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TECHNICAL PAPER FROM THE GENERAL SECRETARIAT OF THE CPMR
PERSPECTIVES OF CPMR ACTION ON STATE AID

1. INTRODUCTION AND BACKGROUND

The CPMR is monitoring changes to legislation relating to state aid, in the short term (communication from the Commission coming shortly concerning the definition of state aid and its components, a revision of maps of assisted zones within the scope of regional state aid in June 2016) and in the long term (reforms expected for the post-2020 period).

This note aims to:

- recall the positions adopted by the CPMR on the key texts relating to state aid for the period 2014 - 2020 with respect to the current legislation
- draw up an inventory of the trends and issues concerning state aid

NB: This note addresses the various regulations and guidelines governing the control of state aid. A summary of the important notions related to the CPMR positions described in this note is available in [Appendix 1](#) (State aid, de minimis regulations, general block exemption regulation) and [Appendix 2](#) (regional state aid).

2.1 State aid modernisation programme

In 2012, the Commission initiated a **comprehensive reform programme of the State aid system** in order to strengthen the single market, increase the efficiency of public expenditure but also to curb the anti-competitive reactions of States facing the need for economic recovery linked to the crisis. This was part of the negotiation period of the multi-annual financial framework (MFF) 2014-2020 and the strengthening of economic and budgetary monitoring within the scope of the European Semester. The main objectives of this reform are:

- o To promote smart, sustainable and inclusive growth in a competitive internal market.
- o To focus the commission's ex ante examination on cases with the biggest impact on the internal market while strengthening cooperation between Member States in the application of regulations on state aid.
- o To simplify the regulations and speed up the decision-making process.¹

The modernisation programme resulted in the revision, simplification and the adoption of new guidelines: regional state aid, aid for research, development and innovation, environmental aid, aid for private equity, aid for high-speed broadband networks, as well as de minimis and general block exemption regulations. The main components of the reform were adopted in 2014 while the Commission is yet to provide precision and clarification of the notion of state aid and its main components.

2.1 The CPMR's activity

In March 2012, the CPMR and its geographical islands commission met with the European Commissioner for Competition in post at that time - Joaquín Almunia - in order to highlight the specific regional characteristics of the islands as part of the revision of RSA guidelines and more widely the reform of the state aid system. Following this meeting, a study conducted by the CPMR's islands commission measuring the impact and the methods for integrating all or some of the island territories into the assisted zones defined by Article 107.3.c. of the Treaty was sent to the Commissioner in June.

¹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, May 2012. <http://eur-lex.europa.eu/legal-content/FR/TXT/?uri=CELEX:52012DC0209>

The CPMR has also mobilised its regions during this period in order to respond to the proposals for revising the main texts relating to state aid for the period 2014-2020. Through the consultations initiated by the Commission on the revision of the regional state aid (RSA) system², the guidelines relating to aid for the environment and energy³, aid to airports and airlines⁴, and the review of the de minimis regulations⁵, observations were made about the future of the state aid system and its practical implications at regional level. **The main proposals of the CPMR are listed below for each of these regulations.**

2. A REMINDER OF THE CPMR'S POSITIONS

2.1 Regional state aid

Regional state aid is state aid that may be considered compatible with the internal market and with the objective of promoting the economic development of certain disadvantaged zones. In March 2013 the CPMR aligned itself with a revision of regional state aid ⁶ based on the following points:

The exclusion of business sectors:

- In the context of discussions organised with the regions of the CPMR, **the issue of exclusion from the RSA system for certain business sectors was discussed.** The context associated with these business sectors may evolve and be an attractive source of employment for the territories. Within this context, it was proposed that the list of sectoral fields excluded may evolve depending on the context and the new economic realities.

Coverage of "a" and "c" assisted zones:

- The CPMR and its geographical islands commission want **automatic inclusion of all the islands or at least most of them under Article 107.3.c** and for a population quota to be granted to the Member States concerned, as is already the case for low population density zones⁷. In this regard, the CPMR and its islands commission conducted a study⁸ assessing the impact of such a measure both for island regions not affected by the provisions of articles 107.3.a and 107.3.c and for the entire EU. It showed that **statistical indicators used for eligibility under Article 107.3.c do not adequately reflect the territorial constraints of islands**, and, more particularly, the case of the smaller islands that suffer from a lack of economies of scale and a reduced market size. The inclusion scenarios presented in this study show that only a very small proportion of the EU population would be affected and that the impact on the domestic market would thus be zero.

The coverage ceiling:

- The global coverage ceiling (zones "a" and "c"), which was set to be reduced significantly (-2.5 points) in the Commission's first proposals on the revision of RSA guidelines ultimately remained almost the same, increasing from 45.5% to 46.53% (EU27). **It is pleasing to see this ceiling being maintained, as demanded by the CPMR.** Faced with the economic and social crisis in the EU in recent years, a lower coverage ceiling for assisted zones seemed unwelcome.

Aid to large companies:

- The Commission initially proposed **removing aid for large companies outside the scope of Article 107.3.a**, highlighting the low probability that their investments would have an incentivizing effect. In response to this, the CPMR asked that this proposal be tempered in order to consider the effects brought about by large companies on the economic network of the most vulnerable territories. In the end, in the adopted guidelines, **it turns out that aid can also be granted to large companies under Article 107.3.c, solely for initial investment creating new economic activities** or for the diversification of existing establishments in new products or for new process innovations. The impact of this restriction is different depending on the Member States and their ability to provide this type of aid. In the current context

² http://ec.europa.eu/competition/consultations/2013_regional_aid_guidelines/crpm_cpmr_fr.pdf

³ http://www.crpm.org/pub/docs/416_fr-rponse_crpm-consultation_aides_etat_energie.pdf

⁴ http://ec.europa.eu/competition/consultations/2013_aviation_guidelines/conference_peripheral_maritime_regions_europe_en.pdf

⁵ http://ec.europa.eu/competition/consultations/2013_de_minimis/fr_crpm_fr.pdf

⁶ http://www.crpm.org/pub/docs/392_ppp-aides_detat.pdf

⁷ Article 157, guidelines for RSAs. "The Commission also considers that each Member State affected must have 'c' coverage that is sufficient for being able to designate regions with low population density as 'c' zones."

⁸ Including island territories under Article 107.3.c, in April 2012, the Islands Commission CPMR

characterised by low investment, this could be problematic in countries where such aid is granted frequently, as is often the case in France, Spain, Germany, Italy and the United Kingdom⁹.

- **The wide definition of what constitutes a large company** does not really distinguish between a multinational company and a company with 250 employees. **The creation of an intermediate category as suggested in the CPMR's policy position in March 2013**¹⁰ joined the request made by France, during negotiations with the Commission in relation to the concept of medium-sized companies. This makes it possible to distinguish companies that have a systemic interconnection with the regional economic fabric from those that are dependent on multinationals. Although this is not ultimately the case with RSAs, an intermediate category appears in the Guidelines on financial risks, defined by "small businesses with average capitalisation" where the number of employees does not exceed 499 people¹¹.

Additional transport costs:

- The increased use of the General Block Exemption Regulation (GBER) desired by the Commission results in greater flexibility, and, in particular, the integration of regional operating aid relating to the additional transportation costs created in the outermost regions and low population density zones¹². **Although the CPMR was initially satisfied with this GBER integration, it proposed, as part of the studies undertaken with its geographical islands commission, a relaxation of the rules on state aid for the island territories** so that the islands are entitled to receive operating aid to cover the additional transportation costs in the same way as the outermost regions and low population density zones.

2.2 State aid for the protection of the environment and energy

As part of the Europe 2020 strategy and the objectives proposed by the Commission on climate issues and energy to be achieved by 2030¹³, the Commission has adopted new rules favouring a gradual evolution toward support mechanisms for market based renewable energy. Guidelines relating to state aid for the protection of the environment and energy for the period 2014-2020, define the conditions through which the aid granted can be compatible with the internal market under the terms of Article 107.3.a and c. The CPMR position adopted in February 2014 proposed the following¹⁴:

Inclusion of regions suffering from severe and permanent geographical and demographic handicaps as set out in Articles 174 and 170 of the Treaty:

- Although the specific handicaps of the assisted zones are taken into account in the guidelines, these zones are exclusively defined as those subject to articles 107.3.a and c, as defined in the regional state aid maps. The provisions of Articles 174 and 170¹⁵ of the Treaty recognising the particular situation of regions with severe and permanent geographical and demographic handicaps are not considered to be a factor for specific treatment. **During the revision process, the CPMR demanded that any other region with severe and permanent geographical or demographic handicaps under the terms of Articles 174 and 170 be included within the scope of the guidelines.**

Differentiation of aid intensity:

Maximum aid intensity will apply depending on the size of the market failure and the level of distortion of competition and trade. The intensity of aid for investment as an element of the eligible costs therefore varies depending on the aid scheme (e.g. aid for research, energy efficiency, waste management, etc.). In addition, assisted zones benefit from an increase up to a limit of 100% of eligible costs, equal to 15 percentage points for zones covered by Article 107.3.a and 5 points for those covered by article 107.3. c

- **These increases seem quite justified** given the various handicaps faced by the territories affected by these zones, as is the distinction in the level of increase by the type of zone. With this principle, the **CPMR would have liked "territories with severe and permanent geographical and demographic handicaps"**

⁹ Recent developments in Competition policy and regional aid: adjusting to a 'new normal', EPRC.

http://www.eprc.strath.ac.uk/eorpa/Documents/EoRPA_15_Conf/EPRP%2092.pdf

¹⁰ The CPMR's Policy Position, approved by the Political Bureau in Alexandroupolis, March 2013. http://www.crpm.org/pub/docs/392_ppp-aides_detat.pdf

¹¹ See the definition of applicable field of the guidelines.

[http://eur-lex.europa.eu/legal-content/FR/TXT/?uri=CELEX:52014XC0122\(04\)](http://eur-lex.europa.eu/legal-content/FR/TXT/?uri=CELEX:52014XC0122(04))

¹² Article 15 of the GBER on regional operating aid.

¹³ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - "A policy framework for climate and energy for the period between 2020 and 2030", COM/2014/015 final of 01/22/2014.

¹⁴ http://www.crpm.org/pub/docs/416_fr-rponse_crpm-consultation_aides_etat_energie.pdf

¹⁵ Article 170 of the Treaty on trans-European networks "takes particular account of the need to link island regions, landlocked and peripheral to the central regions of the Union."

to be mentioned (such as islands, mountains, sparsely populated areas) where isolation, significant additional costs or restrictions due to the size of the market lead to market failure, and cannot ensure the participation of a sufficient number of companies in the tender process.”

Exclusion relating to aid for projects in isolated small and micro-networks and outermost regions

- The outermost regions and small islands cannot for the most part be connected to the European network and operate in a virtually isolated way. **During the consultation, the CPMR rightly requested that the relevant small isolated networks as defined in Directive 2009/72¹⁶ be subject to a specific evaluation or an exclusion from the application of the guidelines.**

2.3 State aid for airports and airlines

- The CPMR and its islands commission welcome that recent guidelines for state aid for aviation and airports define "all EU islands, including small island states, such as remote areas, as well as the outermost regions and very low population density zones", demonstrating that it is possible to implement a differentiated policy for islands. Islands have therefore been granted more flexible arrangements for start-up aid for new air routes, improved aid intensities for investment in airports in those territories or authorisation for operating aid with no time limit for airports operating a Service of General Economic Interest (SGEI).

2.4 De minimis aid

De minimis regulations concern low amounts of aid which are outside the control of state aid since their impact on the operation of the common market is considered to be non-existent. Since the aid defined by the de minimis regulations is not regarded as state aid by EU rules, it is exempt from notification to the Commission. The Commission has retained the ceiling of €200,000 concluding that in reality this is only rarely reached and increasing it "would entail significant risks for competition and trade in the single market"¹⁷.

Aid ceiling reduced by the effect of inflation

- In its response to one of the consultations opened by the Commission on the review of the de minimis regulations, **the CPMR stressed the important nature of this type of aid that is essential for regional development policies**, actually targeting territories whose economic fabric relies on small and medium sized companies. The final decision to retain a €200,000 aid ceiling over 3 years in the new regulation does, however, correspond in reality to a significant decrease when inflation is taken into consideration¹⁸.

Differentiated ceilings according to territories

- De minimis regulations do not take into account the specific nature of territories such as islands and low population density zones whose handicaps are recognised by Article 174 of the Treaty, nor of the outermost regions where the lack of economies of scale and the small size of the local market do not allow for genuine market distortion. **Within this scope, the CPMR proposed an establishment of differentiated ceilings depending on the nature of the territories.** Therefore, higher ceilings could be granted in territories suffering from severe and permanent handicaps, without the operation of the EU's internal market being disrupted as a result¹⁹.

¹⁶ Under the terms of Directive 2009/72/EC "... any network with consumption of less than 2500 GWh an hour in 1996, and that can be interconnected with other networks for an amount lower than 5% of its annual consumption."

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:211:0055:0093:fr:PDF>

¹⁷ http://europa.eu/rapid/press-release_IP-13-1293_fr.htm

¹⁸ Between 2006, the year in which the ceiling of €200,000 came into force and 2013, the year in which the new regulations came into force, the EU experienced inflation of almost 16%.

http://www.crpm.org/pub/agenda/2276_rponse_crpm-consultation_rglement_minimis.pdf

¹⁹ "A policy aiming to substantially increase the de minimis in island regions would only affect 15 million people in the EU, equal to 3% of the EU population (2.22% if we exclude ORs)". August 2011, *How to take into account the specific situation of islands in the State aid system?* CPMR, CDI.

http://www.islandscommission.org/pub/news/119_fr_2011_note_aides_detat.pdf

3. Challenges and Next Steps

The uncertain environment prevents an accurate definition of the form and content of upcoming state aid schedules. In fact, the revision of the MFF, the British referendum but also the potential impact of the transatlantic trade and investment partnership (TTIP) could influence the future reform process. However, since the reform cycle follows that of the MMF and the maturity of certain regulations and guidelines in 2020, the first reform proposals should appear early in 2018.

Between now and then, there remain two important milestones: **the review of assisted zones and the Commission's publication on the definition of state aid and its components. The compatibility of investments supported by the Juncker Plan with state aid systems is another important issue.**

3.1 Mid-term review of assisted zones (June 2016)

The Commission will publish a memo on the mid-term revision of maps of assisted zones in June 2016. This revision will affect the NUTS 2 regions that are not currently listed as "a" zones in Appendix 1 of the RSA guidelines and whose average GDP over the last three years is less than 75% of the EU28 average. Re-qualification of the relevant regions as eligible for regional aid under the terms of Article 107.3.a does not appear to be automatic under the guidelines for RSA. The eligibility of the relevant regions seems to be subject to the Commission's decision which "will establish at that point whether such regions may be eligible for regional aid under the terms of Article 107.3.a (...)"²⁰.

If the relevant regions have previously been designated as predefined or non-predefined "c" zones, the specific component of their Member State for the population of "c" zones will be adjusted. The relevant Member State will then "modify the list of "c" zones included in the regional aid maps for the period between 1 January 2017 and 31 December 2020" up to a limit of 50% of the "c" coverage.

This readjustment exercise could only therefore be undertaken by the Member States for which one or more "c" zone regions integrate the eligibility conditions mentioned in the previous paragraph.

According to estimates produced by the European Policies Research Centre (EPRC)²¹ which compares the 2008-2010 GDP on which initial eligibility is based and 2011-2013 GDP²², 11 regions would register such a change, namely, by country: Crete, Dytiki Makedonia, Sterea Ellada, Ionia Nisia for Greece, Andalusia and Melilla in Spain, Molise and Sardinia in Italy and Tees Valley and Durham, South Yorkshire and Lincolnshire in the UK.

3.2 The notion of State aid

A major component of the modernisation plan of state aid is the clarification of the notion of state aid itself and its components, taking the form of a Commission communication. **The draft²³ communication submitted for public consultation in early 2014 appears now to be finalised, but has still not been published.**

Qualification for state aid in the outermost regions raises questions about the real consequences that aid granted in these territories could have on trade and competition on the European market. The effect of such aid in the outermost regions remains very localised and marginal when it comes to exports in EU countries²⁴. The measures are primarily intended to maintain business activity and the local economy, which in addition is increasingly faced with competition from non-EU countries located nearby and that are not subject to the same regulations for aid or salary-related, social or environmental practices.

3.3 State aid within the scope of the Juncker Plan

The projects eligible for funding from the European Fund for Strategic Investment (EFSI) must be consistent with European rules on state aid. During a discussion session on the EFSI in Strasbourg in January 2015, the EIB drew attention "to controls for financing of infrastructure projects emanating from the Juncker plan by the Commission which could cause a slowdown in investment".

²⁰ Article 183, of RSA guidelines.

²¹ EPRC: Recent developments in Competition policy and regional aid: adjusting to a 'new normal' - see figure3: NUTSII regions and 'a' status (GDP-PPS per head % of EU average >60%<80%).

²² The change to the statistical methodology from ESA95 to ESA2010 which came into force in September 2014, on its own led to profound changes in the values of GDP able to increase the differences recorded between the initial eligibility values and those of the latest data available.

²³ (2014). Draft communication from the Commission on the notion of State aid under the terms of Article 107, paragraph 1, of the TFEU. http://ec.europa.eu/competition/consultations/2014_state_aid_notion/draft_guidance_fr.pdf

²⁴ Contribution to the public consultation on the notion of state aid; EURODOM Europe and the French Overseas Departments. http://ec.europa.eu/competition/consultations/2014_state_aid_notion/fr_eurodom_fr%20.pdf

The Commission hopes that the infrastructure projects and in general those of the EFSI respect state aid regulations in order to ensure that the public money spent is essential to investment, that the infrastructure does not duplicate existing ones and that access is not discriminating. Individual assessment of the projects could help finance projects not attracting investors due to a national political interest involved, e.g. gas pipelines in Eastern Europe²⁵.

In July 2015 the Commission published a Communication on the contribution and the role played by national development banks (NDB) in Europe's investment plan. In particular, it specifies the procedure for state aid in co-financing. Here the framework for state aid is limited to market failures in investment areas where private provision is absent without distorting the market or ensuring the survival of companies that would have otherwise left the market. In order to reduce the risk of crowding out private donors BDNs intervene indirectly via financial intermediaries.

The state aid modernisation plan has simplified the Commission's decision-making process which now excludes an ex ante economic analysis of market failures for activities that comply with de minimis regulations and are affected by the GBER. The Commission is also committed to implementing an accelerated procedure with regard to state aid for the compatibility of national co-financing for a project funded by the Juncker plan, namely six weeks after receipt of the complete notification from the member State²⁶.

4. Discussion elements for CPMR Action

A working session is being dedicated to the issue of state aids at the meeting of the Political Bureau of the CPMR in Haarlem on 19 February. **The CPMR is inviting members of the CPMR's Political Bureau to identify important issues regarding the development of legislation affecting state aid, particularly by the end of 2017/beginning of 2018 and the expected publication of a new legislative package.** The CPMR is raising the following questions:

- ✓ The failure of the market in the most vulnerable areas is recognised in the context of State aid control, however, these territories are those whose capacity for intervention is the lowest. **Do the benefits granted to them prove effective enough to address market failures and reduce development disparities between EU regions? More generally, does competition policy make a proven and/or adequate contribution to territorial cohesion?**
- ✓ **Looking ahead to the next revision of regulations relating to state aid, how will the changes to European investment mechanisms affect financial instruments?**
- ✓ The conditions of the mid-term review of assisted zones maps raise questions of a practical nature. **Is the revision of the "c" zones restricted to the member states for which one or more "c" zone regions become eligible under the "a" zone criteria? Is this eligibility conditioned by the Commission?**
- ✓ The constraints encountered in the territories of the outermost regions, linked to their remoteness from the common market, their market size, a lack of economies of scale and limited availability of infrastructure and services fail to actually define an effect of market distortion by the aid which is granted to it. **Should measures be taken to examine, in particular, the specific options for applying the provisions relating to state aids or support to relevant companies internationally given the nature of their close proximity?**

²⁵ European Commission - Fact Sheet; The European Fund for Strategic Investment: Questions and Answers. Strasbourg, 13 January 2015 http://europa.eu/rapid/press-release_MEMO-15-3223_fr.htm

²⁶ 3.4 Regulations relating to state aid, <http://eur-lex.europa.eu/legal-content/FR/TXT/?uri=COM%3A2015%3A361%3AFIN&qid=1438075411849#footnoteref12>

Appendix 1 - What is state aid?

State aid is a competitive advantage selectively granted to a company by a public body. Article 107.1 of the Treaty relating to the operation of the European Union defines state aid as an aid that fulfils all of the following criteria: it is granted by a State or through State resources, it favours certain companies or certain production types, it distorts or threatens to distort competition and affects trade between Member States. State aid is not authorised and can only be granted if it falls within the scope of state aid compatible with the internal market.

State aid can be compatible if it is part of an exemption to the regulations relating to state aid or if there is an aid scheme approved by the Commission or if the aid was notified and approved by the Commission. Otherwise, **de minimis regulations** allow the compatibility of a proportion of low amounts of aid.

The General Block Exemption Regulation (GBER) provides a set of block exemptions and is used to define the compatibility of aid by public agencies.

Aid may be defined as compatible by the GBER. It must then meet all of the general criteria and fulfil specific conditions for exemption from the relevant category. The general conditions of application of the GBER stipulate that aid must:

- fall within the scope of the block exemption
- comply with the applicable threshold for the relevant block exemption
- be granted in a transparent manner, be deemed to have an incentivizing effect
- comply with the specific terms of aid intensity and eligible costs
- comply with the rules on the accumulation of aid.

Appendix 2 - Regional state aid

The specific characteristic of the regional state aid system is the territorial nature of its application. Member States must inform the Commission of this aid, except when it falls under the block exemption regulation. There are therefore three types of aid: **investment, operating and urban development**. These types of aid must meet specific conditions for regional state aid.

- **Investment aid** must: not exceed the relevant notification threshold, be positioned within the specific framework of exemptions for regional aid, be intended for an assisted zone, concern an initial investment and not exceed the aid ceiling and cover only the eligible costs. Also, the investment must be maintained across the zone for a certain period of time. With regard to aid for the development of a high-speed broadband network, additional conditions are set out in Article 14.10²⁷.
- Regional **operating aid** is granted exclusively in the Outermost Regions (ORs) and in low population density zones, as defined by Member States in the maps of assisted zones. They are used to compensate for additional costs linked to the transportation of the goods produced and/or processed in these territories, and linked to the direct consequences of one or more permanent handicaps referred to in Article 349 of the Treaty (Article 15).
- **Regional state aid for urban development** is closely related to the implementation strategy of sustainable urban development integrated into the urban environment and fulfilling the specific criteria set out in Article 16.

It should be noted that some **business sectors are excluded** from regional aid block exemptions.

Coverage of "a" and "c" assisted zones:

One of the criteria for the compatibility of aid measures with the Treaty is the need for state intervention when faced with a problem of equity or cohesion for which the market does not itself provide significant improvements. In this sense the aid granted in assisted zones, under the terms of articles 107.3.a and c, are considered compatible with the market.

- Type "a" assisted zones are covered by Article 107.3.a, and these are regions where the standard of living is abnormally low or where there is serious underemployment, as well as the regions referred to in Article 349, namely the ORs. They are defined in these regulations as the NUTS2 whose GDP per capita in PPS is less than 75% of the average of the EU 27 based on the last three available years (2008-2010) and ORs.
- Type "c" assisted zones are covered by Article 107.3.c, and are defined as disadvantaged areas compared to the national average within their Member State and for which aid enables development "without being limited by the economic conditions set out in 107.3.c". These type "c" zones are made up of:

-predefined "c" zones made up of former "a" zones during the 2011-2013 period and low population density zones (NUTS2 <8 inhabitants per km² or NUTS3 <12.5 inhabitants per km²).

-non-predefined "c" zones which may be made up of territories defined by 5 territorial criteria, including islands of less than 5,000 inhabitants with a GDP per capita below or equal to the EU27 average or an unemployment rate higher than or equal to 115% of the national average²⁸.

²⁷ Namely; the aid is only intended for areas that do not have the same category of network and where such a network will not be developed in the following three years on a commercial basis, the operator offers active and passive wholesale access and aid is awarded through a competitive process.

²⁸ See details in Article 168, guidelines for RSAs.