

European and External Affairs Committee

Date: 1 July 2004

Time: 09:00 am

Venue: Committee Rooms 3 and 4, National Assembly for Wales, Cardiff Bay

Title: **Scrutinising EU legislation: State Aid Rules**

Purpose

1. This paper updates Members on various issues relating to the state aid régime. It is for information only, and Members may wish to read it in conjunction with (a) the briefing note provided by Dr Rose D'Sa, European Consultant, Morgan Cole, following the 27 May meeting of the Committee and (b) paper EDTC 08-04(p3), discussed by the Economic Development and Transport Committee on 16 June.

Summary

2. The Commission is reforming various strands of the state aid régime, including: development of a Significant Impact Test; review of the regional aid guidelines; Services of General Economic Interest (SGEI); and rules governing research and development activities. The Commission has sole competence in state aid matters, but consults member states widely on future developments. At its first meeting on 26 April, the Cabinet Sub-Committee on Structural Funds considered a paper on state aids.

Consideration

3. The Welsh Assembly Government has a small unit within its European and External Affairs Division overseeing state aid policy development, with Economic Policy Division leading on the review of the regional aid guidelines (AA Map). All policy divisions (including WEFO) and any other body in Wales that spends public money in support of economic activities are responsible for ensuring compliance with state aid rules.

4. There is an important read-across between aspects of the state aid régime and the structural funds. The Cabinet Sub-Committee on Structural Funds took a paper on state aids at its first meeting in April. Unlike structural funds, state aids fall within the exclusive competence of the Commission, but the Commission regularly consults and has made officials available for regular briefings, both in Brussels

and, for example, during the recent visit of a senior DG Competition official, Wouter Pieke, arranged by the Commission office in Wales.

Significant Impact Test

5. In a briefing note for Morgan Cole Associates, which Dr Rose D'Sa kindly made available to EEAC Members after the last meeting, Dr D'Sa summarised the position at March 2004 on the development of two models for testing "Significant Impact". These were known as Lesser Amounts of State Aid (LASA) and Limited Effect on Trade (LET). The Commission has been seeking for some time to find a way of bringing an element of proportionality into its assessment procedures. While higher levels of aid will still need to be notified as they are now, the significant impact test is a way of minimising the administrative burden where lesser amounts of aid are being given, as below.

6. After consultation, DG Competition has decided to drop the second of these tests, and will pursue the adoption by the Commission of the LASA test only.

7. Using the LASA model, an undertaking could be aided to a maximum of €1m over a 3-year period. Aid has to be notified in advance and must be approved before it is implemented, and while public funding may rise to €1m it must not exceed 30% of the total costs. Although not specifically a regional aid instrument, LASA could be used to support community initiatives anywhere in the EU, within a national cap, which will be based on EU GDP and population. A paper from the Commission was circulated by the Assembly Government to the WLGA and ASPBs. Our response was sent to DTI State Aid Branch in January 2004, welcoming the proposals as potentially a useful relaxation under certain circumstances of the current state aid rules. DTI wrote to the Commission in March, highlighting in particular the need to keep the Significant Impact Tests under review in order to ensure compatibility with the Commission's post 2006 EU Regional proposals.

8. It should be noted that the LASA will only be in force until December 2006. While it effectively offers "lighter touch" administrative procedures for a certain amount of aid per member state up to a certain ceiling per project, even for larger firms, it will not remove entirely the need to inform the Commission about granting of these aids.

9. As Dr D'Sa's note records, de minimis aid to firms is not considered to be state aid and therefore aid given under the LASA scheme can be cumulated with any de minimis support (the de minimis rule allows public money of up to €100,000 to an undertaking over a 3-year period). Once a member state has exhausted its "allocation" of LASA aid, other frameworks will have to be used.

Regional Aid Guidelines Review

10. DTI issued a consultation document to all UK stakeholders on 14 June seeking responses by 1 July although comments will be accepted up until 6 September. All Welsh responses will be copied to the Assembly Government (I wrote to Patricia Hewitt on 11th June confirming the arrangements). A paper

was considered by Economic Development and Transport Committee on 16 June (EDTC 08-04(p3)).

Services of General Economic Interest (SGEIs).

11. SGEI is an area of increasing interest to the Commission because of a growing grey area of services that are provided by private companies on behalf of the public sector. The Commission is interested in ensuring that the private companies are not over-compensated by the state for delivering the services. A complexity is that in most cases, the service required would normally be above and beyond what a private undertaking would be interested in delivering without support from the state. Examples might be found in the broadband, waste disposal, public transport and social housing sectors. Because there is not an agreed definition of SGEI, different Member States would not necessarily list the same services, were they asked to do so.

12. The DTI State Aid Branch has recently sought views on a Block Exemption by the Commission for small, local SGEI, as summarised in Dr D'Sa's note. The DTI has asked in particular for views on whether we would wish to have included in the Block Exemption as suggested by some Member States, a specific list of exempt social service activities and, if so, which services we would wish to see listed. The general direction of travel appears to indicate that Member States have a preference for being able to define their SGEIs for themselves, with the EC only intervening in cases of manifest error.

13. For larger public service companies, a draft framework is proposed so that the Commission can assess whether or not the undertaking has been over-compensated by the public sector for services rendered.

14. However, clearer guidance is needed on a number of topics such as the exemption of certain small SGEIs from notification and over-compensation for services provided (what is a reasonable level of profit that could be expected by the undertaking providing the service?).

Research and Development Framework

15. The current Research and Development Framework expires end of 2005 and an internal consultation process (including the WDA) has been undertaken on an initial UK position paper.

Risk Assessment consultation

16. The DTI and HMT have produced a paper on State Aid "Risk Assessment" which has been widely distributed in Wales. The aim of the paper is to outline a pragmatic approach to risk-based decision making in State Aid cases. The paper was generally welcomed and the three substantive responses from Wales (the WDA, ELWa and the Environment Agency Wales) fed back to DTI/HMT.

Other Reform Activities

17. The Rescue and Restructuring guidelines are due to expire in December 2004 and Member States are now considering proposals for change. These include a new concept of "urgency aid" to replace "rescue aid" which will allow firms to undertake urgent measures with a simplified notification procedure.

18. The current Research and Development Framework expires at the end of 2005 and DTI are undertaking a consultation process on the way ahead. The Environmental Aid Guidelines are also being reviewed but the publication of the new guidelines is unlikely before 2007.

19. The Film State Aid Guidelines are due to expire in June 2004 and the EC have been looking to reform them in terms of reducing the requirement to spend part of the film budget in the Member State supporting the project. The UK Government have called for the status quo to be retained and most Member States support this line.

Compliance

20. Standing Order 15, in particular 15.2 and 15.3 gives the Committee the function of monitoring the "general impact and consequences for Wales of policies pursued by institutions of the European Union" and drawing "particular issues to the attention of relevant subject committees".

Financial Implications

21. There are no additional financial implications for the Assembly arising directly from the issues covered in this report.

Divisional Contact: European and External Affairs Branch 2, Head of Branch: Jackie Brown (ext 3157)

**Rhodri Morgan AM
First Minister**