (Scottish Enterprise, Highlands and Islands Enterprise and South of Scotland Enterprise) have reintroduced map-based subsidy schemes for SME support, based on an extension of the 2014-20 EU assisted areas map.[38]

A new **Subsidy Advice Unit** (SAU) has opened within the Competition and Markets Authority (CMA) at the start of 2023, with offices in London, Belfast, Edinburgh and Cardiff, to **evaluate and provide independent and non-binding advice** on assessments of subsidies and subsidy schemes[39] put forward by public authorities in national, devolved and local government. The SAU does not carry out subsidy reviews on its own initiative, and it does not have the power to block or approve subsidies. Public authorities can **voluntarily refer their own proposed subsidies**/schemes to the unit; in some cases, the public authority must refer a subsidy i.e. the largest and potentially distortive awards (mandatory referrals).[40]

So far, 56 cases have been referred to the unit.[41] For example, in March 2024, the Scottish Government and then Department for Levelling Up Housing and Communities (now known and the Ministry for Housing, Communities and Local Government) requested a report from the SAU on the proposed Green Freeports in Scotland Subsidy Scheme (see Box 4). This was a mandatory referral due to the size of the scheme. The SAU's report evaluated the public authorities' own assessment of compliance with the subsidy control regime.

Box 4: SAU report on assessment of compliance – Green Freeports Programme

The UK government established the UK Freeports Programme in 2021 under its Levelling Up agenda. Eight Freeports were initially selected in England. In 2022, the Scottish and UK governments agreed to jointly deliver two additional Green Freeports in Scotland (with an estimated value of c.£118 million (£50m in seed capital; £68 million in tax relief). Two Scottish sites - Forth and Inverness/Cromarty Firth - were selected in January 2023 following a competitive bidding exercise. Qualifying enterprises on the sites will be able to receive support through a range of time-limited measures, including (among others) tax relief on land and buildings, rates relief on business premises, capital allowances on plant and machinery and access to seed capital funding for infrastructure and site remediation.

---

[38] https://www.hie.co.uk/media/eqnnq45d/hie-economic-development-subsidy-scheme-edss-ext-to-2027-public-version.pdf; https://www.scottish-enterprise.com/media/znebadm2/se-regional-and-sme-investment-subsidy-scheme-2022-2025-021222.pdf; https://www.southofscotlandenterprise.com/media/hwgpcajw/sose-economic-development-subsidy-scheme-ext-to-2025-web-guide.pdf

[39] Generally, over £5m in value, or schemes that allow subsidies of this value to be awarded.

[40] Over £10 million (or over £1 million and cumulatively over £10 million with other related subsidies over the previous 3 years) outside of sensitive sectors, and over £5 million (or over £1 million and cumulatively over £10 million with other related subsidies over the previous 3 years) in sensitive sectors.

[41] https://searchforuksubsidies.beis.gov.uk/

In March 2024, Scottish Government and the UK Department of Levelling Up, Housing and Communities (now the Ministry of Housing, Communities and Local Government) requested a report from the SAU in relation to the proposed scheme as a 'Subsidy Scheme of Particular Interest' (where one or more beneficiaries may receive a subsidy of over £10 million).

The SAU prepared an advisory report which did not directly assess whether the scheme complied with subsidy control requirements; nor did it make a recommendation on whether the scheme should be implemented. The report highlighted several positive features of the submitted scheme assessment:

- It clearly described the scheme's policy and equity objectives, supported by appropriate reasoning and evidence.
- it demonstrated the considered policy options and set out well-reasoned and evidenced arguments in favour of the selected model.
- it provided a detailed and thorough consideration of the counterfactual scenario, supported by reasoning and evidence.

Several possible improvements were suggested:

- a fuller explanation of how the seed funding allocation, management and monitoring processes will support SG and DLUHC in ensuring continued compliance with the subsidy control principles when devolving decision-making over seed funding projects to relevant local authorities; and
- giving further consideration to the potential competitive impact of freeports, e.g. by considering the actual impact of other freeports, or similar investment zones in the past and assessing the likelihood of those applying to Green Freeports; as well as potential negative impacts that the scheme may have on other ports.

Source:
https://assets.publishing.service.gov.uk/media/6627cb2081fe3e98d1a7e4fc/Scotland_Green_Freeports_Report_final.pdf

7.2 How is the new regime working?

In terms of how the new regime is working, it might be too early to judge. However, experience is showing that:

- **Larger awards seem to proceed more quickly** under the UK's Subsidy Control regime; potentially because of lower levels of scrutiny.[42] There is no requirement to notify awards; public authorities must refer the largest awards to the SAU, which provides an advisory report.

[42] Rose A (2024) Is it time for Parliament to amend the Subsidy Control Act 2022? UK Subsidy Control Insider (UKSCI), Lexxion, May 2024

- **The administrative burden for smaller awards may now be higher**. These awards (e.g. made my local government) would previously have been made under block exemptions and now involve additional administrative burden unless using one of the UK's three (reportedly less popular) Streamlined Routes.[43]

There are already **areas of divergence** between the UK and EU systems. In September 2023, in a landmark ruling, the Competition Appeal Tribunal (CAT) ruled that a public authority (which was carrying out commercial waste collections) could not grant a subsidy to itself.

"The CAT held that, under the Subsidy Control Act 2022, a person cannot be at once a 'public authority' granting a subsidy and an 'enterprise' receiving that same subsidy."[44]

This is a different approach than under EU law where the general prohibition on State aid involves the use of state resources to grant a selective advantage to an 'undertaking'; which does not require that the entity in question has a distinct legal personality.

Several key messages are also emerging in relation to possible 'teething problems'. As mentioned above, bodies awarding subsidies must publish these on a national Transparency Database, which holds information on all subsidy schemes and subsidy awards made to businesses (of all values, with some exceptions, e.g. Minimum Financial Assistance and awards of £100,000 made under subsidy schemes).[45] The Database is designed to play a central role in the UK Subsidy Control regime. In most cases,[46] database entries must be made within three months of confirmation of the decision to give the subsidy or make the subsidy scheme.

Details that must be uploaded include (among others):[47]

- the legal basis for the subsidy/subsidy scheme
- the specific policy objective of the subsidy/scheme

[43] Kynoch A and Hymers A (2024) The Transparency regime under the Subsidy Control Act – How it could be improved, UK Subsidy Control Insider (UKSCI), Lexxion, May 2024; Rose A (2024) Is it time for Parliament to amend the Subsidy Control Act 2022? UK Subsidy Control Insider (UKSCI), Lexxion, May 2024

[44]https://www.pinsentmasons.com/out-law/news/competition-appeal-tribunal-gives-first-judgment-under-subsidy-control-act-2022

[45] https://searchforuksubsidies.beis.gov.uk/

https://www.gov.uk/government/publications/subsidy-control-rules-key-requirements-for-public-authorities/subsidy-control-rules-quick-guide-to-key-requirements-for-public-authorities#step-6--publish-the-subsidy-or-scheme-on-the-subsidy-database

[46]This does not apply where the subsidy itself was granted under a scheme, a streamlined route, or under the rules on Minimal Financial Assistance or SPEI Assistance, where a threshold of £100,000 applies before an entry must be made.

[47] Subsidy Control (Subsidy Database Information Requirements) Regulations 2022; https://www.legislation.gov.uk/uksi/2022/1153/regulation/3/made

- the name of the scheme
- the details of the awarding public authority
- details of the recipient, including company size, sector, geographical location (and company registration number, or VAT number, or charity registration number)
- the value of the subsidy, date of award, duration and means by which it was given and whether it relates to goods or services.

The database should provide transparency on aid granted and support the potential challenging of such aid. However, there are **concerns around whether public authorities are properly engaging with the transparency requirements** and the impact this might have on how well the regime will function.[48]

The information supplied by public authorities to the database has been described as being **too basic, inconsistent, difficult to search and including variable levels of information with errors and broken links, and being largely unpoliced**.[49] This raises a number of issues:

- **Possible awareness and capacity issues, especially among smaller awarding bodies**. Issues have been identified around awareness of the requirements, and lack of capacity/resources to deal with them. While there is evidence that central government bodies are uploading information regularly, many other (smaller) bodies are not. This might be due to lack of awareness of the requirements, or lack of awareness that the award qualifies as a subsidy. Some public authorities may not yet have understood that 'the increased scope of what amounts to a subsidy under the SCA means that [in many cases] what would once have been considered not to give rise to State aid [….] is now a subsidy'.[50] Devolved administrations and larger bodies will have better resources and expertise to carry out the self-assessment exercise.[51]

- **Barriers to potential challengers include insufficient information, the speed required to make a challenge and the potential cost**. Missing database entries will have an impact on parties who may be negatively affected by a subsidy, as they cannot challenge it

[48] Kynoch A and Hymers A (2024) The Transparency regime under the Subsidy Control Act – How it could be improved, UK Subsidy Control Insider (UKSCI), Lexxion, May 2024; Rose A (2024) Is it time for Parliament to amend the Subsidy Control Act 2022? UK Subsidy Control Insider (UKSCI), Lexxion, May 2024

[49] Kynoch A and Hymers A (2024) The Transparency regime under the Subsidy Control Act – How it could be improved, UK Subsidy Control Insider (UKSCI), Lexxion, May 2024; https://www.ft.com/content/627e9603-edc4-4817-8f72-c5da48a1ee06

[50] i.e. Because of the higher threshold for a measure having a relevant effect on competition. (Kynoch A and Hymers A (2024) The Transparency regime under the Subsidy Control Act – How it could be improved, UK Subsidy Control Insider (UKSCI), Lexxion, May 2024)

[51] Stephan, A (2024), Will the New UK Subsidy Control Regime Help 'Level Up' the Economy? Mod Law Rev., 87: 172-201. https://doi.org/10.1111/1468-2230.12835

if they are not aware of it.[52] The functionality of the database and ease of searching has been criticised - ease of searching is particularly important when the challenge window is so short.[53] The speed with which a challenge must be brought has been described as 'infeasible'.[54] Many schemes listed on the database are vague about potential beneficiaries, which makes it difficult for interested parties to make an informed decision as to whether to bring a challenge.[55] An early case revealed that those bringing subsidy control claims are unlikely to be protected by a costs cap, which is likely to be a deterrent.[56]

- **Inaccurate monitoring could affect the potential for learning** - 'while challenges are never welcome, they can result in judgments which help to clarify and develop the regime.'[57] In addition, inaccurate reporting means that information collected by the government on the number of subsidies awarded and the functioning of the regime will be flawed.

- **Increased potential for risk?** The errors identified on the subsidy database raise questions about whether public authorities may be 'rushing subsidies onto the database hoping no one will raise an issue in the one-month window, and they may be foregoing a light touch assessment of the public money committed'.[58] Over time, this could encourage public authorities to take a ''risk-based approach' to their subsidy awards, which could negatively impact the aims and objectives of the regime'.[59]

---

[52] Kynoch A and Hymers A (2024) The Transparency regime under the Subsidy Control Act – How it could be improved, UK Subsidy Control Insider (UKSCI), Lexxion, May 2024

[53] Al-Mugheiry S (2024) How the Subsidy Database can be refined to improve the UK Subsidy Control Regime, UK Subsidy Control Insider (UKSCI), Lexxion, May 2024

[54] https://www.ft.com/content/627e9603-edc4-4817-8f72-c5da48a1ee06

[55] Rose A (2024) Is it time for Parliament to amend the Subsidy Control Act 2022? UK Subsidy Control Insider (UKSCI), Lexxion, May 2024

[56] As those bringing subsidy control claims look unlikely to get the protection of a costs cap, which may be a deterrent to challenging subsidies https://www.ft.com/content/627e9603-edc4-4817-8f72-c5da48a1ee06

[57] Kynoch A and Hymers A (2024) The Transparency regime under the Subsidy Control Act – How it could be improved, UK Subsidy Control Insider (UKSCI), Lexxion, May 2024

[58] Al-Mugheiry S (2024) How the Subsidy Database can be refined to improve the UK Subsidy Control Regime, UK Subsidy Control Insider (UKSCI), Lexxion, May 2024

[59] Kynoch A and Hymers A (2024) The Transparency regime under the Subsidy Control Act – How it could be improved, UK Subsidy Control Insider (UKSCI), Lexxion, May 2024

8 LOOKING AHEAD

Looking ahead, similar issues look set to dominate the State aid agenda and potentially intensify, as countries seek to improve their ability to support decarbonisation projects while working to protect and prepare the regions affected by transition, among other challenges.

In the UK, the new subsidy control regime continues to 'bed in', against criticism of levels of awareness and transparency of the system. Some divergence from the EU approach has already been noted, but at the same time, assisted areas in Scotland still appear to adhere to the EU map.

In Europe, amid calls for the restoration of a level State aid playing field, different views exist among MSs on the impact of any possible extension of the TCTF (for example, the French authorities are potentially in favour of extending sections 2.5 and 2.6 of the TCTF and propose that Section 2.8 be maintained until 31 December 2027).

More immediately, on a practical level, the ongoing complexity of State aid regulations has led to calls from MSs for **simplification, harmonisation, greater flexibility** and **review:**

- **Simplification**. The need for simplification is widely acknowledged (including by CZ, FR, LT, PT, SI). This encompasses bureaucratic inefficiencies, complex administrative procedures and insufficient administrative capacity.
- **Harmonisation** (PL, PT). This could include, for example, further harmonisation of GBER with Cohesion policy regulations (PL), relating specifically to **timescales.** The current GBER will end in 2026 while Cohesion policy implementation can continue until 2029 and de minimis regulations run until the end of 2030. This means that some transitional provisions in the next GBER or an amended current GBER would be helpful for finalising current Cohesion policy programmes and operations. A further area concerns the **definition of eligible expenditure** e.g. Article 16 (para 4) of the GBER where scope to use simplified methods of accounting such as Simplified Cost Options could be introduced in line with the CPR.
- **Flexibility**, in terms of re-use of EU funds as aid including from the NRRP (IT).
- **Review**. For example, France considers that the regulations on State aid for environmental protection (GBER and CEEAG) currently provide an unsuitable framework for supporting decarbonisation projects and call on the Commission to launch a **mid-term review of the CEEAGs and a targeted review of GBER from 2025** in order that they can come into force in 2026.

At EU level, two reports have recently presented more radical proposals. The **Letta report** (April 2024) paves the way for a 'European approach to investments' and calls for 'bold and innovative solutions' balancing targeted national support addressing market failures with respect for the Single Market.[60] The report argues that while crisis aid and the use of successive temporary frameworks have been needed, they have distorted competition and undermined the level playing field due to the different financial resources available to the MSs. The report suggests simplification of the 'diverse and complex' State aid landscape, along with harmonisation of rules, reducing the administrative burden for businesses and speeding up the assessment of State aid measures. The report also advocates a **stricter enforcement of State aid at national level, combined with a progressive expansion of EU-level funding support:**

'we could envision a State aid contribution mechanism, requiring Member States to allocate a portion of their national funding to financing pan-European initiatives and investments.'[61]

At the same time as the way is prepared for 'a wave of genuinely European public investments', national state aid schemes would comply with a **uniform set of conditionalities applicable across all Member States** to prevent 'State-aid shopping'. These could be ex ante eligibility criteria (e.g. relating to wages, workers' rights, support for less developed regions, the environment) or require ex post changes in enterprise behaviour (e.g. profit-sharing, reinvestment requirements). This would be supported by a **new flexible State aid governance framework** (inspired by the US DARPA and ARPA-E, or along the lines of a broadened IPCEI[62] approach) to identify, develop, implement and evaluate State aid projects, along with technical and administrative capacity building, investment in training and forums for sharing best practices and identifying promising EU projects.

More recently, **the Draghi report** (September 2024) on a new industrial strategy for Europe echoes these proposals to some degree, when it identifies that the 'EU's fragmented approach to State aid risks undermining the Single Market and disadvantages smaller Member States that can't afford to participate in a subsidy race'. Report recommendations include:

[60] Letta E (2024) Much more than a market. Speed, security, solidarity. Empowering the Single Market to deliver a sustainable future and prosperity for all EU Citizens. April 2024. https://www.consilium.europa.eu/media/ny3j24sm/much-more-than-a-market-report-by-enrico-letta.pdf

[61] Letta E (2024) Much more than a market. Speed, security, solidarity. Empowering the Single Market to deliver a sustainable future and prosperity for all EU Citizens. April 2024. https://www.consilium.europa.eu/media/ny3j24sm/much-more-than-a-market-report-by-enrico-letta.pdf

[62] Important Projects of Common European Interest (IPCEIs) - a State Aid instrument focusing on highly ambitious cross-border RD&I, and first industrial deployment (FID) activities. Member States pool resources in strategic sectors and technologies of common European interest, where the market alone does not deliver efficient outcomes, for example because of market failure.

- Returning to a '**normal enforcement of State aid controls**'

- **Moving national aid to EU level and harmonising approaches** (esp. in relation to energy)

- Creation of **nationally pre-allocated envelopes in the MFF** to incentivise and co-finance multi-country industrial projects. The report proposes deployment of a new Competitiveness IPCEI allowing State aid for cross-border projects, including industrial infrastructure, and a new Competitiveness Joint Undertaking for public-private partnerships between the Commission, interested Member States and industries.

- the compatibility assessment under State aid control should **more closely consider the coherence of the State aid with any EU-wide industrial policy** and allow for greater amounts of aid where EU coordination is enhanced.

- **greater emphasis on the potential impacts on both innovation and resilience** should be given in decisions involving State aid control.

Recent developments suggest that the new green agenda is leading to the introduction of '**a green industrial policy'**,[63] a form of public policy that has been virtually absent since the 1990s.[64] This raises the question - to what extent will the apparent reappearance of a new industrial policy revive the tensions with State aid policy that were also experienced three decades ago?

[63] See opinion piece by Danish ministers: https://www.stm.dk/statsministeren/indlaeg/mf-den-groenne-omstilling-er-moderne-industripolitik/

[64] Halkier, H. (2008). Regional Development Policies and Structural Reform in Denmark. From Policy Segmentation towards Strategic Synergy? In O. Bukve, H. Halkier, & P. D. Souza (Eds.), *Towards New Nordic Regionalism. Politics, Administration and Regional Development* (pp. 201-225). Aalborg: Aalborg University Press. Halkier, H. (2011). Erhvervspolitik mellem det lokale og det globale? Dansk turismepolitik under forandringspres. *Økonomi & Politik*, *84*(4), 11-24.

EoRPA CONSORTIUM

This paper has been prepared by Rona Michie of the European Policies Research Centre (EPRC) for the European Regional Policy Research Consortium, EoRPA. In 2024-25, EoRPA partners are:

Austria	Bundesministerium für Land- und Forstwirtschaft, Regionen und Wasserwirtschaft (Federal Ministry for Agriculture, Forestry, Regions and Water Management), Vienna
Finland	Työ- ja elinkeinoministeriö (Ministry of Economic Affairs and Employment), Helsinki
France	Agence nationale de la cohésion des territoires (National Agency for Territorial Cohesion), Paris
Germany	Bundesministerium für Wirtschaft und Klimaschutz (Federal Ministry for Economic Affairs and Climate Action), Berlin Berliner Senatsverwaltung für Wirtschaft, Energie und Betriebe (Berlin Senate Administration for Economic Affairs, Energy and Business)
Italy	Dipartimento per le politiche di coesione (Department for Cohesion Policies and the South), Rome
Netherlands	Ministerie van Economische Zaken (Ministry of Economic Affairs), The Hague
Norway	Kommunal- og distriktsdepartementet (Ministry of Local Government and Regional Development), Oslo
Poland	Ministerstwo Funduszy i Polityki Regionalnej (Ministry of Development Funds and Regional Policy), Warsaw
Portugal	Agência para o Desenvolvimento e Coesão (Cohesion and Development Agency), Lisbon
Sweden	Landsbygds- och infrastrukturdepartementet (Ministry of Rural Affairs and Infrastructure), Stockholm
Switzerland	Staatssekretariat für Wirtschaft (SECO, State Secretariat for Economic Affairs), Bern
United Kingdom	Ministry of Housing, Communities & Local Government, London Scottish Government, Glasgow

The European Policies Research Centre gratefully acknowledges the financial support provided by the members of the EoRPA Consortium. The EoRPA research programme is directed by Professor John Bachtler, Professor Carlos Mendez, Ruth Downes and Dr Irene McMaster. The research is based on desk research and fieldwork carried out by a research team of national experts from EPRC and across Europe comprising:

- Stefan Kah (Austria)
- Odilia van der Valk (Belgium and the Netherlands)
- Neli Georgieva (Bulgaria)
- Vinko Mustra and Blanka Šimundić (Croatia)
- Eleftherios Antonopoulos (Cyprus and Greece)
- Lucie Jungwiertova (Czechia)
- Henrik Halkeir (Denmark)
- Kristiina Tõnnisson (Estonia)
- Heidi Vironen (Finland and Sweden)
- Eléna Jabri (France and Switzerland)
- Ruth Downes (Germany and Malta)
- Zsuzsanna Kondor (Hungary)
- Irene McMaster (Ireland and Norway)
- Liliana Fonseca (Ireland)
- Virginia Arena (Italy)
- Tatjana Muravska and Jelena Daha (Latvia)
- Gintarė Vikmonaitė and Jonas Jatkauskas (Lithuania)
- Rachel Maguire (Norway)
- Martin Ferry (Poland)
- Viktoriya Dozhdeva (Portugal)
- Neculai-Cristian Surubaru (Romania)
- Martin Obuch (Slovakia)
- Damjan Kavaš (Slovenia)
- Carlos Mendez (Spain)
- Rona Michie (UK)