State aid control in the EU

A State aid guide for civil society

January 2024

ClientEarth

Contents

Disclaimer

The information is this guide is believed to be accurate at the date of publication in January 2024. This guide is designed to provide general information and does not constitute legal, professional, financial or investment advice. Specialist advice should be taken in relation to specific circumstances. Action should not be taken on the basis of this document alone. ClientEarth endeavours to ensure that the information it provides is correct, but no warranty, express or implied, is given as to its accuracy and completeness, and ClientEarth does not accept responsibility for any decisions made in reliance on this document.

Background

ClientEarth is a not-for-profit environmental law organisation that uses the power of the law to protect people and the planet. We are legal experts working to shape and enforce the law to tackle the world's biggest environmental challenges.

For several years, we have been advocating for EU State aid rules to align with and integrate environment and climate protection objectives, as outlined in the European Green Deal.[1]

The purpose of this State aid guide is to provide civil society organisations (CSOs) with a hands-on overview of State aid control in the EU. National and regional authorities across the EU use State aid to financially support companies for various reasons.

This guide attempts to provide an overview of what State aid is, how important it is, how State aid control in the EU works, and how State aid could be used by CSOs to achieve specific public interest objectives or as part of a broader strategy.

Our mission

We strive for a healthy planet where nature and all people can thrive together.

For any questions, please contact ClientEarth's State aid legal experts:

Catherine Derenne: cderenne@clientearth.org

Lorenzo Fiorilli: lfiorilli@clientearth.org

Stéphanie Nieuwbourg: snieuwbourg@clientearth.org

1 More information about our advocacy efforts and cases can be found on our website: www.clientearth.org.

1.
The importance and role of State aid in the EU internal market

1. The importance and role of State aid in the EU internal market

1.1. State aid control to protect the EU internal market

The **EU internal market** is a cornerstone of the European Union (EU). It consists of a borderless economic area covering the EU 27 Member States, in which *"the free movement of goods, persons, services and capital is ensured".*[2] It aims to foster competition, efficiency and opportunities for companies and consumers.

A well-functioning EU internal market involves the harmonisation of regulations and standards across the EU internal market to ensure an **economic level playing field**.[3] For this to happen, the removal and prevention of market barriers between Member States, such as import/export tariffs and regulatory constraints, are key.

In the same vein, when a Member State provides financial support, for instance through subsidies, to one or several companies or industries in its territory, this can hinder fair competition and affect the economic playing field. Such support gives those companies an advantage over other companies in other Member States that are in direct competition and may not get the same (level of) support. This type of support given by a government (at any level) to companies or industries often qualifies as **"State aid"**.

To preserve fair competition between companies and trade between Member States, the EU has a **State aid control policy** in place. The European Commission is responsible for overseeing and enforcing the rules of the State aid policy with the aim to **allow State aid in a controlled and effective manner**.

While State aid control in the EU is particularly robust at preserving the EU internal market, other countries and regions may also have mechanisms to regulate subsidies to varying extents.[4]

1.2. State aid as a strong policy tool

Across the EU, State aid is granted by all authorities at various levels, albeit to different degrees, to financially support certain economic sectors and companies for different reasons. It is a **powerful policy tool** for Member States to:

- **Boost certain economic activities**, such as the promotion of sustainable technologies and improve energy efficiency to achieve environmental objectives;
- **Address market failures**,[5] such as the underinvestment in infrastructure (energy, telecom, transport), research and development;
- **Promote economic development**, particularly in less-developed regions or sectors, and to contribute to regional cohesion by reducing economic disparities;
- **Implement industrial policies**, such as by supporting industries of strategic importance;
- **Provide crisis response**, such as during the war in Ukraine or the COVID-19 pandemic, or to compensate for damage from natural disasters.

2 Article 26 of the Treaty on the Functioning of the EU (TFEU); Title II TFEU sets out the provisions on the free movement of goods, whereas Title IV TFEU concerns the free movement of persons, services and capital.

3 The concept of "level playing field" refers to a situation in which everyone has the same chance of succeeding. In trade, this means that there needs to be fair competition between states.

4 For example, the World Trade Organization (WTO) provides guidelines on subsidies and countervailing measures at the global level. The UK, after leaving the EU, adopted the UK Subsidy Control Act.

5 There is a "market failure" when the free market where competition prevails does not deliver, when there is an inefficient allocation of goods and services.

In light of all these policy objectives, the use of State aid by Member States and its control by the European Commission can have an **impact on the environment**. State aid can be used to achieve certain environmental or climate objectives, but conversely, it can also be used to provide support to economic activities that are inherently **environmentally harmful** (e.g. support to fossil fuel activities).

State aid policy has recently been gaining attention due to the role it has played in tackling the COVID-19 pandemic and in the EU's response to the war in Ukraine and the energy crisis. In times of crisis, the European Commission has also been able to react quickly by adopting **temporary crisis State aid rules** to allow Member States to be able to support their economies.

State aid also has an **important role to play in industrial policies** and is therefore often mentioned as a tool for the European Green Deal Industrial Plan.[6] Many are however wary of a more active intervention of governments in markets through industrial policies as this can cause unnecessary competition distortions in the EU internal market and lead to a potential waste of public resources if not well allocated.

In addition to being an important tool for Member States to implement various policies and therefore being mostly a "policy follower", **State aid control can also lead to changes in policy and legislation**. For instance, in 2015, the European Commission launched a sector inquiry on State aid to secure electricity supplies, which lead to significant changes in the EU's energy legislation in 2019 with the Clean energy for all Europeans package. This means that State aid is sometimes a testing ground for future legislation.

EU State aid policy aims to strike the **balance between enabling Member States to pursue policy objectives while setting boundaries to ensure that these policy objectives are pursued at the lowest possible cost**, both in terms of public resources and in terms of distortion of competition on the EU internal market. What is clear, is that badly designed and/or allocated State aid can reduce economic welfare for all and undermine the success of the policy it is supposed to support.

For all of the above reasons, it's clear that State aid can not only benefit CSOs in having positive environmental impact, but can also negatively impact CSOs' work. More generally, as will be developed in this guide, these impacts are often a blind spot in EU State aid control and CSOs therefore have a role to play to **raise awareness** about these impacts among the competent authorities.

1.3. State aid expenditure on the rise

State aid expenditure across the EU has been increasing in the last decade, with a big spike in 2020-2021 due to the COVID-19 crisis and in 2022-2023 due to the war in Ukraine and the energy crisis.[7] However, not taking into account these recent crises, State aid expenditure in the EU27 as a whole has doubled over the period 2011-2019.[8]

In recent years across the EU, Member States have, on average, spent around 1% of the EU Gross Domestic Product (GDP) on State aid. There are however large spending differences between Member States with certain countries spending only 0.6% of their national GDP on State aid while others spend up to 4.6% of their GDP.

6 The plan, published in February 2023, aims to enhance the competitiveness of Europe's net-zero industry and support the fast transition to climate neutrality, by providing a more supportive environment for the scaling up of the EU's manufacturing capacity for the net-zero technologies and products. It is built on four pillars: a predictable and simplified regulatory environment, speeding up access to finance, enhancing skills, and open trade for resilient supply chains.

7 The European Commission publishes a yearly "State aid scoreboard" based on expenditure reports provided by Member States. It provides information and statistics on State aid granted by EU Member States. The European Commission uses it to monitor and assess the implementation of state aid rules across the European Union.

8 Significant increases can be observed in most Member States, with the strongest increases in Czechia (+104%), Estonia (+319%), Germany (+206%), Italy (+103%), Lithuania (+260%), Malta (+160%) and Slovakia (+229%). A decrease has been observed in Bulgaria, Cyprus, Finland, Greece, Ireland, Portugal, Slovenia and Sweden.

Figure 1 Evolution of total State aid expenditure between 2011 and 2021 as % of EU 27 GDP; Source: European Commission, State aid scoreboard 2022, p. 26.

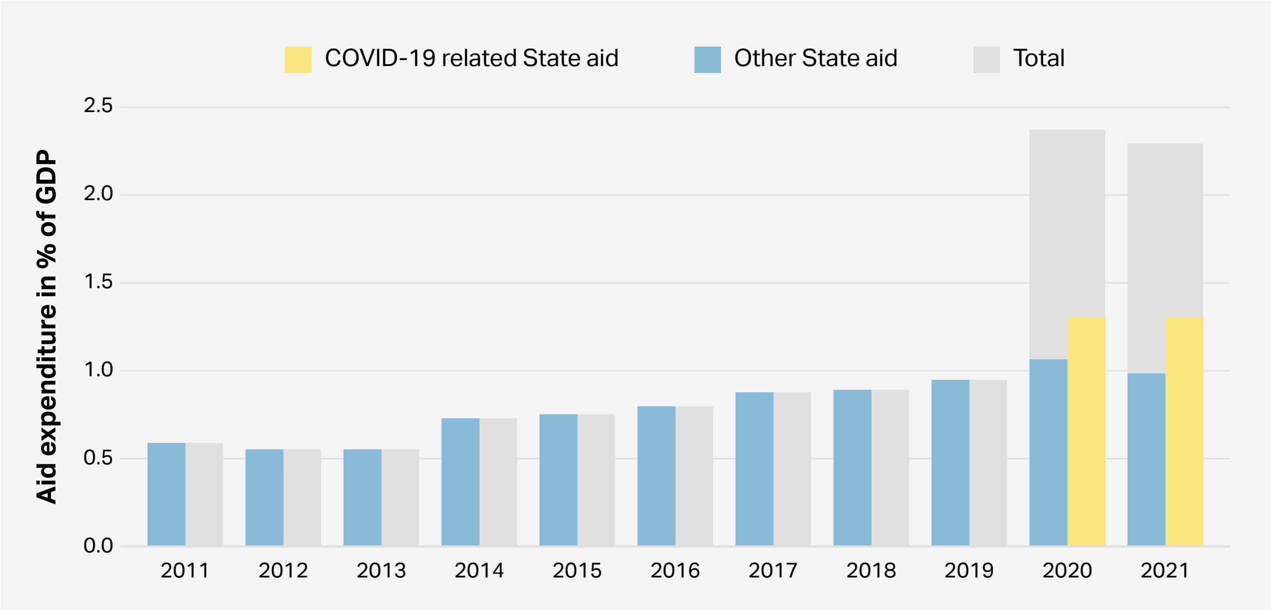
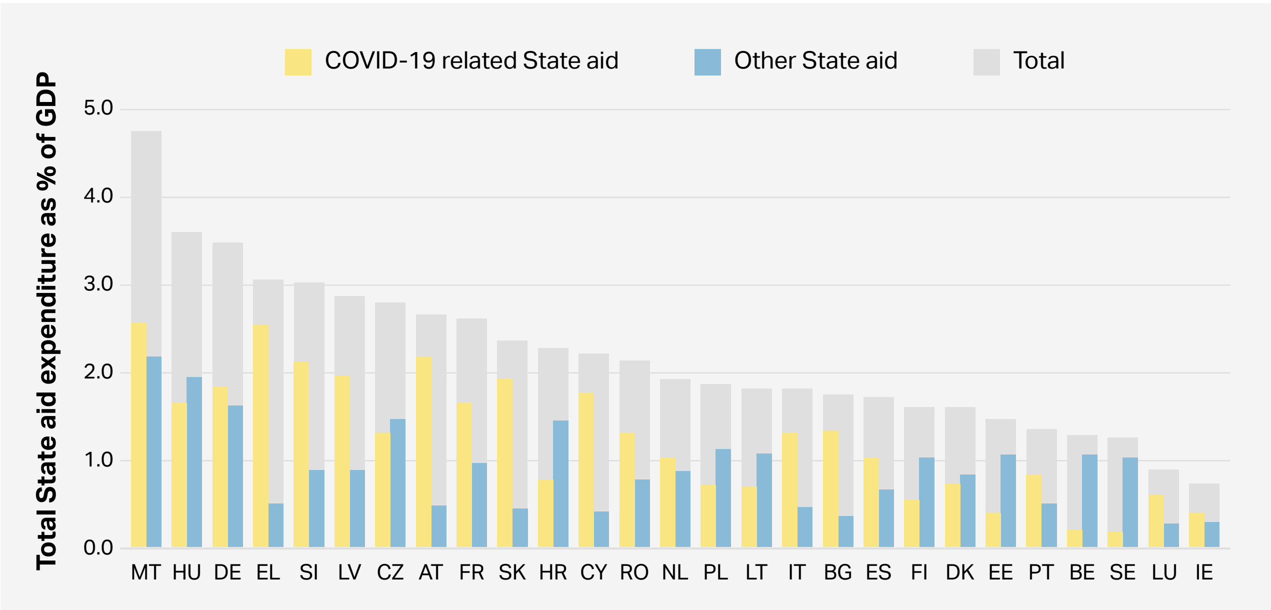


Figure 2 Total State aid expenditure by Member State in 2021, as % of national GDP; Source: European Commission, State aid scoreboard 2022, p. 23.

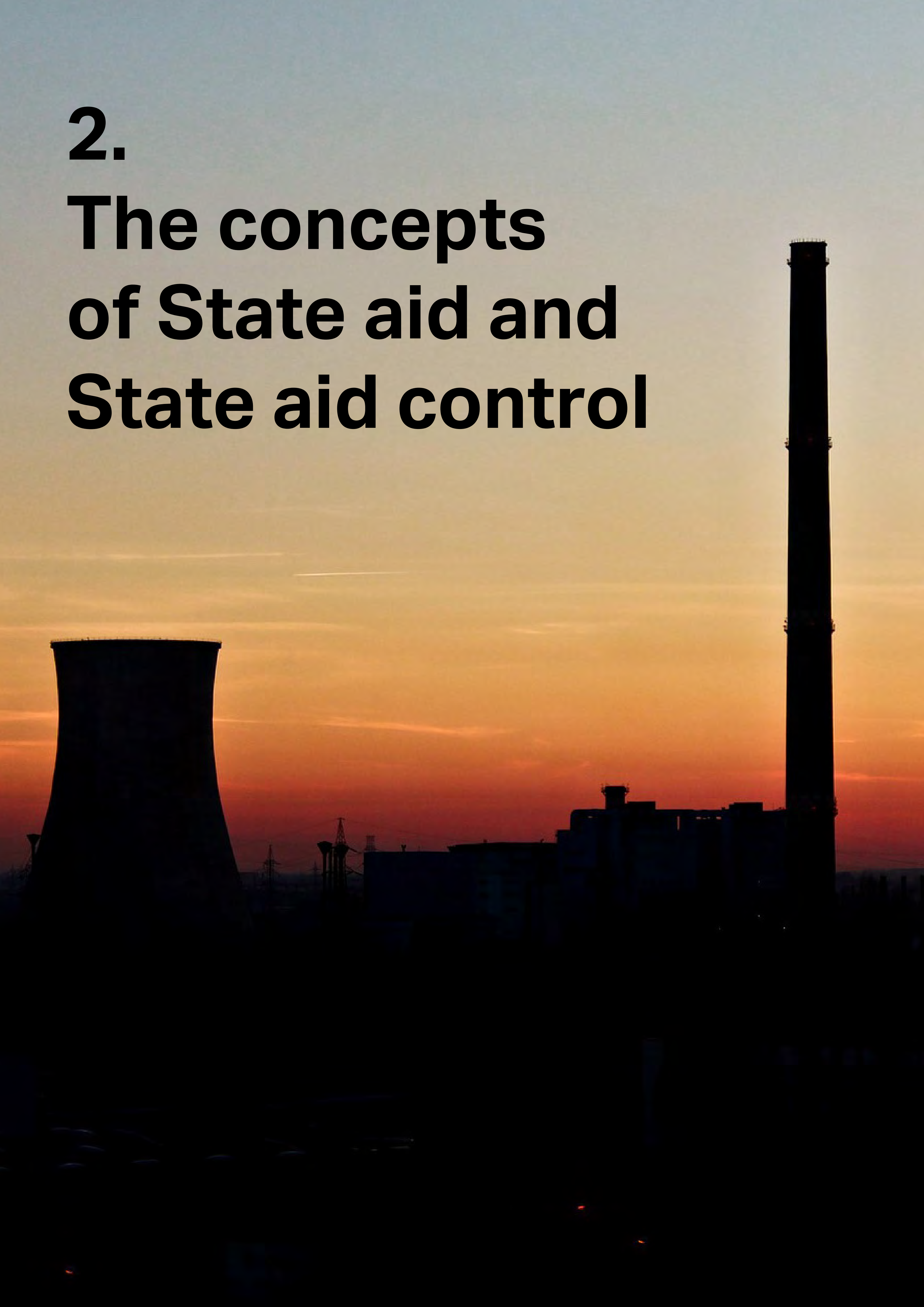


In nominal terms, Member States have spent EUR 334.54 billion on State aid in 2021 (57% on COVID-19 spending).[9] This corresponds to 2.3% of the 2021 EU GDP and is **more than double the total annual EU budget** of EUR 160-180 billion.[10]

9 The largest spenders were, unsurprisingly, taking into account the size of the national economies: Germany (EUR 121.21 billion or 36% of total EU State aid expenditure) followed by France (EUR 63.3 billion or 19%), Italy (EUR 31.52 billion or 9%), Spain (EUR 20.45 billion or 6%), the Netherlands (EUR 16.21 billion or 5%) and Poland (EUR 10.50 billion or 3%). For more information, please consult the European Commission State aid scoreboard 2022 at pp. 23-24.

10 The current 7-year EU budget as set in the Multiannual financial framework 2021-27 amounts to EUR 1.211 trillion. It has exceptionally been topped up by NextGenerationEU, the COVID-19 recovery package, amounting to EUR 806.9 billion. The total available resources therefore amount to 2.018 EUR trillion. For more on the EU budget, please consult the Commission's website.

2. The concepts of State aid and State aid control



2. The concepts of State aid and State aid control

2.1. What is State aid?

State aid refers to any form of support (financial or through goods/services) provided by a Member State to companies.[11] It can be granted by local, regional, or national authorities, across **almost all economic sectors**, such as energy, agriculture, manufacturing, research and development, healthcare, fisheries, and education. Sectors of a non-economic nature, where market players do not compete, are excluded. These are notably activities that belong to the State prerogative, such as armed forces, police forces and airport control.

Box 1: Examples of the different forms of State aid

- Direct grants and subsidies
- Government issued loans at preferential costs/soft loans
- Government issued loan guarantees
- Capital injections by governments into companies
- Tax incentives and rebates that are not equally available to all market operators
- Providing assets, goods and services at lower than market price

Support by the State is considered to be State aid when the following cumulative criteria are met:

1. There is an intervention **by the State or through State resources**
2. The intervention gives the recipient an **advantage on a selective basis**
3. The advantage is given **to companies or sectors**, or to companies located in specific regions
4. The intervention **leads to or may lead to a distortion of competition**
5. The intervention is likely to affect **trade between Member States**

The assessment of whether an intervention by a government qualifies as State aid is subject to scrutiny by the European Commission and ultimately by the Court of Justice of the European Union (CJEU).

The legal basis for State aid and its control by the European Commission can be found in Articles 107 to 109 of the Treaty on the Functioning of the EU (TFEU).

11 Article 107(1) TFEU refers to the concept of "undertaking". In this guide, the concept of "company" is used. For the purpose of this guide, the two notions can be used interchangeably.

Box 2: Deep dive into the cumulative conditions to establish State aid

1. What is an intervention through State resources?

State resources can be granted to a beneficiary either directly by a Member State or indirectly via a private body that administers State resources.

State resources can also be impacted without a transfer of money from the State to the beneficiary. For example, if a State takes the decision not to collect taxes from a company by granting a reduction or an exemption, State resources are involved as the State receives less income than it would otherwise have received. To verify if the intervention involves State resources, it is therefore important to assess the **impact on the State budget**, whatever its size.

2. What is an advantage and when is it considered selective?

A State intervention results in a selective advantage when specific companies or a sector benefit from certain conditions that are not in line with, or available on, the market.

To determine if there is an **advantage**, the government measure or intervention needs to be compared with the behaviour of a prudent market operator (this is the **market economy operator principle** (MEOP)). If a prudent market operator could be expected to act in the way the government is acting, the government measure or intervention does not result in an advantage. For instance, a lumpsum payment by a Member State that does not need to be reimbursed by the beneficiary is very likely to result in a selective advantage. It is clear that such conditions are not available on the market. Conversely, the purchase of goods or services by a government at market terms does not result in an advantage. Less straightforward examples include financial guarantees and loans at rates below market terms.

An advantage is generally **selective** when it excludes companies that are equally capable of contributing to the objective pursued. A decision not to collect a specific tax from a single company would likely be selective, since other companies still have to pay that tax. Conversely, a general tax-cut on corporate taxes that equally applies to all companies would be considered non-selective.

How to concretely identify the existence of an advantage

Identifying the existence of an advantage often requires a market analysis to understand the existing level of competition, market structure, regulatory frameworks and key players. This allows to compare the situation of the aid recipient(s) to the situation of other companies that are in a similar legal and economic position (called *benchmarking*), and to determine whether the aid recipient(s) enjoys more favourable conditions or benefits compared to their competitors.

When benchmarking is not possible, a detailed economic analysis may be provided with financial ratings (e.g. for loans and guarantees) or valuation reports (e.g. for capital injections and transactions). Tax related measures and price regulation are particularly challenging to assess and often require an in depth legal analysis to identify the baseline (norm) against which the existence of an advantage must be established.

(continued over...)

Box 2: Deep dive into the cumulative conditions to establish State aid *(continued)*

3. What is a company?

State aid only concerns measures that benefit companies. The legal form of the company is not relevant. The only determining factor is that the company performs an economic activity. This means that various types of companies and organisations, including partnerships, private companies, public companies (owned by the State) and associations, can qualify as a company.

Generally speaking, individuals are not considered to be companies – except when they perform an economic activity. This means that households receiving subsidies, for instance to install solar panels for self-consumption, are not companies – they do not perform an economic activity on a market.

4. When does a measure distort competition?

The primary purpose of State aid rules is to protect the EU internal market and to minimise distortions of competition (see also Section 1.1). In practice, this condition is not difficult to meet, as it is sufficient to establish that the State's intervention **may** strengthen the position of a company compared to competing companies in the EU, which is often the case.

5. When does a measure affect trade between Member States?

Similarly to point 4, this condition is not difficult to meet, as it is sufficient to establish that the products sold or services offered by the beneficiary of the aid freely compete with similar products or services offered by competitors in other Member States. This most commonly occurs in the liberalised EU market where free trade prevails.

***De minimis* rule – small amounts of aid**

Aid falling below certain financial thresholds is assumed to be too small to have an impact on competition and trade between Member States, and therefore does not qualify as State aid. The **general threshold for aid to companies is EUR 300,000 over a period of three years** on a rolling basis. This threshold applies across all sectors, with the exception of:

- the fishery and aquaculture sector: EUR 30,000 per company in a three year period (or EUR 40,000 if information on *de minimis* aid is published in a central register).
- the agriculture and forestry sector: EUR 20,000 per company in a three year period (or EUR 25,000 if the information on *de minimis* aid is published in a central register).

2.2. State aid is in principle prohibited… unless it is approved by the European Commission

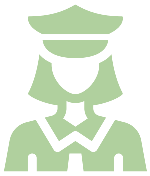
State aid is in principle prohibited in the EU, because it is deemed to disturb competition and affect the level playing field of the EU internal market. There is however an **important exception to this prohibition: State aid can be allowed if it is compatible with the internal market.**

There is an oversight mechanism at EU level that determines if State aid provided by Member States is compatible with the EU internal market. This mechanism is referred to as **EU State aid control**. The European Commission plays a pivotal role in this oversight as it has exclusive competence in this field.

Box 3: The European Commission has three roles in EU State aid control

1. It acts as the administrative decision maker

It is the only body with the power to allow or block State aid to be granted by Member States. Its power is subject to review by the CJEU.



2. It acts as a law enforcer

It has the power to investigate aid that was granted unlawfully by Member States and it can impose an obligation on Member States to recover any unlawfully granted aid from the beneficiary.

3. It acts as a policy maker

It is the only one with the power to develop State aid policies.

As a general rule, **before a Member State grants State aid, it must notify it to, and receive approval from, the European Commission**. The approval is given in the form of a formal decision. Pending approval, a Member State cannot grant State aid. This is also referred to as the standstill obligation.

If a Member State grants State aid without approval from the European Commission, the aid is considered **unlawful** (illegal). In such cases, the European Commission can impose an obligation on the Member State to recover this aid from the beneficiaries (see Box 3). This means that the beneficiary will have to repay the aid received with interest to the Member State that granted it in the first place.

Box 4: Individual aid *versus* aid schemes

Member States can notify two different aid measures for approval to the European Commission:

1. **Individual aid measures:** aid is granted to one or more companies that are specifically identified beforehand.
2. **Aid schemes:** general frameworks, that apply to an undefined number of beneficiaries, on the basis of which individual aid can be provided. An aid scheme sets out the aid objective, the budget available, the eligible beneficiaries, the conditions for receiving the aid and the amount of aid. For instance, aid schemes for renewable energy are widely used.

Generally, the European Commission has a preference for aid provided through aid schemes, since these are less distortive of competition. Schemes often allocate aid using bidding processes to ensure that only the aid needed to achieve the pursued objective is granted, not more. The European Commission will approve individual aid measures if there is no real alternative to achieve the aid objective (e.g. when a specific company needs to be rescued from bankruptcy).

Once an aid scheme has been notified to, and approved by, the European Commission, the Member State concerned can grant aid under that scheme, provided the conditions of the scheme are complied with, without seeking prior approval from the European Commission.

2.3. The many exceptions to the prohibition to grant State aid

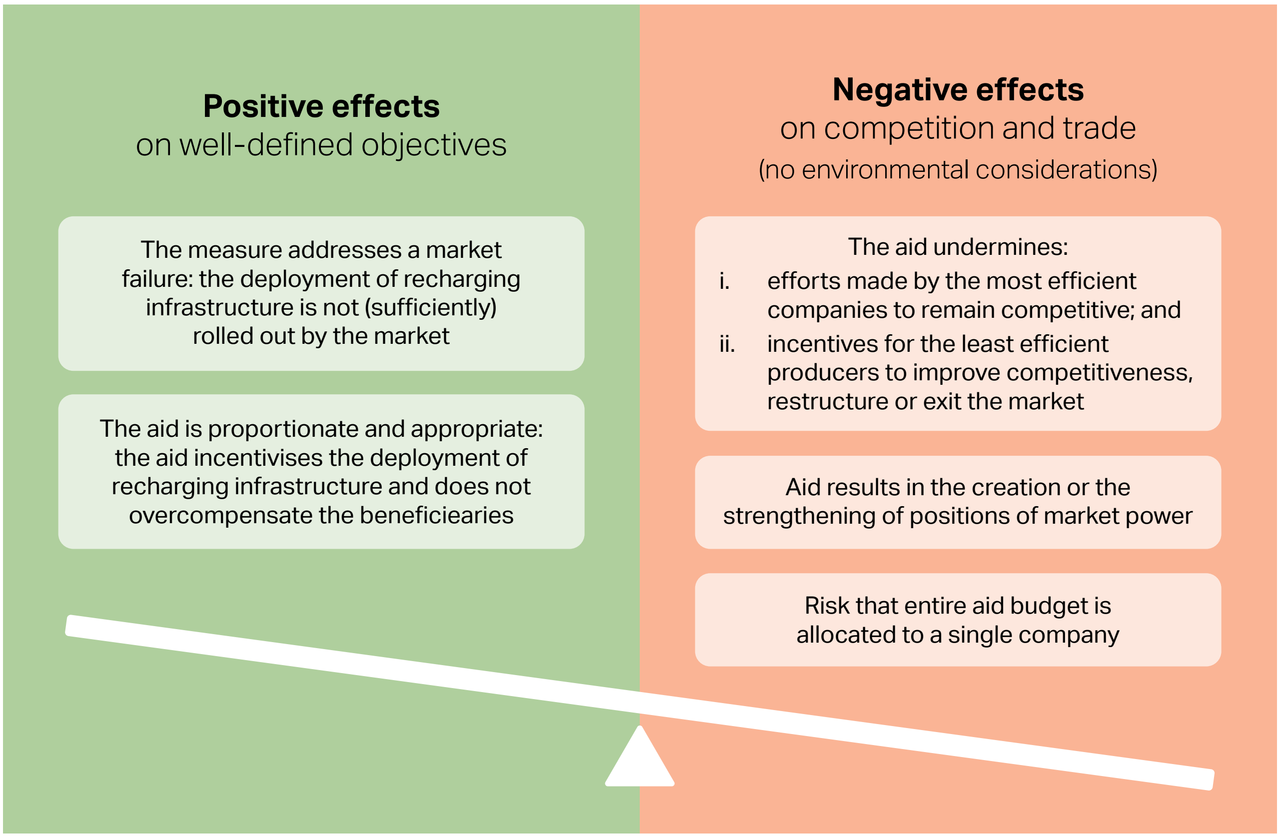
2.3.1. Grounds to allow State aid

The European Commission can approve State aid if it is **compatible with the internal market** (see Section 2.2). To be compatible, the aid measure must pursue a **well-defined objective**,[12] such as:

- to help develop economically disadvantaged regions in the EU;
- to remedy disturbances in the economy, such as the COVID-19 and the war in Ukraine;
- to support the development of certain economic activities, such as to promote renewable energy;
- to ensure that certain essential public services are provided, such as bus connections in low populated rural areas.

As the primary goal of State aid control is to preserve competition on the market and trade between Member States, **the European Commission will assess the positive effects of the aid measure in view of achieving its objective against the potential negative effects on the internal market**. This is called the balancing test. State aid inherently provides an economic advantage to the recipient, so the European Commission will only consider an aid measure compatible with the internal market when the positive effects of a measure outweigh the negative effects. The European Commission has a relatively wide margin of discretion in this regard.

Figure 3 Example of the application of the balancing test to an aid measure aimed at supporting the deployment of recharging infrastructure for road vehicles in a Member State.



12 The relevant grounds for approving State aid are listed in Article 107 (2) and (3) TFEU. State aid for the objectives listed under Article 107 (2) **must** be approved by the European Commission. State aid for the objectives listed under Article 107 (3) **may** be approved by the European Commission, meaning it has discretionary power to allow or refuse aid.

2.3.2. The State aid rulebook: guidance on compatibility of State aid

To provide Member States with guidance on the types of aid measures that could be declared compatible with the EU internal market and how to design such aid measures, the European Commission has developed a State aid rulebook. Each set of State aid rules has its own objective, as well as its own eligibility criteria and conditionalities for granting aid.

There is **no general climate and environmental mainstreaming[13] in the State aid rulebook** (see Section 2.4). This means that there are some specific rules that consider climate and environmental impacts of an aid measure, but not all of them do so. Whereas some frameworks actively pursue climate and environmental priorities, other frameworks focus on other unrelated objectives without considering climate and environmental aspects or imposing environmental conditionality. Therefore, in practice, nothing structurally precludes Member States from granting environmentally harmful aid and/or aid to companies carrying out environmentally harmful activities. **Aid measures with a positive environmental and climate impact can therefore be undermined by environmentally harmful aid measures.**

The State aid rulebook is composed of two main sets of rules:[14]

(i) Block exemptions for aid that does not need to be notified to the European Commission

The European Commission has adopted rules that **exempt certain aid from the obligation to notify to, and obtain approval from**, the European Commission. These exempted aid measures are subject to **specific conditions** and **maximum aid thresholds** (see Figure 4).

The largest set of rules is the **General Block Exemption Regulation (GBER)**. It gives the possibility to grant aid for a variety of objectives, such as environmental protection, local infrastructures, research and development, disadvantaged regions, etc. For aid to environmental protection, a general maximum amount (threshold) of EUR 30 million per company per investment project applies.

Similar specific block exemption regulations apply to the fishery and aquaculture sector (the Fishery Block Exemption Regulation – FIBER) and the agriculture sector (Agriculture Block Exemption Regulation – ABER).

The underlying reason for a block exemption is that the European Commission prefers to avoid spending enforcement resources on State aid that, based on previous experience, is unlikely to seriously disturb the level playing field in the EU internal market.

The **scope of these block exemption regulations is well-defined and the conditions are to be interpreted strictly**, due to the lack of notification and prior control by the European Commission. This means that large (in financial terms), complex (e.g. security of energy supply) and/or more controversial (e.g. aid for fossil fuels) aid measures usually do not fall within the scope of these block exemption regulations and always need to be notified to the European Commission. Aid provided in accordance with these block exemption regulations is subject to specific reporting and transparency obligations (see Section 3.5.3).

Aid in line with these block exemption regulations needs to be distinguished from the very small amounts of aid that are also exempted from the notification obligation as they are not believed to disturb competition or affect trade between Member States, and are therefore not considered State aid (see Section 2.1 Box 2). The ***de minimis* regulation** sets the general threshold under which there is no State aid: EUR 300,000 per company over a period of three years on a rolling basis. It applies across all sectors, with lower financial thresholds for the agriculture and fishery sectors.

13 Climate mainstreaming refers to the integration of climate change considerations into the planning, development, and implementation of policies, programs, and projects across various sectors and levels of governance. The goal is to ensure that climate change considerations are systematically and effectively incorporated into the decision-making processes, rather than being treated as a separate or isolated issue.

14 A full overview of the State aid rulebook is available on the European Commission's website.

(ii) Guidelines for aid subject to notification and approval from the European Commission

The European Commission also adopts **guidelines**[15] that explain how it assesses State aid that must be notified. These set out the objectives that can be pursued, and under what general principles and conditions State aid can be approved.

The European Commission is bound by these guidelines, which are regularly updated to align with new legislation and to reflect new priorities. They are a cornerstone of State aid policy and Member States make considerable use of them when notifying aid.

Broadly speaking, State aid guidelines can be:

Horizontal: relates to a type of aid with a specific objective that can apply across sectors, such as regional aid, aid for research and development and innovation, training aid, risk finance investments and important projects of common European interest.

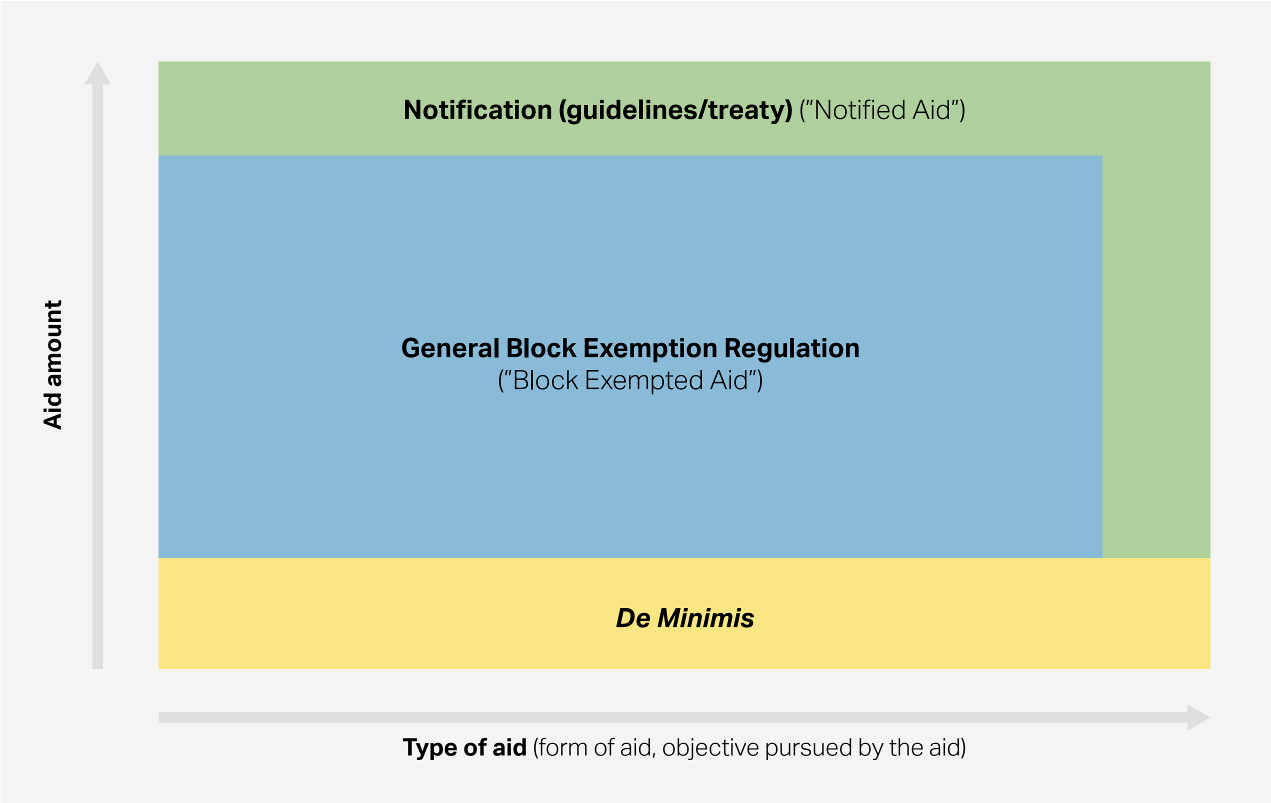
Sector-specific: relates to aid in a specific sector, which exists for the agriculture, fishery, forestry, broadband networks, energy and environment, postal services and transport sectors.

Box 5: Examples of guidelines, frameworks and communications (non-exhaustive list)

- Guidelines on State aid for climate, environmental protection and energy 2022 (CEEAG)
- Temporary Crisis and Transition Framework (TCTF)
- Regional aid Guidelines (RAG)
- Framework for State aid for research and development and innovation (RD&I framework)
- Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty (R&R guidelines)
- Guidelines for State aid in the fishery and aquaculture sector (Fisheries guidelines)
- Guidelines for State aid in the agricultural and forestry sectors and in rural areas (Agriculture & Forestry guidelines)
- State aid guidelines on the EU Emission Trading System (ETS Guidelines)
- Criteria for the analysis of the compatibility with the internal market of State aid to promote the execution of important projects of common European interest (IPCEI communication)
- European Union framework for State aid in the form of public service compensation (SGEI framework)
- Guidelines on State aid to airports and airlines (Airport and airline guidelines)
- Community guidelines on State aid for railway undertakings (Railway guidelines)
- Community Guidelines on State aid for maritime transport (Maritime guidelines)

15 These guidelines are sometimes also called "frameworks" or "communications". For ease of reading, this guide uses the term "guidelines".

Figure 4 Overview of the functioning of the State aid rulebook



2.4. Environmental and social considerations in State aid policy

The primary goal of EU State aid control is not to protect the environment, nor to consider the potential impact of State aid measures on the environment, or any other social considerations. The role of State aid control is to ensure that aid measures granted by Member States do not negatively affect competition and trade on the EU internal market (see Section 1).

Environmental and social considerations may nevertheless come into play in State aid control:

- Article 11 TFEU outlines that **environmental protection requirements must be integrated into EU policies**. This means that State aid rules should support the EU Green Deal objectives. Ideally, there should be climate and environmental mainstreaming across the EU State aid rulebook and enforceable environmental conditionalities should systematically be attached to State aid measures, but this is currently not the case (see Section 4.3.)
- State aid, as a public financial support and policy tool, can also help companies or sectors pursue positive social or environmental objectives (see Sections 1.2, 3.4 and 4.3).
- When the European Commission assesses the compatibility of State aid measures, it has to verify that these **aid measures are not in breach of EU law** (including general principles of EU law).[16] The European Commission will restrict its verification to the object of the aid measure and aspects closely linked to the object of the aid. In practice, it mostly merely requires the notifying Member State to confirm that the aid measure does not breach EU law.

16 This was confirmed by the CJEU in the *Hinkley Point C* judgment, Case C-594/18 *Austria v European Commission*. See for more details on this topic, ClientEarth's legal briefing on the *Hinkley Point C* ruling. Note that a recent judgment from the General Court interprets this ruling: judgment in Case T-101/18 *Austria v Commission (Paks II)*.

Box 6: Case study – the *Oltenia* decisions (Romania)

The poor inclusion of environmental considerations is reflected in the State aid approval decisions concerning Complexul Oltenia Energetic Oltenia S.A. (Oltenia), the main electricity provider in Romania and the owner of several power plants running on lignite mined from its own mine pits.[17]

Due to financial difficulties, Oltenia received rescue aid in 2020 as well as restructuring aid in 2022. The aid was reviewed and approved by the European Commission in accordance with the **Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty** (rescue and restructuring guidelines) (see Section 4.3.6), without taking into account climate and environmental considerations:

- **No general climate streamlining or environmental conditionalities**: both the 2020 rescue and 2022 restructuring aid were approved without any environmental conditionality (as none is required in applicable guidelines). In particular, the 2022 restructuring aid decision approved new fossil gas capacities without any of the conditions that usually apply for new fossil gas capacity that is approved in accordance with the Guidelines on State aid for climate, environmental protection and energy 2022 (CEEAG). This lack of consistency between guidelines creates a loophole for harmful activities, such as fossil fuel activities.
- **Weak assessment of an environmental law breach**: in the 2022 restructuring aid decision, the European Commission conducted a light-touch and narrow assessment of an environmental law breach that had been raised by NGOs. Without a convincing motivation, the European Commission concluded that there was no breach of EU environmental law.

17 For more details, see ClientEarth's press release on these cases.

2.5. The difference between State aid and EU funds

State aid and EU funds are both financial support instruments used across the EU. However, they serve different purposes and have distinct characteristics.

	State aid	EU funds
Description	**Financial support or advantage provided by a Member State** (national, regional or local authorities) **to a company(ies) or industry.**	Financial support provided by **the EU to its Member States, regions, or various stakeholders** (not only companies or industries). *e.g. Just Transition Fund, European Regional Development Fund, Cohesion Fund, Innovation Fund, Modernisation Fund.*
Purpose	**Support for Member State specific policy objectives.** *e.g. promote an economic activity, encourage investments in areas that may not attract private funding, crisis response, etc.*	**Support for EU policy objectives.** *e.g. reduce economic and social disparities between EU regions, foster sustainable development and protect the environment, support research and development, develop (strategic) infrastructure projects.*
Financing	Financed through the **Member States' budget**.	Financed from the **EU budget** (Multiannual Financial Framework).[18] Funds allocated directly by the EU or under shared management with the Member State.
Applicable rules	Subject to **strict EU State aid rules** and oversight by the European Commission.	Governed by **EU regulations and policies**; Priorities for the use of EU funds are set through programming documents and allocation is based on specific criteria.
Control	Member States must **notify** any planned State aid measures, subject to exceptions, **to the European Commission** to obtain prior approval.	European Commission and national authorities monitor the implementation. Subject to rigorous reporting and auditing procedures.

The distinction between EU funds and State aid is however not always clearcut as **EU funds can also qualify as State aid in some instances**. This is the case whenever a Member State's authorities (national/regional/local) (i) control the funds received from the EU and (ii) decide which project to finance. All the conditions for State aid (see Section 2.1), also need to be fulfilled. In practice, this means that some EU funds under "shared management"[19] can fall under State aid control.

18 The EU budget is mainly financed by contributions from each Member State (70%) as well as other own resources stemming from customs duties, VAT, agricultural duties and borrowing on markets. For more on the EU budget, please consult the Commission's website. For the 2021-2026 period, NextGenerationEU, the EUR 800 billion temporary recovery instrument to support the economic recovery from the coronavirus pandemic and build a greener, more digital and more resilient future, exists in addition to the MFF 2021-2027. NextGenerationEU allows to top up certain EU funds as well as the creation of the Recovery and Resilience Facility.

19 EU funds are under "shared management" (as opposed to direct management by the EU) if the European Commission and Member State authorities jointly manage the fund but the Member State ultimately decides which projects receive funding.

EU funds that <u>are not</u> under State aid control	EU funds that <u>may</u> fall under State aid control
• Innovation Fund • Connecting Europe Facility • Programme for Environment and Climate action • Horizon Europe • InvestEU • European Maritime, Fisheries and Aquaculture Fund • Funds under Common Agriculture Policy	• Modernisation Fund • Just Transition Fund • Recovery and Resilience Facility • European Social Fund + • European Regional Development Fund • Cohesion Fund
E.g.: A grant from the Innovation Fund to support a chemical company to lower its carbon dioxide emissions by installing a carbon capture installation is not subject to State aid control because the Innovation Fund is directly managed by the EU, without the involvement of the Member State.	*E.g.: A grant from the Recovery and Resilience Facility to support a coal-to-gas power plant conversion is subject to State aid control, provided all conditions for State aid are met, because the Member States is responsible for selecting the project and setting the amount of the grant, subject to the Commission's approval of the national Recovery and Resilience plan.*

Finally, support from EU funds often only covers a part of the project's costs. A project that benefits from EU funds is therefore often **co-financed** by State aid granted by the Member State. Most State aid guidelines that apply to a particular sector or horizontally to support a policy objective (see Section 2.3.2), set out **specific cumulation rules on how to combine State aid and EU funds**. Although rules vary, as a rule of thumb, public support can never exceed the actual costs incurred by the beneficiary of the support, or cover more than 100% of certain eligible costs, as this would lead to "overcompensation".

2.6. State aid in numbers

The overall trend over the last decade shows a **stable increase in State aid expenditure across the EU** (see also Section 1.3). On average, Member States grant around 1% of the EU's GDP in State aid, with some Member States granting up to 3-4% of their national GDP. Given the recent COVID-19 and energy crises, the State aid spending doubled, amounting to 2.3% of the EU's GDP in 2021.[20]

Not taking into account the recent crises, **energy and environment are the policy objectives on which Member States spend the most State aid.** This includes, amongst others, State aid for security of supply, energy generation, energy infrastructure, decarbonisation measures, energy efficiency and reductions from taxes for energy intensive industries. It accounts for 21% of the overall State aid expenditure in the EU. State aid for research and development including innovation and State aid for regional development account for 5.6% and 4.3%, respectively.[21]

Overall, State aid expenditure tends to be higher in sectors where Member States benefit from a larger autonomy in steering policies and where EU funds are less important. This means for instance that State aid plays an important role in the energy sector as Member States have the right to choose their energy mix,[22] as well as in the transport sector (especially for aviation and rail). Conversely, State aid plays a smaller role in the agriculture and fishery sectors due to the respective EU common agricultural and fisheries policies.

20 European Commission, State aid scoreboard 2022, pp. 24-26.
21 European Commission, State aid scoreboard 2022, pp. 33-34.
22 Article 194 (2) last sentence TFEU.

Figure 5 Total State aid expenditure for non-crisis objectives, by policy objective, for the period 2016-2021[23]; Source: European Commission – State aid scoreboard, p. 52.

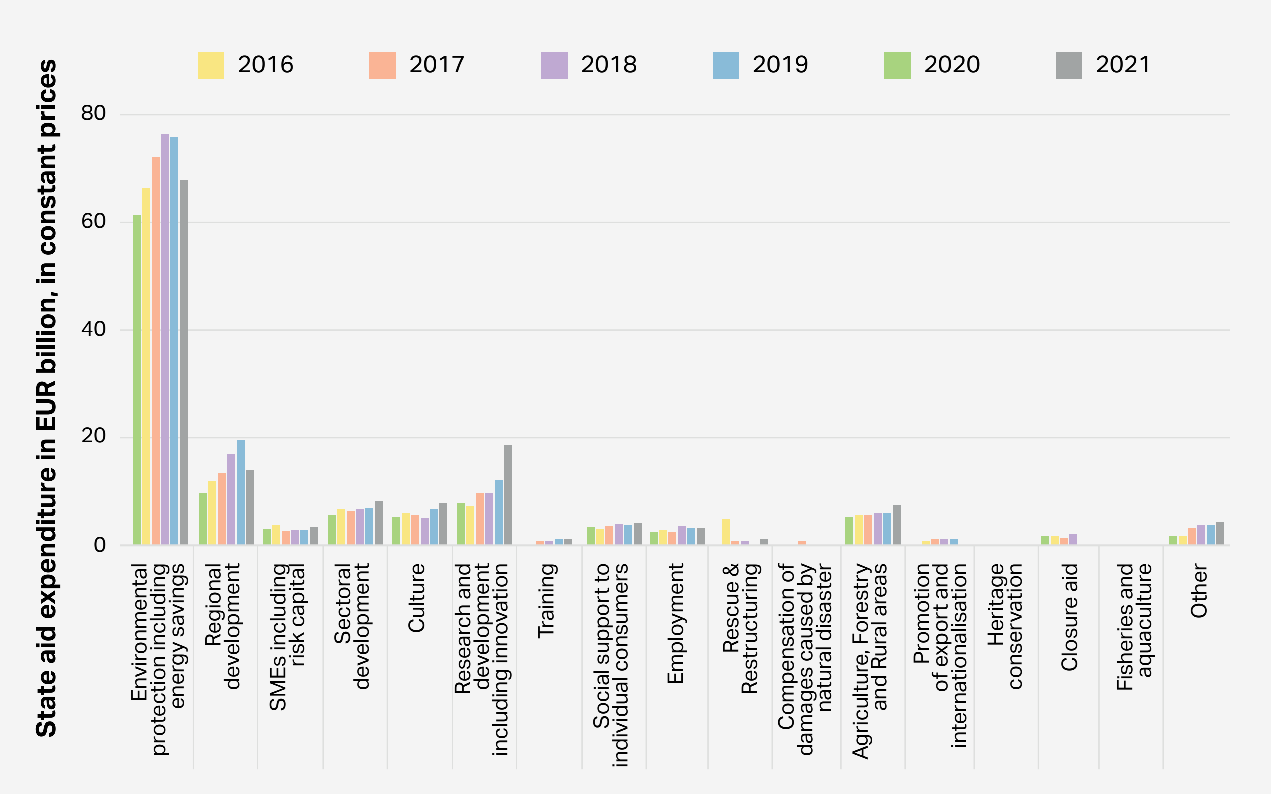
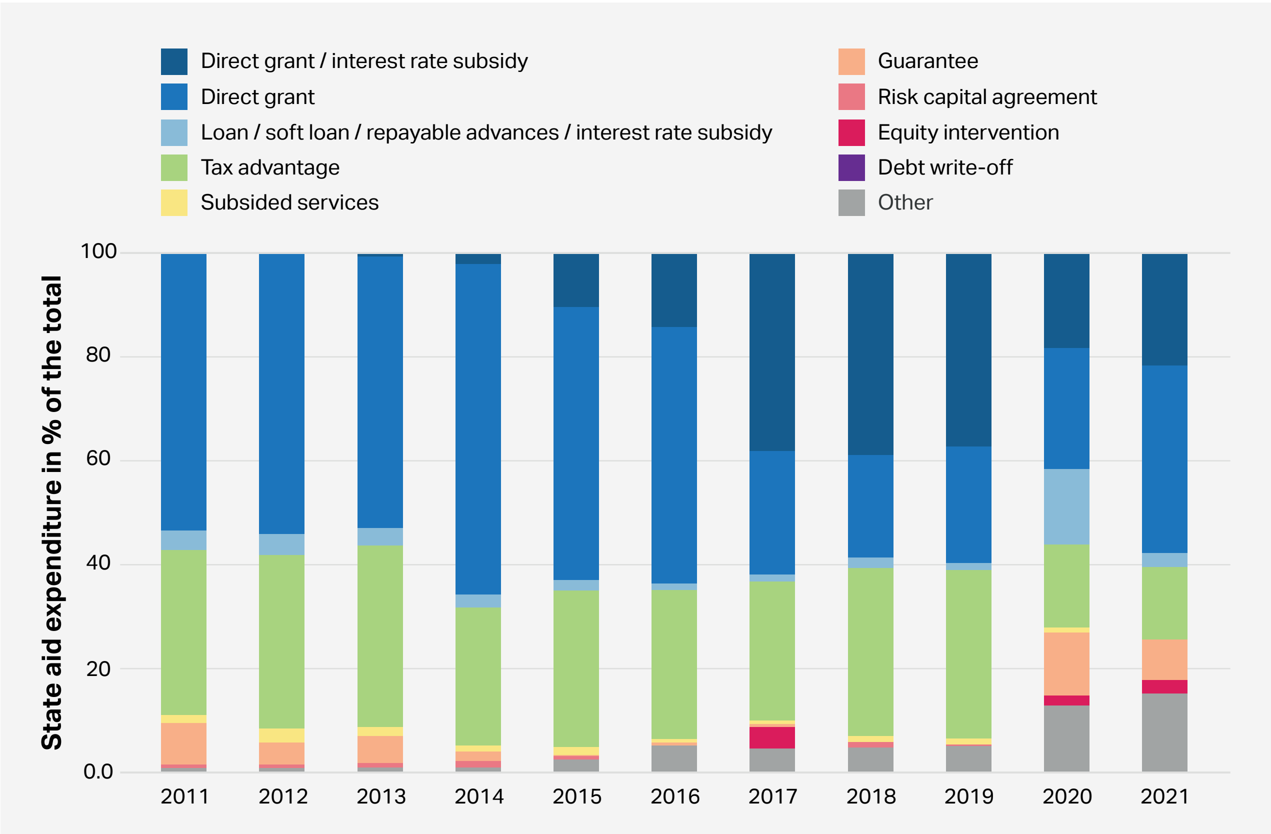


Figure 6 Share of total State aid expenditure for the period 2011-2021 (including COVID-19 measures) by type of instrument; Source: European Commission – State aid scoreboard 2022, p. 31.

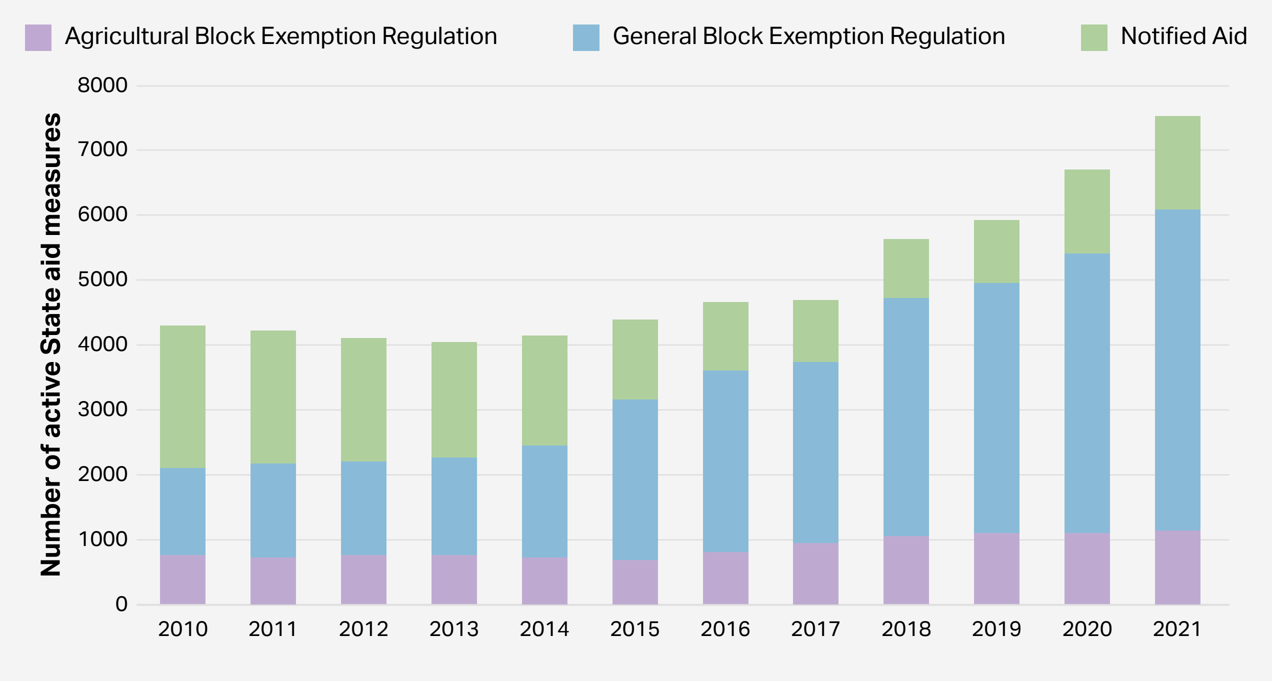


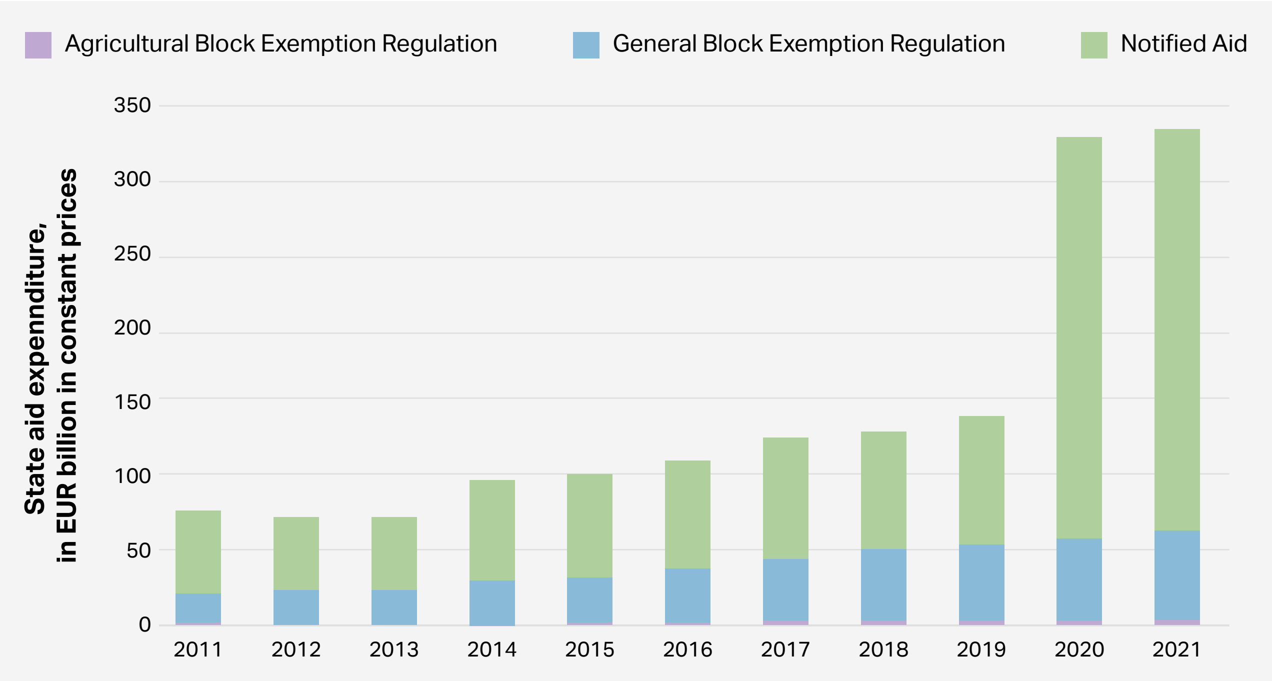
23 Subsidies for the rail sector are not presented in this figure as these are based on a different Treaty provision. These subsidies have also increased in the last decade, increasing from around EUR 40 billion to EUR 50 billion.

In terms of State aid instrument used by Member States, **direct grants** are by far the most used.

There is no need to notify State aid if it falls within the scope of the GBER[24] (see Section 2.3.2). A clear increase in the use of the GBER has been observed in the last few years. Currently, 93% of the State aid measures (non-crisis related) fall under the GBER, meaning that **the European Commission only assesses 7% of all State aid measures for approval**. In terms of expenditure however, approximately **30% of the total State aid expenditure is still notified to the European Commission**, which means it mainly focuses on the large State aid measures.

Figures 7 and 8 on notified aid and aid exempted from notification, respectively in number of State aid measures and in total State aid expenditure. Source: European Commission, State aid scoreboard 2022, pp. 70-71.[25]





24 Or equivalent block exemption regulation for the agriculture or fishery sectors.

25 This overview does not contain State aid measures exempted under the fishery block exemption regulation.

2.7. State aid trivia

2.7.1. State aid *versus* subsidies

The concepts of State aid and subsidies are often used interchangeably. However, the concept of subsidy differs depending on the legal context. For instance, the notion of subsidy in the World Trade Organisation (WTO) framework and State aid in the EU have some notable differences:

	Subsidy under WTO law	State aid under EU law
Purpose	Maintaining fair trade at the international level, among WTO member countries.	Maintaining fair competition and trade between EU Member States in the EU internal market.
Type of measures	Broad notion of subsidy that may also cover government interventions that fall outside the stricter notion of State aid under EU law (e.g. purely regulatory interventions)	Government measures that fulfil the cumulative conditions set out in Section 2.1.
Oversight/ control mechanism	There is no centralised notification or pre-approval process. There is a dispute settlement procedure, allowing countries to challenge subsidies allegedly in breach of WTO rules.	State aid is subject to a centralised notification and pre-approval process by the European Commission (exemptions apply).

2.7.2. State aid in the EU *versus* State aid in the Energy Community

The main objective of the Energy Community Treaty[26] is to create an undistorted energy market within the Energy Community, which consists of the EU, Albania, Bosnia and Herzegovina, Kosovo, North Macedonia, Moldova, Montenegro, Serbia, Ukraine and Georgia. **The application of the principles of the EU's internal market with respect to energy, including EU State aid rules relating to energy market**, are therefore extended to all countries of the Energy Community.

The notion of State aid (see Section 2.1) is the same in the EU and the Energy Community. However, the procedural aspects differ substantially, especially the responsibilities and enforcement powers of the Energy Community Secretariat, in comparison to its counterpart the European Commission. State aid rules are to be applied and enforced by **the Energy Community Secretariat as well as by national authorities**. The Energy Community Secretariat's power is limited to initiating **dispute settlement cases** for non- or wrong enforcement. Contrary to the European Commission, the Energy Community Secretariat does not have the individual power to impose an obligation to countries to recover unlawfully granted aid.

2.7.3. State aid *versus* foreign subsidies

Over the past years, it has become apparent that not only State aid granted by EU Member States but also financial interventions from non-EU countries in the EU, can distort the EU internal market. In January 2023, the EU therefore adopted a **Foreign Subsidies Regulation (FSR)** aimed at tackling situations where

26 The Energy Community Treaty is to be distinguished from the Energy Charter Treaty, which is an international agreement that establishes a multilateral framework for cross-border cooperation in the energy industry, principally the fossil fuel industry. There is no relationship between the two treaties and they serve fundamentally different objectives.

non-EU countries (not subject to EU State aid rules) financially support companies, who in turn use this advantage to acquire companies or obtain public procurement contracts in the EU.[27] The main differences between EU State aid law and EU control of foreign subsidies are:

	EU control on foreign subsidies	EU State aid law
Goal	Ensuring fair competition in the EU internal market by setting new rules for subsidies granted by **non-EU states.**	Ensuring fair competition in the EU internal market by setting rules for subsidies granted by **EU Member States** only.
Focus	Scrutinising **both acquisitions and public procurement cases** involving foreign subsidies.	Directly controlling the **granting of aid** by EU Member States.
European Commission powers	Acts on foreign subsidies ***only***: (i) in the context of acquisitions or public procurement processes in the EU and (ii) to the extent these had an impact on the EU internal market.	Controls the **compatibility of State aid** granted by EU Member States with the EU internal market.

2.7.4. Services of General Economic Interest

Services of general economic interest (SGEIs) are economic activities that serve a **public interest.** Usually these are unprofitable activities and/or activities that the market cannot sufficiently carry out under socially acceptable conditions. Common examples of activities that would not be provided by companies at an acceptable price, frequency or quality level for reasons of economic efficiency are:

- A bus connection that is necessary for large groups of people (elderly, students, commuters);
- Ambulance services in scarcely populated areas;
- Postal services.

These activities are therefore often carried out as SGEIs and benefit from a special legal status.[28] This means that a Member State may **designate a company to provide a SGEI and compensate it for doing so based on objective and transparent parameters**, to the extent that this does not disproportionately disrupt trade in the EU internal market. If these conditions are satisfied, the existence of **State aid is excluded** and the European Commission does not need to be notified.

If not all conditions are met and the compensation by the Member State therefore constitutes an aid measure, it can still be granted without prior approval from the European Commission if the specific conditions of the European Commission's **SGEI decision** are met. The compensation may however not exceed an annual amount of EUR 15 million. Transport services and infrastructure are excluded from the scope of the SGEI decision. Finally, there is also a specific SGEI *de minimis* regulation, that exempts small amounts of aid (EUR 750,000 over any period of three fiscal years) for SGEIs from the notification obligation. The primary production of agricultural products, and of fishery and aquaculture products is excluded from the scope.

27 For a brief explanation of the Regulation on foreign subsidies, please view the video created by DG Competition.

28 Services of general economic interest have a specific legal basis: Article 106 (2) TFEU.

2.7.5. State aid enforcement in the European Economic Area

Iceland, Liechtenstein and Norway are part of the European economic area (EEA) but not part of the EU. These countries therefore take part in the EU internal market and must respect the rules that govern it, including the rules on State aid. The **European Free Trade Association (EFTA) Surveillance Authority** enforces the State aid rules in those EEA EFTA countries, in a similar way as the European Commission enforces those rules in the EU.[29] The State aid rules that apply in the EEA EFTA countries are broadly equivalent to those that apply across the EU. This means that the content of this guide also applies to State aid in Iceland, Liechtenstein and Norway.

29 An overview of the State aid legal framework of the EEA is available on the website of the EFTA Surveillance authority.

3. The procedural aspects of State aid control

3. The procedural aspects of State aid control

3.1. The procedure before the European Commission

3.1.1. The different stages of the procedure

State aid is in principle prohibited and therefore needs to be notified for prior approval to the European Commission (see Section 2.2). **This State aid control procedure happens bilaterally between the Member State** that notifies (and later grants) the aid, **and the European Commission** that approves the aid. The bilateral character of the procedure has several legal and practical implications (see Sections 3.1.2 and 3.3).

The State aid control procedure formally starts with the opening of a **preliminary procedure** by the European Commission in two instances:

i. Upon the **formal notification of aid** by a Member State: the formal notification is typically preceded by informal talks between the Member State and the Commission, allowing the Member State to further adapt the State aid measure accordingly (called pre-notification).

ii. To **investigate an unlawful (illegal) aid** (aid that a Member State failed to notify): the European Commission can act on its own initiative (e.g. based on information in the press), or after having received a formal complaint and/or after having considered market information submitted by third parties (e.g. competitors, CSOs).

If at the end of the preliminary procedure, the European Commission still has doubts on the compatibility of an aid measure with the EU internal market, it opens a **formal / in-depth investigation**. At the end of this investigation, the European Commission takes a positive (in green), conditional (in orange) or negative (in red) decision.

The flowchart (Figure 9) overleaf, provides an overview of the various stages of the procedure before the European Commission, the types of State aid decisions it can take and an approximate timeline.

3.1.2. The procedural rights of CSOs

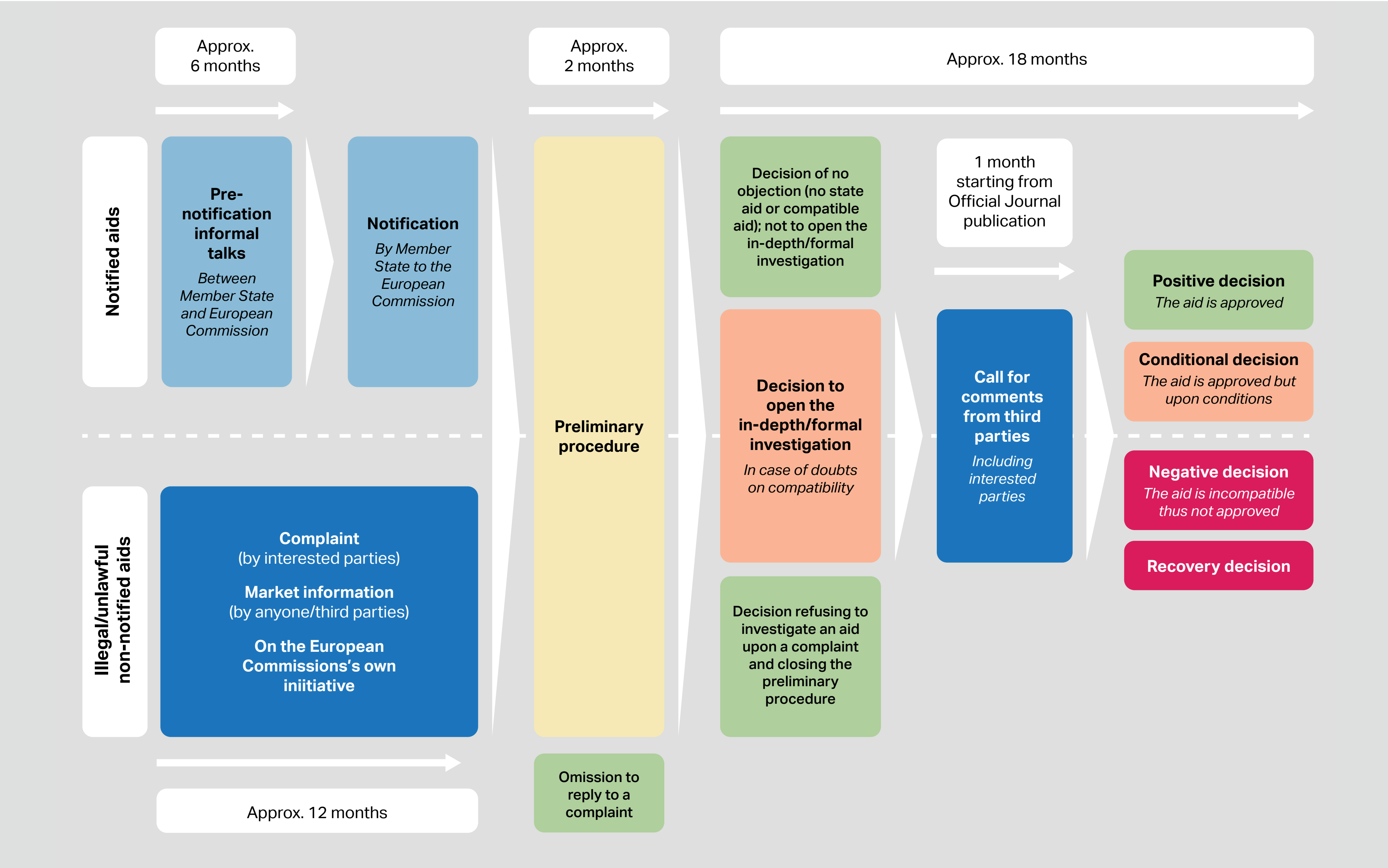
As a consequence of the privileged bilateral relationship between the European Commission and the Member State, only '**interested parties**' have basic procedural rights in the State aid procedure. These rights include: submitting an official complaint that must be treated by the European Commission, submitting comments during the formal procedure (in-depth investigation), and receiving a copy of any decision taken by the European Commission at the end of the formal procedure.

Any Member State, and any person, company or association of companies **whose interests may be affected by the granting of aid**, in particular the beneficiary, competitors and trade associations, are considered "interested parties". It is not a limited list as the European Commission has the discretion to interpret the notion of interested parties.

Until now, the European Commission has applied this definition restrictively, which implies that CSOs are in practice (but not explicitly) excluded. Instead, **CSOs are considered as 'third parties'**, like any other member of the public (see Section 3.3).[30] This means that, to date, CSOs cannot submit a formal State aid complaint. In practice, the information submitted by CSOs to the European Commission is therefore treated as **'market information'**.

30 The European Commission has recently, in the approval decision of restructuring aid to Oltenia (para. 4 and 49), explicitly referred to ClientEarth and others environmental NGOs as third parties that submitted market information. For more information about this case, see Section 2.4, Box 6.

Figure 9: Flowchart of the State aid control procedure before the European Commission



3.2. The complementary role of national courts

Although the European Commission is the main enforcer of State aid rules (subject to review by the CJEU), **national courts** also enforce State aid rules and therefore complement the role of the European Commission. The competences of the respective institutions are however distinct.

	EU level: **European Commission and CJEU**	**National level:** **National courts**
Competences	Control of **compatibility of aid measures:** Only the European Commission is competent to assess whether an aid measure is compatible with the EU internal market (and can thereby greenlight aid). The European Commission is also competent to assess whether a measure constitutes State aid.	Control of **legality/lawfulness of aid measures:** National judges can only assess whether a measure constitutes State aid and should therefore have been notified to the European Commission.
Interpretation of the notion of State aid	The CJEU is competent to interpret the EU treaties. This means that the CJEU interprets the notion of State aid (i.e. the different cumulative conditions of State aid, see Section 2.1).	If unsure whether or not a measure constitutes State aid, national courts can submit a question for interpretation to the CJEU (this is referred to as a **preliminary ruling**).
Enforcement powers for aid that has been granted	Whenever the European Commission adopts a **negative State aid decision** (incompatible aid) but the aid has **already been paid out**, the concerned Member State must recover the aid from the beneficiary (**recovery decision**, see in flowchart in red – Figure 9).	If a national court observes illegal aid, it can order the **suspension** and/or **recovery** of the aid already granted. National courts also **enforce** the recovery decisions adopted by the European Commission, in line with national law.

3.3. Judicial review of State aid decisions by the European Courts

A State aid decision adopted by the European Commission (decisions in green, orange and red in the flowchart in Section 3.1.1, Figure 9), can be challenged before the EU courts. An **application for annulment** of such decision is lodged before the General Court (in first instance).[31] Subsequently, an appeal against a judgment of the General Court can be lodged before the CJEU.

A State aid decision can be challenged by the Member State concerned by the aid measure, the beneficiary, or interested parties. Only these actors have **legal standing** to challenge a decision.

However, for interested parties, the following distinctions apply:

i. **Decisions adopted by the European Commission before or after a preliminary procedure** (i.e. without having opened an in-depth / formal investigation): interested parties can claim that their procedural rights have been violated since the European Commission did not open an in-depth / formal investigation. They need to demonstrate that the decision has a 'specific effect on their situation'.

31 The time limitation for interested parties to lodge their application for annulment is two months and ten days, starting 14 days as from the publication of the decision in the Official Journal.

ii. **Decisions adopted after having opened an in-depth / formal investigation**: interested parties need to establish that they are **individually and directly concerned** by these decisions. This is (very) difficult to establish as it usually implies a direct impact on a competitive position on the market. It sets the bar for legal standing very high. Competitors of the aid beneficiary can be found admissible if they can demonstrate that their position on the market has been substantially affected as a result of a State aid decision. Similarly, trade unions can also be found admissible if they can demonstrate that their interests or those of their members have been affected.

To date, **CSOs are not considered interested parties**, neither in the procedure before the European Commission nor before the EU courts. This means that **CSOs cannot challenge a State aid decision before the EU courts** (inadmissible). In practice, CSOs can indirectly overcome this hurdle by informally supporting an interested party (e.g. a competitor) who has legal standing to challenge a State aid decision because its competitive position is affected by the State aid decision.

Alternatively, CSOs can also **intervene** in a pending action for annulment before the EU courts, although the rights of an intervener are more limited than those of the actual parties to the procedure. The admissibility threshold for an intervener is also high: it needs to demonstrate that it has an interest in the result of the pending case. For environmental NGOs, this would require that they have activities or are involved in protection programmes in the region and sector concerned by the aid.

Box 7: Access to justice for CSOs in State aid matters

Environmental NGOs pointed out the lack of access to justice to the Aarhus Convention Compliance Committee (ACCC) in March 2021. The United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) establishes a number of rights for individuals and CSOs, such as on access to justice, with regard to the environment. In the EU, the Aarhus Convention has been implemented in EU law through the Regulation on the application of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (Aarhus Regulation). The latter excludes the possibility for environmental NGOs to challenge State aid decisions adopted by the European Commission before the EU courts. The **ACCC found that with this exclusion, the EU violates the Aarhus Convention** and that it should therefore modify its EU law.

The fact that CSOs would have access to justice in national courts for State aid matters (covered in Section 3.2) is not a valid substitute for not having access to justice before EU courts. Regardless, environmental NGOs have very little chance to have legal standing before national courts.[32]

Next steps >>>

The European Commission is currently working on addressing this violation and has to issue a proposal on how to amend EU law in order to be compliant with the ACCC findings by 2025.[33]

32 For more details, see ClientEarth's study conducted about access to justice at national level in State aid matters in the context of the ACCC's findings.

33 For more details, see ClientEarth's press release dated 22 May 2023.

3.4. How and when can CSOs contribute to State aid procedures?

Due to the lack of climate and environmental mainstreaming across the State aid rulebook and the fact that the European Commission's primary focus when assessing a State aid measure lies with its possible anti-competitive effects, **CSOs have a role to play** in several ways:

- Raising awareness among public authorities on the **possibilities to support environmental and social policies by means of State aid**, for instance:
  - » State aid schemes for renewable energy communities and/or energy efficiency;
  - » the possibility to include environmental and social criteria (such as citizen participation) in tenders for renewable energy or decarbonisation measures;
  - » State aid measures for the protection and restoration of biodiversity;
  - » the possibility of organising a public participation process when designing large and especially more controversial aid schemes (e.g. for fossil fuels), whereby environmental breaches or harmful impacts can be raised.
- **Raising (potential) breaches of EU environmental law** that are linked to a planned or existing State aid measure, or the economic activity that is supported by State aid.
- Raising awareness on (harmful) **environmental and social impacts of planned or existing State aid measures** (by providing expert knowledge that granting authorities may not have) in view of having aid measures that are better aligned with environmental or social objectives.

CSOs can contribute throughout the State aid process, from the inception of a State aid measure at national/regional level, to the procedure for approval before the European Commission (if the aid needs to be notified), and potentially even during a challenge of a State aid decision before the General Court. The table on page 32 gives a brief overview of the procedural stages at which CSOs can contribute.

3.5. Transparency of State aid

3.5.1. The State aid procedure is confidential, yet State aid decisions are published

Due to the privileged bilateral relationship between the European Commission and the Member State in State aid, as well as the political sensitivity of certain aid measures and the importance to safeguard business secrets, the **State aid procedure is confidential.** This means that the (pre-)notification of an aid measure to the European Commission by a Member State, and any other steps in the approval procedure, are not disclosed to the public, including to the aid beneficiary and potential interested parties.

However, the **State aid decisions taken by the European Commission are published** (see Section 3.1.1). This allows stakeholders and the public to access information about State aid measures once the approval process has been finalised (aid approved or rejected), or when the European Commission has serious doubts and needs to open a formal investigation.

The State aid decisions are published in the **State aid register** available on DG Competition's website.[34] The non-confidential version of a decision is often published some weeks, or sometimes only months, after the adoption of a decision. The European Commission does however publish a press release upon the adoption of important decisions.

34 It allows to search under the exact number of the State aid case (starting with "SA") but also under country or region, objective of the aid measure, legal basis, etc. One can also search with key words.

	Stages at which CSOs can contribute throughout the State aid process		
	Prior to a procedure before the European Commission	**During the procedure before the European Commission**	**After the procedure before the European Commission**
EU level	CSOs can **submit information to the European Commission before an aid measure is notified[35] or if it should have been notified (illegal/ unlawful non-notified aid).[36]** CSOs should use the template for complaint to submit their information. (See Section 3.1.1 and Figure 9, in dark blue).	CSOs can also **submit information at any time** during an on-going case opened before the European Commission. In particular, CSOs can **submit comments as part of the "call for comments by third parties"** whenever the European Commission opens an in-depth / formal investigation if in doubt about a State aid measure.[37] (see Section 3.1.1 and Figure 9, in orange and dark blue).	CSOs can **submit comments regarding the amendment of aid schemes** by the European Commission (even after the aid had been approved). Before the EU Courts: • CSOs can **support a challenge against a State aid decision** by informally supporting a market participant that is admissible to challenge it (see Section 3.4). • CSOs can **intervene in pending proceedings against a State aid decision** (but there is a high threshold to be found admissible; see Section 3.3).
National level	CSOs can **influence the existence, design and scope of a State aid measure by**: • monitoring the proposals of aid measures; • trying to (informally) influence the proposal of aid measures; • providing comments if a public consultation is opened; • following and intervening in any debates on the aid measure in the national parliament.		

3.5.2. How to (informally) find out about pending State aid

Although State aid measures are not publicly disclosed before the European Commission takes a decision (see Section 3.5.1), it is still possible to find out about an aid measure through different means, such as:

- Some Member States run **public consultations** about new State aid measures or are otherwise transparent about State aid measures (such as through the publication of press releases);
- State aid measures are often discussed in **Member States's parliaments**;

35 For example, ClientEarth filed submissions regarding State aid for the lignite coal phase-out in Germany since 2019, well before the aid was notified by Germany in 2020. See Case SA.53625 and a non-exhaustive list of ClientEarth's submissions in this case in the press release dated 11 December 2023.

36 For example, ClientEarth and Bankwatch Romania submitted a complaint to the European Commission in March 2020 regarding unlawful aid to Oltenia, outside of any on-going investigation; see ClientEarth's press release dated 12 March 2020.

37 For example, ClientEarth filed observations following the European Commission's decision of 21 September 2020 to open an in-depth/formal investigation into the Belgian capacity mechanism; see ClientEarth's press release dated 16 November 2020.

- **Press articles** about aid measures, especially for larger or more controversial measures, are often published by mainstream or specialised media outlets. The reference to "State aid", being a more technical term, is often not used, but reference is made to "state intervention" or "subsidies". Also, if media refer to a "hurdle in Brussels", "talks with the European Commission" or the "greenlight by the European Commission", it is likely that State aid is involved.
- Member States publish **databases or reports on subsidies** (e.g. national energy and climate plans) which contain State aid measures, and may potentially reveal illegal aid measures (that were not notified).

3.5.3. Transparency and reporting on State aid by Member States

In addition to the Member States' obligation to notify State aid to the European Commission *before* granting aid, Member States also have **specific transparency obligations *after* granting aid**. There are transparency obligations towards the public, but also reporting obligations to the European Commission.

i. **Transparency towards the public on aid measures and expenditure:**

   » For each **aid measure above EUR 100,000**, Member States have to **publish the text** (or a link to it) **and information** on the aid measure (on the beneficiary, aid instrument, sector, amount, etc.) on the European Commission's "Transparency Award Module" or on a publicly accessible national (or regional) website, within six months after granting the aid. This obligation applies to all aid measures, whether notified to the Commission or exempted from the notification obligation.

   This **allows the public to search for aid granted** to a specific company or to get an overview per sector or policy objective. In practice, there are however important transparency shortcomings as some national/regional authorities do not (fully) comply with this obligation.

   An overview of the national aid registers can be found in Annex 1.

   » As from 1 January 2026, Member States will have to publish any ***de minimis* aid** (see Section 2.1) **and relevant information** (on the beneficiary, aid instrument, granting authority, sector, amount, etc.) in a central publicly accessible register at national or EU level (still to be created by the European Commission), within 20 days after granting of the aid.

   However, for *de minimis* aid granted in the fishery and aquaculture sector as well as the agriculture and forestry sector, there is no obligation to publish relevant information in a register. It is nevertheless encouraged by allowing for higher financial thresholds when the relevant information is published in a register (see Section 2.1).

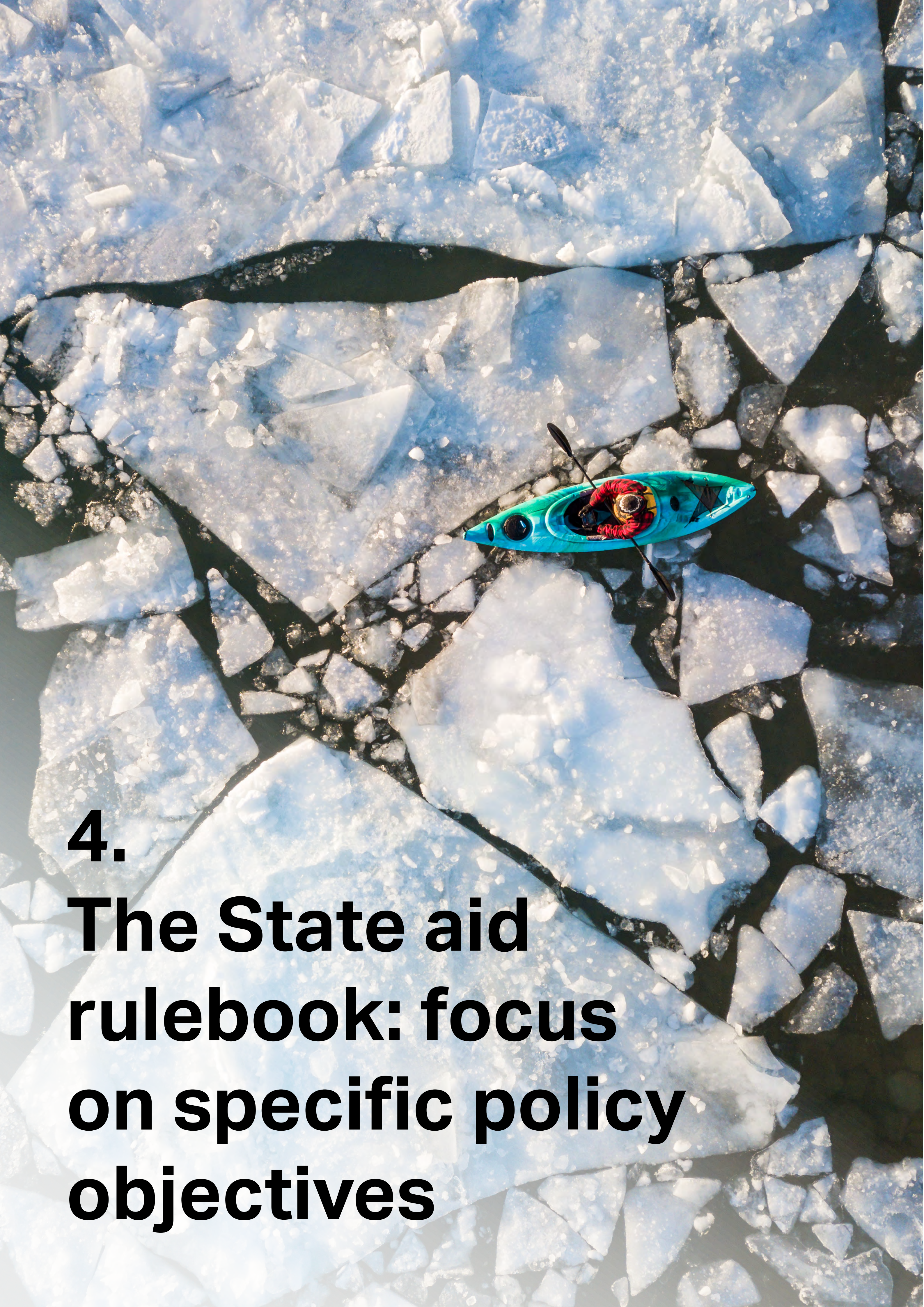
   Some countries already have a national register for de minimis aid, as set out in Annex 1.

ii. **Reporting to the European Commission on aid measures and expenditure:**

   » Member States must report all State aid expenditure to the European Commission.

   » Member States must report a summary of each aid measure that falls within the scope of a block exemption regulation (GBER, ABER, FIBER), as these are not notified to the European Commission for prior approval, within 20 working days following its entry into force.

   This information is used by the European Commission to monitor State aid across the EU and to publish the yearly State aid scoreboard (see Sections 1.3 and 2.6).



4. The State aid rulebook: focus on specific policy objectives

4. The State aid rulebook: focus on specific policy objectives

In this chapter, we focus on some specific sets of rules of the State aid rulebook that are most relevant for CSOs working on climate and environmental topics. Particular attention is given to rules that focus on energy and environmental objectives in Section 4.1 whereas other relevant rules that have environmental impacts are more briefly described in Sections 4.2 and 4.3.

An overview of the different types of rules of the State aid rulebook can be found in Section 2.3.

4.1. Aid for energy, environment and climate objectives

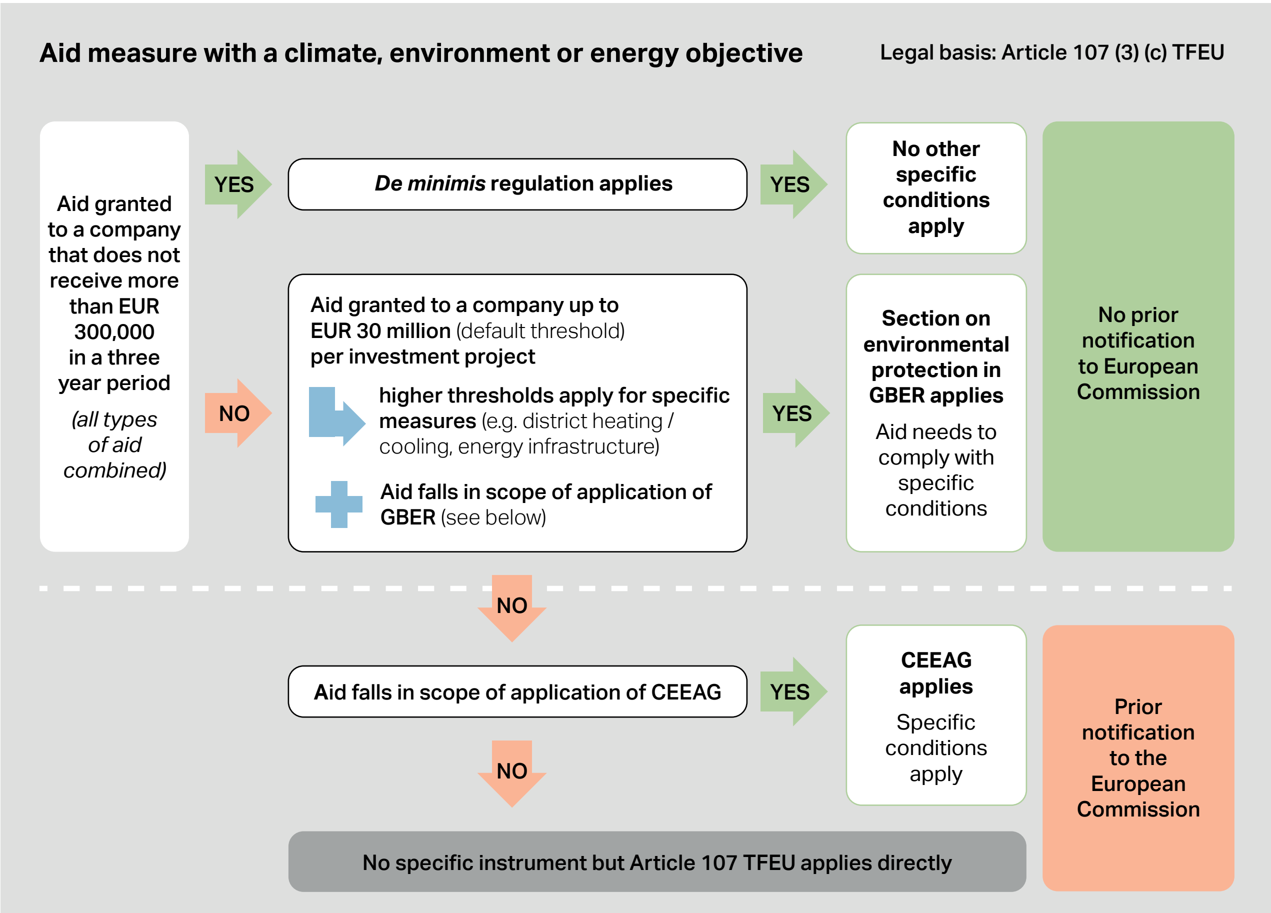
The European Commission developed a rulebook for support to energy, environment and climate objectives. There are two main complementary, yet aligned, sets of rules:

- **Section on environmental protection in the GBER** (Articles 36 to 49) covers aid measures, below certain financial thresholds, exempted from notification to the European Commission.
- **The Guidelines on State aid for climate, environmental protection and energy 2022** (CEEAG) cover aid measures that need to be notified to the European Commission (outside the scope of application of the GBER).

Very small amounts of aid are granted under the *de minimis* regulation (see Section 2.1, Box 2).

Finally, aid measures that do not fall in any specific framework can still be notified to the European Commission on the basis of the Treaty itself.

Figure 10: Summary of instruments focusing on aid for energy, environment and climate



The **scope of application of the GBER is well-defined** and the conditions must be strictly interpreted due to the lack of prior approval of an aid measure by the European Commission. This means that large (in financial terms), complex and more controversial aid measures need to be notified and will be thoroughly assessed by the European Commission. Therefore, although aligned, the scope of application of the GBER and the CEEAG can be summarised as follows:

Type of aid measure by objective pursued	Art. 36 to 49 GBER	CEEAG
Renewable energy (incl. renewable energy communities)	✓	✓
Decarbonisation measures, such as:		
Carbon capture and storage/ use	✓	✓
Hydrogen production	✓ renewable	✓ renewable + low-carbon
Demand response	✗	✓
Energy storage	✓	✓
Efficient co-generation (incl. fossil gas)	✓	✓
Other measures	✓ limited	✓ any
Energy efficiency measures	✓	✓
District heating and cooling networks	✓	✓
Security of electricity supply (e.g. capacity mechanisms, strategic reserves)	✗	✓
Energy infrastructure (e.g. electricity, fossil gas, hydrogen)	✓ if not exempted from energy market rules	✓ exempted or not from energy market rules
Exemptions from levies for energy intensive users	✗	✓
Reductions from environmental taxes	✓	✓
Clean mobility: vehicles and charging/fuelling infrastructure	✓ only renewable	✓ renewable + low-carbon; fossil gas for shipping
Resource efficiency and circular economy (e.g. waste)	✓	✓
Remediation of environmental damage, rehabilitation of habitats and ecosystems, protection/restoration of biodiversity	✓	✓
Compensations for the closure of coal, oil shale and peat plants and mines	✗	✓

The European Commission in principle excludes aid measures for the "**most polluting fossil fuels**" (coal, diesel, oil, peat) from the GBER and CEEAG. However, direct aid measures for **fossil gas** projects remain possible, mainly under the CEEAG as this requires prior approval from the European Commission, albeit subject to safeguards in line with the EU's climate targets.[38]

Following the war in Ukraine and the energy crisis, the European Commission developed an additional set of rules that partially serves the energy, environment and climate objectives: the **"Temporary Crisis and Transition Framework"** (TCTF; see more in detail in Section 4.2). Aid for **renewables and the decarbonisation of industry** can also, subject to conditions, be granted under this recently adopted framework. This means that there is a partial overlap between the GBER, the CEEAG and the TCTF, whereby Member States can choose the most appropriate instrument.

Box 8: Aid to offset emission costs under the EU Emission Trading System (ETS)

The EU ETS operates as a cap-and-trade system, establishing an upper limit on emissions, while the market determines the variable price of emission allowances. Companies within the ETS framework can engage in allowance trading, allowing cleaner companies to sell allowances to those with higher carbon intensity. This system puts a price on emissions, with the intention to create an incentive for investments in cleaner technologies.

The EU ETS applies to emissions of carbon dioxide (CO2), nitrous oxide (N2O), and perfluorocarbon (PFC) from approximately 11,000 energy-intensive facilities, including power plants and industrial installations. The scope of the EU ETS will be expanded as to also cover fuel combustion in buildings, road transportation, and smaller industries, as of 2027.

The European Commission has developed **guidelines on certain State aid measures in the context of the system for greenhouse gas emission allowance trading post-2021 (ETS guidelines)** whereby Member States can grant aid to sectors that are subject to the EU ETS. One of the main objectives of these guidelines is to mitigate the risk of carbon leakage[39] for certain industries, associated with indirect ETS costs (i.e. higher electricity prices due to ETS costs). The guidelines achieve this by allowing Member States to **partially offset the higher electricity prices borne by industrial sectors subject to the ETS**. The compensation levels are currently set at 75% of the indirect emission costs incurred. In theory, this compensation is conditional on companies' decarbonisation efforts, including conducting energy audits, implementing result recommendation, and reducing the carbon footprint of their electricity consumption.

4.2. Temporary Crisis and Transition Framework

Over the past 15 years, the EU economy has been hit by several crises. So far, the European Commission has enabled Member States on three occasions to use a more **flexible temporary State aid framework** to support the economy. In 2008, it adopted a framework in light of the financial and economic crisis and in 2020 in the context of the COVID-19 outbreak. Both frameworks have since expired. Since 2022, following the war in Ukraine, a specific framework to support the EU's economy has been in force.

These types of frameworks can be adopted swiftly, after consultation with the Member States, as the European Commission has exclusive competence when it comes to State aid.

38 For a more detailed overview of the CEEAG, including the possibilities to support fossil gas, please consult ClientEarth's briefing on the CEEAG in this respect. For a similar overview of aid measures in the GBER, please consult ClientEarth's briefing on the GBER.

39 Carbon leakage refers to the concern that if the costs of CO² emission rights become too high in the EU, certain businesses may relocate outside the EU to avoid high emission expenses.

The primary purpose of these frameworks is to allow for (i) increased and targeted flexibility compared to the "normal" State aid rules and (ii) fast-track Commission decisions on the aid measures (a few weeks instead of months). However, Member States must still notify aid measures that fall under a temporary framework to the European Commission.

The currently applicable **Temporary Crisis and Transition Framework** for State aid measures to support the economy following the aggression against Ukraine by Russia (**TCTF**)[40] contains possibilities for Member States to alleviate the economic consequences of the crisis, but also to boost certain economic activities that are believed to be important for the energy transition.[41]

Most possibilities whereby Member States could adopt measures to alleviate the economic crisis (crisis measures) have been phased out at the end of 2023, although it is still possible for Member States to grant limited amounts of aid (section 2.1 TCTF) as well as aid for additional costs due to exceptionally severe increases in fossil gas and electricity prices (section 2.4 TCTF) until 30 June 2024.

Conversely, until the end of 2025, Member States can adopt the following type of measures to **boost certain economic activities believed to be important for the energy transition**:

- Aid for accelerating the rollout of renewable energy and energy storage relevant for REPowerEU (section 2.5 TCTF)
- Aid for the decarbonisation of industry processes through electrification and/or the use of renewable and electricity-based hydrogen and energy efficiency measures (section 2.6 TCTF)
- Aid for accelerated investments in sectors strategic for the transition towards a net-zero economy (section 2.8 TCTF)

Although the first two types of aid measures (roll out of renewable energy and industrial decarbonisation) are temporarily boosted in the TCTF, these types of measures are generally covered by the GBER and the CEEAG (see Section 4.1). This means that there is a partial overlap between the three sets of rules and Member States can choose the most appropriate one depending on the circumstances.

4.3. Other relevant frameworks

Some frameworks may not have a direct climate or environmental objective, yet aid granted under these frameworks can have a – mostly negative – impact on the climate and environment. As there is **no general climate and environmental mainstreaming in the State aid rulebook** (see Section 2.3), it is also important to be aware of the existence of these other frameworks.

4.3.1. Aid for agriculture and forestry

Most public support to the agricultural sector is provided under the Common Agriculture Policy (CAP), through the European Agricultural Guarantee Fund (EAGF) and the European Agricultural Fund for Rural Development (EAFRD). These EU funds are not subject to State aid control. However, public funding by Member States outside the scope of the CAP is subject to State aid control.

The State aid rules for agriculture, forestry and rural areas are embedded in the broader CAP, meaning that the basic principles of the CAP are to be taken into account for State aid measures as well.

40 It was adopted in March 2022 and amended four times to date.

41 The European Commission published a list of Member States measures approved under the TCTF (updated 1/12/2023); In 2022, of the nearly EUR 672 billion of aid approved by the European Commission under the TCTF, EUR 93.52 billion was actually spent (granted to companies), representing 14% of the all aid approved and corresponding to 0.59% of EU27 GDP in 2022.

Aid for the fishery and aquaculture sector		
Aid exempted from notification		**Aid to be notified to the European Commission**
Agricultural *de minimis* exemption Only covers the primary production of agricultural products, subject to a few exceptions. The default threshold for *de minimis* aid is EUR 20,000 per company over a period of 3 years. See Section 2.1, Box 2 for more on *de minimis* aid.	**Agricultural Block Exemption Regulation** (ABER) Includes e.g. aid for environmental protection in agriculture (including organic farming), aid for the prevention and restoration of damage to forest and aid to make good damage of various sorts	**Guidelines for State aid in the agricultural and forestry sectors** (Agriculture guidelines) These cover aid for specific forest actions and interventions with the primary objective of restoring forest ecosystems and biodiversity or the traditional landscape. *Temporary Crisis and Transition Framework (TCTF) – until 30/6/2024* *Limited aid amounts (up to EUR 2.25 million) for companies active in the processing and marketing of agricultural products and affected by the war in Ukraine.*

4.3.2. Aid for the fishery and aquaculture sector

Most public support to the fishery sector is provided through the European Maritime, Fisheries and Aquaculture Fund (EMFAF). This EU fund is not subject to State aid control. However, public funding by Member States for the benefit of the fishery and aquaculture sector, outside the scope of EMFAF, is subject to State aid control:

Aid for the fishery and aquaculture sector		
Aid exempted from notification		**Aid to be notified to the European Commission**
Fishery *de minimis* exemption Only covers the primary production of fishery and aquaculture products, subject to a few exceptions. The default threshold for *de minimis* aid is EUR 30,000 per company over a period of three years. See Section 2.1, Box 2 for more on *de minimis* aid.	**Fishery Block Exemption Regulation** (FIBER) Includes aid for fostering sustainable fisheries and the restoration and conservation of aquatic biological resources, aid for fostering sustainable aquaculture activities, and aid to make good damages of various sorts.	**Guidelines for State aid in the fishery and aquaculture sector** (Fisheries guidelines) These cover, amongst others, aid for risk and crisis management, aid for fleet measures (e.g. aid for the first acquisition of a fishing vessel or the replacement of an engine), and aid for cessation of fishing activities. *Temporary Crisis and Transition Framework (TCTF) – until 30/6/2024* *Limited aid amounts (max. EUR 2.25 million) to the fishery and aquaculture sector, for companies affected by the war in Ukraine.*

4.3.3. Aid for transport

Aid measures to the transport sector are subject to a complementary set of rules, covering various aid objectives and different modes of transport (air, rail, maritime, road).

<table>
<tr><th colspan="3">Aid for the transport sector</th></tr>
<tr><th colspan="2">Aid exempted from notification</th><th>Aid to be notified to the European Commission</th></tr>
<tr>
<td>General de minimis Regulation
Covers the transport sector. The threshold for de minimis aid is of EUR 300,000 over a period of three years on a rolling basis.
See Section 2.1, Box 2 for more information on de minimis aid.</td>
<td>General Block Exemption Regulation (GBER)
It covers amongst others aid for:
• accessible recharging or refueling infrastructure
• the acquisition of clean vehicles or zero-emission vehicles
• regional airports
• inland and maritime ports</td>
<td>Community guidelines on State aid to airports and airlines (Airport and airline guidelines): These cover airport infrastructure, regional airports, start-up aid for airlines opening new routes, airport-airlines agreements.
Community guidelines on State aid for railway undertakings (Railway guidelines): These cover infrastructure funding, purchase / renewal of rolling stock, financial restructuring, debt cancellation and State guarantees.
Guidelines on State aid for maritime transport (Maritime guidelines): These include tax abatements for shipping companies, investment aid for improving safety of on-board equipment and for promoting the use of reliable, and in support of non-polluting ships.
Guidelines on State aid for Climate, environmental protection and energy (CEEAG): These cover clean mobility: vehicles and charging/ refueling infrastructure (see Section 4.1).</td>
</tr>
</table>

Box 9: State aid for public service obligations: a particular set of rules

The Regulation on public passenger transport services by rail and by road (**PSO Regulation**)[42] contains the rules under which Member States can provide a public service compensation to companies that have a public service obligation to provide **public transport services by rail, road and inland waterways**. If the compensation complies with these rules, the Member State does not need to notify it to the European Commission.

4.3.4. Aid to support Projects of Common European Interest

The European Commission has adopted a specific communication called **Criteria for the analysis of the compatibility with the internal market of State aid to promote the execution of important projects of common European interest (IPCEI Communication)**. IPCEIs are (very) large projects that involve cooperation between multiple Member States and private companies, aiming to address strategic challenges, enabling breakthrough innovation or building cross-border infrastructure projects, in view of achieving common EU policy objectives (including industrial policies and key value chains).

42 The PSO regulation has a special legal basis: Article 93 TFEU.

The IPCEI Communication provides guidance on how Member States and stakeholders can design and implement State aid measures for an IPCEI. To be eligible, projects must be important and of common European interest, with positive spillover effects on society and the internal market. Aid measures under the IPCEI Communication must always be notified to the European Commission. So far, the European Commission has approved six IPCEIs, covering microelectronics, batteries, tunnel infrastructure and hydrogen projects.

4.3.5. Aid for disadvantaged regions in Europe (regional aid)

In line with one of the EU's core objectives to improve cohesion across the EU, the European Commission adopted specific rules to allow Member States to grant State aid to companies in less advantaged regions of the EU. The main objective of these rules is to boost investments and job creation. These rules do not apply to the steel, lignite and coal sectors.

Aid for disadvantaged regions in Europe	
Aid exempted from notification	**Aid to be notified to the European Commission**
General Block Exemption Regulation (GBER): Section 1 of chapter 3 GBER exclusively covers aid to disadvantaged regions. It includes: • investment aid for tangible and intangible assets • operating aid for transport costs • urban development aid. More generally, for other aid objectives (e.g. energy efficiency), besides specific aid for disadvantaged regions, higher aid amounts are also possible when the beneficiary is located in a disadvantaged area.	**Regional Aid Guidelines** (RAG): Covers aid to support investments in new production facilities in disadvantaged regions. The aid objectives are broadly defined and allow for both investment aid and operating aid. The guidelines also set the rules to draw the regional aid maps, which are the geographical areas in Member States that qualify as disadvantaged regions. The regional aid maps need to be notified to, and approved by, the European Commission **Temporary Crisis And Transition Framework** (TCTF): Section 2.8 TCTF covers aid for accelerated investments in sectors strategic for the transition towards a net-zero economy (e.g. batteries, solar panels, electrolysers, critical materials). Member States can give aid in disadvantaged regions up to the amount that the beneficiary could demonstrably receive for an equivalent investment in a third country outside the EEA (called "matching clause").

4.3.6. Aid to rescue and restructure companies

The **Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty** (rescue and restructuring guidelines) set out the framework for Member States to provide aid to rescue or restructure a company, except in the coal,[43] steel or financial sector. Member States have often used these guidelines in the past to rescue airlines (outside of COVID-19). The European Commission also applied these guidelines when it approved the rescue and restructuring aid to a lignite power plant operator in Romania, without taking due account of climate and environmental considerations (see Section 2.4, Box 6).

43 Coal being referred to hard coal only, not lignite.

5.
Examples: aid for specific economic activities

5. Examples: aid for specific economic activities

This chapter contains **theoretical examples of types of aid measures** that a company with a specific economic activity could, in theory, be entitled to, in line with the State aid rulebook. It focuses on aid measures that have an impact, directly or indirectly, on the environment. This means that aid measures for objectives unrelated to the environment, such as training aid for workers or risk finance investments, are not taken into account.

The type of aid measures suggested in the examples can exist in theory as the EU State aid rulebook outlines them. However, it does not necessarily mean that these aid measures are available in practice in all Member States, as Member States are responsible for setting policies and spending priorities.

Example 1: State aid for a steelmaking plant

A company produces steel in its blast furnaces with iron ore bought on the commodities market. It then sells the steel to various clients such as the car industry and the construction sector. The company could benefit from different types of aid (non-exhaustive):

Type of aid	State aid instrument	Description
Offsetting indirect emission costs (higher electricity prices associated to the EU ETS)	Section 3.1 EU ETS guidelines	Producing steel is recognised in the EU ETS guidelines as being subject to carbon leakage – i.e. it is considered to be at risk of moving its activities outside the EU because of the high energy prices associated to the EU ETS. The company could therefore benefit from a compensation of its electricity consumption (up to a maximum of 75% of its indirect emission cost).
Reduction from electricity levies for energy intensive users	Section 4.11 CEEAG	Producing steel is an energy intensive activity exposed to international trade that relies heavily on electricity. The steel plant could therefore benefit from certain reductions from electricity levies but will have to conduct an energy audit and make decarbonisation efforts.
Investment aid for decarbonisation	Section 4.1 CEEAG or Section 2.6 TCTF (different conditions)	The company currently uses coal in its blast furnaces to melt the iron ore. It will receive support to replace these with electric arc furnaces, that will run on hydrogen and electricity, to decarbonise its steel-making process.
Investment aid for renewable energy	Article 41 GBER or section 2.5 TCTF or section 4.1 CEEAG, depending on the aid amount	Installation of an on-site wind turbine and solar panels to produce electricity to be used in the production process.

Example 2: State aid for a fishing company

A company operates four fishing vessels, all running on heavy oil, to fish in the high seas. It sells its fish to several wholesale buyers as well as on the fish trade market. As many others, the company suffers from declining fish stocks and more extreme weather patterns. The company could benefit from different types of aid (non-exhaustive):

Type of aid	State aid instrument	Description
Aid for the modernisation of a main engine	Section 3.2. Fisheries Guidelines.	The company will receive up to 40% of the costs related to the replacement of the main engine, provided that the engines emits significantly less CO2 (at least 20%).
Aid for permanent cessation of fishing activities, in support of diversification and adaptation of the fishery sector	Article 19 FIBER or section 3.4 Fisheries Guidelines	Due to the declining fishing stock, the company decides to downsize its fishing activities. It could benefit from aid for the investments costs related to converting one or more of its vishing vessel for the purposes of other economic activities.
Aid for the acquisition of a fishing vessel	Article 20 FIBER	One of the employees has decided to leave the company and start its own fishing business. To acquire a first fishing vessel, the (ex-)employee can obtain aid to a maximum of EUR 75,000 per fishers and fishing vessel (subject to conditions).
Aid for the protection and restoration of marine biodiversity and ecosystems	Article 26 FIBER	As part of its environmental policy, the company decides to collect waste from the sea. It can obtain aid that covers the costs relating to the removal of lost fishing gear from sea, the purchase of equipment on board for the collection and storage of litter, and the training for its fishers.
Aid to make good the damage caused by natural disasters	Section 1.1 Fisheries Guidelines	The fishing company has lost two ships in a violent summer storm. The company can receive aid in the form of compensation for the financial loss.

Example 3: State aid for a company active in peat exploitation

As part of its National Climate and Energy Plans (NECPs), a Member State has decided to phase out peat mining activities by 2030 across the country. To already start the phase-out, the Member State provides the opportunity for companies to voluntarily close down in the coming years. A company that has suffered from the difficult economic climate and therefore has been unprofitable for the past years, has decided to close down by 2025. The company could benefit from different types of aid (non-exhaustive):

Type of aid	State aid instrument	Description
Aid for exceptional costs due to closure of uncompetitive peat activities	Section 4.12.2. and Annex II CEEAG	The company will receive support to help cover: • Social welfare benefits from pensioning off workers early • Re-adaptation and reskilling workers • Mining damage
Aid for rehabilitation of ecosystems and restoration of biodiversity	Section 4.6.2 CEEAG	The company will invest in rewetting of peatlands on those parts of the land that had not yet been mined, in view of starting a new and different activity.

Example 4: State aid for a cattle farm

A medium-sized cattle farm located in a rural mountainous area would like to make several investments to become a more energy efficient and self-sufficient. In addition to subsidies that the farm may receive under the European Common Agriculture Policy (CAP) for its activities, the farm could benefit from different types of aid (non-exhaustive):

Type of aid	State aid instrument	Description
Investment aid for production of renewable energy	Article 41 GBER (given the small size of the investment/ farm)	The farm will install and receive support for a biomethane production plant and storage unit, whereby farmyard manure will be transformed into biomethane, to be used as a source of energy on the farm. In addition, the farm will invest and receive support for a large solar panel installation.
Investment aid for clean mobility	Article 36b GBER (given the small size of the investment/ farm)	The farm will receive support to replace two vehicles used to deliver its produce in local restaurants and at the local markets by electric vehicles. It will also receive support to invest in charging infrastructure.
Aid to compensate for damage by protected animals	Article 27 ABER (given the small size of the investment/ farm)	Wolves recently attacked and killed a part of the livestock. This damage will be compensated and the farm will invest in safety fences and livestock guardian dogs.
Aid for conservation of genetic resources in agriculture	Article 30 ABER (given the small size of the investment/ farm)	The farm will receive support to rear local endangered breeds in danger of being lost to farming.

Example 5: State aid for hydrogen

As part of its transition plans, a large harbour is investing into hydrogen as many of the companies in the harbour are active in logistics and heavy industry, some of which are "hard-to-abate" industries (e.g. petrochemicals and fertilisers). The harbour could benefit from different types of aid (non-exhaustive):

Type of aid	State aid instrument	Description
Investment aid for renewable energy	Article 41 GBER or section 2.5.1 TCTF or section 4.1 CEEAG (depending on the aid amount)	The harbour will receive support for its investment in wind power and solar panels.
Investment aid for renewable energy	Art. 41 GBER or section 2.5.1 TCTF or section 4.1 CEEAG (depending on the aid amount)	The harbour will receive support for its investment in an electrolyser that will produce renewable hydrogen from the on-site renewable energy, but will also be connected to the grid to be able to produce hydrogen whenever there is not sufficient on-site renewable energy.
Investment aid for dedicated infrastructure	Article 36 GBER or section 4.1 CEEAG (depending on aid amount)	To bring the hydrogen to several companies in the harbour area, the harbour will invest and receive support for a network of dedicated hydrogen pipelines.
Investment aid for clean mobility	Article 36b GBER	The harbour will invest and receive support for a new waterway vessel (tugboat), used to pull or push ships into the harbour, that will run on hydrogen.
Investment aid for clean mobility	Article 36a GBER	The harbour will invest and receive support for recharging infrastructure for electric vehicles and hydrogen refuelling infrastructure for electric vehicles and water vessels. These will be open for public use.

List of abbreviations

ABER	Agricultural Block Exemption Regulation
ACCC	Aarhus Convention Compliance Committee
CAP	Common Agriculture Policy
CJEU	Court of Justice of the European Union
CEEAG	State aid Guidelines for climate, environmental protection and energy 2022
EEA	European Economic Area
EFTA	European Free Trade Association
EU	European Union
EU ETS	European Union Emission Trading System
EMFAF	European Maritime, Fisheries and Aquaculture Fund
FIBER	Fishery Block Exemption Regulation
GBER	General Block Exemption Regulation
IPCEI	Important Project of Common European Interest
SGEI	Service of general economic interest
TCTF	Temporary Crisis and Transition Framework
TEU	Treaty of the European Union
TFEU	Treaty on the functioning of the European Union
WTO	World Trade Organization

Glossary

Aarhus Convention The "United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters" which establishes a number of rights for individuals and CSOs (such as on access to justice, with regard to the environment).

Aid scheme General aid frameworks setting out the objective of the framework, eligibility criteria and specific conditions that apply to an undefined number of beneficiaries, on the basis of which individual measures can be provided.

Beneficiary A company that receives aid.

Block exemption Block exemptions are part of the State aid rulebook and exempt aid measures with specific objectives from the obligation to be notified to and approved by the European Commission, provided that the aid amount does not exceed certain thresholds.

Climate and environmental mainstreaming Integration of climate and environmental considerations across various policies and governance levels. The goal is to ensure that climate and environmental considerations are systematically and effectively incorporated into decision-making processes, rather than being treated as a separate or isolated issue.

Compatible aid As an exception to the general State aid prohibition, State aid can be compatible if it complies with the conditions set out in the block exemption regulations, or further to a decision by the European Commission upon notification of the aid.

Court of Justice of the European Union See EU Courts

Court of Justice See EU Courts

***De minimis* aid** Small amounts of aid below specific financial thresholds that are assumed to be too small to have an impact on competition and trade between Member States, and therefore do not qualify as State aid.

DG Competition The Department-General for competition of the European Commission is responsible for the Commission's policies on competition and antitrust law. This includes antitrust (cartels and abuse of dominant position by companies), mergers, State aid, the digital market act and foreign subsidies.

Energy Community International organisation created by the Energy Community Treaty. Its members are the EU, Albania, Bosnia Herzegovina, Kosovo, North Macedonia, Moldova, Montenegro, Serbia, Ukraine, and Georgia. The principles of the EU's internal market apply to the Energy Community, as far as the energy market is concerned.

EU Courts It refers to the Court of Justice and the General Court – which are both part of the Court of Justice of the European Union. The General Court is the court of first instance. Judgments of the General Court can be appealed before the Court of Justice, but only on points of law. The Court of Justice is tasked with interpreting EU law and ensuring its uniform application across all EU Member States.

EU internal market EU single market in which the free movement of goods, services, capital and persons is ensured, and in which citizens are free to live, work, study and do business.

European Commission Executive body of the European Union and holds exclusive powers in State aid matters.

Formal / in-depth investigation procedure Procedure opened by the European Commission following a preliminary procedure to review the compatibility of an aid measure with the EU internal market. This procedure is opened whenever the European Commission still has doubts about the compatibility.

General Court See EU Courts

Granting authority Any Member State authority that has the competence to grant State aid, regardless of its administrative level (national, regional or local).

Guarantee A type of State aid in the form of a written commitment whereby the Member State assumes responsibility for all or part of a company's debt or obligation if an event occurs which triggers such guarantee, such as a loan default.

Individual aid Aid measure that is granted to one or more companies that are identified beforehand.

Illegal/unlawful aid Aid that has been granted in breach of applicable procedural requirements, meaning aid that was granted by a Member State to a company in breach of the obligation to notify and obtain approval from the European Commission.

Interested party Any Member State and any person, company or association of companies whose interests may be affected by the granting of aid (in particular the beneficiary, competitors and trade associations).

Legal standing It refers to the legal right of an individual or entity to bring a case or a legal action in a court of law. It is a prerequisite that must be satisfied for a person to have the authority to initiate a legal proceeding.

Level playing field Situation in which everyone has the same chance of succeeding. In trade, this means that there needs to be fair competition between states.

Market failure When the free market where competition prevails does not deliver, when there is an inefficient allocation of goods and services.

Notified aid Aid that has been notified to the European Commission, in order to obtain approval before granting it. In principle, all aid must be notified to, and approved by, the European Commission, unless it is explicitly exempted.

Negative decision Decision adopted by the European Commission by which it does not approve an aid measure.

Official journal of the European Union The official publication (gazette) for EU legal acts (including State aid decisions), other acts and official information from EU institutions, bodies, offices and agencies.

Positive decision Decision adopted by the European Commission by which it approves an aid measure.

Preliminary procedure Procedure opened by the European Commission to preliminarily assess the compatibility of an aid measure (notified or non-notified) with the EU internal market.

Preliminary ruling Question of interpretation of EU law asked to the CJEU by a national court.

Recovery of aid Member States must recover the aid from the beneficiary whenever it has been granted without having been notified and/or approved by the European Commission (illegal and/or incompatible aid).

Services of general economic interest Economic activities that serve a public interest. Usually these are unprofitable activities and/or activities that the market cannot sufficiently carry out under socially acceptable conditions.

Standstill obligation Requirement that Member States must not implement or put into effect any State aid measure without prior approval from the European Commission.

State aid prohibition Core principle of State aid control that State aid is prohibited, unless it is compatible with the EU internal market.

State aid guidelines Guidance issued by the European Commission on the interpretation and application of State aid control rules in the EU. They serve as a framework to guide Member States to design State aid measures, which need be notified to the European Commission, in a way to support EU objectives and to not distort competition in the EU internal market.

State aid register Public database that contains all (and allows to search for) State aid decisions available on the website of the European Commission.

Transparency Award Module European Commission's registry in which Member States have to publish the text of the aid measure (or a link to it) and information (on the beneficiary, aid instrument, sector, amount, etc.) about each aid measure above EUR 100,000.

Annexes

Annex 1 – Overview of registers used by Member States to publish granted State aid

Member States have to comply with transparency requirements for State aid effectively granted to companies (see Section 3.5.3). This obligation applies to all State aid granted above EUR 100,000 regardless of the guidelines or block exemptions that may apply. To comply with this obligation, some Member States use the European Transparency Aid Module, while other Member States have set up a central national register. Some Member States have also set up a national register for *de minimis* aid, although there is no obligation for this yet (see Section 2.3.1).

The colour coding in the table reflects the degree to which the register is existing and publicly available: red is not existing or publicly available, orange is partly publicly available and green is publicly available.

Not existing or publicly available — Partly publicly available — Publicly available

Country	EU Transparency Aid Module (TAM)	Publicly available National (or regional) State aid register	Publicly available *De minimis* register
Austria	Yes	The Federal authorities maintain a regularly updated database of all State support measures (whether or not these qualify as State aid)	No
Belgium	Yes	The Region of Flanders has a databank registering subsidies to companies (these do not all qualify as State aid)	No
Bulgaria	Yes	No central register but fragmented across various registers by specific authorities: • Aid by the ministry of Tourism • Aid by the SME Promotion Agency • Aid by the Agriculture Fund	Register only partly publicly available
Croatia	Yes	Central register not publicly available	Same central register but not publicly available
Cyprus	Yes	No central register but State aid decisions are published on website of State aid Commissioner	No
Czechia	Yes	No central register but fragmented across various registers by specific authorities: • Office for protection of competition • Aid by ministry of agriculture • Aid by ministry of environment • Aid by South Moravian region	Register only partly publicly available
Denmark	Yes	No	No

Not existing or publicly available

Partly publicly available

Publicly available

Country	EU Transparency Aid Module (TAM)	Publicly available National (or regional) State aid register	Publicly available *De minimis* register
Estonia	Yes (only over EUR 500,000)	Central register for all aid (except agriculture)	Same central register for all aid
Finland	Yes	No	No
France	Yes	Central register for State aid	No
Germany	Yes	No central register; Federal government reports on subsidy trends; Database on aid programmes managed by Ministry of economy and climate; Six ministries have a public funding database.	No
Greece	Yes	Central register not publicly available	Part of the central register not publicly available
Hungary	Yes	An excel spreadsheet with aid decisions (in Hungarian only) can be downloaded from the website of the State aid Monitoring Office.	No (only for agriculture)
Ireland	Yes	No	No
Italy	Yes (bulk upload from national register)	Central register for aid, as well as specific registers for COVID-19 and crisis aid due to the war in Ukraine	Same central register for all aid
Latvia	Yes	No central register but fragmented across different granting authorities	Specific Register for *de minimis* aid
Lithuania	Yes	Yes, register available on the website of the Competition Council of Lithuania	Same central register available on the website of the Competition Council of Lithuania
Luxembourg	Yes	No	No
Malta	Yes	No	No
Netherlands	Yes	No	No
Poland	No	SUDOP database on State aid Separate Database for aid granted in agriculture and fishery sectors	SHRIMP database but not publicly available
Portugal	Yes	No	Yes

Not existing or publicly available | Partly publicly available | Publicly available

Country	EU Transparency Aid Module (TAM)	Publicly available National (or regional) State aid register	Publicly available *De minimis* register
Romania	No	Central register on the website of the competition council but not publicly available, only awards above EUR 500,000 are published in central register (not agricultural aid)	Same central register but not publicly available
Spain	No	Central register for aid and subsidies; there is also a website with all aid by ministry	Same central register
Slovenia	Yes (bulk upload from national register)	Central register but not publicly available	Same central register that is not publicly available
Slovakia	Yes (bulk upload from national register)	Central register in SEMP Database	Same central register in SEMP Database
Sweden	Yes	No	No

clientearth.org

Brussels | Beijing | Berlin | London | Warsaw | Madrid | Los Angeles | Luxembourg