# Recent developments in Competition policy and regional aid: adjusting to a 'new normal'


## Highlights

Recent developments have emphasised transparency, effectiveness and evaluation and few aspects of regional aid control have been immune from change.

Assisted area coverage is, in principle, set for the period to 2020. However, the Commission is set to assess whether any further areas qualify as 'a' regions in 2016.

Evaluation plans are an important requirement in the new framework, but it remains to be seen what the impact of these will be on the future of the schemes in question.

Fewer aid schemes will be subject to direct scrutiny by the Commission since the scope of the GBER has been broadened. However, the implementation of the GBER has not been trouble-free.

The relationship between the definition of State aid and regional aid control remains troublesome.

Aid to large enterprises in 'c' areas remains a contentious issue for some, with the GBER provisions proving complex to implement.

Reducing levels of regional aid to large firms has long been a Commission's priority. However, comparisons with US spending suggest that European governments may be considerably less profligate in their use of subsidies to firms than is frequently supposed.

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# 1. INTRODUCTION

State aid control is completing its move to a new phase of development. In 2014 the Commission largely finished its reform programme, the State aid modernisation (SAM) initiative. This placed new emphasis on transparency, effectiveness and evaluation, recast the basis for the assessment and compliance of State aid across a range of policy areas and further increased the 'self-policing' element of State aid discipline. The main element of the reform package not (yet) achieved is the adoption of a Communication on the 'notion' of State aid.

The reform agenda has been wide-ranging, and ***few aspects of regional aid control have been immune from change***. The approval of all the assisted area maps by the European Commission or the EFTA Surveillance Authority under the 2014-20 Regional Aid Guidelines (RAG) provided the basis for the introduction of new aid schemes mainly on the basis of the 2014-20 General Block Exemption Regulation (GBER). The last year or so has seen the implementation of regional aid schemes on the basis of these new rules.

The new RAG and GBER place further constraints on the use of regional aid, particularly in terms of the use of regional aid to ***large firms*** in the so-called 'c' areas. For some Member States, this is an important policy change, with direct implications for the conduct of regional policy; for others there is limited impact since large firms rarely received regional aid anyway and have not traditionally been the target of policy.

Fewer aid *schemes* will be subject to direct scrutiny by the Commission since the scope of the GBER has been broadened to encompass measures with which the Commission considered it had had sufficient experience and could exempt. However, the ***implementation of the GBER has not been trouble-free:*** Commissioner Vestager has noted that almost a third of cases reported on the basis of the GBER have 'issues'; given that the Commission expects up to 90 percent of aid measures to be covered by the GBER, this is a significant error rate. In addition, uncertainties among domestic policymakers have led DG Competition to produce a response to 'Frequently Asked Questions'; this runs to some 42 pages – more than half the length of the Regulation itself. However, not only does this document fail to address all the interpretation questions raised (only the most common ones to date), but it is also not binding on the Commission as an institution.

An important development in the recent State aid reforms has been the emphasis on ***evaluation***. Under both the RAG and the GBER, approval of regional aid schemes can be subject to evaluation plans negotiated with the Commission. Under the GBER, this applies where the estimated annual budget exceeds €150 million. For some countries this limit is well above likely regional aid spend, but for others there have been sometimes intense negotiations over the type of evaluation that should be undertaken. In due course, the outcome of evaluations may have direct implications for the Commission's willingness to extend approval of the schemes concerned.

The definition of State aid remains an issue for many – in fact, in some policy areas, the GBER seems to bring measures within the ambit of State aid that some domestic policymakers had not hitherto considered to involve aid at all, blurring the distinction between the ***presence*** of aid and the ***compatibility*** of aid with the Treaty. The notice on the 'notion of State aid' remains in draft form, but while the new Commissioner has decided to reflect on this issue, she has also signalled her intention

to propose a Communication for adoption by the Commission. In parallel, and related, a working group on designing infrastructure projects that do not raise issues under State Aid Law is being established by DG Competition. Meanwhile, a number of cases have begun to shed some light on the views of the Commission as to where the edges of the definition lie.

Recent developments in regional aid have been characterised by a degree of ‘bedding in’. Although substantial changes have taken place, some unresolved issues remain, and there is a degree of dissatisfaction with the parameters and demands of the new GBER. The aim of this paper is to provide an overview and update of regional aid control issues as Member State introduce measures and adapt to the new regime. Section 2 takes stock of the progress with implementing regional aid under the new rules, reviewing, among other things, the uptake of the GBER and the Commission’s emerging stance on evaluations, as well as some recent developments in the definition of State aid. Section 3 reflects on the changes to treatment of regional aid to large firms, reviewing both the Commission’s response to “FAQs” on the GBER and past patterns of aid to large projects. Section 4 concludes by highlighting some questions and issues for discussion.

Annexed to the paper are: (i) a brief outline of the main features of the recent reforms in relation to regional aid, providing a reference point on some of the key changes discussed in the body of the paper, aid rates and assisted area coverage across countries; (ii) copies of the available assisted area maps approved in 2014; (iii) a listing the schemes known to have been reported under GBER 2014 to date.

# 2. TAKING STOCK OF RECENT DEVELOPMENTS

Against the backdrop of the major changes to the legislative context summarised in ANNEX I: *pour memoire* – key changes in regional aid control 2014-20 v 2007-13, this section takes stock of recent developments largely resulting from the new regulatory context.

## 2.1 Assisted area coverage

### *2.1.1 Assisted area maps changes*

Two countries have made small amendments to their assisted area maps within the last year. In both cases, a small population reserve had been left to deal with unforeseen circumstances. In France, this amounted to two percent of the 'c' population; in Finland, the reserve amounted 0.669 percent of the national population.

In ***Finland*** the regions of Viitasaari-Pihtipudas and Äänekoski (representing 1.7 percent of the population coverage) have been added to Aid Area 2 on the basis of their employment-related socioeconomic indicators. The decision by the ministerial group to extend the support area was taken in November 2014 and approved by the Commission in April 2015 (see annex II: national assisted area maps 2014-20 for amended map).

Viitasaari-Pihtipudas and Äänekoski were designated on the basis of high unemployment and as it was considered they would benefit from higher aid levels especially in connection with the bio-production facility planned in Äänekoski, which in turn is expected to accelerate the investments in the supply chain and other businesses.

In June 2015, the Commission approved the extension of the regional aid map for ***France*** using 26 percent of the population reserve of 233,757 inhabitants. This concerns five municipalities in Burgundy and one in Champagne-Ardenne as non-predefined 'c' areas in accordance with Criterion 1 of RAG 2014-20. Criterion 1 concerns contiguous areas of at least 100,000 inhabitants located in NUTS 2 or NUTS 3 regions that have a GDP per capita below or equal to the EU-27 average, or an unemployment rate of 115 percent or more of the national average. All municipalities involved have a GDP below the EU-27 average, and belong to a larger zone of more than 100,000 inhabitants (the municipality in Champagne-Ardenne is part of an assisted area with 845,108 inhabitants, the five in Burgundy are part of an area with 124,562 inhabitants).

### *2.1.2 Review of 'a' areas in 2016*

It is worth recalling that RAG 2014-20 makes provision for a limited review of assisted area coverage in 2016.[1] Specifically, the Commission will establish whether any NUTS 2 region which is not listed as an 'a' region in Annex I to the Guidelines has GDP per capita below 75 percent of the EU28 average. This will use the most recent data available at the time and will be based on the three-year average.

The Commission will publish a Communication on the results, but the impact of these results is not entirely clear. RAG 2014-20 notes that the Commission will "establish at that moment whether these

[1] RAG 2014-20, para 183-5.

identified areas may become eligible for regional aid under Article 107(3)(a)…" which implies a degree of discretion on the part of the Commission, irrespective of the outcome of the analysis.

Also unclear, is the impact on existing assisted areas:

> "if these identified areas are designated either as pre-defined 'c' areas or as non-predefined 'c' areas in the national regional aid map… the percentage of the specific allocation for 'c' areas indicated in Annex I will be adjusted accordingly…. A Member State may, within the limit of its adjusted specific allocation for 'c' areas, amend the list of 'c' areas contained in its regional aid map for the period from 1 January 2017 to December 2020. These amendments may not exceed 50 percent of each Member States' adjusted 'c' coverage".

This can be read as suggesting that changes to 'c' areas are only open to Member States where there have been changes in 'a' region coverage; however, if this is so, it is unclear why changes to 'c' area coverage are so restrictive.

Designation of 'a' regions for 2014-20 was based on GDP data for 2008-10. Regional GDP data are currently available in Eurostat to 2013 for many but not all countries. It seems probable that the reassessment of 'a' region coverage will be based on 2011-13, or possibly 2012-14 data.

As well as changes in the economic situation, the new GDP data will also be based on a different methodology – ESA 2010, as opposed to ESA 95.[2] The main changes in the methodology relate to the capitalisation of expenditure on research and development and on weapons; this expenditure is now counted as *investment*. As well as revised concepts and definitions, ESA 2010 also incorporates statistical 'improvements' such as the integration of new or updated sources and better measurement, for instance of the way in which illegal activities are accounted for in GDP.[3] For the EU28, methodological changes revised 2010 GDP upwards by 2.3 percent, of which the bulk (1.9 percent) is accounted for by the capitalisation of R&D expenditure. At country level, the impact is variable. Methodological changes had the most impact in Sweden and Finland where 2010 GDP increased by 4.4 percent and 4.2 percent, respectively (in each case 4 percent being due to the capitalisation of R&D). The largest changes resulting from statistical improvements were in Cyprus (8.4 percent) and the Netherlands (5.9 percent).

These changes carry through to the regional level: in the majority of cases (240 NUTS II regions)[4] there is an *increase* in GDP; in 31 regions there is a *decrease*; and in the remaining nine, there is no change. However, the regional differences are more extreme than those at national level: in 11 regions the change results in a fall in GDP per capita of more than two percent.

[2] The change in methodology is worldwide – ESA 2010 is the European counterpart of the 2008 SNA adopted by the United Nations Statistical Commission and already implemented in the USA, Australia and Canada.

[3] *First estimation of European aggregates based on ESA 2010,* Eurostat newsrelease 154/2014 of 17 October 2014

[4] Including the Norwegian NUTS II regions.

**Figure 1: Negative Impact of ESA 2010 on GDP(PPS) per head 2011**

| | | ESA 95 | ESA 2010 | % Change |
|---|---|---|---|---|
| **PT** | Região Autónoma da Madeira | 24900 | 20100 | -19.3 |
| **EL** | Dytiki Makedonia | 20000 | 17200 | -14.0 |
| **NL** | Zeeland | 31000 | 27300 | -11.9 |
| **EL** | Notio Aigaio | 22300 | 20800 | -6.7 |
| **EL** | Ionia Nisia | 18900 | 18100 | -4.2 |
| **EL** | Sterea Ellada | 18100 | 17400 | -3.9 |
| **NL** | Friesland | 26300 | 25400 | -3.4 |
| **ES** | La Rioja | 27200 | 26500 | -2.6 |
| **EL** | Kriti | 17300 | 16900 | -2.3 |
| **ES** | Cantabria | 23500 | 23000 | -2.1 |
| **BG** | Yugoiztochen | 9500 | 9300 | -2.1 |

**Source:** Own calculations from Eurostat data.

At the opposite end of the spectrum, a number of regions see an uplift in GDP per head of over nine percent.

**Figure 2: Positive Impact of ESA 2010 on GDP(PPS) per head 2011**

| | | ESA 95 | ESA 2010 | % Change |
|---|---|---|---|---|
| **FR** | Champagne-Ardenne | 23200 | 25300 | 9.1 |
| **NL** | Gelderland | 27200 | 29700 | 9.2 |
| **NL** | Zuid-Holland | 32000 | 35000 | 9.4 |
| **UK** | Hampshire and Isle of Wight | 25600 | 28000 | 9.4 |
| **IT** | Provincia Autonoma di Trento | 30500 | 33900 | 11.1 |
| **IT** | Liguria | 26700 | 29700 | 11.2 |
| **RO** | Bucuresti - Ilfov | 30700 | 34300 | 11.7 |
| **IT** | Lazio | 29300 | 33100 | 13.0 |
| **NL** | Flevoland | 23600 | 26900 | 14.0 |
| **BE** | Prov. Brabant Wallon | 29800 | 34100 | 14.4 |
| **NL** | Noord-Holland | 36600 | 42600 | 16.4 |

**Source:** Own calculations from Eurostat data.

Looking towards the mid-term review of 'a' region status, indications from 2013 data are that some additional regions would qualify as 'a' regions, compared to the outcome presented in RAG 2014-20.[5] The countries potentially affected would be Greece, Spain, Italy and the United Kingdom (see Figure 3):

- In Greece, four regions which do not currently have 'a' status fall well below the 75 percent threshold on the basis of 2011-13 data.
- In Spain, Andalucía and Melilla would qualify.
- In Italy, Molise and Sardegna appear likely to be below 75 percent in the qualifying period.
- In the United Kingdom, Tees Valley falls well under the threshold based on 2011-13 data, while South Yorkshire and Lincolnshire appear to be close to the cut-off.

Interestingly, there is only one region, Jihovýchod (CZ), which appears to have 'outgrown' 'a' region status – though RAG 2014-20 does not envisage changes to current 'a' regions.

[5] RAG 2014-20, Annex I.

**Figure 3: NUTS II regions and 'a' status (GDP-PPS per head % of EU average >60%<80%)**

| | | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | Status |
|---|---|---|---|---|---|---|---|---|
| SK | Stredné Slovensko | 58 | 57 | 60 | 57 | 58 | 60 | 'a' |
| EL | Peloponnisos | 73 | 75 | 69 | 62 | 59 | 60 | 'a' |
| IT | Calabria | : | : | : | 61 | 60 | 57 | 'a' |
| LV | Latvija | 60 | 53 | 53 | 56 | 60 | 64 | 'a' |
| EL | **Kriti** | 81 | 81 | 74 | 65 | 61 | 63 | |
| PL | Lódzkie | 51 | 55 | 57 | 59 | 61 | 63 | 'a' |
| HR | Kontinentalna Hrvatska | 64 | 63 | 60 | 61 | 62 | 62 | 'a' |
| PT | Norte | 63 | 65 | 66 | 63 | 62 | 64 | 'a' |
| IT | Sicilia | : | : | : | 65 | 63 | 61 | 'a' |
| CZ | Severozápad | 63 | 66 | 63 | 64 | 63 | 62 | 'a' |
| IT | Campania | : | : | : | 63 | 63 | 63 | 'a' |
| IT | Puglia | : | : | : | 65 | 64 | 61 | 'a' |
| EL | **Dytiki Makedonia** | 81 | 85 | 75 | 66 | 64 | 62 | |
| EL | **Sterea Ellada** | 83 | 82 | 75 | 67 | 64 | 62 | |
| ES | Extremadura | 70 | 71 | 69 | 66 | 64 | 65 | 'a' |
| PL | Pomorskie | 52 | 58 | 59 | 61 | 64 | 65 | 'a' |
| FR | Réunion | 67 | 68 | 67 | 66 | 65 | 66 | 'a' |
| PT | Centro (PT) | 66 | 69 | 69 | 66 | 65 | 67 | 'a' |
| HU | Nyugat-Dunántúl | 61 | 61 | 65 | 67 | 66 | 67 | 'a' |
| UK | West Wales and The Valleys | 68 | 69 | 67 | 66 | 66 | 67 | 'a' |
| CZ | Strední Morava | 64 | 66 | 65 | 67 | 67 | 67 | 'a' |
| CZ | Severovýchod | 66 | 68 | 67 | 68 | 68 | 68 | 'a' |
| EL | **Ionia Nisia** | 91 | 88 | 82 | 70 | 68 | 68 | |
| SI | Vzhodna Slovenija | 74 | 70 | 68 | 69 | 68 | 68 | 'a' |
| IT | Basilicata | : | : | : | 72 | 69 | 69 | 'a' |
| PT | Região Autónoma dos Açores | 71 | 74 | 74 | 71 | 69 | 71 | 'a' |
| LT | Lietuva | 63 | 57 | 60 | 65 | 69 | 73 | 'a' |
| PL | Slaskie | 58 | 64 | 66 | 69 | 70 | 70 | 'a' |
| UK | Cornwall and Isles of Scilly | 76 | 75 | 71 | 66 | 70 | 70 | 'a' |
| PT | Alentejo | 72 | 73 | 74 | 71 | 70 | 72 | 'a' |
| PL | Wielkopolskie | 58 | 64 | 65 | 67 | 70 | 73 | 'a' |
| CZ | Moravskoslezsko | 68 | 68 | 67 | 71 | 71 | 69 | 'a' |
| ES | **Andalucía** | 78 | 77 | 74 | 72 | 71 | 70 | |
| ES | **Ciudad Autónoma de Melilla** | 82 | 82 | 77 | 74 | 71 | 70 | |
| SK | Západné Slovensko | 68 | 67 | 68 | 69 | 71 | 71 | 'a' |
| EE | Eesti | 68 | 62 | 63 | 68 | 71 | 73 | 'a' |
| UK | **Tees Valley and Durham** | 78 | 78 | 75 | 72 | 71 | 73 | |
| FR | Guadeloupe | 70 | 73 | 73 | 73 | 72 | 72 | 'a' |
| CZ | Jihozápad | 69 | 73 | 72 | 72 | 72 | 73 | 'a' |
| PT | Região Autónoma da Madeira | 79 | 80 | 79 | 77 | 72 | 74 | 'a' |
| IT | **Sardegna** | : | : | : | 75 | 73 | 69 | |
| FR | Martinique | 72 | 74 | 75 | 74 | 73 | 75 | 'a' |
| BG | Yugozapaden | 72 | 74 | 74 | 74 | 74 | 72 | 'a' |
| CZ | Strední Cechy | 76 | 75 | 72 | 75 | 74 | 73 | 'a' |
| PL | Dolnoslaskie | 59 | 64 | 70 | 73 | 74 | 76 | 'a' |
| IT | **Molise** | : | : | : | 77 | 75 | 70 | |
| UK | **South Yorkshire** | 80 | 81 | 78 | 74 | 75 | 76 | |
| EL | Notio Aigaio | 105 | 102 | 93 | 80 | 76 | 76 | |
| ES | Castilla-la Mancha | 83 | 82 | 79 | 77 | 76 | 76 | |
| UK | **Lincolnshire** | 80 | 78 | 76 | 76 | 76 | 76 | |
| CZ | Jihovýchod | 73 | 75 | 73 | 75 | 76 | 77 | 'a' |
| PT | Algarve | 83 | 82 | 80 | 77 | 76 | 79 | |
| ES | Región de Murcia | 85 | 84 | 81 | 77 | 77 | 77 | |
| ES | Ciudad Autónoma de Ceuta | 87 | 88 | 83 | 79 | 77 | 77 | |
| BE | Prov. Luxembourg | : | 78 | 79 | 80 | 78 | 77 | |
| BE | Prov. Hainaut | : | 76 | 77 | 79 | 78 | 78 | |
| UK | Lancashire | 86 | 85 | 81 | 78 | 78 | 79 | |
| UK | Shropshire and Staffordshire | 84 | 81 | 79 | 78 | 79 | 80 | |
| UK | East Yorks and North Lincs | 88 | 91 | 86 | 79 | 80 | 81 | |

**Source:** Eurostat and RAG 2014-20, Annex I.

## 2.2 Uptake of the GBER and Notifications under RAG

Recent changes to the regional aid rules have expanded the scope of the GBER to enable a wider range of schemes simply to be reported rather than requiring prior approval. The key extensions in relation to regional aid concern specific types of operating aid and *ad hoc* aid that otherwise meets the GBER conditions.

GBER 2014-20 extends the block exemption to cover types of operating aid that had been routinely approved under RAG 2007-13.[6] However, not all operating aid schemes will fall within the GBER and those excluded will be assessed under RAG 2014-20. Operating aid under the GBER falls into two main groups:

- Transport aid in sparsely-populated areas and OMR
- Operating aid other than transport costs in the OMR only

**Figure 4: Operating aid covered by the GBER**

| | Eligibility criteria | Eligible areas |
|---|---|---|
| **Additional transport costs** | Outward transport within the Member State | Sparsely-populated areas<br>OMR |
| | Inward transport within the Member State | OMR |
| **Other operating aid** | Aid amount not exceeding:<br>• 15% of GVA<br>• 25% of annual labour costs<br>• 10% of annual turnover | OMR |

**Source:** GBER, Article 15.

The extension of the GBER to include *ad hoc* aid that otherwise meets the criteria of the GBER may facilitate the use of 'packages' of support offered by different agencies to a single project. In addition, in Poland, regional aid awards were made on the basis of individual 'ordinances' which were treated as *ad hoc* aid and notifiable to the Commission under GBER 2008-13 for assessment under RAG 2007-13. Under GBER 2014-20, such awards fall within the scope of the block exemption. However, the 'incentive effect' criterion is relatively demanding for *ad hoc* regional aid to large firms insofar as the Member State must verify that the project would not have been carried out in the area concerned or would not have been sufficiently profitable for the beneficiary in the area concerned in the absence of aid.[7] Whilst domestic policymakers might want to assure themselves that proposed aid would have such an effect, being able to 'verify' this is quite demanding. The requirements for 'incentive effect' are less onerous in the case of aid *schemes* (although the Commission had initially sought more stringent terms), so domestic policymakers would have an interest in only offering such aid within aid schemes.

### *2.2.1 Regional aid under the GBER – the picture so far*

GBER 2014-20 places considerable emphasis on transparency and reinforces the obligations on Member States in information provision. Indeed, by June 2016, Member States are to have a comprehensive State aid website at national or regional level providing:

- summary information on each exempted aid measure in the standardised format (or a link to it);

[6] GBER 2014-20, Article 15.
[7] GBER 2014-20, Article 6(3)(a).

- full text of each exempted measure or a link to it
- information on each individual award exceeding €500,000.

At present, it appears that most national authorities are some way from providing such comprehensive information sources. Moreover, the Commission's database of cases, which should provide easy access all GBER 2014-20 exempted schemes, has apparently faced technical problems with the result that it is not yet straightforward to identify all relevant aid measures.

By August 2015, some 911 schemes had been reported by EU Member State under GBER 2014-20, with a further 52 by the EFTA countries. Only Bulgaria and Greece (and Lichtenstein) appear not to have reported schemes on the basis of the block exemption.[8]

**Figure 5: Number of schemes reported under GBER 2014-20 (at August 2015)**

| | | | |
|---|---|---|---|
| **Austria** | 66 | **Latvia** | 10 |
| **Belgium** | 12 | **Lithuania** | 9 |
| **Bulgaria** | 0 | **Luxembourg** | 1 |
| **Croatia** | 4 | **Malta** | 4 |
| **Cyprus** | 3 | **Netherlands** | 50 |
| **Czech Republic** | 63 | **Poland** | 32 |
| **Denmark** | 12 | **Portugal** | 3 |
| **Estonia** | 10 | **Romania** | 8 |
| **Finland** | 20 | **Slovakia** | 3 |
| **France** | 37 | **Slovenia** | 9 |
| **Germany** | 238 | **Spain** | 70 |
| **Greece** | 0 | **Sweden** | 13 |
| **Hungary** | 58 | **United Kingdom** | 79 |
| **Ireland** | 10 | **Iceland** | 1 |
| **Italy** | 87 | **Norway** | 51 |

**Source:** DG COMP database: http://ec.europa.eu/competition/elojade/isef/index.cfm?clear=1&policy_area_id=3 and EFTA Surveillance Authority State aid register: http://www.eftasurv.int/state-aid/state-aid-register/

In the specific context of *regional aid*, the way in which schemes have been reported – typically covering a wide range of policy objectives within a given measure – makes it quite difficult to assess the real extent to which the regional aid provisions are being used, or the budgets being allocated specifically to regional aid schemes. Schemes that have been reported under GBER 2014-20 to date and include regional investment aid[9] are listed in Annex III. In many countries this reveals a number of schemes where clearly the regional aid element is minor or incidental, as well as a wide range of budget allocations and schemes offered by various tiers of government within countries. As a result, this listing includes a number of measures that regional policymakers would not regard as falling within their portfolio, as well as major regional aid schemes, some of which are substantial enough to have been caught by the evaluation plan requirement, which discussed further below.

One interesting point to note is the 'umbrella' approach taken to GBER cover in a few instances. In France and in the UK, aid 'frameworks' have been reported under the GBER providing cover for aid schemes operated by different tiers of government. The advantage of this approach lies having a single text which (assuming it is implemented accurately) provides a secure single legal basis under which a range of agencies can offer aid without a proliferation of legal bases and weblinks. On the

[8] Clearly there is a potential timing issue here and these totals may not accord with national records depending on possible delays in including reports within the DG COMP database.

[9] GBER 2014-20, Article 14.

other hand, reporting is still required by all those availing themselves of GBER cover; the coordination of this across multiple organisations could be onerous. In addition, under the new provisions, there is the issue of being certain, *ex ante*, that the €150 million annual threshold will not be exceeded when decisions on spending do not lie with the party reporting the measure under the GBER.

### *2.2.2 Notification under the RAG*

One of the Commission's key objectives under the State aid modernisation initiative was to reduce the number of cases which it was required to scrutinise individually and to focus its attention on measures most likely to have serious implications for competition. To date, just five schemes have come to be scrutinised on the basis of RAG 2014-20. Three of these concern reduction of excise duties in the Outermost regions.

**Figure 6: Schemes notified under RAG 2014-20**

| Country | Scheme | Reason for notification |
|---|---|---|
| **Norway** | Social security concession | Operating aid falling outside the GBER |
| **France** | Reduced rate of excise duty on traditional rum produced in DOM | Outermost region operating aid falling outside the GBER |
| **Portugal** | Reduced rate of excise duty applied to liqueurs and eaux-de-vie in the Azores | Outermost region operating aid falling outside the GBER |
| **Portugal** | Reduced rate of excise duty applied to rum and liqueurs in Madeira | Outermost region operating aid falling outside the GBER |
| **Germany** | Subordinated loans for SMEs in Saxony | Non-transparent aid – methodology for aid element calculation approved by COM |

**Source:** DG COMP database: http://ec.europa.eu/competition/elojade/isef/index.cfm?clear=1&policy_area_id=3 and EFTA Surveillance Authority State aid register: http://www.eftasurv.int/state-aid/state-aid-register/

The German (Sachsen) case essentially concerns the approval by the Commission of a proposed methodology for assessing the aid element in a loan scheme. The precise nature and terms of the loan meant that the gross grant equivalent could not readily be calculated simply on the basis of the reference rates and the scheme was not 'transparent' within the meaning of the GBER.

The most significant decision taken to date on the basis of RAG 2014-20 is the EFTA Surveillance Authority decision in June 2014[10] to approve the regionally-differentiated social security contributions in Norway for 2014-20. The decision is based on the ESA Guidelines on Regional Aid,[11] which are analogous to RAG 2014-20 for the sectors covered by the EEA agreement.[12]

The Norwegian social security concession is distinctive in several respects. First, it constitutes regional operating aid, which is rarely approved under the regional aid rules and then only in closely-defined circumstances. Second, assisted areas for operating aid are different from those for investment aid – they are not based on the population ceilings or designation criteria set out in the RAG, but rather subject to a separate assessment by the Commission, or, in this case, ESA. Third, the scheme is extremely large – annual spend is around NOK 13 billion – some €1.4 billion, of which around half is accounted for by undertakings engaged in economic activities. In other words, about €936 million involves State aid with the remainder accounted for by, for example, public sector bodies not engaged in economic activities, and therefore not State aid recipients.

[10] EFTA Surveillance authority Decision of 18 June 2014 on regionally-differentiated social security contributions 2014-20 (Norway), Dec no: 225/14/COL: http://www.eftasurv.int/media/decisions/225-14-COL.pdf

[11] http://www.eftasurv.int/media/state-aid-guidelines/Part-III.pdf

[12] The EEA Agreement does not cover the common agriculture and fisheries policies.

There was considerable controversy over the approval of the scheme. Perhaps surprisingly, given recent population trends in Norway, the controversy did *not* concern the assisted area coverage of the scheme. The Norwegian authorities proposed an increase in coverage compared to 2007-13, with the population rising from 17.7 percent[13] to 21.1 percent of the population, but the assisted area map proposals proved uncontentious.

By contrast, the *sectoral* focus of the scheme was the subject of intense negotiations. The previous scheme (2007-2013) had been available to all sectors of activity, with the exception of steel and shipbuilding.[14] The new scheme was made subject to the sectoral restrictions introduced under RAG 2014-20, most notably the exclusion of the transport and energy sectors, but also the financial and insurance sectors. These had hitherto been eligible on the basis of the 'horizontal' nature of the scheme. The Norwegian authorities argued vigorously for the horizontal approach to be maintained and for precise definitions of the sectors subject to limitations under the RAG and GBER.[15] This approach was rejected by ESA, in league with the Commission, but ESA did specify more closely which sectors would be *ineligible*.[16] These are:

- Steel[17]
- Synthetic fibres[18]
- Transport – namely, the transport of passengers by aircraft, maritime transport, road or rail and by inland waterway or freight transport services for hire or reward, ie.[19]
    - NACE 49: land transport and transport via pipelines, excluding: NACE 49.32 taxi operation; NACE 49.42 removal services; and NACE 49.5 transport via pipeline
    - NACE 50: water transport
    - NACE 51: air transport, excluding NACE 51.22 space transport.
- Airports[20]
- Energy – here the ESA decision refers to the GBER, noting the definition of the energy sector as "energy generation, transmission and infrastructure". On this basis it concludes that the entire NACE division 35 should be excluded.[21]
- Financial and insurance activities (NACE Section K).[22]

[13] Though the population living in the assisted area had declined to around 16.6 percent.

[14] EFTA SURVEILLANCE AUTHORITY DECISION of 19 July 2006 on the notified scheme concerning regionally differentiated social security contributions (Norway), Decision No: 228/06/COL, http://www.eftasurv.int/media/esa-docs/physical/10178/data.pdf

[15] Letter from the Ministers for Local Government and Modernisation and Finance, 28 April 2014: http://www.regjeringen.no/upload/KMD/REGA/letter_almunia_29_4_2014.pdf

[16] Somewhat curiously, perhaps, the shipbuilding sector, which was previously excluded, now appears to be eligible.

[17] RAG 2014-20, Annex IV; ESA RAG 2014-20, Annex II

[18] RAG 2014-20, Annex IV; ESA RAG 2014-20, Annex II(a)

[19] This corresponds to the definition in GBER 2014-20, Article 2(45).

[20] RAG 2014-20, para 11.

[21] Section 35 includes the activity of providing electric power, natural gas, steam, hot water and the like through a permanent infrastructure (network) of lines, mains and pipes. The dimension of the network is not decisive; also included are the distribution of electricity, gas, steam, hot water and the like in industrial parks or residential buildings. This section therefore includes the operation of electric and gas utilities, which generate, control and distribute electric power or gas. Also included is the provision of steam and air-conditioning supply. However, Section 35 *excludes* the production of crude petroleum, the mining and extraction of oil from oil shale and oil sands and the production of natural gas and recovery of hydrocarbon liquids (Division 06). Section 35 also excludes the (typically long-distance) transport of gas through pipelines, see: Statistical Classification of economic activities in the European Community, NACE Rev. 2, see: http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-RA-07-015/EN/KS-RA-07-015-EN.PDF

- Undertakings performing intra-group activities and whose principal activity falls under NACE classes 70.10.[23]

The compatibility assessment itself appears rather mechanistic, though the substance of the underlying discussions is not always easy to discern. In the context of *proportionality*, for example, the decision appears simply to accept the rates proposed by the Norwegian authorities (which are themselves rolled forward from 2007-13) without attempting explicitly to calibrate these with regional disparities.

More noteworthy are the conditions attached to the evaluation of the scheme. This must be delivered to ESA by end 2018 and quite stringent criteria are associated with the goals and conduct of the evaluation. This is discussed in more detail below.

A final point to note is that ESA's decision approving the scheme has been challenged before the EFTA Court. The case, brought by Kimek Offshore AS, a company with operations in northern Norway, involves an action for annulment of the ESA decision on the grounds that it failed in its obligation to open the investigative procedure or to state the reasons on which aspects of its decision were made. The substantive part of the decision at issue concerns the availability of the concession to undertakings registered outside the aid area hiring workers employed within it. Whilst the applicant sought an annulment of the decision as a whole, it also argued for the 'severability' of the part of the decision concerning mobile workers. The case was heard in July 2015, but the Court has not yet released its findings.[24]

## 2.3 Evaluation requirements and aid approval

Among the new developments in both RAG 2014-20 and GBER 2014-20 is the scope for the Commission to make aid authorisation conditional on its approval of an evaluation plan.

RAG 2014-20 provides the possibility for the Commission to limit the validity of aid schemes to four years in order for an evaluation to be carried out.[25] The precise terms of any requirement to undertake an evaluation[26] are defined in the approval of the aid measure. However, evaluations must by undertaken by experts independent from granting authorities, on the basis of a common methodology (which the Commission may provide) and must be made public. The circumstances in which an evaluation would be imposed as a condition of approval are limited to those with large budgets, schemes with novel characteristics or in areas where significant market, technological or regulatory changes are envisaged. Evaluations must be carried out in sufficient time for the results to feed in to the Commission decision on any extension of the scheme proposed, or at expiry.[27]

GBER 2014-20 provides for the expiry of GBER cover after six months for schemes with annual budgets exceeding €150 million, pending the approval by the Commission of an appropriate evaluation plan. In effect, this means that unless a Member State is able to provide an evaluation plan

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[22] RAG 2014-20, para 17.
[23] Ibid.
[24] Case E23/14, see: http://www.eftacourt.int/uploads/tx_nvcases/23_14_RH_EN.pdf
[25] RAG 2014-20, para 27.
[26] See also: http://ec.europa.eu/competition/state_aid/modernisation/evaluation_issues_paper_en.pdf
[27] RAG 2014-20, para 144.

that is acceptable to the Commission, then GBER cover would be withdrawn and the scheme in question would need to be notified. As the whole scheme would then be subject to appraisal under RAG 2014-20, with the delays inherent in the notification process, there is a strong incentive for domestic policymakers to reach early agreement with the Commission on the evaluation plan.

GBER 2014-20 sets out the minimum requirements for an evaluation plan;[28] this should set out:

- the objectives of the aid scheme
- evaluation questions
- result indicators
- the methodology envisaged
- data collection requirements
- proposed timing, including the date of submission of the final report
- description of the independent body conducting the evaluation or the criteria to be used for selecting the evaluator
- mechanisms for publicising the evaluation.

A provisional supplementary information sheet for the submission of an evaluation plan is available. Its use is not yet mandatory as this requires changes to the Implementing Regulation. However, its use is recommended and it refers Member States to a staff working document on a common methodology for evaluation.[29] A version of this document had been subject to consultation at the end of 2013, and many Member States expressed concern at the ambition of the proposal and, more fundamentally, at the competence of the Commission to require the evaluations of the effectiveness of measures financed with purely domestic resources. Nevertheless, the Commission view seems largely to have prevailed.

By August 2015, evaluation plans had been approved for several regional aid schemes, though not all the decisions had been published by the Commission.

[28] GBER 2014-20, Article 2(14).

[29] Commission Staff Working Document "Common methodology for State aid evaluation, 28 May 2014, SWD(2014) 179 final
http://ec.europa.eu/competition/state_aid/modernisation/state_aid_evaluation_methodology_en.pdf

**Figure 7: Evaluation plans approved under RAG and GBER**

| Country | Scheme | Basis | Annual budget | Reference |
|---|---|---|---|---|
| **Norway** | Regionally-differentiated social security contribution (RDSSC) | RAG | €1404 million (NOK 13 billion) | Dec no: 225/14/COL |
| **United Kingdom** | Regional Growth Fund (RGF) | GBER | €4352 million (£3.2 billion – rounds 5 and 6, not all of which is State aid) | SA.39273 |
| **Czech Republic** | Investment Incentives | GBER | 437 million | SA.38751 |
| **Hungary** | Development tax benefit scheme | GBER | €269 million (HUF 82.4 billion) | SA.39669 |
| **Germany** | | GBER | | C(2015)1349 final of 24 February 2015 |
| **Poland** | Special Economic Zones (SEZ) | GBER | €507 million (PLN 2.14 billion) | SA.40523, SA.38830 Not yet published |
| **Portugal** | Inovação Empresarial | GBER | n/a | Not yet published |

**Note :** A French scheme for the *Départements d'outre mer* (*Aide fiscale à l'investissement productif*) has also had an evaluation plan approved on the basis of the regional aid rules, but DOM policies are not considered part of regional policy *per se* in France.

The approval of the social security concession in ***Norway*** by ESA[30] provides for quite an exhaustive evaluation designed to assess:

1. The impact of the scheme on job opportunities and employment in the eligible regions, using results indicators that measure the impact which lowering employment costs through the scheme has on:
    a. Labour market participation rates
    b. Employment growth in the public and private sector
    c. Wage formation and household disposable income
    d. Industrial structure
    e. Educational level of the workforce
    f. Municipal and state finances

    The analysis is to include the effects of the scheme on the labour market by region and sector and assess the impact of the scheme on both undertakings and employees, in order to determine who benefits.

2. The impact of the scheme on competition and trade, including issues related to size of undertaking and international competition.

A detailed timeline for the evaluation, as well as the participation of ESA in a methodological workshop, is also provided for with the delivery of the evaluation to ESA envisaged by end 2018. Domestically, the process began with a feasibility study[31] which was the subject of a wider consultation.[32]

[30] EFTA Surveillance authority Decision of 18 June 2014 on regionally-differentiated social security contributions 2014-20 (Norway), Dec no: 225/14/COL: http://www.eftasurv.int/media/state-aid/Consolidated_version_-_Decision_225_14_COL__NOR_Social_Security_contributions_2014-2020.pdf

[31] Samfunnsøkonomisk Analyse AS (2015) Evaluation of the regionally differentiated social security contribution scheme in Norway – a feasibility study:

Elsewhere, the process is somewhat less advanced since evaluation plans were reported on the basis of the GBER rather than the RAG (which was adopted earlier). In other words, the evaluation requirement was triggered by the budget of the scheme rather than through the notification process. Although the approval decisions have not all yet been published (e.g. the decisions for Germany, Poland and Portugal), it seems that decisions on the evaluation plans are taking in the order of four to six months. In Germany, in particular, the length of these negotiations was a source of irritation.

It also seems that the Commission's working paper[33] has been influential in determining the scope and nature of the plans approved – see Figure 7, which shows the prominence of econometric techniques, especially difference in differences, in the evaluation plans. Indeed, some policymakers have criticised the 'over-prescriptiveness' of the Commission's approach, as well as the emphasis on very short-term effects rather than long-term impacts. In the Polish context, a particular issue is the sheer number of evaluations required since much of Polish regional policy is co-financed by Cohesion policy, which has its own evaluation regime.

At this stage it is difficult to assess what the implications of the evaluation requirement will be. One concern is the very short-term nature of the effects being measured – because of the timescale of the GBER and RAG requirements (with evaluation results required six months before the end of 2014-20 period) - and whether there is a risk that changes could be sought to schemes before any information about their real longer-term impact is actually known. The German authorities were keen also to examine  longer terms impacts and so have agreed to provide, not only an evaluation by the end of June 2020, but also a second evaluation using data for the full 2014-20 period, to be published after the end of the period.

https://www.regjeringen.no/contentassets/de4d96bf32814b9e9e6fb5bc1b8a7b20/rdssc-scheme-feasibility-study.pdf

[32] RDSSC consultation – workshop on methodology: https://www.regjeringen.no/no/tema/kommuner-og-regioner/regional--og-distriktspolitikk/pameldinger-seminarer-rega/rdssc-evaluation/id2402256/

[33] Commission Staff Working Document "Common methodology for State aid evaluation, 28 May 2014, SWD(2014) 179 final
http://ec.europa.eu/competition/state_aid/modernisation/state_aid_evaluation_methodology_en.pdf

**Figure 8: Regional aid evaluation plans approved by the Commission (at August 2015)**

| Country | Scheme | Objectives | Evaluation questions | Results indicators | Methods |
|---|---|---|---|---|---|
| **Norway** | RDSSC | To prevent or reduce depopulation in already sparsely populated areas by lowering employment costs for companies located in these areas, with the expectation that this will stimulate the local labour markets and lead to increased job opportunities and employment. | What is the scheme's impact on job opportunities and employment in the eligible regions, and prevention or reduction of depopulation?<br>What is the effect on competition and trade? | Labour market participation; employment level and growth by zone and industry; wage income by zone; disposable income; industrial structure; firms size distribution; education level; central and local government incomes; capital accumulation; use of intermediates; hourly wage costs (Feasibility study proposal) | Difference in differences modelling<br>Regression discontinuity design<br>Matching procedure to identify control group<br>(Feasibility study proposal) |
| **United Kingdom** | Regional Growth Fund (RGF) | Stimulate enterprises by supporting projects/programmes with potential for economic growth, leveraging private investment and creating additional sustainable private sector employment<br>Support area which are currently dependent on the public sector to make the transition to sustainable private sector led growth and prosperity. | Impact: what are the causal effects of RGF-funded projects and programmes on beneficiary firms?<br>Economic evaluation: how far are the costs of RGF justified by the benefits achieved? | For firm level grants and loans: capital investment, training expenditure, number of workers trained, research and development, patents, employment levels, profitability, productivity.<br>For land and property: intermediate effects in local property markets (space and rents), employment and unemployment. | Longitudinal panel data sets comprising applicants, non-applicants, successful and unsuccessful applicants analysed through fuzzy regression discontinuity design, propensity score matching and fixed effects, difference in differences for survey data and synthetic control methods. |
| **Czech Republic** | Investment Incentives | Eliminate difference between developed and less-developed regions<br>Reduce difference in unemployment rates through the creation of new jobs<br>Promote creation of higher skilled jobs<br>Promote economic development by supporting investment projects focused on advanced technologies and activities with high added value and export potential<br>Increase international | How did assisted companies develop compared with a control group?<br>Did amendments implemented on the basis of mid-term evaluation contribute to achievement of objective?<br>What are the lessons for future aid schemes? | Projects assisted; amounts of aid; amount of investment aided; leverage effects; net jos created; increase in value-added; increase in labour productivity; increase in sales; total amount of investment; | Control group (non-assisted firms) and aided firms analysed using difference in differences.<br>Qualitative data collected in interviews with beneficiaries and non-beneficiaries. |

| | | | | | |
|---|---|---|---|---|---|
| | | competitiveness in innovation, IT and strategic services | | | |
| **Hungary** | Development tax benefit scheme | Encourage sustainable new investment and job creation<br>Alleviate regional disparities through regionally-differentiated support | Does the scheme generate additional improvement in the level of investment, employment, gross value-added and labour productivity?<br>Does the scheme incur a deadweight loss?<br>Is the scheme most cost-effective than other support schemes?<br>What is the additional fiscal dividend of the scheme in the long term? | Annual investment flows; capitalised costs of assets; change in non-financial assets; wages and salaries; employment headcount; GVA/average headcount; GVA/wages. | Control group of 'matched' non-assisted firms for some eligible groups; case studies for niche sectors and projects with positive spillovers and externalities (R&D, environment).<br>Difference in differences to measure direct impact, deadweight loss, proportionality and appropriateness. |
| **Germany** | GRW | To offset the locational disadvantages of the structurally weaker regions by supporting economic development to reduce regional disparities | Has GRW funding had an incentive effective on assisted firms?<br>Does income and employment differ between comparable aided and non-aided firms?<br>Are aided firms more viable in the long term?<br>Is there evidence of other effect? Eg employee skills, R&D intensity?<br>What is the causal impact of the GRW on aided firms?<br>What is the cost of the programme? | Employment<br>Revenue<br>Survival rates<br>Skills | Control group of 'matched' non-assisted firms.<br>Difference in differences |
| **Poland** | Special Economic Zones (SEZ) | | | | |
| **Portugal** | Inovacao Empresarial | | | | |

**Source:** DG COMP and ESA decisions, EPRC country research; the decisions for Poland and Portugal are not yet published.

## 2.4 State aid, regional policy and definitional issues

A critical issue in matters of State aid compliance is that a concrete definition remains elusive: "the European Court has not yet provided a consistent and comprehensive interpretation of the conditions for State aid".[34] Moreover, the result of Commission practice has been a tendency to blur the distinction between the presence of aid and its compatibility with the Treaty. This is evident in several provisions of the new GBER which in some cases brings within the ambit of compatibility measures that had not hitherto been considered as aid at all by domestic policymakers. At the same time, the Commission has tended to encourage use of the *de minimis* Regulation or of the GBER as mechanisms to deal with doubts about whether aid is present. While this may in some respects be regarded as expedient, it should also be recalled that both the GBER and the *de minimis* Regulation have quite onerous administrative requirements associated with them.

In 2014 the Commission sought, for the first time, systematically to clarify the concept of State aid. This took the form of a draft notice[35] which was subject to consultation; this closed on 31 March 2014. For the most part the document is a compilation of existing case law – since the ultimate arbiter is the European Court - but it also refers to the 'decisional practice' of the Commission. It remains to be seen whether the document is actually finalised – there are questions over the status of the document and while some Member States responded positively to the consultation and attempts at clarification, this was not universal. Nevertheless, there are signs that the Commission is seeking to clarify the scope of aid, not least in order to reduce its own workload and focus on priority cases.

### *2.4.1 Some 'no aid' decisions*

In recent months the Commission has reached decisions in a number of cases where it found no aid to be present – perhaps indicating that, following several years of decisional practice in which the tendency has been to widen the definition of aid, the time has come to rein it back in.

In ***Propapier**,*[36] the Commission had been obliged to open an investigative procedure following the General Court's annulment of its earlier decision to allow aid, which has been challenged by a competitor *Smurfit Kappa.*[37] The complainant had alleged that certain infrastructure projects financed by State resources in an industrial park were exclusively intended for Propapier and should therefore be deemed State aid. These concerned:

- the construction of a parking facilities for trucks and cars
- a new connecting road
- widening and deepening of the Oder-Spree Canal
- the construction of a waste-water treatment plant.

[34] Bacon, K (2013) European Union Law of State Aid, Second edition, Oxford University Press, p20.

[35] European Commission (2014) Draft Commission Notice on the notion of State aid pursuant to Article 107(1)TFEU, see http://ec.europa.eu/competition/consultations/2014_state_aid_notion/index_en.html

[36] Commission Decision 2015/508 of 1 October 2014 on alleged infrastructure aid implemented by Germany in favour of Propapier PM2 GmbH, OJEU L89/72 of 1 April 2015.

[37] Case T-304/08 *Smurfit Kappa Group plc v Commission.*

The focus of the Commission analysis was on whether the infrastructures were dedicated to Propapier:

> "The Commission has considered in the past that public authorities can carry out work to develop their land. They can, for instance, finance investments into infrastructure which will benefit the population as a whole. Moreover, the Commission considers that the reason for setting up such infrastructure is irrelevant, provided it is in the interests of the local community as a whole. However, if such infrastructure will serve the needs of a private company only, that company is responsible for funding it. This follows from the fact that, where State aid is concerned, the Commission's remit is to analyse the impact of the measures concerned in practice, rather than the objectives pursued. In the present case, the Commission therefore takes the view that it is a matter of analysing which infrastructure is of benefit to the community as a whole (including Propapier) and which is of use only to Propapier. It is only the latter which should be financed by Propapier"

The Commission then observed that the issue of aid to owners and operators of the road, car park and canal did not arise because their use was free of charge; they were not, therefore, operated by undertakings. Thereafter, the Commission considered each element in turn. Regarding the parking facilities, the Commission considered that the German authorities had provided sufficient evidence that this was a planned development of the industrial area by the public authorities; it also noted that it was open to other users and that, as Propapier had its own parking facilities, it was not dependent on those that were publicly funded. The absence of rest facilities was not relevant to whether it constituted general infrastructure. Accordingly the Commission concluded that the parking facilities did not involve State aid to Propapier. A similar reasoning applied to the construction of the connecting road – the German authorities showed that it was part of a wider planned development and was accessible to any user. Regarding the canal, this had been extended with a view to attracting firms to the area, but the Commission concluded that there was no causal link between these works and the settlement of Propapier or that these works would offer a selective advantage to Propapier.

Regarding the waste treatment plant, this did constitute an economic activity on the part of the operator (which had itself received aid), and the complainant had alleged indirect aid since the plant had benefited from an investment grant. However, although Propapier currently used up to 70 percent of the capacity of the plant, it was not considered to be dedicated to Propapier partly because the modular approach to its construction had been designed to benefit other users as demand rose. As with the other infrastructure elements, the key issues were the presence of an overall plan and the access by other users.

In ***TenderNed***[38] the Commission had occasion to consider the issue of *economic activities.* In order to qualify as aid, the recipient of the advantage conferred must be an *undertaking*. The notion of *undertaking* is neutral as to ownership, legal status and financing. The term undertaking is not defined in EU law, but it is established that it may be public or private, voluntary, charitable or not-for-profit, involve a group of organisations or a public-private partnership or a self-employed individual; the key is not the *status* of the organisation, but rather that it must be engaged in an *economic activity* in order for Article 107(1) to apply. Economic activity is broadly defined as 'any activity consisting in offering goods or services on a given market'.[39] There is no definitive list of economic activities, but 'non-

[38] Alleged State aid to The Netherlands e-procurement platform, see http://ec.europa.eu/competition/state_aid/cases/255396/255396_1614207_95_2.pdf

[39] C-222/04 *Ministero dell'Economia e delle Finanze v Cassa di Risparmio di Firenze* [2006] ECR I-289, para 108.

economic' activities include those related to State prerogatives and public safety such as passports, police, armed forces, air and maritime traffic control, as well as the organisation of public education and compulsory social security contributions.

Following the adoption of a new package of public procurement rules, the Dutch authorities established an e-procurement platform, *TenderNed*, within the Ministry of Economic Affairs. TenderNed is aimed at supporting the public procurement process from the publication of the notice to the award of the contract. The functional requirements deriving from the 2014 Procurement Directives were taken into account in the design and construction of the system. TenderNed consists of a number of elements, made available to potential tenderers at no cost: (i) a publication module, which can be used for the publication of tender notices as well as associated tender documents, at no cost; (ii) a tendering (submission) module, offering functionalities such as the exchange of questions and answers, the uploading and downloading of tenders and bids - this module also includes a virtual company file in which enterprises can introduce and manage their data; and (iii) an e-guide, which supports contracting authorities in using TenderNed.

The complainants (firms engaged in the provision of online information on public tenders) alleged that the financing of TenderNed involved unlawful and incompatible State aid. However, in considering the case, the Commission concluded that TenderNed's publication module ensures that contracting authorities and special sector entities comply with the transparency obligation under the Union and Dutch public procurement rules and TenderNed's tendering module ensures that public procurement contracts are appropriately tendered under those rules, while the e-guide fulfils the obligations of The Netherlands under the Union Procurement Directives to offer information and support to contracting authorities and economic operators and the supply of statistical information to the Commission is also laid down by those Directives. As such, the Commission took the view that TenderNed's activities had their origin entirely in supporting the procurement activities of the Dutch public authorities and the obligations of the Dutch State under the Procurement Directives and were not economic in nature. As a result, there could be no State aid present.

### *2.4.2 No aid decisions – no effect on trade*

A series of decisions announced in April provided some guidance on the issue of impact on trade.[40] Measures that do not have an impact on trade do not constitute State, but only on rare occasions have the Court or the Commission concluded that there is no such effect. In these decisions, the Commission provides some indications on the circumstances in which activities can be judged to have a purely local impact and no, or at most marginal, foreseeable effects on trade. In ***Hradec Králové public hospitals*** the Commission considered that the main activity of the hospitals is to provide medical care in the local catchment area, and there is no indication of relevant cross-border investments in hospitals or the establishment of healthcare providers from other Member States in the region. Similar issues arose in ***Medical centre in Durmersheim*** where the Commission further considered that the alleged beneficiary was not engaged in any activity for which competition is taking place at a wider than local level. ***Landgrafen-Klinik*** receives compensation for the losses incurred in the provision of healthcare services, but the Commission noted that of over 3000 patients treated in 2013, not one came from another Member State, reflecting the purely local nature of its activities and

[40] European Commission press release, State aid: Commission gives guidance on local public support measures that can be granted without prior Commission approval, 29 April 2015: http://europa.eu/rapid/press-release_IP-15-4889_en.htm

the absence of any likely effect on trade. Similarly, investment aid for the lengthening of a fishing quay in ***Lauwersoog port*** was not deemed to increase the capacity of the port to cater for larger ships and would be used only by small vessels owing to its proximity to the relevant fishing grounds; it would not attract fishermen from other Member States. Free advisory and consultancy services provided to SMEs and start-ups in a disadvantaged part of Kiel by ***Projektgesellschaft Kiel-Gaarden GmbH*** were not considered to affect trade since there was no evidence of cross-border investments in services providing very basic advice in socially-disadvantaged areas. In ***Glenmore Lodge*** subsidies provided by SportScotland were found not to involve State aid since the market catered to was largely regional, at most national and there was no evidence of cross-border investment in this type of activity. Last, tax breaks applicable to ***Member-owned golf clubs*** were found not to affect trade – the tax breaks are capped at low levels which exclude clubs that generate significant revenues from non-member players (from the UK and abroad) which could compete with golf courses outside the UK.

These decisions are line with the principle enunciated in the State aid modernisation initiative that the Commission should further focus its scrutiny on measures most likely to cause serious harm to competition and aim to both provide comfort to domestic policymakers and reduce the workload of the Commission insofar as it relates to case which do not raise competition concerns.

### *2.4.3 Tax and State aid – horizontal enquiries and formal investigations*

At the opposite end of the spectrum, the Commission has begun a high profile series of actions in the field of taxation. On the one hand, it has launched an enquiry into tax rulings in *all* Member States,[41] having initially restricted this to a few. On the other hand, it has opened investigations into alleged aid to ***Starbucks*** (Netherlands), ***Amazon*** and ***Fiat Finance*** (Luxembourg) and ***Apple*** (Ireland). All four cases concern tax rulings dealing with transfer pricing arrangements between companies of the same group. The Commission has already reached a preliminary view that State aid is likely to be present. If confirmed by the in-depth investigation, the beneficiaries would have to repay the aid concerned with interest, subject to a limitation period of 10 years – though calculating the value of the aid received would likely prove contentious since it would not take the form of a direct transfer of State resources as in the case of a grant.

The Commission has long shied away from direct scrutiny of such tax arrangements, partly reflecting the complex interface between State aid and taxation, not least associated with issues of sovereignty in tax affairs, but also the considerable difficulty in obtaining information on tax arrangements for multinational enterprises. These investigations, together with the general enquiry, signal the Commission's determination to address tax practices that have long eluded regulation.

### *2.4.4 Infrastructure and State aid – a work in progress*

An important issue that remains unresolved to date concerns State aid to infrastructure. In the wake of the so-called ***Leipzig-Halle*** case the relationship between funding of infrastructure and the State aid rules changed.[42] Historically, public funding of general infrastructure was either considered to be

[41] European Commission press release: State aid: Commission extends information enquiry on tax rulings practice to all Member States, Brussels, 17 December 2014: http://europa.eu/rapid/press-release_IP-14-2742_en.htm

[42] C-288/11 P, *Freistaat Sachsen and others v European Commission (Leipzig Halle)* *http://curia.europa.eu/juris/document/document_print.jsf?doclang=EN&text=&pageIndex=0&part=1&mode=lst&docid=131967&occ=first&dir=&cid=17784*

within the 'public remit' or if non-discriminatory access was granted to all potential users, was not considered to involve State aid.[43] The Commission's reappraisal of the position following *Leipzig-Halle* extended the reach of the State aid rules into different areas of infrastructure support and created significant uncertainty. In particular, a precise definition of what transactions qualify as State aid remains elusive, while the development of rules on what types of infrastructure aid are compatible with the Treaty is far from complete.

The European Court of Justice ruling in *Leipzig-Halle*[44] links the construction of infrastructure to its later exploitation: if the subsequent use of the infrastructure constitutes an economic activity, then the funding of the construction may entail State aid. Importantly, the Commission has made clear its view that:[45]

> "it cannot be denied anymore that the financing of *any type of infrastructure* (excluding infrastructure related to security, safety, etc.) that is later commercially exploited is State aid relevant." [emphasis in original].

This means that only infrastructure that is not commercially exploited and is built in the interest of the general public is excluded from the application of the State aid rules. Examples include public roads (other than toll roads / roads operated by a concessionaire) or public parks and playgrounds. In addition, case law has confirmed that infrastructure related to national security, safety, air traffic control, meteorological services all fall within the public remit. Notwithstanding these exclusions, it is evident that there are few types of infrastructure funding that fall clearly outside the scope of the State aid rules, though the precise contours of the public remit have yet to emerge.

Following the shift in its thinking in the aftermath of *Leipzig-Halle*, the Commission provided some initial guidance to Member States in the form of 'analytical grids'.[46] These outline the key issues associated with: (i) determining the presence of State aid; and (ii) identifying the circumstances in which aid can be found to be compatible. A 'general' analytical grid is complemented by sector specific grids concerning the following: airport infrastructures; broadband infrastructures; culture – such as the construction of multipurpose arenas, museums, film studios, cinemas and renovation of historical monuments; port infrastructure; research development and innovation; and water services.

For practical purposes, however, the guidance provided by the grids is rather limited and they anyway have no legal status – they explicitly "do not prejudge possible developments in the enforcement practice". At the same time, in some of the areas noted, specific guidelines already apply but have been subject to review (broadband, airports, for example). In addition, some aspects of support for infrastructure are implicated in horizontal measures including the RAG and the GBER, which extends the exemption to sports infrastructure, multipurpose venues and local infrastructures. Notwithstanding

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43 DG Competition (2011) Note to DG Regio (unpublished), see: http://www.esfondi.lv/upload/00-vadlinijas/Note_on_State_aid_for_infrastructure_projects.pdf (accessed March 2014).

44 C-288/11 P, *Freistaat Sachsen and others v European Commission (Leipzig Halle)* http://curia.europa.eu/juris/document/document_print.jsf?doclang=EN&text=&pageIndex=0&part=1&mode=lst&docid=131967&occ=first&dir=&cid=17784 (accessed March 2014).

45 DG Competition (2011) *op cit.*

46 Letter to Member States 1 August 2012: http://www.kr-kralovehradecky.cz/assets/kraj-volene-organy/obce/metodicka-pomoc-obcim/LetterRespectofStateaidrules_cdfd5ace396c4aeeba58e96f7a1c14a1.pdf (accessed March 2014) to which the analytical grids are appended, see: http://www.esfondi.lv/upload/00-vadlinijas/EK_ieteikumi_valsts_atbalsta_noteiksanai_(infrastructure_Analytical_Grid).pdf (accessed March 2014). Note that these documents appear not to be available centrally from the Commission (eg. on the DG COMP website), but have been uploaded onto the web by some managing authorities.

these various developments, some significant uncertainties remain. In particular, for a number of areas, it is unclear in what precise circumstances the funding of infrastructure has State aid implications: [47]

> "(t)he classification as an activity falling within the exercise of public powers or as an economic activity must be carried out separately for each activity engaged in by a given entity."

In addition, where a measure *does* involve State aid there is no overarching framework under which to determine the compatibility or otherwise of that aid; the coverage of existing sector or activity-specific frameworks is only partial. Importantly, this matters not just for the future, but also for the past since the Commission will have to apply the Leipzig-Halle reasoning in investigating potentially unlawful aid.

In recent months, the Commission has reached decisions on a number of infrastructure cases, but the absence of a specific framework means that assessment has to be made directly against the Treaty provisions and case-by-case justification is required. This includes identifying who are the beneficiaries of the project at various levels (owner, operator and user). These are complex analyses with the amount of aid calculated on a case by case basis, based on the funding gap. A further complication for some countries is that there is no coherence between the methodology for the quantification of the aid and the funding gap in the Cohesion policy Common Provisions Regulation. Each major project requires filling in a fiche that has to be approved by DG Regio, but DG Regio calculates the amount of aid in a different way from DG Competition, with the possibility that Cohesion policy funding is lost due to uncertainties over the definition of the public remit, which is not always well-defined in DG Competition decisions.

A working group on designing infrastructure projects that do not raise issues under State Aid Law is being established by DG Competition and there has been mention of a framework or guidelines once the Commission has amassed sufficient experience. In the meantime, a piecemeal approach involving considerable uncertainties persists.

[47] Joined cases T-455/08 *Flughafen Leipzig Halle GmbH and Mitteldeutsche Flughafen AG v Commission* and T-443/08 *Freistaat Sachsen and Land Sachsen v Commission*: http://curia.europa.eu/juris/document/document.jsf?text=&docid=81849&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=118156

# 3. REGIONAL AID TO LARGE FIRMS IN THE NEW LEGAL ORDER

The treatment of investment aid to large firms in 'c' areas has been a major issue since DG Competition first floated proposals for RAG reform in its 2011 'non-paper'.[48] These proposals involved a complete ban on aid to large firms in the 'c' areas. This was arguably the most contentious aspect of the reform proposals and two joint letters to Commissioner Almunia attracted support from the majority of countries with a least some 'c' area coverage. In addition, the Commission's initial RAG proposals were the subject of intensive bilateral lobbying from a number of quarters. RAG 2014-20 and GBER 2014-20 ultimately pulled back from the complete ban on investment aid to large firms in 'c' areas, but nonetheless impose some very significant constraints on aiding such investment, reflecting the Commission's concern to focus aid on cases where it is perceived to have an 'incentive effect'.

The tortuous negotiation process of the RAG and the GBER led to a complicated compromise over the eligibility of large firms for regional investment aid in 'c' areas. Under RAG 2014-20, regional aid for large undertakings in 'c' areas may only be granted for 'initial investments that create new economic activities' or 'for the diversification of existing establishments into new products or new process innovations.'[49] This is wider than the scope of the GBER, which does not allow for the possibility of regional aid to large firms for *new process innovations* in 'c' areas. However, new process innovations are not defined in RAG 2014-20 and the scope of this provision would only become apparent with some decisional practice on the part of the Commission. Nevertheless, while some definitional elements remain unclear, it is evident that investment aid simply to expand existing production facilities is no longer available to large firms in 'c' areas.

In July 2015 the Commission published an initial response[50] to so-called 'frequently asked questions' on the GBER submitted by domestic authorities. These 'FAQs' are not solely concerned with the issue of large firms, but a good deal of the document is concerned with related definitional issues.

## 3.1 The GBER 'settles in' – Commission responses to FAQs

### *3.1.1 'Initial investment' and 'initial investment in favour of new economic activities'*

GBER 2014-20 distinguishes between 'initial investment' which may be aided in 'a' regions for firms of all sizes and for SMEs in 'c' areas, and 'initial investment *in favour of new economic activity'*; aid to large enterprises in 'c' areas 'shall only be granted for an initial investment in favour of new economic activity in the area concerned.'[51] Initial investment and initial investment in favour of new economic activity are defined in the GBER[52] as shown in Figure 9.

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[48] This was not published, but see: Wishlade, F. (2012) 'Non-Paper: Non-Starter or Non-Negotiable? EU Competition Policy and Regional Aid Control Post-2013', European Policy Research Papers, No 83, University of Strathclyde: http://www.eprc.strath.ac.uk/eprc/documents/PDF_files/EPRP_83.pdf
[49] RAG 2014-20, para 15.
[50] General Block Exemption Regulation: Frequently Asked Questions, see: http://ec.europa.eu/competition/state_aid/legislation/practical_guide_gber_en.pdf
[51] GBER 2014-20, Article 14(3).
[52] GBER 2014-20, Article 2(49) and (51), respectively.

**Figure 9: Initial investment and initial investment in favour of new economic activity**

| Initial investment (all firms in 'a' regions and SMEs in 'c' areas) | Initial investment in favour of new economic activity (large firms in 'c' areas) |
|---|---|
| An investment in tangible and intangible assets related to:<br>• the **setting up** of a new establishment,<br>• **extension** of the capacity of an existing establishment;<br>• **diversification** of the output of an existing establishment into new *products* not previously produced in the establishment;<br>• **fundamental change** in the overall production process of an existing establishment | An investment in tangible and intangible assets related to:<br>• the **setting-up** of a new establishment; or<br>• **diversification** of the *activity* of an establishment, under the condition that the new activity is not the same or a similar activity to the activity previously performed in the establishment |
| An acquisition of assets belonging to an establishment that has closed or would have closed had it not been purchased, bought by an investor unrelated to the seller, but excluding the sole acquisition of the shares of the undertaking | The acquisition of the assets belonging to an establishment that has closed or would have closed had it not been purchased, bought by an investor unrelated to the seller, under condition that the new activity to be performed using the acquired assets is not the same or a similar activity to the activity performed in the establishment prior to the acquisition. |

**Source:** GBER Article 2(49) and 2(50).

Several important differences emerge from comparing these provisions of the GBER:

- extension projects are ineligible for large firms in 'c' areas
- projects involving a fundamental change in the overall production process of an existing establishment are ineligible for large firms in 'c' areas under the GBER
- diversification projects are defined differently: for *initial investment,* diversification relates to ***products***, while for *initial investment in favour of new economic activity*, diversification relates to the ***activity***, as defined by the NACE classification.

**Figure 10: Eligible project types by firm size, region and basis for eligibility**

| | **SMEs 'a' and 'c' regions; large firms in 'a' region** | **Large firms in 'c' areas** |
|---|---|---|
| Setting-up new establishment | GBER (Art 14.3, Art 2.49.a) | GBER (Art 14.3, Art 2.51.a) |
| Extension of the capacity of an existing establishment | GBER (Art 14.3, Art 2.49.a) | Incompatible |
| Diversification into ***products*** not previously produced | GBER (Art 14.3, Art 2.49.a) | Notify under RAG (para 15, 24) |
| Fundamental change in the overall production process | GBER (Art 14.3, Art 2.49.a) | Notify under RAG (para 15) |
| Acquisition of assets of an establishment that has closed or would have closed | GBER (Art 14.3, Art 2.49.b) | Incompatible |
| Acquisition of assets of an establishment that has closed, or would have closed, on condition of diversification into new activities that are not the same or similar | Less stringent conditions apply to diversification (Art 2.49.a) | GBER (Art 14.3, Art 2.51.b) |
| Diversification of the ***activity*** of an establishment into new activities that are not the same or similar | Less stringent conditions apply to diversification (Art 2.49.a) | GBER (Art 14.3, Art 2.51.b) |
| Diversification of an existing establishment into new products or new process innovations | GBER (Art 14.3, Art 2.49.a) | RAG (para 15) |

**Note:** In all cases, the GBER only applies up to the adjusted aid amount, beyond which notification is required.

### *3.1.2 New products and new activities*

Regarding activities, 'the same or similar activity' means an activity falling under the same class (four digit numerical codes) of the NACE classification of activities.[53] Accordingly, the Commission services have confirmed that diversification or acquisition projects undertaken by large firms in 'c' areas must involve an activity under a different four digit NACE code from the existing activity.

'New products' are not defined in the GBER. The Commission response to FAQs indicates that if the an initial investment results in an output that falls under a different four digit NACE code, then this can be considered as diversification into a new product; however, a different NACE code is not a requirement.[54] It cites the example of the four digit NACE code for manufacture of other food products and notes that if a firm previously producing soups decided to manufacture honey, then this could be considered a diversification into a new product even though the NACE code is the same.

[53] GBER 2014-20, Article 2(50).
[54] GBER FAQs, point 22.

In sum, while the GBER exempts from notification aid to large firms in 'c' areas for the 'diversification of the activity of an establishment',[55] RAG 2014-20 explicitly requires the notification of aid 'to diversify an existing establishment in a 'c' area into new products'.[56] Overall, this seems unsatisfactory. It is not clear what the rationale is for distinguishing between products and activities for the two categories of investment and NACE classification is rather ill-suited to defining changes in activities favouring, as it does, traditional activities for which the breakdown is much more fine-grained, over new products and services. Figure 11 serves to illustrate this point.

**Figure 11: Examples of four-digit NACE classes**

| Four digit NACE code | Activity description |
|---|---|
| 14.11 | Manufacture of leather clothes |
| 14.12 | Manufacture of workwear |
| 14.13 | Manufacture of other outerwear |
| 14.14 | Manufacture of underwear |
| 14.19 | Manufacture of other wearing apparel and accessories |
| 14.20 | Manufacture of articles of fur |
| 14.31 | Manufacture of knitted and crocheted hosiery |
| 14.39 | Manufacture of other knitted and crocheted apparel |
| 21.20 | Manufacture of pharmaceutical preparations |
| 26.20 | Manufacture of computers and peripheral equipment |
| 26.40 | Manufacture of consumer electronics |
| 63.11 | Data processing, hosting and related activities |

**Source:** Statistical Classification of economic activities in the European Community, NACE Rev. 2, see: http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-RA-07-015/EN/KS-RA-07-015-EN.PDF

### *3.1.3 Establishment*

The notion of establishment is not defined in the GBER. This is important since setting-up, extension, fundamental change and diversification are all defined in relation to an 'establishment'. However, this issue was raised in the FAQs and the Commission services have indicated this refers to a 'production unit' and not a legal entity;[57] no specific functions appear to be required (such as accounting or personnel). For large firms in 'c' areas, only 'initial investment in favour of new economic activity *in the area concerned'* is eligible, but the 'area' is not defined. The draft GBER had specified that the 'new establishment' had to be in a different NUTS 3 region from any existing operations of the firm, but this requirement was dropped. On the other hand:

> 'any initial investment started by the same beneficiary (at group level) within a period of three years of the date of start of works on another aided investment in the same [NUTS 3 region] shall be considered to be part of a single investment project.'[58]

However, this provision appears to relate specifically to the artificial splitting of aided projects in order to avoid the capping of the aid amount, rather than to defining the notion of *a new economic activity in the area concerned.*

[55] GBER 2014-20, Article 15(3) as defined by Article 2(51)(a)
[56] RAG 2014-20, para 24.
[57] GBER FAQs, point 30.
[58] GBER, Article 13(14).

### 3.1.4 Relocation[59]

Regional aid that is linked to relocation is excluded from the GBER.[60] Specifically, this concerns a potential beneficiary that has closed down the same or a similar activity in the EEA in the two years preceding its application for regional investment aid or which, at the time of the aid application, has concrete plans to close down such an activity within a period of up to two years after the initial investment for which aid is requested is completed in the area concerned. Several questions appear to have been raised in relation to defining how 'closure' in determined.

In relation to the *beneficiary*, the working paper indicates that this should be determined at 'group level', deemed to be an economic entity with a common source of control, rather than just a single subsidiary.[61]

The *closure of the same or similar activity* is to be considered at the level of the given establishment rather than the region or the Member State. So, the activity would be considered to be closed down if the beneficiary closed the activity in a particular establishment *even if the group continued the same or a similar activity elsewhere in the region or the Member State.*[62]

The provisions on closure only apply if closure/relocation involves different EEA countries. This means that a beneficiary which has or plans to close down a similar activity in the same Member State is unaffected by this exclusion.[63]

Regarding closure of the same or similar activity, the working paper appears to extend the notion of closing down beyond 100 percent closure to include partial closure of activity "when this results in substantial job losses". For these purposes the working paper defines this as at least 100 jobs or a job reduction of at least 50 percent of the workforce in the establishment on the date of the application (compared to the average employment in the establishment in any of the two years preceding the date of application). As a result, notification is required in all cases of full closure and if one or both of the thresholds is exceeded in the case of partial closures.[64]

## 3.2 Regional aid and large firms: past and future perspectives

### 3.2.1 Impact of the changes in practice

National perspectives on the changes to the eligibility of large firms vary widely. First, and most obviously, some countries are wholly or mainly concerned by 'a' regions (such as the Baltic states, Poland, Hungary, Czech Republic, Romania), which are largely unaffected by the changes in relation to large firms.[65]

[59] The prohibition of support for relocation projects is not limited to large firms, but in practice it would be most likely to occur in this segment.
[60] GBER, Article 13(d).
[61] GBER FAQs, point 64(1).
[62] GBER FAQs, point 64(2).
[63] GBER FAQs, point 64(3).
[64] GBER FAQs, point 64(4).
[65] Though the capital regions of Poland, Romania, Hungary and the Czech Republic

Second, in some countries, large firms have tended not to be targeted by regional aid – this is true of Norway, Sweden, Finland and the Netherlands, for example – so the changes have a limited impact and have not been viewed as controversial.

Elsewhere, the exclusion of large firms is more problematic, particularly in the context of the crisis where levels of investment are relatively low anyway. This is the case, for instance, in Austria, France, Spain, Germany, Italy and the United Kingdom where large firms have historically been regular beneficiaries of regional aid, if not necessarily targeted as such (though this varies widely between these countries).

It is important to note here that concern about the impact in some countries (notably France, Germany, Austria) relates to firms that are 'small' large enterprises, rather than multinational enterprises. During the negotiation of RAG 2014-20, France, in particular, promoted the idea of a more flexible attitude to firm size around the concept of *entreprises à taille intermédiaires* (ETI) – those with 250-4,999 employees, but these proposals were not supported by the Commission. It is worth mentioning in this context that the new guidelines on State aid for risk finance allow for the possibility of support to 'small mid-caps' – essentially firms with fewer than 500 employees[66] on the basis that such firms may face similar financing difficulties as SMEs.[67] So the Commission is open to different definitions of firm size for some types of State aid, if not regional aid.

In some instances the impact of restricting the eligibility of large firms has been exacerbated by changes in assisted area status. In Germany and Spain, in particular (but also in Poland and Romania in the capital city regions, for example), some 'c' areas previously had 'a' region status. As a result, there is not only a new constraint on the eligibility of large firm projects, but also a significant reduction in award values in the event that large firm investment are eligible at all.

Some policymakers have commented on the difficulty in interpreting the diversification provisions in relation to large firms, noting the administrative costs involved in assessing the investment proposals and determining which expenditure relates to diversification as opposed to simple expansion investment. However, others (notably Italy) have welcomed the scope to support diversification in 'c' areas especially in the context of the crisis.

The possibility of notifying under RAG 2014-20 an aid scheme aimed at supporting the diversification of an existing establishment into new products or new process innovations was the subject of some discussion among domestic policymakers,[68] but indications are that this has been discouraged by the Commission and viewed as being outwith the 'spirit' of the RAG. This in turn means that any award to large enterprises falling outside the GBER will require case-by-case notification. This in itself is likely to diminish interest in regional aid among potential large firm applicants, and arguably reduce the incentive effect of the scheme.

The initial view among some policymakers was that the tightening of the rules on support to large firms in 'c' areas would lead to an increase in notifications as policymakers sought to understand what might be eligible in relation to 'the diversification of existing establishments into new products or new

[66] In addition, these must have either annual turnover of less than €100 million or a balance sheet total of less than €86 million.

[67] Guidelines on State aid to promote risk finance investment, OJEU C19/4 of 22 January 2014, point 69.

[68] EoRPA partners' meeting 2013.

process innovations.'[69] However, there appears to be little appetite among firms for the notification of aid proposals. This is perhaps scarcely surprising given the scrutiny to which such proposals would be subjected, the time potentially involved in reaching a decision and the uncertainty of the outcome – especially in the absence of precedent decisions. Nevertheless, policymakers in several countries report lobbying from firms for regional aid, as well as limited understanding in some policy quarters over the implications of the changes.

Although it is too soon to reach clear conclusions on the impact of the rule changes, some countries report a likely underspend in the regional aid budget and/or a reorientation of regional aid monies to aid policies with more horizontal objectives (notably innovation).

### *3.2.2 Patterns of support for large firms*

A key feature of the reform of regional aid control since the late 1990s has been the priority given to reducing the amounts of aid to large projects, monitoring the scale of such aid and Commission intervention in certain cases – even where the award proposed is to be offered under an approved scheme. The first such mechanism was introduced in the late 1990s in the form of the so-called 1998 Multisectoral Framework (MSF 1998).[70] This provided that aid exceeding specified ceilings had to be notified individually and assessed by the Commission against a set of predetermined criteria. In practice, MSF 1998 failed to have any real impact on award values, largely owing to the design of the assessment criteria. It was replaced by the 2002 Multisectoral Framework (MSF 2002).[71] The terms of MSF 2002 were largely incorporated into RAG 2007-13,[72] albeit with some changes.

Under MSF 2002 and RAG 2007-13, there were two main strands to Commission action. First, the systematic lowering of aid maxima for all projects involving eligible investments exceeding €50 million and the reporting of all aid to such projects (whatever the amount of aid); and second, the prior notification and approval of very large awards and their assessment against the terms of RAG 2007-13 by the Commission. As in RAG 2014-20, where the amount of aid proposed was higher than that which a €100 million investment would receive, then individual notification was required.

In the case of individually notified aid proposals, RAG 2007-13 provided for market share and production capacity 'screens'[73] beyond which aid was subject to a formal investigation. These screens concerned beneficiaries that had, or would have had, more than 25 percent market share of the product concerned or projects which resulted in an increase in capacity of more than 5 percent (except in rapidly expanding markets).[74] These screens are abolished in RAG 2014-20, reflecting the implications of the *Smurfit Kappa* judgment,[75] but there were anyway doubts about their effectiveness

[69] RAG 2014-20, para 15.

[70] Multisectoral framework on regional aid for large investment projects, OJEC No C 107 of 7 April 1998.

[71] Multisectoral Framework on regional aid to large investment projects – Rescue and restructuring aid and closure aid for the steel sector, OJEC No C 70/8 of 19 March 2002.

[72] RAG 2007-13, Section 4.3.

[73] RAG 2007-13, para 68.

[74] In practice, most of these investigations were opened because the Commission had doubts about whether the screens were exceeded.

[75] In this case, the Court found that the Commission is not precluded from opening the formal procedure if the market share or capacity criteria are not exceeded and that, by inferring that the aid complied with the guidelines because the market screens were not exceeded without assessing the importance of the project for regional development, the Commission had both misconstrued the scope of the guidelines and failed to exercise its discretion – see Case T-304/08 *Smurfit Kappa v Commission* (judgment of 10 July 2012).

and utility.[76] Under RAG 2014-20, *all* notified aids are subject to the compatibility assessment set out in RAG 2014-20: there is no *per se* presumption of compatibility of the basis of market analysis and there is no explicit trigger for the opening of a formal investigation. Although this affects relatively few cases, the scale of the aid concerned in those cases is significant and it reflects an important underlying shift in philosophy. Looking forward, it remains to be seen what impact this will have on the likelihood of notification by domestic authorities and on the workload of DG Competition, particularly in the context of the narrower GBER criteria for aid to large firms in 'c' areas. Indications from the 'post-*Smurfit-Kappa'* era of RAG 2007-13 suggest that the prospect of an in-depth investigation is highly unattractive to firms.

During the life of RAG 2007-13, over 100 individual aids were notified for assessment. In most cases (around 90 percent), following a consideration of the 'screens' – i.e. market share and capacity, the Commission raised no objections. In several cases where it was unable to assess market share or capacity, it opened the investigative procedure to make this assessment, but went ahead and approved the aid proposed having satisfied itself that the screens were not breached. In two cases, ***Dell Poland***[77] and ***Porsche Leipzig***,[78] the Commission proceeded to an in-depth analysis on the basis of its detailed guidelines.[79] In both cases it reached a positive decision on the aid.

In several cases, however, the prospect of an in-depth investigation has resulted in the notification being withdrawn. Spain withdrew a notification of proposed aid totalling €24.4 million which it planned to grant to Ford España and instead the investment was implement with a lower aid amount (€11.2 million) which was below the threshold requiring Commission approval. Other cases include Volkswagen/Audi in Hungary, Volkswagen in Germany, Linamar in Germany, Fiat in Poland and Revoz, a subsidiary of Renault/Nissan in Slovenia. The Commission has observed that, in the majority of these cases Member States granted substantially less aid than originally planned - which is possible without prior Commission scrutiny - without affecting the implementation of the investments, confirming its doubts about the necessity of the higher aid amounts.[80]

The second strand to controlling large aid volumes has been the requirement to report all to investments exceeding €50 million, irrespective of the aid amount; this has been required since 2002.

Commission data suggest that there have been approaching 500 such cases since the information was required to be reported, with cases heavily concentrated in a few Member States, most notably Germany, and to a lesser extent Poland, Hungary and Spain; some countries have no recorded regional aid to projects of this magnitude.

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[76] Kai-Uwe Kühn (2012) *Making State Aid Rules More Effective: the Reform of the Regional Aid Guidelines,* 10th annual Experts' forum on European State Aid Law, Brussels, 7 June; Friederiszick, H. and Tosini, N. (2013) *Implications of the State aid Modernisation for the Assessment of Large Investment Projects,* European State Aid Law Quarterly, 1, pp46-60.

[77] Commission Decision of 23 September 2009 on the aid which Poland is planning to implement for Dell Products (Poland) Sp. z o.o., L29/8 of 2 February 2010.

[78] Commission Decision of 9 July 2014 on State aid SA 34118 which Germany is planning to implement in favour of Porsche Leipzig GmbH and Dr Ing.H.c.F.Porsche Aktiengesellschaft, not yet published in the OJEU: http://ec.europa.eu/competition/state_aid/cases/245375/245375_1593128_166_2.pdf

[79] Communication from the Commission concerning the criteria for an in-depth assessment of regional aid to large investment projects [2009] OJ C 223/3.

[80] Commission Press Release: State aid: Commission adopts four decisions on regional investment aid for car manufacturers Porsche, BMW, AUDI and Ford, 9 July 2014: http://europa.eu/rapid/press-release_IP-14-792_en.htm

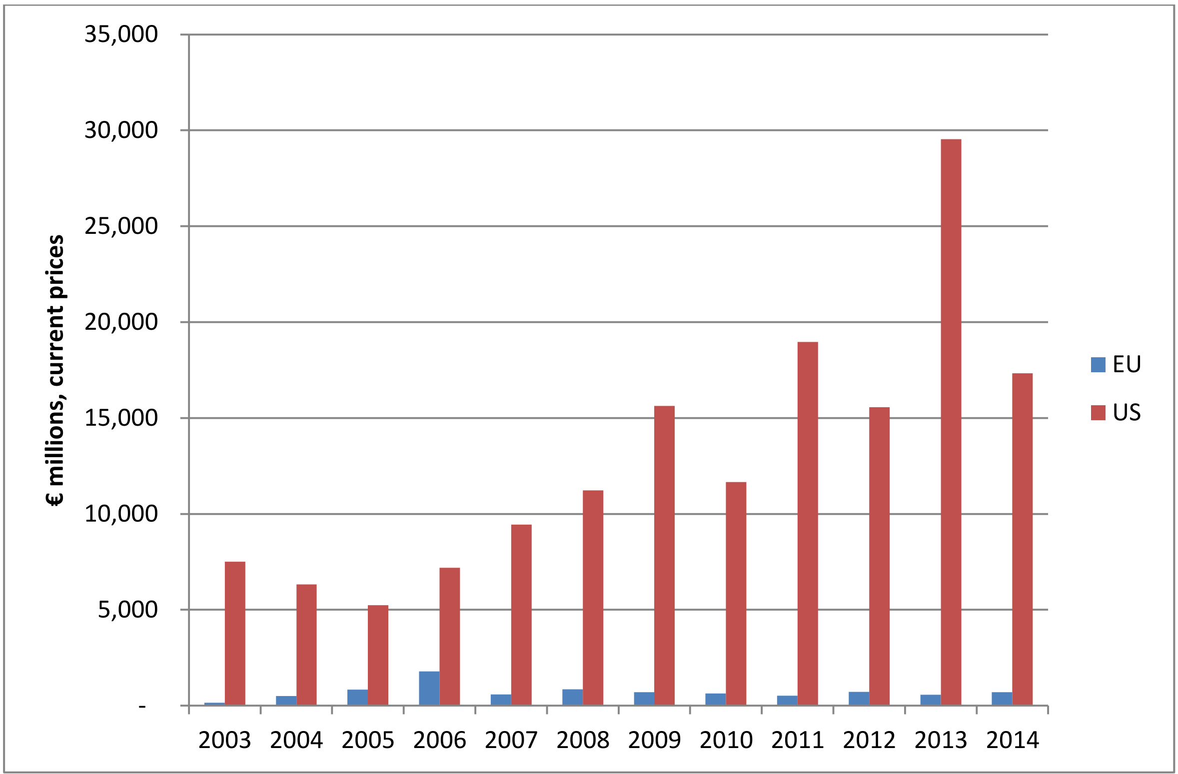
**Figure 12: Aid to eligible investments exceeding €50 million**

| | 2003 | | 2004 | | 2005 | | 2006 | | 2007 | | 2008 | | 2009 | | 2010 | | 2011 | | 2012 | | 2013 | | 2014 | | Total |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | €m | No. | €m | No. | €m | No. | €m | No. | €m | No. | €m | No. | €m | No. | €m | No. | €m | No. | €m | No. | €m | No. | €m | No. | No. |
| **AT** | - | | - | | 14.1 | 1 | - | | 7.1 | 1 | - | | - | | 3.3 | 1 | - | | 4.0 | 1 | 5.3 | 1 | - | | 5 |
| **BE** | - | | 18.0 | 1 | - | | 31.5 | 4 | 27.9 | 2 | 60.2 | 4 | 32.1 | 2 | - | | 19.3 | 1 | - | | 8.1 | 1 | 15.3 | 2 | 17 |
| **BG** | - | | - | | - | | - | | - | | - | | - | | - | | - | | 0.5 | 1 | - | | 2.3 | 1 | 2 |
| **CZ** | - | | 31.5 | 1 | - | | 313.2 | 10 | - | | 89.8 | 4 | 20.7 | 1 | - | | 50.8 | 2 | - | | 36.3 | 2 | 143.7 | 6 | 26 |
| **DE** | 20.3 | 1 | 107.0 | 5 | 275.9 | 13 | 316.3 | 14 | 193.4 | 12 | 145.9 | 11 | 138.3 | 8 | 156.4 | 10 | 123.6 | 6 | 267.9 | 18 | 170.0 | 11 | 210.7 | 17 | 126 |
| **ES** | 60.0 | 2 | 140.3 | 4 | 88.1 | 5 | 185.4 | 15 | 105.0 | 10 | 35.8 | 5 | 72.4 | 4 | 65.5 | 4 | - | | 11.0 | 1 | 5.4 | 1 | 39.2 | 5 | 56 |
| **FR** | - | | - | | 18.4 | 1 | 33.3 | 5 | 20.7 | 3 | 7.2 | 3 | 1.1 | 1 | - | | - | | - | | 1.5 | 2 | - | | 15 |
| **GR** | - | | - | | - | | 146.0 | 4 | 18.8 | 1 | - | | 29.8 | 1 | - | | - | | - | | 73.1 | 3 | - | | 9 |
| **HU** | - | | 71.3 | 3 | 223.7 | 10 | 277.6 | 11 | 78.8 | 6 | 218.0 | 10 | 133.8 | 6 | 85.4 | 4 | 35.9 | 1 | 26.7 | 1 | 125.7 | 6 | 149.3 | 6 | 64 |
| **IE** | - | | 2.6 | 1 | 28.5 | 2 | 76.0 | 9 | 8.4 | 3 | 30.8 | 5 | 7.5 | 1 | - | | - | | - | | - | | 2.0 | 1 | 22 |
| **IT** | - | | 88.9 | 3 | - | | 78.7 | 3 | - | | - | | 48.6 | 3 | 36.1 | 2 | - | | 26.9 | 2 | - | | - | | 13 |
| **NL** | - | | - | | 8.8 | 1 | - | | - | | - | | - | | - | | - | | - | | - | | - | | 1 |
| **PL** | - | | 32.2 | 1 | 82.6 | 5 | 65.9 | 3 | 128.9 | 8 | 165.6 | 7 | 97.0 | 4 | 72.2 | 4 | 241.3 | 11 | 259.8 | 11 | 26.7 | 2 | 81.4 | 4 | 60 |
| **PT** | 69.4 | 1 | 11.5 | 1 | 51.8 | 3 | 200.8 | 9 | - | | 29.7 | 1 | 68.6 | 4 | 23.9 | 1 | 14.3 | 1 | 36.5 | 2 | 15.1 | 1 | - | | 24 |
| **RO** | - | | - | | - | | - | | - | | 50.9 | 2 | - | | 135.3 | 2 | - | | 77.9 | 3 | 28.7 | 1 | - | | 8 |
| **SE** | - | | - | | 4.9 | 1 | - | | - | | - | | - | | - | | 10.7 | 1 | - | | - | | - | | 2 |
| **SK** | - | | - | | - | | 26.0 | 1 | - | | - | | - | | - | | - | | - | | 18.8 | 1 | - | | 2 |
| **UK** | - | | 7.3 | 1 | 39.0 | 5 | 42.7 | 4 | - | | 25.9 | 2 | 54.6 | 4 | 51.9 | 5 | 16.6 | 2 | 12.5 | 2 | 63.2 | 6 | 58.4 | 5 | 36 |
| **Total** | **149.7** | **4** | **510.5** | **21** | **835.7** | **47** | **1793.5** | **92** | **589.0** | **46** | **859.8** | **54** | **704.4** | **39** | **630.0** | **33** | **512.6** | **25** | **723.7** | **42** | **578.0** | **38** | **702.3** | **47** | **488** |

**Note:** the figures refer to the aid amounts and the number of cases in each country annually.
**Source:** Own calculations from European Commission reporting on transparency at: http://ec.europa.eu/competition/state_aid/register/msf_2015.pdf

One quite interesting issue is how this might compare internationally. This is difficult to assess given data availability and problems of comparability. However, lobbying against so-called 'corporate welfare' in the United States has resulted in an increasing amount of information becoming available on subsidies to US firms. Figure 13 takes as its starting point the data presented in Figure 12. This involves aid amounts exceeding €500,000, so the same minimum threshold is applied to available US data. Subsidies paid by the federal level are excluded so that only state, city and local subsidies are included. Also excluded are subsidy programmes that focus on specific objectives such as training, environmental protection and research and development. In short, the expenditure is filtered to included only those measures that aim at economic development and employment creation generally or development of disadvantaged areas and can be considered broadly comparable with the objectives of regional aid in Europe.

**Figure 13: Large regional aid spend in the EU and US**




**Source:** Own calculations from European Commission reporting on transparency at: http://ec.europa.eu/competition/state_aid/register/msf_2015.pdf and Good Jobs First: http://www.goodjobsfirst.org/corporate-subsidy-watch

Clearly there are significant issues associated with comparability. For example, the precise nature of many of the US measures is unclear, though it is known that tax incentives are widely used at city and State level. Nevertheless, the differences in level of spend are extremely striking. Since 2008, spend among US State and cities on subsidies exceeding €500,000 has generally been in the range €10 billion to €20 billion, while spend in Europe in the same period has been in the range €0.5 billion to €0.9 billion, a fraction of the amount. In short, European governments may be considerably less profligate in their use of subsidies to firms than is frequently supposed.

# 4. DISCUSSION ISSUES

This paper has provided an overview of the some of the recent developments in State aid control related to regional policy. The following questions are suggested as a basis for discussion at the EoRPA partners' meeting.

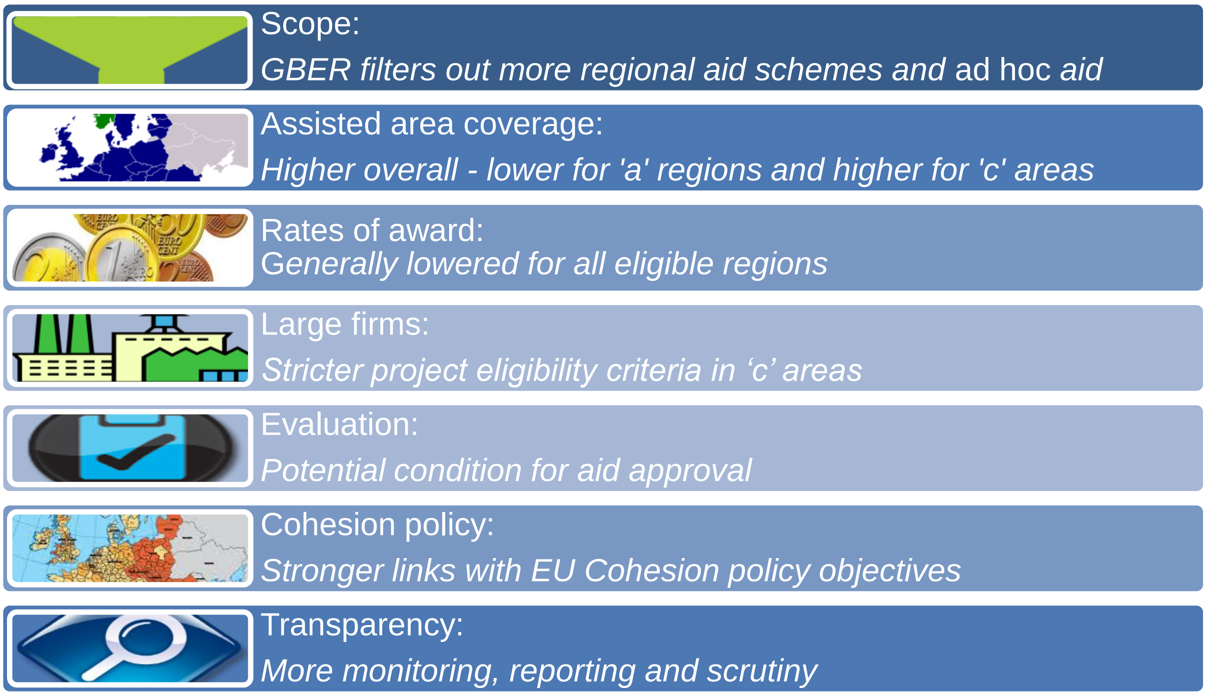
(i) How is the new approach to support to large firms in 'c' areas working out in practice? How constraining are the new rules? Do you regard the treatment of regional aid to large firms as a settled matter? What further developments – such as further clarification of the GBER, amendment of the GBER, decisions on individual cases under RAG 2014-20 do you anticipate?

(ii) How is the new GBER 'settling in'? Is it workable? How content are you with the operation of the new GBER? What do you see as the main challenges and how might they be resolved?

(iii) What are your experiences with negotiating the evaluation plans for large schemes with the Commission? What are your views on the evaluation plans negotiated with the Commission? How do you think they will contribute to the future of development of policy?

(iv) What do you see as the key emerging areas of controversy in economic development and State aid? Treatment of infrastructure? Use of financial instruments? Relationship between tax competition and State aid?

# ANNEX I: *POUR MEMOIRE* – KEY CHANGES IN REGIONAL AID CONTROL 2014-20 V 2007-13



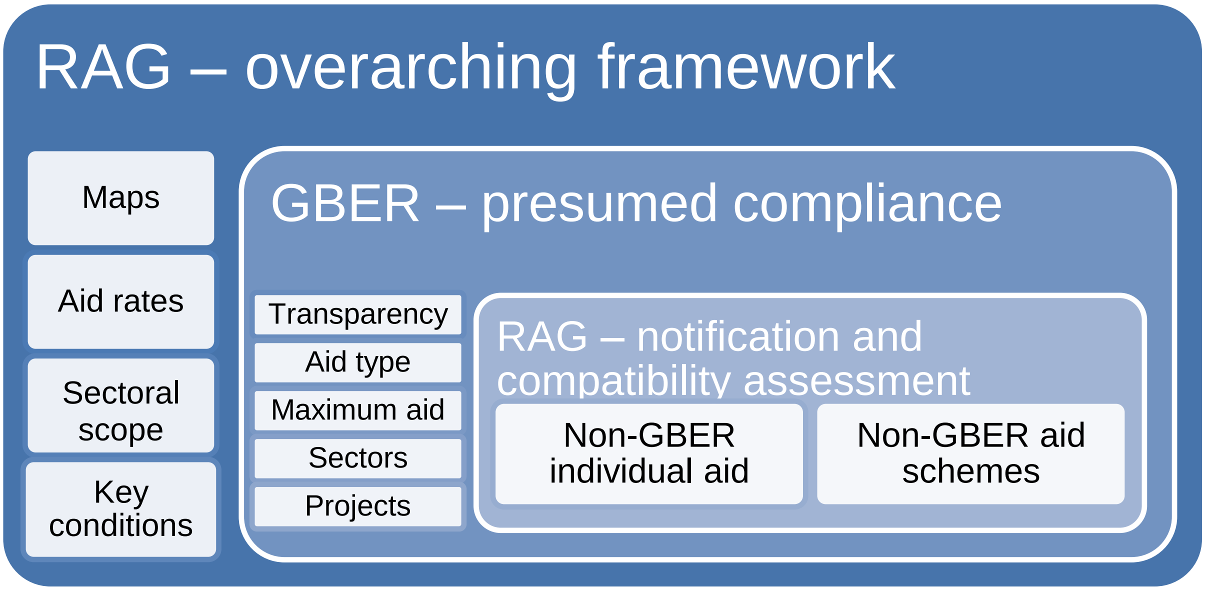

## Scope

The overall architecture of the RAG and the GBER remains substantially the same: the RAG sets out the parameters for maps and award rates as well as the criteria for assessing notifiable aid. The GBER provides the basis for exempting aid from prior notification and approval. However, the scope of the GBER is widened to include the following regional aid types that previously had to be notified and approved:

- *Ad hoc* aid provided that meets the all the relevant conditions (save that it is not a 'scheme')[81]
- Aid for outward transport within the Member State in the Outermost and sparsely-populated regions
- Aid for inward transport within the Member State

[81] GBER 2014-20, Article 3.

**Figure 14: The architecture of regional aid control**




## Assisted area coverage

Figure 2 illustrates the impact of RAG 2014-20 on spatial coverage. At the EU level, the most striking point to note is that, while overall coverage increases by around one percentage point, there is a pronounced shift in the *composition* of this coverage – with 'a' region coverage falling from around 33 percent to some 25 percent of the EU27 population and 'c' areas rising from under 14 percent to over 22 percent. At country level, patterns of change vary widely.

Looking at ***reductions in coverage***: in *relative* terms, the biggest 'loser' is **Luxembourg**, where coverage is halved. In *absolute* terms, the biggest loser is **Hungary**, which loses over 23 percent of existing coverage (down from 100 percent to under 77 percent). **Finland** and **Sweden** each lose around 20 percent of current coverage. **Germany** sees a reduction of almost four percentage points, but also significant is that no German region has 'a' status from July 2014.

Turning to ***increases in coverage:*** the biggest 'winner' in *relative* terms is ***France***, which sees an increase in existing coverage of over 30 percent. In *absolute* terms, the main gains are in ***Portugal*** and ***Spain*** – where coverage increases by 8.3 and 9 percentage points respectively. ***Austria***, ***Belgium*** and the ***United Kingdom*** see coverage increase by around three to four percentage points.

Perhaps as important as changes in coverage, at least for some countries, are changes in the ***composition*** of that coverage, with several Member States seeing a significant ***shift from 'a' region to 'c' area*** coverage, even if overall coverage does not change significantly or at all. This is illustrated in Figure 15. This shows that:

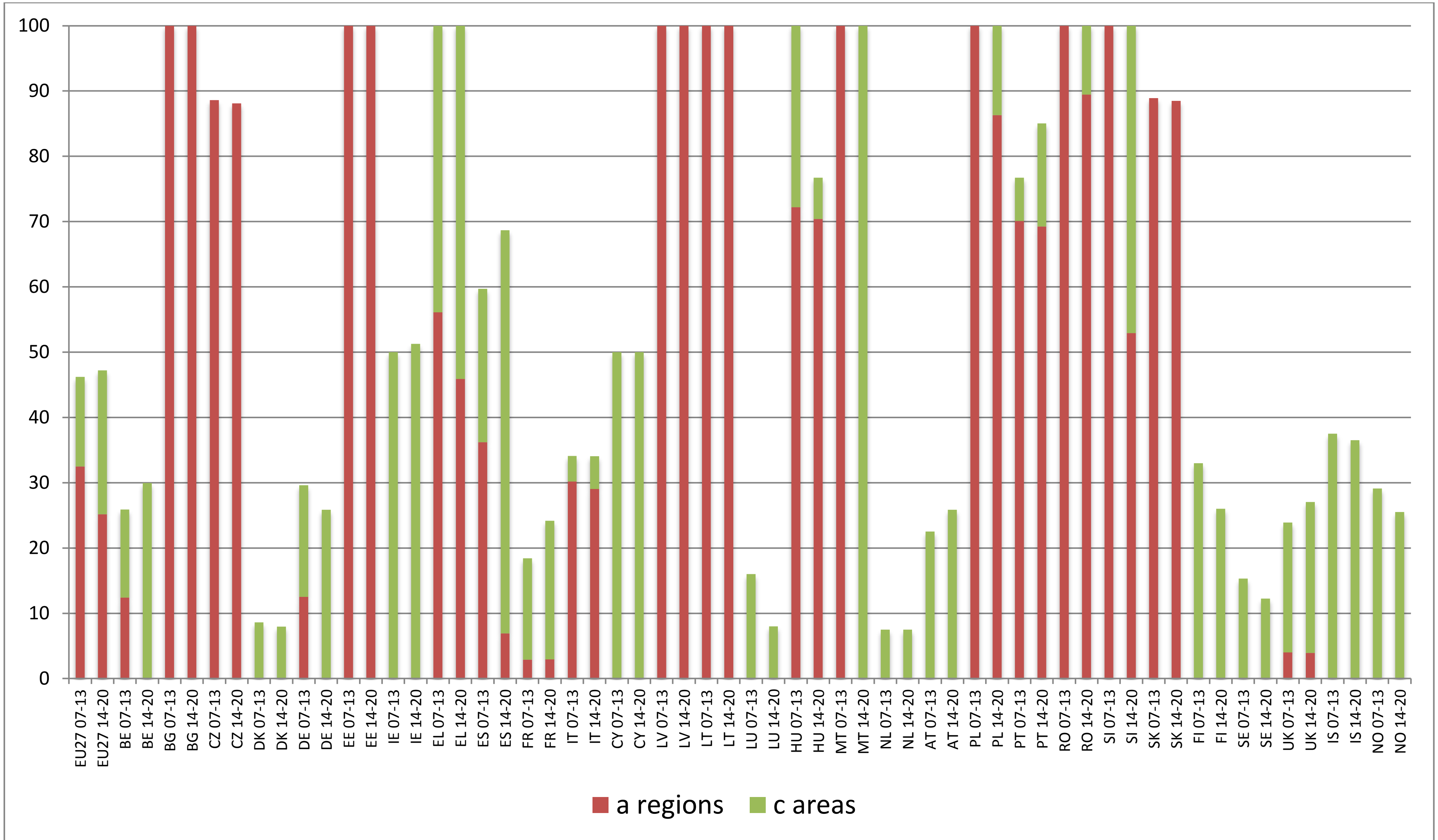
- in ***Germany*** there is both a reduction in overall population coverage and a reduction in the number of 'a' regions;
- in some countries overall coverage has remained same, but fewer regions qualify as 'a' regions (***Greece, Malta, Poland, Romania, Slovenia***),
- in others, overall coverage has fallen, but the eligible 'a' regions have remained the same (***Hungary, Italy, Czech Republic, Slovakia***). However, only in ***Hungary*** is the reduction

significant; in the remaining countries the reduction is very small and simply a result of demographic change rather than de-designation

**Figure 15: Impact of RAG 2014-20 on population coverage (%) and 'a' region eligibility**

| | | Overall population coverage (%) | | |
|---|---|---|---|---|
| | | **Lower** | **Same** | **Higher** |
| **'a' regions covered** | **Fewer** | DE | GR MT PL RO SI | ES BE |
| | **Same** | IT HU CZ SK | BG EE LT LV | FR UK PT |
| | **N/A** | LU FI SE DK NO IS | NL CY | IE AT |

**Figure 16: Population coverage 2007-13 and 2014-20 (% of total)**




**Note:** 2007-13 figures in fact relate to 2011-13, i.e. following the 2010 review when Statistical effect areas were re-designated as 'full' 'a' regions or 'c' areas.
**Source:** RAG 2007-13, RAG 2014-20 and own calculations from Eurostat data,

## Rates of award

RAG 2014-20 reduces aid intensities across the board, except for the very poorest regions and the sparsely-populated areas. The main maximum aid intensities are shown in Figure 17 along with rates under RAG 2007-13 (Figure 18).

**Figure 17: RAG 2014-20 Maximum aid intensities ('standard' matrix) gross grant-equivalent**

| | Large firms | Medium-sized firms | Small firms |
|---|---|---|---|
| 'a' regions GDP per head <45% EU27 av. | 50% | 60% | 70% |
| 'a' regions GDP per head < 60% EU27 av. | 35% | 45% | 55% |
| 'a' regions GDP per head <75% EU27 av | 25% | 35% | 45% |
| 'c' areas – ex 'a' regions until 31.12.2017 | 15% | 25% | 35% |
| 'c' areas – sparsely populated/border | 15% | 25% | 35% |
| 'c' areas | 10% | 20% | 30% |

**Note:** Aid to large firms in 'c' areas is restricted to certain types of investment, so that in practice a zero rate will often apply. Rates for OMRs and other specific cases are omitted.
**Source:** RAG 2014-20, para 171-177.

**Figure 18: RAG 2007-13 Maximum aid intensities ('standard' matrix) gross grant-equivalent**

| | Large firms | Medium-sized firms | Small firms |
|---|---|---|---|
| 'a' regions GDP per head <45% EU25 av | 50% | 60% | 70% |
| 'a' regions GDP per head <60% EU25 av | 40% | 50% | 60% |
| 'a' regions GDP per head <75% EU25 av | 30% | 40% | 50% |
| 'c' areas – sparsely populated/border | 15% | 25% | 35% |
| 'c' areas | 15%/10% | 25%/20% | 35%/30% |

**Note:** Rates for OMRs and other specific cases are omitted.
**Source:** RAG 2007-13, para 44-48.

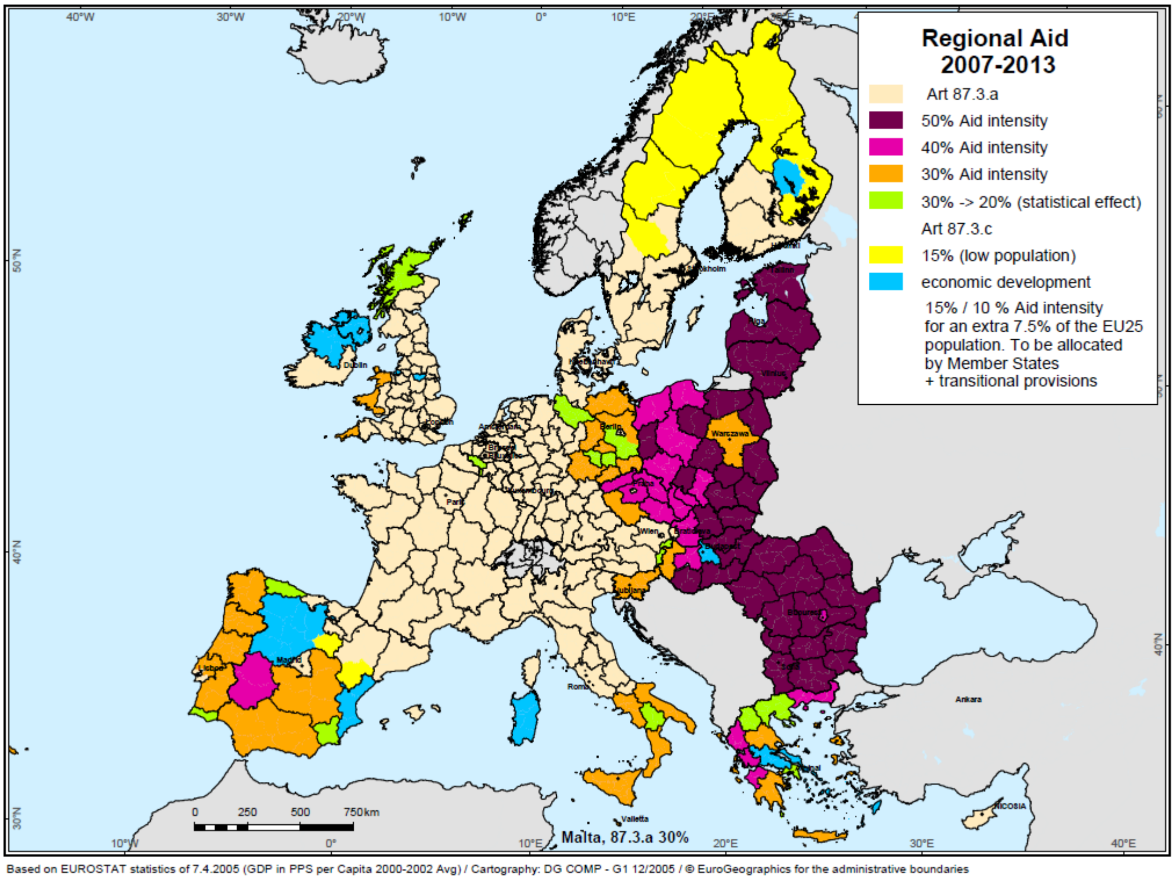
Direct comparisons are complicated because the rate 'bands' are adjusted to reflect enlargement to EU27 and the economic performance of different regions has anyway not been uniform. Nevertheless, maps produced by DG COMP (see Figure 19 and Figure 20) illustrate the combined effects of these changes, especially in 'a' regions. For example:

- Rates in eastern ***Germany*** were 20-30 percent in 2007-13, but typically fall to 15 percent in 2014-17 and to 10 percent in 2018-20 (see Figure 21). A key point to note here is that this arises from the shift from 'a' region to 'c' area status, which also has an impact on eligible investment for large firms
- Similarly in ***Spain***, only Estremadura retains 'a' status; here the rate falls from 40 percent in 2007-13 to 25 percent for 2014-20. Elsewhere in Spain, where a rate of 30 percent aid intensity applied in 'a' regions, these regions now have 'c' status and rates fall to 15 percent in 2014-17 and again to 10 percent in 2018 to 2020.
- In ***Poland***, the less prosperous regions in the east retain a maximum 50 percent rate, but elsewhere rates become more differentiated. In Śląskie and Dolnośląskie, for example, the maximum has fallen from 40 percent to 25 percent. However, in much of the capital region, Mazowieckie, a 35 percent rate applies, even though the region as a whole now has 'c' area status. This is because Mazowieckie adjoins areas with a 50 percent rate, so the provisions

on a maximum aid differential of 15 percent apply.[82] However, the more restrictive eligibility criteria for large firms in 'c' areas still apply in Mazowieckie.

- Similarly, in the ***Czech Republic*** a maximum rate of 25 percent applies through the eligible areas whereas most of the country was previously eligible for a maximum of 40 percent and in ***Italy*** maximum rates in the ***Mezzogiorno*** fall from 30 percent to 25 percent.
- In some areas the maximum rate reductions are more substantial – in Estonia, Lithuania and the capital region of Bulgaria rates have fallen from a maximum of 50 in 2007-13 to 25 percent in 2014-20.

**Figure 19: Regional aid ceilings 2007-13**

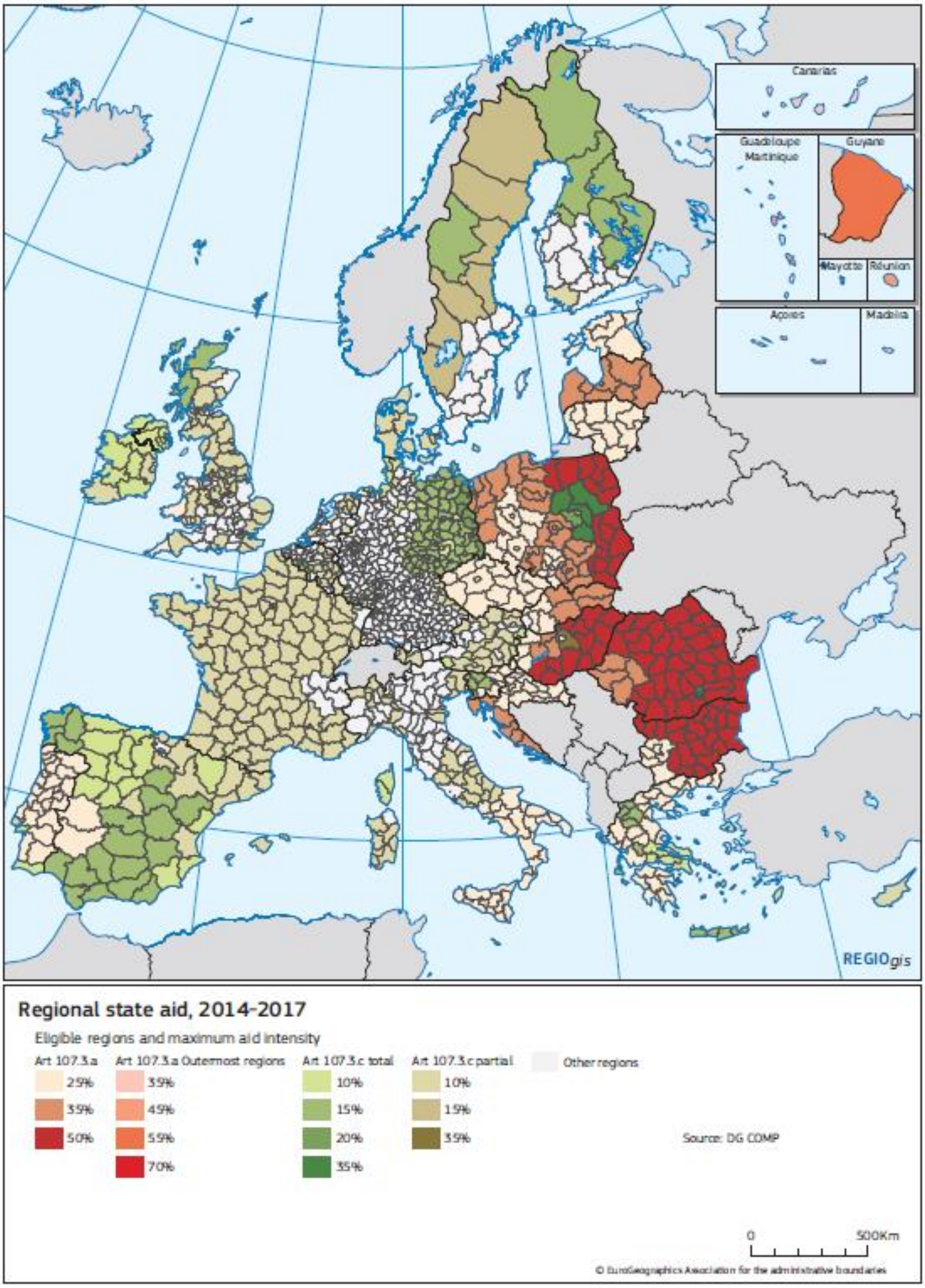



**Source:** DG COMP

Overall, these changes are in line with the long term trend of reducing award values; the present situation contrasts sharply with the pre-2000 period where maximum rates of award were as high as 75 percent *net* grant equivalent in 'a' regions and 30 percent net grant equivalent in 'c' areas.

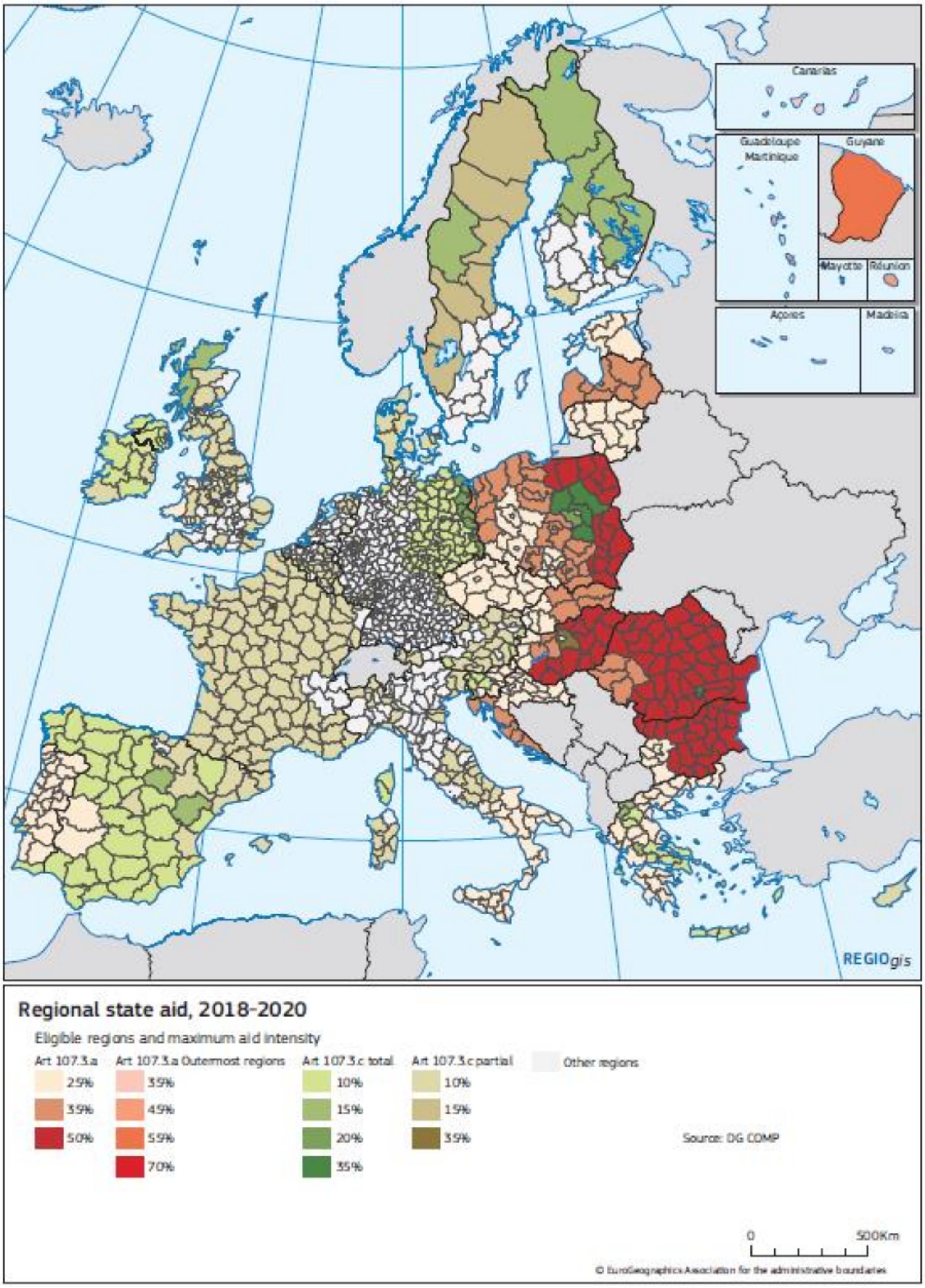
[82] RAG 2014-20, para 176.

**Figure 20: Regional aid ceilings 2014-17**




**Source:** DG COMP.

**Figure 21: Regional aid ceilings 2018-20**




## Large firms

The eligibility of large firms for regional aid in ‘c’ areas was one of the most controversial aspects of the negotiations of the RAG and the GBER. Initially, the Commission had wanted to exclude this possibility altogether but protracted negotiations resulted in a compromise whereby such firms are

only eligible for regional aid under the GBER for 'initial investment in favour of new economic activity'. In principle, this aims to exclude expansion projects, but allow setting-up projects. In between there is some scope for 'diversification' to be supported either under the GBER or potentially following a notification and assessment under the RAG. The precise contours of these definitions have been the subject of some debate and attempts at clarification by the Commission services, but the main point here is to emphasise the very significant reduction in the scope to assist large firms with existing activities in 'c' areas.

## Evaluation

The emphasis on evaluation of regional aid policy is new. GBER 2014-20 provides for the expiry of GBER cover after six months for schemes with annual budgets exceeding €150 million, pending the approval by the Commission of an appropriate evaluation plan. Regional aid schemes reported by several countries have already been subjected to this requirement.

RAG 2014-20 enables the Commission to limit the validity of aid schemes to four years in order for an evaluation to be carried out.[83] The precise terms required of an evaluation[84] would be defined in the approval of the aid measure. However, they must be carried out in sufficient time for the results to feed in to the Commission decision on any extension of the scheme proposed, or at expiry.[85]

## Cohesion policy

Since the 1988 reform of the Structural Funds relations between Cohesion policy and Competition control of regional aid have often been strained. Historically, this has been particularly so in context of assisted area coverage, and the lack of coincidence between the EU Cohesion policy and national assisted area maps. However, this has been less controversial since 2000, when Member States gained greater flexibility in choosing both sets of areas, and especially since 2007, when Cohesion policy ceased to be spatially restricted. In this context, the interface between Cohesion policy and the GBER is now of more relevance than relations with the RAG. Nevertheless, it is interesting to note a greater degree of coordination between RAG 2014-20 and the objectives of Cohesion policy. This is reflected in the explicit use of Cohesion policy criteria in State aid compatibility assessments and in the specific provisions made for territorial cooperation and regional urban aid.

## Transparency

Transparency obligations are included in the common assessment criteria for notified aid.[86] These include online publication of the full text of the aid scheme, its implementing provisions and award data, notably names of beneficiaries, aid amounts and intensities. In principle, Member States were already required to provide online information on aid *schemes* approved under the GBER, though in practice the links to such information have often been poorly maintained and the information limited in detail. Reporting was required under RAG 2007-13 for aid to all *large* projects (those involving investment exceeding €50 million, irrespective of the amount of aid). RAG 2014-20 extends this to *all*

[83] RAG 2014-20, para 27.
[84] See also: http://ec.europa.eu/competition/state_aid/modernisation/evaluation_issues_paper_en.pdf
[85] RAG 2014-20, para 144.
[86] RAG 2014-20, para 141.

projects and requires aid awards exceeding €3 million to be reported to the Commission within 20 days of the award.[87]

Under GBER 2014-20, Member States are required to develop websites providing information on the implementation of the GBER by 30 June 2016 - two years from the entry into force of the Regulation. More specifically, the GBER requires the publication on a comprehensive State aid website at national or regional level of: [88]

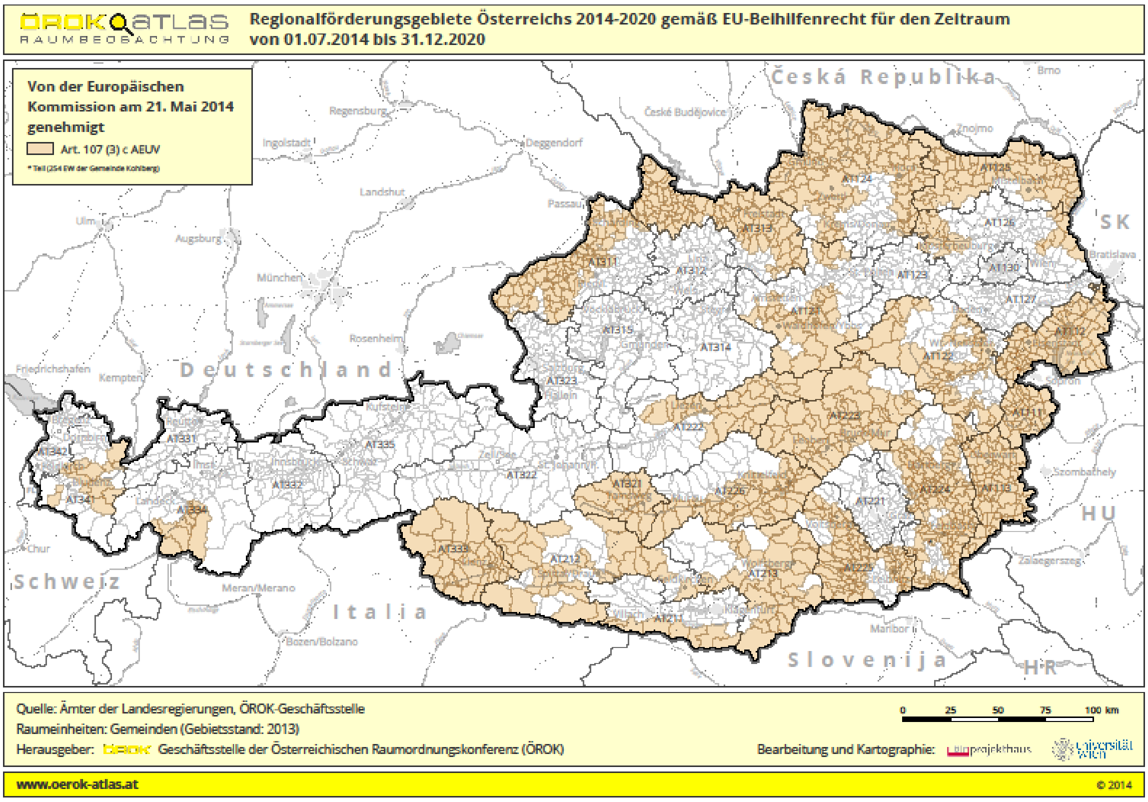
- the summary information set out in a standardised format or a link providing access to that information;
- the full text of each aid measure or a link providing access to it;
- information on each individual aid award exceeding €500,000.

Early indications are that the Commission will reinforce its monitoring of compliance.

[87] RAG 2014-20, para 193.
[88] GBER 2014-20, Article 9.

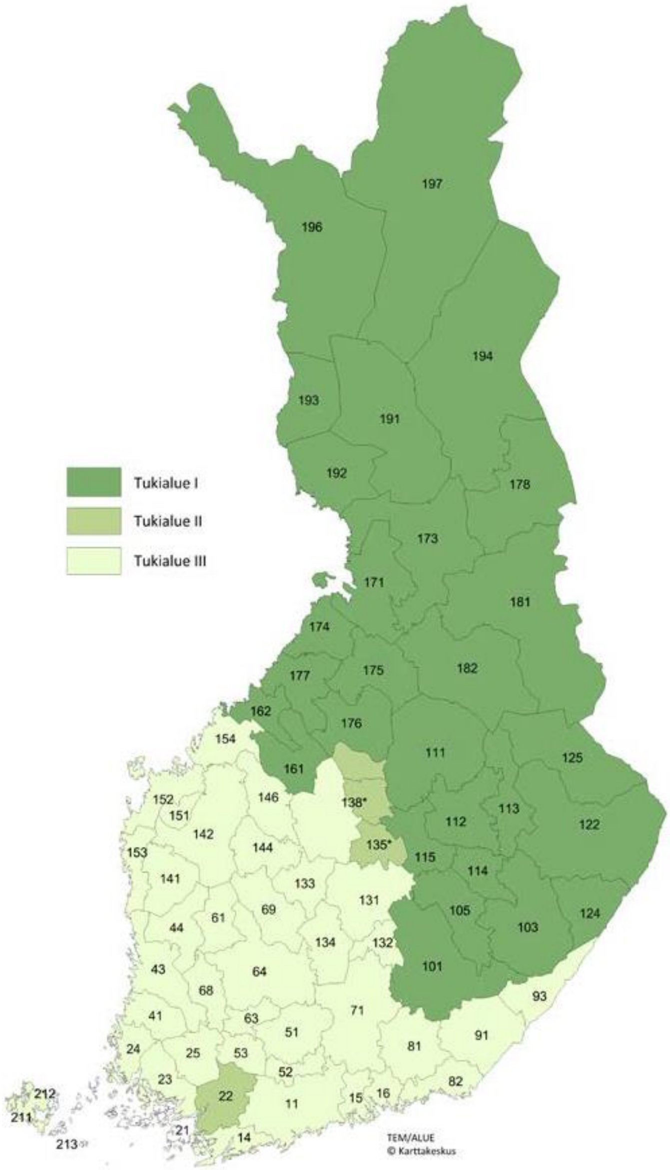
# ANNEX II: NATIONAL ASSISTED AREA MAPS 2014-20

### Assisted Areas in Austria 2014-20

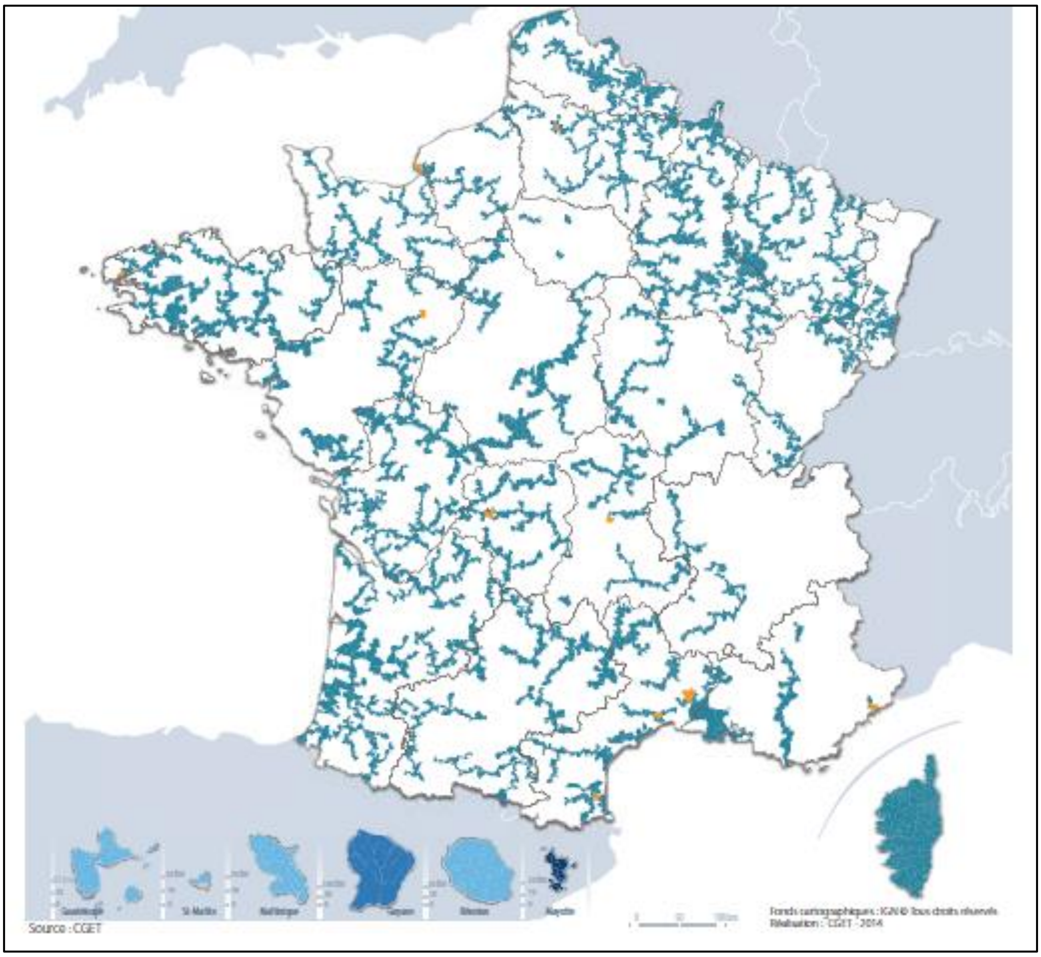


**Assisted Areas in Finland 2014-20**

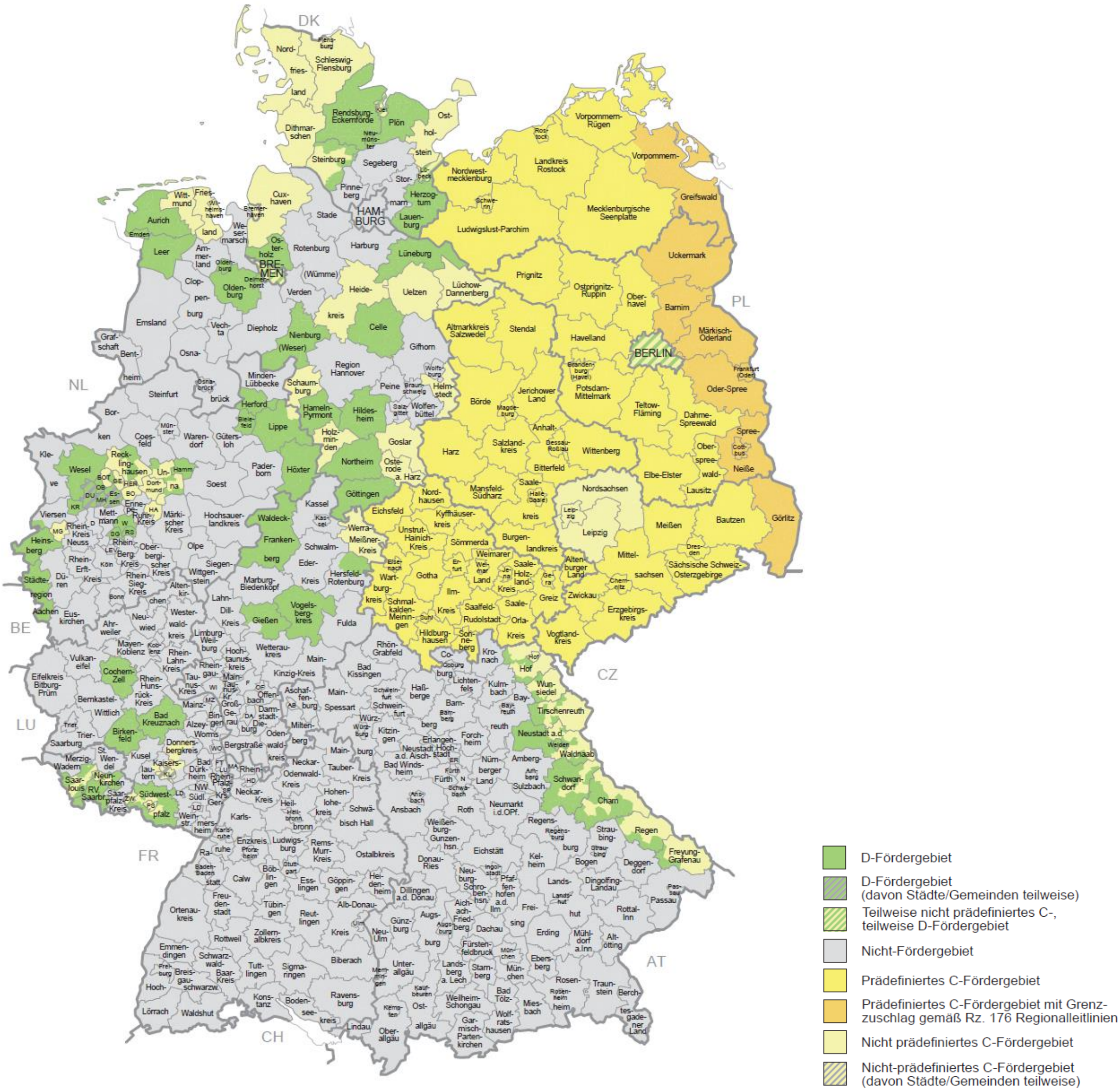
| **Aid Area 1** | **Article 107(3)(c) predefined** |
|---|---|
| Central Ostrobothnia | |
| Kainuu | |
| Lapland | |
| Northern Karelia | |
| Northern Ostrobothnia | |
| Northern Savonia | |
| Southern Savonia | |
| **Aid Area 2** | **Article 107(3)(c) non-predefined** |
| Salo | |
| Äänekoski | |
| Viiitasaari | |
| Pihtipudas | |



**Assisted Areas in France 2014-20**

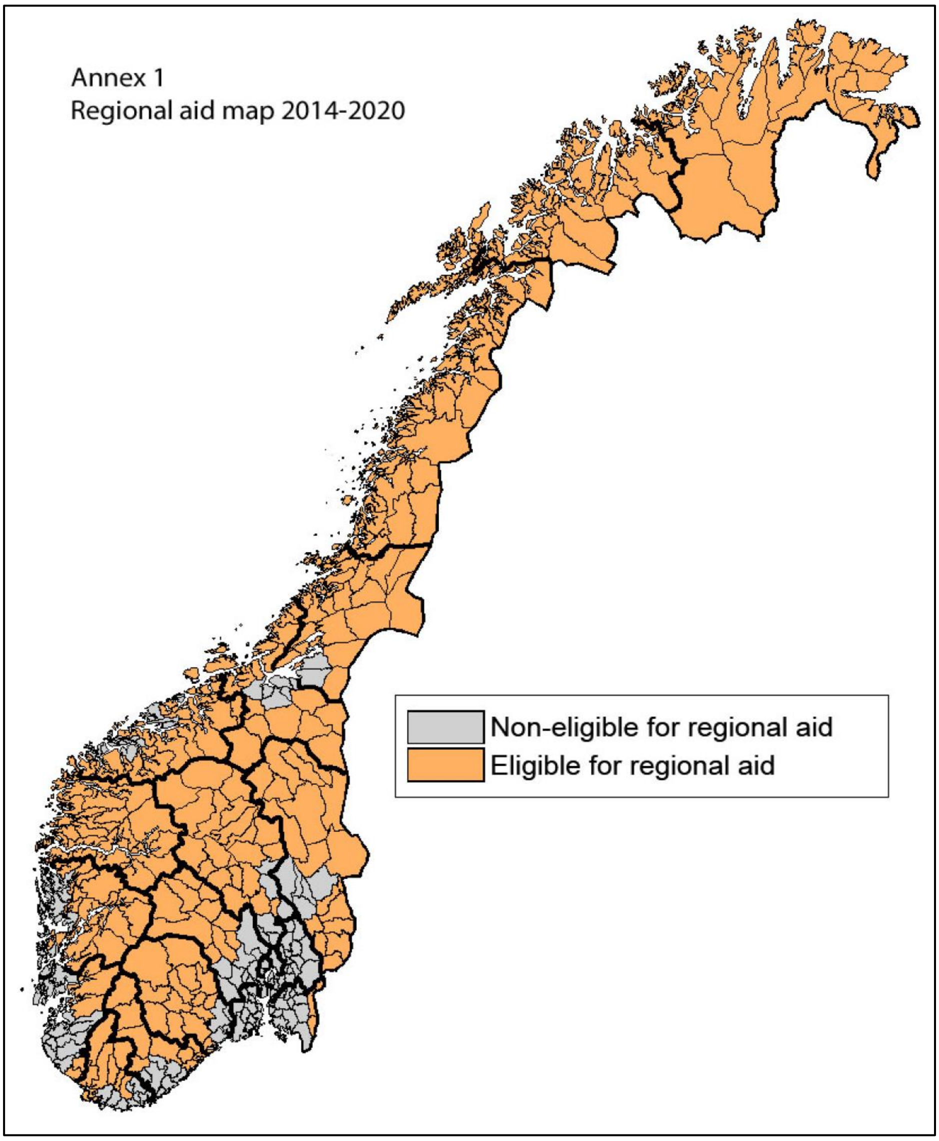


**Assisted Areas in Germany 2014**

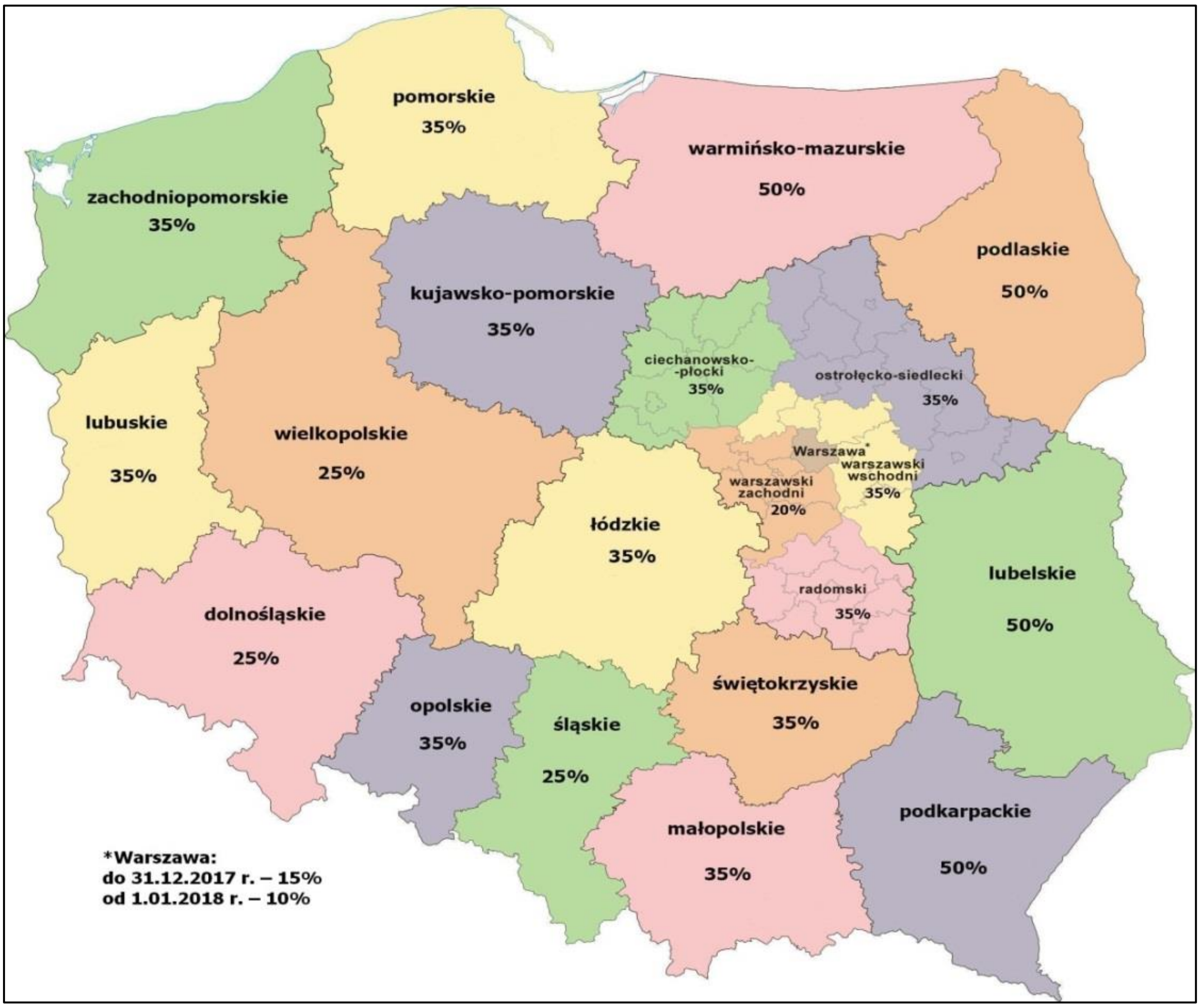



**Source:** Federal Ministry for Economic Affairs and Energy

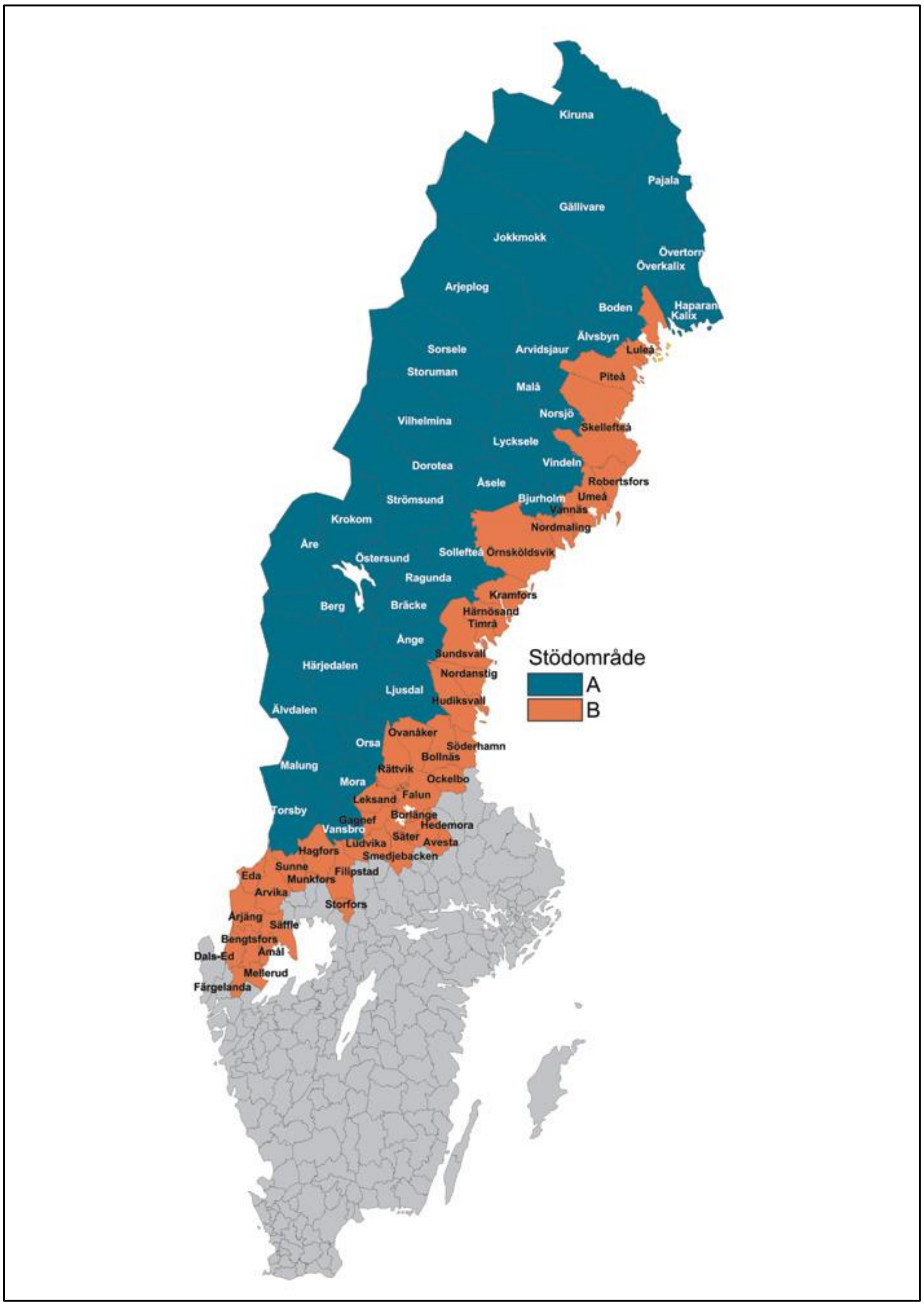
**Assisted Areas in Norway 2014-20 (Investment Aid)**



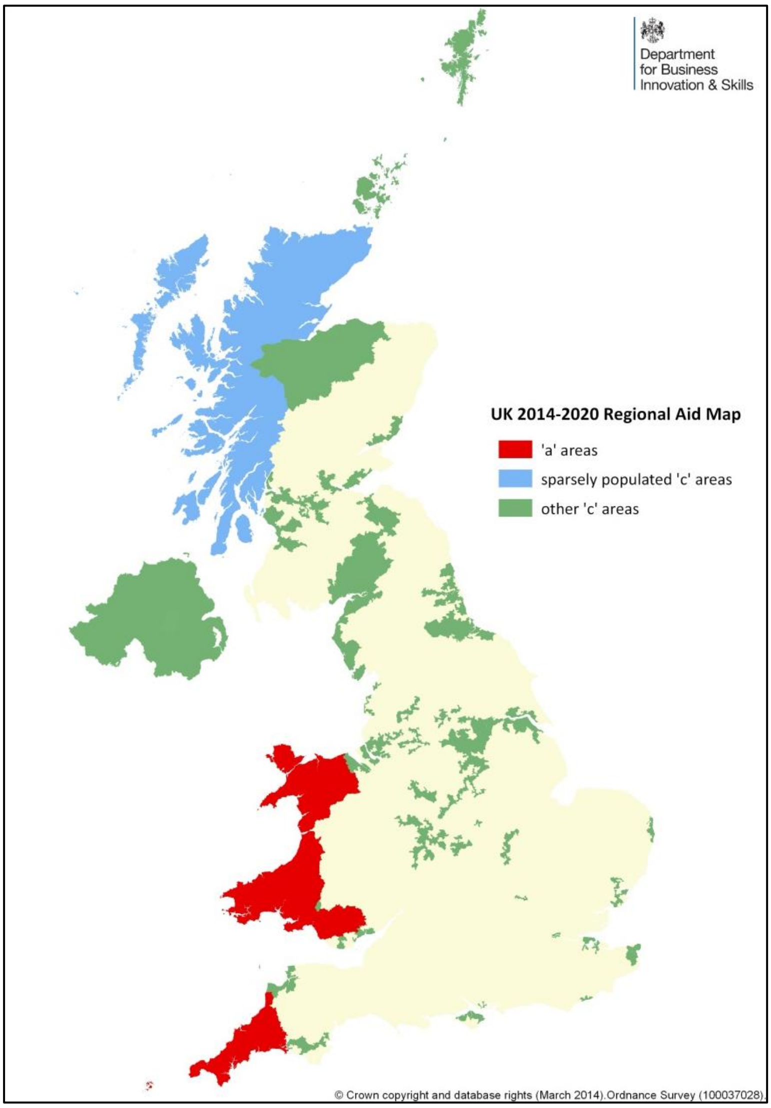
**Assisted Areas in Poland 2014-20**



**Assisted Areas in Sweden 2014-20**



**Assisted Areas in the United Kingdom 2014-20**



# ANNEX III: GBER 2014-20 AID SCHEMES FEATURING ‘REGIONAL AID

| Country / scheme name | Annual budget €m | Case code |
|---|---|---|
| **Austria** | | |
| Guidelines “Investment support – trade / industry” (Aktionsrichtlinie "Investitionsbeihilfen - Gewerbe / Industrie") | 12.0 | SA.40516 |
| Guidelines “Key support for tourism and leisure economy” (Aktionsrichtlinie "Schwerpunktförderung der Tourismus- und Freizeitwirtschaft") | 10.0 | SA.40585 |
| aws guidelines on guarantees 2014 (aws-Garantierichtlinie 2014) | 75.0 | SA.39530 |
| aws guidelines on guarantees 2014 (aws-Garantierichtlinien 2014) | 75.0 | SA.39174 |
| ecoplus guideline for regional investment support in firms (ecoplus Richtlinien für die regionale betriebliche Investitionsförderung in Niederösterreich) | 15.0 | SA.39888 |
| ERP Tourism Programme (ERP-Tourismusprogramm (Teil: Regionalbeihilfen)) | 1.0 | SA.39523 |
| **ERP Regional Programme (ERP-Regionalprogramm)** | **10.0** | **SA.32294** |
| **ERP Regional Programme 2015 (ERP-Regionalprogramm (Fassung 1.1.2015))** | **5.0** | **SA.40903** |
| ERP Tourism Programme 2015 (ERP-Tourismusprogramm (Fassung 1.1.2015)) | 2.0 | SA.40905 |
| Lower Austria's Agency for the Promotion of Border Regions (Förderungsaktion der Niederösterreichischen Grenzlandförderungsgesellschaft mbH) | 2.2 | SA.39886 |
| Frontrunner Initiative (Frontrunner-Initiative) | 5.0 | SA.36899 |
| aws guarantees for SME (Garantieübernahmen der aws gemäß KMU-Förderungsgesetz, Förderungsrichtlinie des Bundesministeriums für Wissenschaft, Forschung und Wirtschaft im Einvernehmen mit dem Bundesministerium für Finanzen) | 50.0 | SA.39569 |
| Innovations- und Wachstumsprogramm des Landes Oberösterreich für die oö.Tourismus- und Freizeitwirtschaft für den Zeitraum bis 31.12.2020. | 2.8 | SA.40449 |
| Innovations- und Wachstumsprogramm für die oberösterreichische Wirtschaft (IWW) bis 30.06.2020 | 6.5 | SA.40942 |
| KWF framework guidelines (KWF-Rahmenrichtlinie) | 20.0 | SA.39275 |
| KWF framework guidelines version 2.0-14 (KWF-Rahmenrichtlinie v.2.0-14) | 20.0 | SA.41047 |
| KWF guidelines „financial support“ (KWF-Richtlinie "Finanzierung") | 4.0 | SA.39274 |
| Guidelines for Styrian promotion of economic development 2014-20 (Richtlinie für die Steirische Wirtschaftsförderung 2014-2020) | 100.0 | SA.39283 |
| Specific guidelines of the Lower Austrian Fund for Business and Tourism for the assumption of guarantees (Spezielle Richtlinien des NÖ Wirtschafts- und Tourismusfonds für die Übernahme von Bürgschaften) | 7.6 | SA.39582 |
| Specific guidelines of the Lower Austrian Fund for Business and Tourism for shareholding (Spezielle Richtlinien des NÖ Wirtschafts- und Tourismusfonds/ des Landes Niederösterreich für Beteiligungen im Rahmen des Niederösterreichischen Beteiligungsmodelles) | 1.2 | SA.39581 |
| Standard guarantees in the context of the Upper Austrian KGG guidelines (Standardbürgschaften im Rahmen der Bürgschaftsrichtlinien der OÖ KGG) | 15.0 | SA.40964 |
| Tyrolean special support programme for planning region 9 „Oberes und Oberstes Gericht“ 2015-14 (Tiroler Sonderförderungsprogramm Oberes und Oberstes Gericht Regionalwirtschaftliches Programm für den Planungsverband 9 „Oberes und Oberstes Gericht“ – Tiroler Sonderförderungsprogramm 2015-2024) | 1.0 | SA.40308 |
| TOP Tourism Impulse Support 2014-20 (TOP-Tourismus-Impuls- | 19.2 | SA.39148 |

| Country / scheme name | Annual budget €m | Case code |
|---|---|---|
| Förderung 2014-2020, Teil A und Teil B) | | |
| Assumption of liabilities in the tourism and leisure economy 2014-20 (Übernahme von Haftungen für die Tourismus- und Freizeitwirtschaft 2014-2020) | 0.6 | SA.39149 |
| Guidelines on aws grants according the law on SME support (Zuschussrichtlinie der aws gemäß KMU-Förderungsgesetz, Förderungsrichtlinie des Bundesministeriums für Wissenschaft, Forschung und Wirtschaft im Einvernehmen mit dem Bundesministerium für Finanzen) | 6.0 | SA.39568 |
| **Finland** | | |
| Business Development Grant (Yrityksen kehittämisavustus) Business Environment Development Grant (Yritysten toimintaympäristön kehittämisavustus) | 50.0 | SA.39643 |
| **France** | | |
| **Regional Development Grant (Prime d'aménagement du territoire pour l'industrie et les services)** | **30.0** | **SA.39746** |
| **Regional Aid 'Umbrella' Scheme for 2014-2020 (Régime cadre exempté de notification relatif aux aides à finalité régionale (AFR) pour la période 2014-2020)** | **130.0** | **SA.39252** |
| **Germany** | | |
| Federal. Guidelines for the Rural Bank's federal funding (Richtlinien über die Verwendung des Zweckvermögens des Bundes bei der Landwirtschaftlichen Rentenbank) | 15.0 | SA.40407 |
| Federal: Innovation support programme (GBER) (Bund: Programm zur Innovationsförderung, AGVO) | 36.0 | SA.41003 |
| Federal guarantees and Land guarantees in the new Lãnder and Berlin (Bundesbürgschaften unter Einbindung paralleler Landesbürgschaften für Investitions- und Betriebsmittelkredite zugunsten von Vorhaben in den neuen Bundesländern und im Regionalfördergebiet Berlin) | 20.0 | SA.39140 |
| **Federal-Länder Joint Task for the Improvement of Regional Economic Structures (GRW) – (Bund-Länder-Gemeinschaftsaufgabe "Verbesserung der regionalen Wirtschaftsstruktur" (GRW) - gewerbliche Wirtschaft, einschließlich gemeinnützige außeruniversitäre wirtschaftsnahe Forschungseinrichtungen)** | **900.0** | **SA.39463** |
| Guarantees of Land Lower Saxony (Bürgschaften des Landes Niedersachsen) | 50.0 | SA.33431 |
| Guarantee programme of Land Saxony (Bürgschaftsprogramm des Freistaates Sachsen) | 4.0 | SA.40758 |
| Electro-mobility: positioning the new value added chain, Electro Power (ELEKTROmobilität: Positionierung der neuen Wertschöpfungskette, ELEKTRO POWER) | 25.0 | SA.39114 |
| Land guarantees for investment and business operating capital for businesses in Land Mecklenburg West Pomerania (Landesbürgschaften für Investitions- und Betriebsmittelkredite zugunsten von Unternehmen der gewerblichen Wirtschaft in Mecklenburg-Vorpommern) | 20.0 | SA.40550 |
| Saarland guidelines for business guarantees (Richtlinie des Saarlandes für die Übernahme von Bürgschaften, Garantien und sonstigen Gewährleistungen im Bereich der gewerblichen Wirtschaft) | 15.0 | SA.40684 |
| Guidelines of Land Saxony's Ministry for the Environment and Agriculture on the granting of funding for measures aimed at increasing energy efficiency and climate protection in Land Saxony (Funding guidelines on climate protection – RL Climate/2014) (Richtlinie des Sächsischen Staatsministeriums für Umwelt und Landwirtschaft über die Gewährung von Fördermitteln für Maßnahmen zur Steigerung der Energieeffizienz und zum Klimaschutz im Freistaat Sachsen (Förderrichtlinie Klimaschutz – RL Klima/2014)) | 6.4 | SA.40656 |

| Country / scheme name | Annual budget €m | Case code |
|---|---|---|
| Guidelines on energy funding in the context of Land Hesse's energy law (Richtlinie zur energetischen Förderung im Rahmen des Hessischen Energiegesetzes) | 2.2 | SA.40232 |
| Federal and Land counter-guarantees for guarantee banks and guarantee companies (Rückbürgschaften und Rückgarantien des Bundes und der Länder für die Bürgschaftsbanken und Garantiegesellschaften) | 20.0 | SA.39134 |
| Federal and Land counter-guarantees for participation guarantees issued by the guarantee banks using the premium subsidy model (PSM) (Rückgarantien des Bundes und der Länder zu Beteiligungsgarantien der Bürgschaftsbanken unter Anwendung des Prämienzuschussmodells (PZM)) | 45.0 | SA.39144 |
| Saxony: Rural development measures for integrated rural development under the GAK Framework plan (Sachsen: Ländliche Entwicklung (LE) Maßnahmen der Integrierten Ländlichen Entwicklung nach GAK-Rahmenplan) | 4.5 | SA.40446 |
| Saxony: (LEADER implementation of projects in the cotext of the LEADER development strategies; projects for interregional and transnational cooperation in the Local Action Groups (LAG) (Sachsen:LEADER Durchführung der Vorhaben im Rahmen der LEADER-Entwicklungsstrategien; Vorhaben für gebietsübergreifende und transnationale Kooperationen in den Lokalen Aktionsgruppen (LAG)) | 10.9 | SA.40445 |
| **ERP Regional aid programme (ERP Regionalförderprogramm)** | 300 | SA.38707 |
| **Italy** | | |
| Agreements for competitiveness – Public call for firms that passed the first stage scrutiny | 20.8 | SA.39395 |
| Aids for micro and small firms for investments relating to the innovation of productive processes (Micro call – 2015 edition) | 7.0 | SA.40819 |
| Aids for SMEs for investments relating to innovation, environmental sustainability and safety in the worlplace (SME call – 2015 edition) | 10.0 | SA.40818 |
| Aids for firms operating in the Tuscan territory for the initial training, re-qualification and updating of employees' skills | 6.4 | SA.40520 |
| Lifelong learning call – Phase III | 15.0 | SA.39394 |
| Support to SMEs for the participation to Expo Milan 2015 | 0.8 | SA.40632 |
| Tax credit for firms subscribing programme agreements in polluted sites of national interest | 35.0 | SA.40412 |
| Regulation of region Apulia relating to aids under exemption (regional aids, Regional Regulation no. 17 of 30.09.2014 (RPOJ 06.10.2014) | 98.0 | SA.39759 |
| **Netherlands** | | |
| Subsidieregeling Regionale Investeringssteun Groningen 2014 (RIG 2014) | 10.0 | SA.39721 |
| **Poland** | | |
| **Regional aid program granted to entrepreneurs operating in special economic zones on the basis of permits issued during the period from 25 December 2014- 31 December 2020.** | **527.0** | **SA.40523** |
| The program of regional investment aid - Stargard Szczeciński | 1.5 | SA.39770 |
| Resolution No. LXIV / 1639/14 Wrocław City Council of 16 October 2014. | 27.1 | SA.40339 |
| Resolution No. LXIV / 1640/14 Wrocław City Council of 16 October 2014. | 12.3 | SA.40338 |
| Resolution No. LXIV / 1641/14 Wrocław City Council of 16 October 2014. | 12.3 | SA.40340 |
| Resolution No. LXIV / 1642/14 Wrocław City Council of 16 October 2014. | 12.3 | SA.40542 |
| Resolution No. XLVIII / 392/14 Commune Rawicz City Council of 24.09.2014 r | 0.1 | SA.39771 |

| Country / scheme name | Annual budget €m | Case code |
|---|---|---|
| Financial assistance to employers conducting workshops for the disabled from the State Fund for Rehabilitation of Disabled Persons | na | SA.40693 |
| Reimbursement of additional costs of employing disabled workers | na | SA.40694 |
| Financial aid granted by the Polish Agency for Enterprise Development to support innovative centres under the Operational Programme Innovative Economy 2007-2013 | na | SA.40518 |
| Monthly grant of compensation of employees with disabilities | na | SA.40525 |
| Granting aid for consultancy services related to preparation of the initial investment and aid for advisory services related to the implementation of the initial investment in the regional operational programs adopted for the period 2007-2013 (Dz. U. Pos. 1697) | na | SA.40789 |
| granting of regional investment aid, aid for consultancy services related to preparation of the initial investment and aid for advisory services related to the implementation of the initial investment for urban development funds in the regional operational programs adopted 2007-2013 (Dz. U. pos. 1699) | na | SA.40790 |
| Reimbursement of the costs of training workers with disabilities | na | SA.40691 |
| Granting by the Polish Agency for Enterprise Development financial aid for the support of innovative centers under the Operational Programme Development of Eastern Poland, 2007-2013 | na | SA.40793 |
| Conditions and procedure of granting state aid and de minimis aid through the National Research and Development Centre | na | SA.41471 |
| On the conditions for granting exemptions from property tax and tax on means of transport, accounting for regional investment aid, aid for culture and heritage conservation, aid for sports infrastructure and multi-purpose recreational infrastructure and support for local infrastructure (Dz. U. of 2015. pos. 174) | na | SA.41495 |
| Regional investment state aid for the purposes of environmental protection specified by Regulation of the Minister of Environment on detailed conditions for granting regional state aid for investments in the field of environmental protection | na | SA.41730 |
| Support for fundamental research, industrial research, experimental development and feasibility studies in the regional operational programs for 2014-2020 | na | SA.42839 |
| Financial aid granted by the Polish Agency for Enterprise Development under Axis and entrepreneurial Eastern Poland Eastern Poland Operational Programme 2014-2020 | na | SA.42798 |
| **Portugal** | | |
| Contractual tax benefits regime for productive investment | 45.0 | SA.39992 |
| Fiscal Regime for Investment Support (Regime fiscal de apoio ao investimento) | 41.0 | SA.39993 |
| Incentive Scheme for Regional Competitiveness in Azores (COMPETIR+) | 22.0 | SA.42245 |
| **Incentive Scheme for Business Innovation (SI Inovação empresarial)** | 350.0 | SA.42136 |
| **United Kingdom** | | |
| Business Premises Renovation Allowance | 67.3 | SA.40156 |
| Coventry and Warwickshire Growing Places | 5.5 | SA.38649 |
| Coventry Investment Fund | 27.5 | SA.38594 |
| Doncaster Aid for Land and Property | 2.7 | SA.40731 |
| Enterprise Ready Fund | 8.2 | SA.39649 |
| First-year allowances for expenditure on plant and machinery in designated assisted areas | 37.1 | SA.40157 |
| **Highlands and Islands Enterprise, General Block Exemption Scheme 2014-2020**. | 27.5 | SA.39220 |
| Nottinghamshire Economic Development Capital Fund | | SA.38617 |
| **Scottish Enterprise Regional and SME Investment Aid Scheme** | 48.0 | SA.39217 |

| Country / scheme name | Annual budget €m | Case code |
|---|---|---|
| **2014 – 2020** | | |
| Scottish Local Authority Support of Regional Investment, SME Investment and Employment Aid | 6.9 | SA.39213 |
| **Selective Financial Assistance Scheme(Northern Ireland)** | 68.6 | SA.39233 |
| The English Aid for disadvantaged workers and for workers with disabilities State Aid scheme | 171.6 | SA.39062 |
| The English Regional Aid scheme | 135.9 | SA.39211 |
| The English Training Aid State Aid scheme | 171.6 | SA.39061 |
| Welsh Government Capital Investment and Employment Aid Scheme | 137.3 | SA.39086 |
| Welsh Government Property Development Grant Scheme | 68.6 | SA.39138 |
| Welsh Local Government Capital Investment Aid & Employment Aid Scheme | 41.2 | SA.39123 |
| | | |
| **Norway** | | |
| Telemark development fund | 3.2 | GBER55/14/REG |
| Start-up aid scheme | 48.6 | GBER41/14/RDI |
| Biorefining aid scheme | 15.1 | GBER38/14/ENV |
| Competence and development of the tourist industry | 16.2 | GBER37/14/TRA |
| **Regional development aid scheme** | 86.4 | GBER25/14/REG |
| Financial support for restructuring in Meloy municipality | 1.3 | GBER17/14/REG |
| Regional transport aid | 3.2 | GBER11/14/REG |
| **Regional investment aid** | 32.4 | GBER10/14/REG |

**Note: (i)** This is based on information available at August 2015; it is not clear how quickly reported schemes are added to the DG COMP database. **(ii)** The listing for France exclude schemes for the Départements d'Outre Mer.
**Source:** DG COMP database: http://ec.europa.eu/competition/elojade/isef/index.cfm?clear=1&policy_area_id=3 and EFTA Surveillance Authority State aid register: http://www.eftasurv.int/state-aid/state-aid-register/ and national sources where available.

# EORPA RESEARCH

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**Austria**
- Bundeskanzleramt (Federal Chancellery), Vienna

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- Työ- ja elinkeinoministeriö (Ministry of Employment and the Economy), Helsinki

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- Commissariat Général à l’Egalité des territoires (General Commissariat for Territorial Equality, CGET, previously DATAR), Paris

**Germany**
- Bundesministerium für Wirtschaft und Energie (Federal Ministry for Economic Affairs and Energy), Berlin
- Ministerium für Wissenschaft und Wirtschaft (Ministry of Science and Economic Affairs), Sachsen-Anhalt

**Italy**
- Dipartimento per lo Sviluppo e la Coesione economica (Department for Development and Economic Cohesion), Agenzia per la coesione territoriale (Agency for Territorial Cohesion), Rome

**Netherlands**
- Ministerie van Economische Zaken (Ministry of Economic Affairs), The Hague

**Norway**
- Kommunal- og moderniseringsdepartementet (Ministry of Local Government and Modernisation), Oslo

**Poland**
- Ministerstwo Infrastruktury i Rozwoju (Ministry of Infrastructure and Development), Warsaw

**Sweden**
- Näringsdepartementet (Ministry of Enterprise and Innovation), Stockholm

**Switzerland**
- Staatssekretariat für Wirtschaft (SECO, State Secretariat for Economic Affairs), Bern

**United Kingdom**
- Department for Business, Innovation and Skills, London
- Scottish Government, Glasgow

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