



Banks stabilization and resolution: an assessment of State aid rules and of their past and present enforcement

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*The opinions expressed do not necessarily reflect the views of the EBA

Content

- *State aid application during the crisis*

- *State aid and resolution:*
 - ▶ interaction between 2013 Banking Communication and BRRD/SRM

State aid: during the crisis

- Unprecedented use of State aid: framework applies also during the financial crisis, even in systemic crisis (eg. Greece)
- New, flexible approach
- **Article 107(3)(b) TFEU** as legal basis ('remedy to serious disturbance in the economy of a Member State') + 2008 Crisis Communications
 - State guarantees; Recapitalisation; Restructuring; Impaired assets
- N. 450 approx. decisions; € 802 bn approved and € 453 bn actually disbursed (2008-2014)
- Neelie Kroes: '*State aid is part of the solution*'

State aid: during the crisis

- **DG-COMP's review** of public financial support aimed at ensuring:
 - **financial stability, integrity of internal market, no distortions of competition, avoid banks' moral hazard, return to viability**
 - DG-COMP's flexible approach has balanced financial stability with competition needs in EU-wide coordinated manner
- State aid compatibility with EU law subject to specific scrutiny/conditions:
 - **Stabilization/rescue:** return to viability, burden-sharing, aid kept to minimum necessary and proportionate
 - **Restructuring:** submission of plan with timeline for return to viability, dismissal of assets, no acquisition, no dividend distribution / coupon payment, governance (remuneration cap), State aid advertisement and new activity ban etc., periodical review, oversight by monitoring trustee

State aid: state of the art

- **2013 Commission Banking Communication:** application of State aid framework based on Article 107(3)(b) TFEU
- **BRRD/SRM:** harmonised EU framework for crisis management + centralised EU resolution authority
- Points of interaction:
 - State aid as resolution trigger and FOLTF
 - Restructuring
 - Burden-sharing *at least* 8% of total liabilities
 - New financial architecture

State aid and FOLTF

- **Article 32(1) BRRD sets out the 3 conditions** to be met to put an institution in resolution
 - FOLTF: supervisor or resolution authority
 - Absence of private or supervisory remedy to return to viability: resolution authority
 - Public interest: resolution authority

- **Article 32(4)(d) BRRD: need of State aid is FOLTF (save express exceptions)**
 - Whether State aid exists is assessed by DG-COMP

State aid and resolution: restructuring

- **SRB:** preparatory phase (resolution planning, resolution strategy) + resolution decision, resolution tools and powers
- **If SRF is used** = State aid requires prior submission of restructuring plan
 - DG-COMP approves restructuring conditions
 - 2 restructuring plans: 1 for State aid, 1 for BRRD (bail-in) = they must be compatible
 - Bridge bank:
 - ▶ BRRD: under control of resolution authority
 - ▶ ... in compliance with State aid ...

State aid and resolution: burden-sharing

- 2013 Banking Communication:
 - ▶ Equity, hybrid capital and subordinated debt: full contribution to offset losses
 - ▶ Financial stability and proportionality exceptions to burden-sharing
- BRRD: write down of *at least* 8% of total liabilities before:
 - ▶ RF can intervene up to 5% of total liabilities
 - ▶ Extraordinary financial stabilization tools may be used
 - ▶ ESM direct recapitalization line may be accessed

State aid and resolution: burden-sharing

- CJ, *Kotnik*: 2013 Banking Communication binding upon COM not upon MS
 - ▶ In exceptional circumstances MS may submit notification of State aid non compliant with 2013 Banking Communication. This follows directly from Article 107(3)(b) TFEU
 - ... Article 107(3)(b) already covers exceptional circumstances, “serious disturbance to economy of one MS” = macroeconomic, systemic



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