



Uniting Europe's Energy, Today

# Fundamentals of State Aid Control

Workshop 1 for the State Aid Authorities of the Contracting Parties of the Energy Community

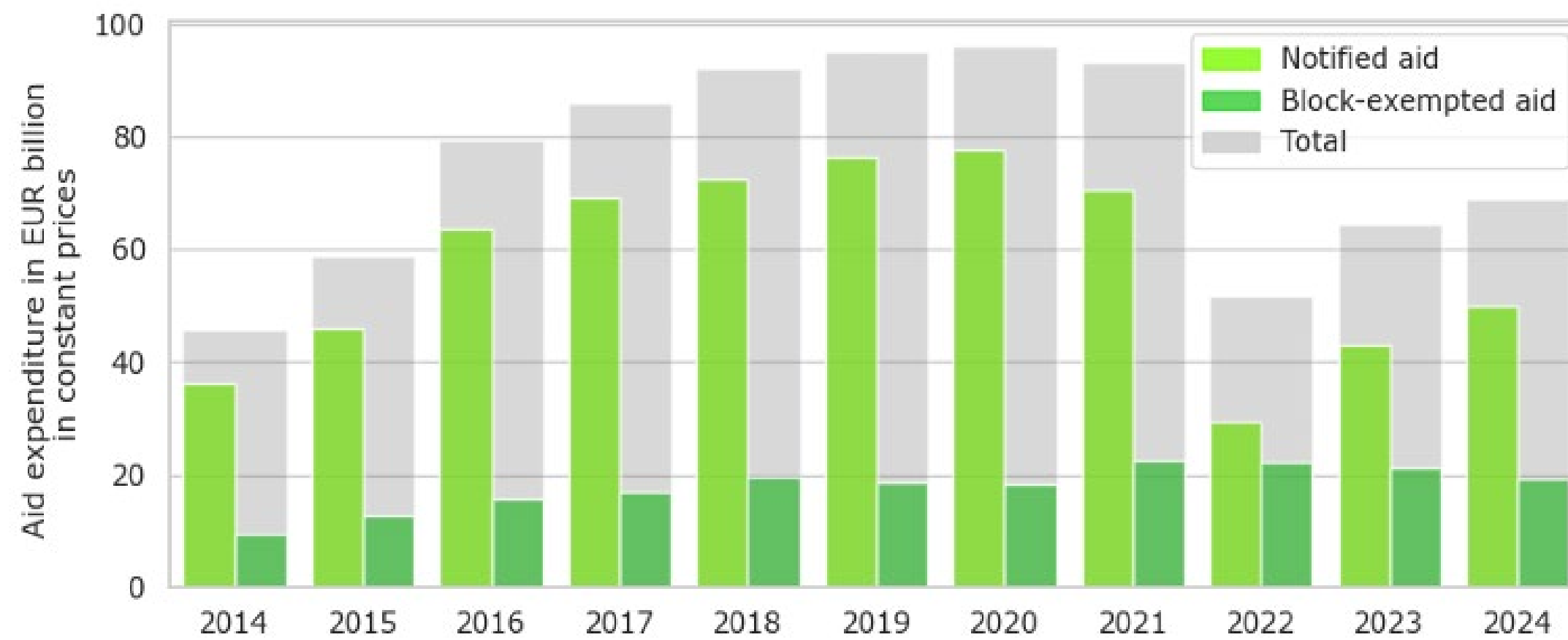
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# INTRODUCTION

## Why is the State aid control needed?

- To strengthen competition (in goods and services) on the European Single Market
- Competition is a prerequisite to the well-functioning of the European Single Market
- Competition provides companies with incentives to innovate, enter new markets and improve productivity (hence, a greater variety of choice and lower prices for consumers).

# STATISTICS



Source: [State aid Scoreboard 2025](#) by the European Commission

Activity in the reporting period (energy)	Albania	Bosnia and Herzegovina	Georgia	Kosovo*	Moldova	Montenegro	North Macedonia	Serbia	Ukraine
Requests for information	0	0	0	1	0	0	0	0	suspended
Opening of investigation	0	0	0	0	2	0	0	0	suspended
Decisions on the authorisation of State aid	1	1	0	0	1	1	2	1	suspended
Decisions on illegal and incompatible aid	0	0	0	0	0	0	0	0	suspended
Decisions on ordering aid recovery	0	1	0	0	0	0	0	0	suspended

Source: [Implementation Report 2025](#) by the Energy Community Secretariat

# Article 107(1) TFEU

*“Save as otherwise provided in the Treaties, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market.”*

## And also:

- Commission Notice on the notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union (2016/C 262/01)
- Case-law of the Court of Justice of the European Union
- Decisional practice of the European Commission

# Article 107(1) TFEU

The criteria are cumulative and exhaustive:

1

By State (i.e., from public budgets) or through State resources (directly or indirectly)

2

To undertaking (i.e., not to individuals)

3

Aid confers advantage

4

Selective (to certain undertakings or production of certain goods)

5

Affects trade and distorts (or threatens to distort) competition

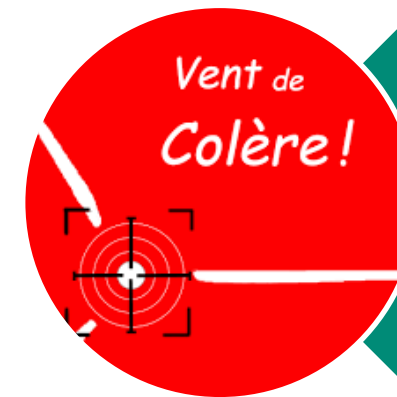
# State resources

**State resources = resources controlled (i.e., the State determines how they are to be used) by the State**

- Resources from the budget of a public authority (e.g., grant, guarantee)
- Resources that are managed by an entity that is owned or controlled by the State (but imputation of the granting decision to the State is also necessary)
- Private resources which are identified by the State and their use is determined by the State

## Imputability:

- **If adopted by the State (namely, its public bodies)**
- **Compensation or legal obligation (e.g., buy RES electricity) established by law**



**Case C-262/12 Association Vent De Colère! Fédération nationale and Others v Ministre de l'Écologie, du Développement durable, des Transports et du Logement and Ministre de l'Économie, des Finances et de l'Industrie**



**C-706/17 Achema AB and Others v Valstybinė kainų ir energetikos kontrolės komisija (VKEKK)**



**C-379/98 PreussenElektra AG v Schleswag AG [not state resources]**

# Undertaking

*‘public undertakings’ means any undertaking over which the public authorities may exercise directly or indirectly a dominant influence by virtue of their ownership of it, their financial participation therein, or the rules which govern it.*

*A dominant influence on the part of the public authorities shall be presumed when these authorities, directly or indirectly in relation to an undertaking:*

- (i) hold the major part of the undertaking’s subscribed capital; or*
- (ii) control the majority of the votes attaching to shares issued by the undertakings; or*
- (iii) can appoint more than half of the members of the undertaking’s administrative, managerial or supervisory body;*

**(Directive 2006/111/EC of 16 November 2006 on the transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertakings)**

Many public undertakings operate in energy sector



**Economic activity:** provision of goods or services on a given market (CJEU)

**Non-economic activity:** e.g., exercise of powers of public authority (C-343/95), environmental protection which is social in nature (T-347/09)

*“Even if the State is in a position to control a public undertaking and to exercise a dominant influence over its operations, actual exercise of that control in a particular case cannot be automatically presumed. A public undertaking may act with more or less independence, according to the degree of autonomy left to it by the State” (C-482/99, Stardust, para. 52)*

# Advantage

FONDUL  
PROPRIETATEA

## C-179/20 Fondul Proprietatea

- Fondul Proprietatea, a hydroelectric producer, alleged that CE Hunedoara and CE Oltenia [producing electricity from indigenous sources] received state aid by having guaranteed access to state-owned network operator at fixed prices and priority over other suppliers

ACHEMA

## C-706/17 Achema

- Compensation = advantage (from TSO/DSO for extra costs of purchasing green electricity)
- Compensation  $\neq$  advantage only if it is Altmark compliant
  - Service must be correctly defined as SGEI
  - Parameters of compensation defined in advance
  - Compensation  $\leq$  net extra costs
  - Undertaking chosen competitively or is efficient

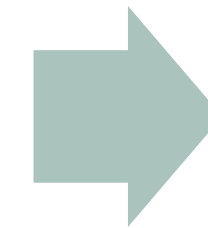
**NB: Auctions or competitive selection minimise but do not eliminate advantage**

# Selectivity

Determining the  
reference framework,  
applicable national law



Analysis of the measure  
through the lens of the  
reference framework  
(prima facie selectivity)



Can the prima facie  
selectivity be justified  
under the objectives of  
the reference  
framework?

**NB:** Even if number  
of beneficiaries is  
very large: C-143/99,  
Adria-Wien Pipeline

C-159/01, Netherlands v Commission (selective)

C-105/18, UNESA (not selective)

# Effects on trade and competition



**C-558/22, Fallimento  
Esperia**

- Obligation of energy importers to buy green certificates affects trade



**C-387/17, Fallimento  
Traghetti del Mediterraneo**

- Full market liberalisation is not a pre-requisite



**C-140/09,  
Fallimento Traghetti del  
Mediterraneo**

- In case of closed market, there may be cross-subsidisation of activities in markets (or market segments) open to competition

**NB: No need to show substantial or actual effect, only that aid is liable to affect trade**

# Effects on trade and competition

Commission Notice on the notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union (2016/C 262/01), para 188

CEEAG, para. 374 (for gas and electricity):

a legal monopoly which excludes distortions of competition exists where the following cumulative conditions are met:

- the construction and operation of the infrastructure is subject to a legal monopoly; this is the case where the TSO/DSO is legally the only entity entitled to make a certain type of investment or activity and no other entity can operate an alternative network
- the legal monopoly not only excludes competition on the market, but also for the market
- the service is not in competition with other services
- if the operator of the energy infrastructure is active in another (geographical or product) market that is open to competition, cross-subsidisation is excluded



# THANK YOU!



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