

**Assessment of the impact of current State
aid rules on local and regional authorities
and recommendations for changes**

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Index of Contents

1. Introduction	1
1.1 Facts and Figures	2
2. Current legislation	5
2.1 Regulatory framework of State aids	5
2.2 Key issues in the perspective of LRAs	7
3. The main changes proposed by the communication	11
3.1 General approach	11
3.2 Specific objectives	12
4. Comparative analysis and assessment	15
4.1 Analysis of potential administrative burden	15
4.2 Relevance of the proposal	22
5. Conclusions	29

1. Introduction

This document is the final report of the study ‘**Assessment of the impact of current State aid rules on local and regional authorities and recommendations for changes**’.

In May 2012 the European Commission (EC) launched its intention to modernize the rules concerning the State aid (COM(2012) 209 Final). The need to modernize the State aid basically derives from two main reasons. First, the achievement of a smart, sustainable and inclusive economy through the Europe 2020 strategy can be realized by developing a strong and efficient single integrated market where its functioning is not distorted by anticompetitive behavior of companies or by Member States favoring some actors to the detriment of others. Therefore, the State aid control, which represents one of the instruments of competition policy, plays a fundamental role in defending and strengthening the construction of the single market. Second, the economic and financial crisis of the last years has threatened the integrity of the single market, increased the potential for anticompetitive reactions and raised the demand for a greater and active role of the State to help the most vulnerable members of society to recover from the economic difficulties. Since the crisis has also put strains on Member States’ budget – requiring fiscal consolidation and a better use of scarce resources – the use of public spending should be more efficient, effective and targeted at growth-promoting policies oriented to fulfill common European objectives.

To maintain the internal market open and contestable and reduce the competition distortions, the EC has outlined an integrated strategy for reforming the State aid rules. The modernization of the State aid, in fact, is part of a broader modernization package for the EU State aid policy as a whole, including the expiry of a number of key State aid instruments before the end of 2013, the preparation of the EU Multiannual Financial Framework and of the EU Structural Funds rules for 2014-2020, and the strengthening of the economic and budgetary surveillance system under the EU semester. In order to transform the State aid control in a robust instrument essential to ensure a well functioning single market, an effective Commission’s scrutiny, and an efficient use of the policy instruments promoting a sound use of public resources for growth-oriented policies, the current complexity of the substantive rules as well as of the procedural framework should be substantially minimized.

In order to achieve the mentioned aims, the EC intends to foster growth in a strengthened, dynamic and competitive internal market; focus enforcement on cases with the biggest impact on internal market; streamline rules and faster decisions.

Furthermore, the State aid regulatory framework represents a very sensitive issue for local and regional authorities (LRAs). As a matter of fact, the main policy instruments for LRAs to support economic development are represented by the incentives to enterprises (e.g. in the field of innovation, green economy, start-ups, etc.) or by public infrastructures (transport, environment, broad band). In both cases (incentives and infrastructures), LRAs have to face the State aid regulation which for some of them are likely to imply an increase of administrative burden.

The structure of the **final** report will be as follows:

Chapter 2 focuses on the current legislation by identifying and underlying the main issues in the perspectives of the LRAs.

Chapter 3 discusses the main changes proposed in the communication with special attention to the aspects directly concerning the LRAs.

Chapter 4 illustrates the comparative analysis and assessment by looking at the administrative burden and the relevance of the changes for LRAs.

Chapter 5 summarizes the main conclusions and provides some recommendations.

1.1 Facts and Figures¹

- The total non-crisis State aid in Europe aid amounted to 73.7 billion euro in 2010, which represent the 0.6% of EU 27 GDP.
- The financial crisis State aid was 983.9 billion euro in 2010 in the 27 EU Members, the 8% of GDP.
- The broad sectoral distribution of non-crisis State aid is divided into 80% to industry and services and the remaining 20% to

¹ Sourced from 'State Aid Scoreboard – Report on State aid granted by the EU Member States – Autumn 2011 Update', COM(2011) 848 Final.

agriculture, fisheries and aquaculture and transport.

- The horizontal aid represents the bulk of the non-crisis State aid with 51.9 billion euro out of the 61 billion euro dedicated to industry and services, with 14.4 billion euro to environmental, 14.8 to regional development and 10.9 to research and development innovation. Among the EU 27, only in two Member States aid to horizontal objectives accounts for 59% or less of the total aid to industry and services. However, there are large disparities between Member States in the share of aid allocated to the various horizontal objectives.
- In 2010, State aid granted to industry and services had increased, both when compared to 2009 and when observing the trend. However, it has remained at a low level overall, i.e. between 0.4% and 0.5% of EU GDP when looking at the period 2007 to 2010, and has also remained lower than during the years prior to 2006.
- Several Member States were able to further reduce their aid expenditure to industry and services in the period 2008-2010 compared to 2005-2008. Some Member States, in particular Malta and Latvia, reduced their aid levels by more than 0.5% of their GDP. Many Member States posted smaller increases which represented less than 0.2% of their GDP. In most instances, more aid was granted under horizontal objectives of common interest. The most substantial increases were in Greece and Hungary.
- In the period 2000-2010 the Commission took 980 decisions on unlawful aid and, in about 22% of aid cases the Commission intervened by taking a negative decision on an incompatible measure.

2. Current legislation

2.1 Regulatory framework of State aids

The current legislation is based on Article 107(1) of the Treaty on the Functioning of the European Union (TFEU), which sets the general principle that State aids are not compatible with a common and competitive market. However exemptions are allowed in certain conditions defined by Articles 107(2) and 107(3). More in detail, Article 107(3) envisages exemptions concerning in particular with Regional aids (regions with low standards of living or high unemployment), horizontal incentives (such as for innovation, environment protection, risk capital, training and others limited categories), and aids to specific sectors such as transports and agriculture. In all the other cases, aids from national authorities to private and public enterprises must be submitted to an ex-ante control and authorized by the Commission - procedures are based on a case by case evaluation. In other words, aids involving transfer of States resources, which constitute an economic advantage, are selective and produce effects on competition and trade between members States, are not authorized. Only small amounts of aids, without any potential effects on competition and trade, are allowed to be spent by public authorities (see *de minimis* in the box below).

BOX 1. Key Concepts

State aid: State aid is a Member State's financial aid to business which meets all the following criteria Stated in Article 107(1) of TFEU:

- 1) It is granted by the State or through State resources.
- 2) It favours certain undertakings or production of certain goods.
- 3) It distorts or threatens to distort competition.
- 4) It affects trade between Member States.

Regional State aid: Article 107(3) of the Treaty allows the possibility of State aid for tackling regional problems. The aim of regional aid is to promote the development of the less-favoured regions by supporting initial investment, or by providing operating aid. There are two categories of eligible regions:

- Article 107(3)(a) regions: These are regions where the standard of living is abnormally low or where there is serious underemployment (NUTS II regions with a GDP / cap lower than 75% of the EU average).

- Article 107(3)(c) areas: These are problem areas defined on the basis of national indicators proposed by the Member States.

General Block Exemption Regulations (GBER): certain categories of aid compatible with the common market and exempts aid givers from the obligation to formally notify. Aid givers only have to inform the Commission up to 20 days after the aid has been granted using a simple information sheet. GBER applies to nearly all sectors of the economy except for fisheries and aquaculture, agriculture and parts of the coal sector.

"De minimis" aids: small amounts of aid, which do not count as State aid in the sense of Article 107(1). The total de minimis aid granted to any one undertaking must not exceed €200,000 over any period of three fiscal years.

Service of General Interest (SGEI): SGEI are economic activities that would not be produced by market forces alone or at least not in the form of an affordable service available indiscriminately to all. SGEI are carried out in the public interest under conditions defined by the State, who imposes a public service obligation on one or more providers. SGEI are regulated by Article 106.

The Commission established a first guideline concerning regional State aid in the 1998 (RAG – 98). The RAG aimed to establish a comprehensive and predictable framework² for assessing State aid at regional level. Approval procedure of national assisted area maps for the identification of Article 107(3)(a) and (c) regions became more straightforward and the role of the EC more proactive.

The adoption by the EC of the State Aid Action Plan (SAAP) in 2005 reshaped the general approach in a sense of simplification but also in order to ensure a better governance of the system, to support the entrance of new members States into UE and to take into consideration the objective of Lisbon and Goteborg Strategy. Detailed rules were introduced for innovation and R&D for example and existing ones, such as rules on environmental protection, were modified.

² Wishlade F (2009) 'Measure for Measure: Recent developments in EU competition policy and regional aid control', European Policy Research Papers, No 65, European Policies Research Centre, University of Strathclyde, Glasgow.

In 2006, parallel, the EC up dated the Regional State Aid guidelines for the period 2007-2013 which introduce a certain degree of flexibility in the use of national assisted area maps - only regarding the 107(3)(c) regions, enhancing a wider control on the use of regional State aid for large investment project. In the 2008, the Commission updated the previous EU's Guidelines for State aid for environmental protection (2001). These guidelines set the specific rules and regulations regarding environmental State aid in the EU Member States and the European Free Trade Association (EFTA) countries.

A further important change in the regulatory framework has been the adoption of the General Block Exemption Regulation (GBER) 2008³, which aim was to alleviate the notification procedure. The rationale underpinning the regulation was that if an incentive scheme accomplishes “ex ante” the requirement of the regulation, there is no need for a notification. Even if the block exception already existed, the GBER streamlined the approach to other policy areas.

Finally, the current crisis started in 2007 obliged the EC to introduce, on a temporary scheme, some flexibilities into the system of State aids, especially regarding thresholds, risen from 200.000 € to 500.000 € for the de minimis rule, and beneficiaries in key sectors, such as renewable and energy efficiency.

2.2 Key issues in the perspective of LRAs

Despite the importance of State aid for economic and social development of the regions, the regulative framework represents sometime more a constrain rather than an opportunity for the economic regional development. Although the increasing improvements of the regulatory framework toward a “less and better” approach, the European State Aid regulation is a source of administrative burden.

Administrative burdens

Especially the Regional administrations face a significant workload due to the State aid regulations mostly regarding the notification procedure and the controls. A great deal of the texts in force (guidelines, regulations, handbooks, communications) are not linked together, complex to apply for beneficiaries (aids for environment protection for

³ Commission Regulation (EC) No 800/2008

example) and demanding in terms of time and skills to be implemented. For a better and more efficient implementation of public policy at local level, LRAs need a large simplification of notification and authorisation procedures and general rules regarding State aids. Moreover the State aid sometime is an obstacle for regional development policy and creates dangerous distortions.

National Mapping of State aid

The **national maps** regarding the 107(3)(a) and 107(3)(c) regions represent a rigidity in planning for LRAs, especially in the field of the implementation of the structural funds where the programming period lasts for 7 years. The **recent crisis** shows the need of flexibility due to economic social, political, continuously and rapidly evolution. The crisis has in fact rapidly transformed or threatens to turn areas with a strong industrial development into regions in crisis. A map drawn today, even with current and updated data, may already be outdated within a few months. Therefore the regional policies suffered of those constrains in providing an effective response to the crisis. On the other hand, a partial solution was offered by the temporary framework for de minimis which results to be more effective in sustaining new investments⁴.

The identification of the Regions “A” and “C”

The GDP per capita is the only parameter of underdevelopment for the identification of **107(3)(a) Regions**. This criteria is questionable since a process of deindustrialization, and the consequent State aid policy response, is expected to be rather more sophisticated from an economic standpoint⁵. In fact, there is evidence⁶ that the correlation between the GDP per capita level and the actual difficulties that investors must face to locate new projects in the assisted regions⁷ is no direct and significant. Production costs such as manpower and related costs and, to amore limited extent, fixed production costs, can be significantly lower in regions with a relatively lower GDP per capita, and therefore they can create an advantage for a location if compared with an investment in

⁴ For a better understanding of the role of States aid in the crisis see Fiona Wishlade “Crisis, what crisis? business as usual for EU competition policy and regional aid control” EoRPA Paper 09/5

⁵ See Merola M.(2010), ‘Regional aid: recent trends and some historical background’, GCLC Working Paper 01/10, The Global Competition Law Centre Working Papers Series, College of Europe, Bruges.

⁶ See K. Junginger and Dittel (2007), *Economic and Legal Problems of Regional Aid to Larger Investment Projects*, EStAL conference on The law and economics of European States Aid control, EStAL Institute/European School of Management and Technology, Berlin, 8-9 November 2007

⁷ For instance Murcia questioned the relevance of not automatically considering under 107.3.c regions currently covered by 107.3.a where GDP per capita exceeds 90% of the EU average.

richer regions. In this way the State aid regulation can also create discriminatory conditions.

The **107(3)(c) regions** are basically identified on the basis of a mere subtraction of the ceiling (42%) of the population globally assigned to a State to the population of the areas as in Article 107(3)(a). This can create situations of serious disparities among Member States because it does not derive from a comparative assessment of the real difficult conditions of the selected regions. In some countries there might be eligible regions despite high levels of development and, at the same time, relatively “poor” regions without the possibility to benefit of State aid. This paradox can happen if the latter regions are located in countries where population plafond related to Article 107(3)(c) is lower.

Delocalisation

An additional point is related to the difference in the intensity of aid between regions 107(3)(a) and regions 107(3)(c), which, especially in cross border regions, can encourage or even lead to delocalisation process. This is particular evident in the case of large companies since the intensity of the aid can be 35% higher among large companies in the area "a" than in the region "c". On this issue, for example, the Italian border-regions recognize⁸ the risk of intracommunity relocations which might lead to high authorized ceilings in zones covered by 107(3)(a) and, more importantly, in those with an extremely low GDP/capita. Combined with low salaries and low social costs, these rates might be seen as a “windfall” and encourage “grantseekers” to relocate companies that are currently operating in EU countries or territories without such attractive conditions. The situation would be more acute for large companies since they would no longer enjoy any aid from outside the zones under 107(3)(a). This would affect certain border territories, some of them very severely.

Public Infrastructure and environment

A great concern among the LRAs is represented by the recent sentence of European Court of Justice (ECJ) on 24 of March 2011 endorsing the Commission position. According to the EC, any public fund to certain infrastructure is framed as “State aid” if it is managed by third parties, against payment of a fee, regardless of the public nature of the subject

⁸ See CPMR (2012), ‘A review of national regional aid’, technical paper from the Conference of Peripheral Maritime Regions Europe, General Secretariat, 14 May 2012

and its institutional mission (e.g. port authorities). This approach on infrastructure poses a serious challenge to many projects co-funded by ERDF or Cohesion Funds (ports, airports, ports, stadiums, waste treatment plants, research facilities, and energy for broadband network). As a matter of facts, if the public funding is considered “State aid”, it will imply an additional burden for LRAs such as notification procedure, controls, and even a new framing of financial allocation. A reduction of expenditures on already approved project can jeopardise the spending capacity of Regional Programs (due to the ‘N+2’ rule) and threatens the financial stability of LRAs. Furthermore, there is also an issue directly related to the **environmental aspects**. Despite the current guidelines on environmental State aid have rendered State aid on this sector broader and more generous, a strict interpretation of the ECJ sentence can severely endanger the capacity of LRAs to respond to environmental challenges. In fact, many LRAs are involved into environmental risk management and deal with the decrease in the natural resources quality facing sometimes the lack of policy instruments and economic and financial resources to address this issue.

3. The main changes proposed by the communication

3.1 General approach

State aid is actually under discussion for various reasons, among them are:

- The general need to modernise State aid control to allow Member States to better contribute to the implementation of the Europe 2020 strategy and the overcoming of the economic and financial crisis.
- The need to clarify the role of State aid in relation to the provision of Services of General Economic Interest (SGEIs)⁹.
- The special regulations regarding State aid related to promoting regional development, and linked to EU Structural Funds will expire on 31 December 2013.¹⁰

The Communication on State Aid Modernisation (SAM) (COM(2012) 209 Final) launches a far-reaching reform process and identifies three main and closely linked objectives, which shall enter into force by the end of 2013. To meet the three targets, the Commission's proposal for the procedural and enabling regulations should be adopted in autumn 2012. The Commission aims at developing the rest of the package over the next months with a view to progressively achieving the revision and streamlining of the main Commission acts and guidelines by the end of 2013. The Commission intends to consult Member States and engage in an open dialogue with the European Parliament and other stakeholders, with the view to gathering input for a debate on the state aid modernisation proposals.

⁹ See OJ 2012/C 8/02.

¹⁰ These are (a) RAG (Guidelines on National Regional Aid for 2007-2013) which lay down the provisions on the basis of which notified States aid granted in order to promote the economic development of certain disadvantaged areas within the European Union can be considered compatible with the internal market, (b) GBER (General block exemption Regulation) which lay down, inter alia, the conditions under which regional States aid is considered to be compatible with the internal market without requiring prior notification to the Commission.

3.2 Specific objectives

The objectives of the proposal contained in ‘COM(2012) 209 Final’ are presented as three main aims:

1. Foster growth in a strengthened, dynamic and competitive internal market

State aid control shall support sustainable growth and contribute to improving the quality of public spending by discouraging aid that does not bring real added-value and distorts competition. This shall ensure that public support stimulates innovation, green technologies, human capital development, avoids environmental harm and ultimately promotes growth, employment and EU competitiveness. Such aid will best contribute to growth when it targets market failure and thereby complements, not replaces, private spending. Today, State aid control already contributes to the achievement of the Europe 2020 goals. An illustrative example on this issue is the broadband guidelines providing conditions for efficient State support to broadband rollout¹¹, underpinning the objectives of the digital agenda for Europe.

In order to promote growth in a strengthened, dynamic and competitive internal market, the proposal of the SAM intends to:

- a. Identify horizontal principles applicable to the assessment of compatibility of support projects, which represent the common basis to define and assess genuine market failures, the incentive effects and the negative effects of public interventions, and to make potential considerations on the overall impact of the State aid.
- b. Revise and streamline the State aid guidelines, to make them consistent and in line with the common principles. In a first stage, several guidelines, including guidelines for regional aid, RDI, environmental aid, risk capital and broadband, could be aligned and possibly consolidated with the common principles by the end of 2013. This could also allow establishing synergies between different aid regimes and achieving multiple objectives.

¹¹ Communication from the Commission ‘Community Guidelines for the application of States aid rules in relation to rapid deployment of broadband networks’ (2009/C 235/04).

2. Focus enforcement on cases with the biggest impact on the internal market

In order to make public spending more efficient it is necessary to avoid the translation into micro control of all public expenditure and rather to prioritise and strengthen EC's scrutiny of the aid with a significant impact on the single market. The SAM, therefore, shall focus more on cases with the biggest impact on the internal market. This will include stronger scrutiny of large and potentially distortive aid as well as enquiries by sector, across Member States.

The proposals of the State aid modernisation in this field aim to:

- a. review the de minimis Regulation on the basis of a detailed impact assessment, in order to evaluate the correspondence of the current threshold to the market conditions.
- b. change the ex-ante notification system, permitting an increase of the types of aid that could benefit from simplified controls, without weakening efficient supervision by the Commission and ex-post monitoring. The new types of aid include aid granted to culture, aid to make good the damage caused by natural disasters and aid to EU-funded projects such as JESSICA.
- c. Review the regime of exemptions, in particular the General Block Exemption Regulation adopted in 2008 and, possibly, the Regulation on small amounts of aid adopted in 2006.

3. Streamlined rules and faster decisions

Procedures shall be streamlined to deliver decisions within business-relevant timelines. Also, rules and concepts shall be better explained, including a clarification of the notion of State aid and a modernisation of the Procedural Regulation.

In order to streamline rules and faster decision, the proposals of the State aid modernisation intends to:

- a. clarify and better explain the notion of State aid and its key concepts in order to contribute to an easier implementation;

- b. modernise the Procedural Regulation with regard to complaint-handling and market information tools to allow the Commission to better focus on cases which are most relevant for internal market.

4. Comparative analysis and assessment

The analysis in this chapter is carried out along two different dimensions in order to assess:

- which are the potential effects on administrative burden for LRAs administration;
- how much relevant for the LRAs are the envisaged changes potentially made by SAM.

4.1 Analysis of potential administrative burden

The Communication on the State Aid Modernisation contains various references to the ambitions of lessen the administrative burden even if there is not a clear assessment of “how much” less it might be. This also due to the lack of data and base lines on this issue (see Box 3).

BOX 3. Regional State aid and Administrative cost and burden

The national and regional distribution and variation of State aid measures and impacts is widely discussed, whereas the national and regional variation of the administrative costs of State aid is only rarely addressed. At the same time it goes without saying that State aid involves administrative burden both for public sector providing it and for the private sector receiving it.

A report issued by the Danish Ministry of Economic and Business Affairs underlines that State aid means both direct and administrative costs for the public finances. It notes that “Financing public expenses leads to higher taxes with potential distortions on e.g. labour supply and investment. The Danish Ministry of Finance estimates the social cost of taxation to be 20 percent of the total tax revenue. These extra costs should be taken into account when deciding whether to implement a State aid scheme.”¹²

In a larger discussion of administrative burden also the costs of beneficiaries – i.e. businesses receiving State aid – for complying with State aid regulations and providing the necessary information and documentation are taken into account. However, for the purpose of the

¹² <http://www.kfst.dk/index.php?id=14791>

following discussion the costs for the beneficiaries will not be considered.

Indeed, in other policy fields, e.g. such as EU Regional Policies, a differentiation is made between administrative costs and administrative burden. In this respect the administrative costs are usually associated with costs and working time for the execution of a policy by the public sectors. The administrative burden on the other side is associated with the costs occurring for businesses and citizens for complying with the regulations linked to the policy execution.¹³

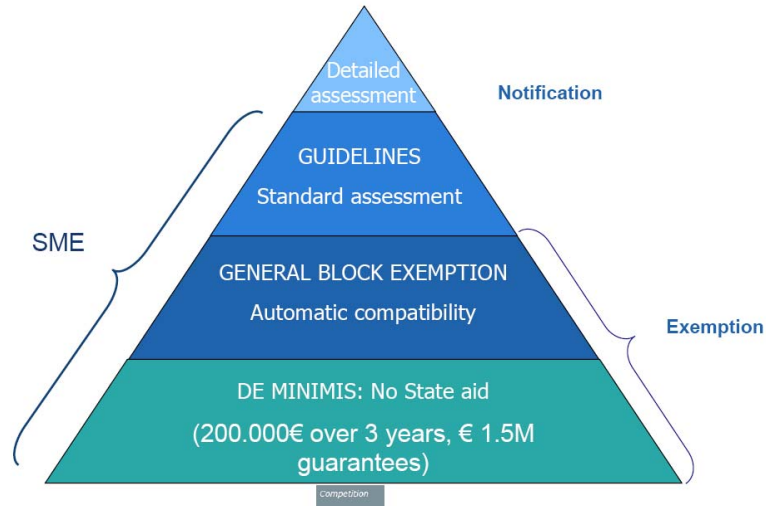
However, following the wording of the Communication on EU State Aid Modernisation (COM(2012) 2009 final), no differentiation is made between administrative costs and burden. Therefore, administrative burden are defined, here, as the costs that occur to public bodies involved in the execution of State aid related tasks. Finally, at present there is no clear baseline information of the administrative – burden costs of the current State aid regime.

State aid handling and thus also the administrative requirements can be discussed in four major dimensions. As the figure (see below) illustrates, there is firstly the level of de minimus rules, which covers a wide range of State aid. Second comes the General Block Exemption Regulation (GBER), which also covers a wide range of State aid. Both of them are characterised as exemptions.

¹³ See e.g. SWECO (2010) Regional governance in the context of globalisation. A study commissioned by DG Regio. http://ec.europa.eu/regional_policy/sources/docgener/studies/pdf/2010_governance.pdf



Architecture of State aid rules



Source: Carles ESTEVA MOSSO (2012): European State aid policy and SMEs: recent and future developments. Presentation in Innsbruck, 01.03.2012.

This is followed by two dimensions implying notification procedures. Firstly, there are the standard assessments following the usual guidelines and secondly come the cases where detailed assessments are required (usually not linked to SMEs).

The pyramid presented in the figure illustrates on the one hand that number of cases to which the four dimensions apply decrease from the bottom to the top. At the same time, however, the administrative burden increases substantially from the bottom to the top. Whereas State aid in the areas of exemptions comes with very little administrative burden deriving from EU regulations, State aid requiring assessments or even detailed assessments is rather burdensome. As afore mentioned, there are no figures available about the magnitude of the burden linked to State aid. Therefore, it is impossible to establish how big the burden for a standard assessment or a detailed assessment is.¹⁴

¹⁴ Sweco (2010) provides solid data available for ERDF and Cohesion Fund. Drawing some parallels to EU Structural Funds, a detailed assessment might be roughly comparable to the administrative procedures of a major project under the ERDF regulations. Major projects make only a small share of the total ERDF and CF funding and have a high administrative burden. The administrative burden linked to major projects amounts to 30 million EUR. This 350 EUR per million spent by ERDF and CF on all types of projects. (Source: Sweco (2010) Regional governance in the context of globalisation. A study commissioned by DG Regio). Translated to States aid this would imply that the administrative burden for detailed assessments amounts to 350 EUR per million EUR spent on States aid under all four dimensions together.

The proposed State Aid Modernisation may have effects on the administrative burden in two ways. Firstly, it has the potential to shift the balance between the four dimensions. Secondly, depending on the detailed arrangements to be presented later in 2012 or 2013, it has the potential to change the administrative burden within the single dimensions.

Changes in the number of cases exempted


The change of the de minimis rule from EUR 200,000 to EUR 500,000 implies a clear shift of the balance between the different dimensions with the result that a larger number of cases fall under the de minimis rule. This will also result in a reduced administrative burden for a larger number of cases. As for Services of General Economic Interest (SGEI) the European Commission adopted a new de minimis regulation on compensation granted to companies that provide SGEI, on 25 April 2012. Under the new regulation, compensation granted by public authorities for the provision of SGEI will fall outside the scope of EU State aid law if it does not exceed €500,000 per company over three years, more than double the previous threshold of €200,000.

“The new Regulation is a major simplification for both public authorities and service providers, because it will considerably reduce the administrative burden for granting public service compensation for small SGEI. At the same time, it increases legal certainty, because it establishes a clear threshold, below which SGEI compensation does not constitute State aid within the meaning of EU/EEA rules.”¹⁵

A possible extension of the categories covered by the General Block Exemption Regulations (GBER) is envisaged in COM(2012)209. This should also allow for a shift of the balance between the four dimensions, towards a larger number of cases falling under exemptions and less cases requiring notifications. The example below illustrates how the block exemption has been widened for services of general economic interest (SGEI). Furthermore, the broadband network example below illustrates how local and regional authorities can benefit from exemptions for national specificities.

¹⁵ EC – Press release (25 April 2012) States aid: Commission adopts de minimis Regulation for services of general economic interest (SGEI)

Example related to the rules for service of general economic interest



Main Changes in the SGEI Package

2005 Package	2011 Package
	Communication on the application of Art. 107
general <i>de minimis</i> rule applied: €200.000 over 3 years	specific <i>de minimis</i> regulation €500.000 of compensation over 3 years
<p>Block exemption decision</p> <ul style="list-style-type: none"> Hospitals and social housing Aid below €30M per year for providers with turnover below €100M per year Annual approach 	<p>Block exemption decision</p> <ul style="list-style-type: none"> Hospitals and social services: <i>"health and long term care, childcare, access to and reintegration in the labour market, social housing and the care and social inclusion of vulnerable groups"</i> Aid below €15M per year Multi-annual approach Entrustment act less than 10 years except if a significant investment is required
<p>Framework</p> <ul style="list-style-type: none"> Compensation of all the net costs incurred by the provider Annual approach 	<p>Framework</p> <ul style="list-style-type: none"> Compensation of the net avoided costs Multi-annual approach Efficiency incentives Equal treatment Control of serious competition distortions Compliance with public procurement rules when applicable Strengthened transparency

Competition

The Decision block exempts public service compensation from notification. Compared to the 2005 Decision, the main changes in the revised version concern the scope of application, the duration of the entrustment and the amount of compensation.

First, taking into account the administrative burden for providers and for authorities in the social services sector, the scope of the exemption without any notification threshold has been extended to services "meeting social needs as regards health and long term care, childcare, access to and reintegration into the labour market, social housing and the care and social inclusion of vulnerable groups". For the remaining SGEI, the notification threshold of the Decision has been lowered to EUR 15 million of compensation per SGEI, while the threshold for the turnover of the undertaking has been eliminated.

Sources:

- Pesaresi N., A. Sinnaeve, V. Guigue-Koeppen, J. Wiemann, M. Radulescu (2012) The New State Aid Rules for Services of General Economic Interest.¹⁶
- DG Competition presentation of main changes in SGEI.¹⁷

Examples related to the draft Guidelines for broadband network

- Certain concepts, such as the three years time horizon for assessing investment plans, seem to have been open to different interpretations. The draft Guidelines provide more explanations and examples on this and other notions that were not fully clear to all stakeholders.

¹⁶ http://ec.europa.eu/competition/publications/cpn/2012_1_9_en.pdf

¹⁷ http://ec.europa.eu/competition/States_aid/overview/table_of_changes_en.pdf

Some stakeholders reported that the claw-back mechanism seems to have created too high administrative burden in particular for small, local projects. Public authorities seem to have problems to define effective claw-back mechanisms at low cost of administration. In some cases these difficulties have even led to limit State aid virtually below a (national) threshold for introducing a claw back mechanism. The draft Guidelines propose to increase the threshold for the claw-back requirement to €10 million of aid, exempting all projects below that threshold.

- The Broadband Guidelines can be the most effectively applied if Member States design and implement national framework schemes, thereby taking away the administrative burden from small local authorities to seek funding or State aid approval for small, individual projects.

- Thus small local projects are best implemented if each Member State has a national framework scheme approved by the Commission that 'translates' the Broadband Guidelines requirements in line with national specificities. Many such framework schemes were designed and approved by the Commission in the last years, for instance in Finland, Sweden, France, Germany or Italy. To take the example of Finland, more than 800 small, local projects will be realized under the national framework scheme aimed at ensuring that all citizens have access to a 100 Mbps connection within less than 2 kms. As a result, 800 municipalities can implement their project without having to submit individual State aid notifications to the Commission.

Sources:

- MEMO/12/396¹⁸
- WIK Consult (2007) Study on the Implementation of the existing Broadband Guidelines. COMP/2011/00.

Changes in the detailed procedures for not exempted cases

The changes of the detailed procedures may open both for increased and decreased administrative burden.

“A lower administrative burden through less notification obligations can only be envisaged if it is accompanied by increased commitment and delivery on the part of the national authorities in terms of compliance.”
COM(2012)209:8

¹⁸ <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/12/396>

Following this argument, an increase of ex-post controls by the Commission is envisaged. This bears certainly the risk of increasing administrative burden also for the local and regional authorities involved.¹⁹

To a certain degree local and regional authorities might also be affected by the fact that Member States will have to ensure – in strict coordination with the Commission – the ex-ante compliance with State aid rules of de minimis measures and block-exempted schemes and cases.²⁰ Differences between national and EU regulations including national ‘gold plating’ are an important aspect of this discussion.

At the same time faster decision-making processes and a better streamlining may bear some potentials for reducing the administrative burden at local and regional level.

Example related to the State aid framework for RDI

In the field of research, development and innovation, the concrete implementation of the economic approach however has not seemed to have reduced burdens and lead to more RDI. On the contrary, it may discourage Member States from devising specific RDI aid schemes given the daunting prospect of having to submit very comprehensive economic information for each notification. The required information is often difficult and costly to obtain and, if at all available, likely to be based on numerous speculative assumptions. The detailed assessment currently prescribed for a large number of individual notifications may increase

¹⁹ Within EU Structural Funds there is a long standing debate about the costs of control and to what degree additional control measures increasing the administrative burden can be justified by the additional gains achieved through the controls. As an example, PricewaterhouseCoopers estimated in 2006 that the control costs amount to 2.68% of total ERDF financing. Just the audits (not including a wide range of other financial control measures) for the 2007-2013 period are estimated to involve 14,100 person years and cost approximately EUR 1,050 million, i.e. 2,700 EUR per million in ERDF and CF expenditure. That is 2.7% of the ERDF funding used for audits. (Source: Sweco (2010) Regional governance in the context of globalisation. A study commissioned by DG Regio.) If these figures are to be comparable with the States aid ex-post assessments, it would imply that approximately 3% of the total States aid would be used for ex post assessments.

²⁰ In study on concerning the change of administrative costs towards the next ERDF programming period (2014-2020) also the newly introduced ex-ante conditionalities exercises are addressed. T33 and Sweco (forthcoming) estimate it can be assumed that the workload needed to prepare or modify strategic documents will not exceed that necessary to carry out ex-ante evaluations. On this basis, and taking the costs of ex-ante evaluation as a proxy, it is estimated that the compliance with regulatory requirements related to ex-ante conditionalities will require in total, i.e. for all programmes and Member States, approx. 165 person years. Translating this into monetary terms, the administrative costs for national and regional authorities would amount to approx. 15 million EUR. If these figures are to be comparable with the States aid ex-ante assessments, it would imply that approximately 0.01% of the total States aid would be used for ex-ante assessments.

legal uncertainty, boost costs and administrative burdens significantly, and ultimately discourage Member States from stimulating companies to carry out more RDI activities.

Source: Business Europe (2012) Position Paper.²¹

4.2 Relevance of the proposal

How the State Aid Modernisation (SAM) may affect LRAs will mainly depend on (a) the actual translation of these ideas into concrete proposals, and (b) the national context of local and regional authorities.

However there are aspects of SAM which are more significant and partially can solve the issues raised in chapter 2.2 regarding the challenges posed by the recent economic and financial crisis which has dramatically changed the context. As a matter of fact, the crisis puts on risk the LRAs capabilities of achieving sustainable development goals as set by the EU under the Europe 2020 strategy.

SAM envisaged a possible extension of the **de minimis threshold** (as it has done for the SGEI and for the Crisis temporary framework). This should involve possibilities to make aid more flexible and ready to use by the LRAs, which often handle a series of small support measures.

Furthermore, the SAM aims to reduce the need of ex-ante notifications e.g. related to cultural, aids related to combating the damage of natural disasters or EU-co-funded projects as such JESSICA which have the potential to reduce the administrative burden. Finally the Commission Proposal also foresees the possible extension of GBER scope.

The effects of these changes will largely depend on the national context, and will affect differently the regions depending on 4 factors:

- eligibility in “a” or “c” areas.
- propensity of the single Member States to deliver State aid.

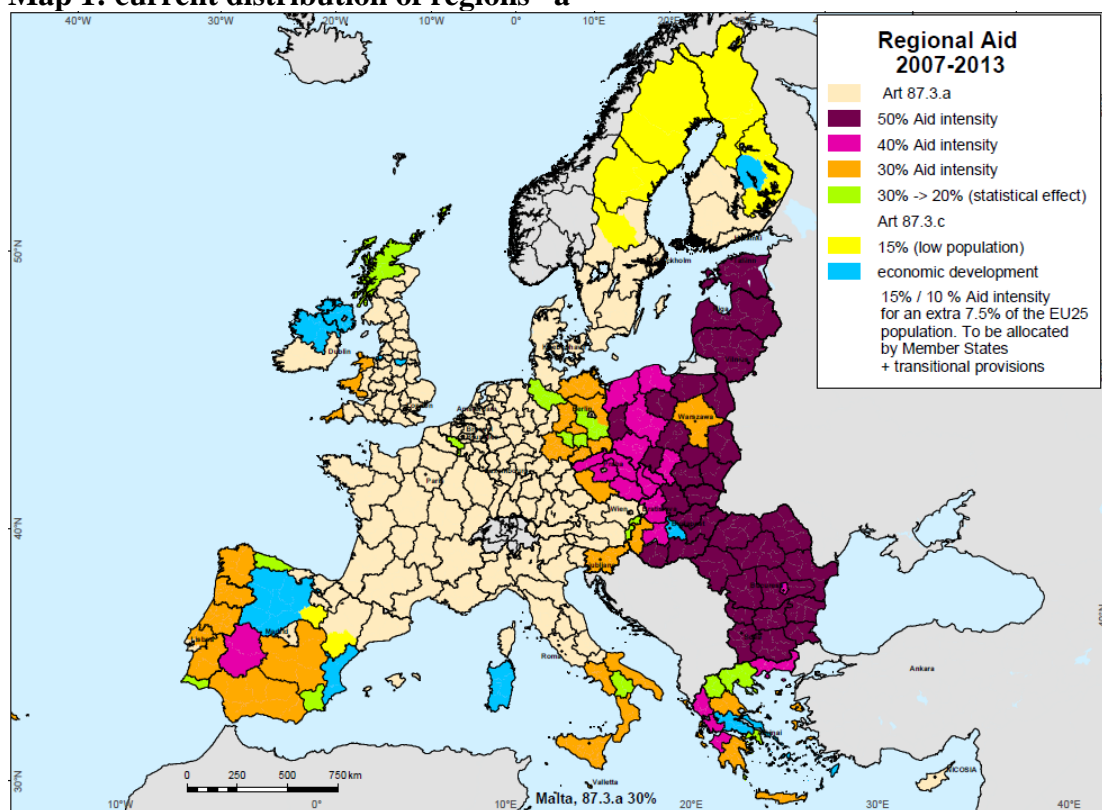
²¹<http://www.nho.no/getfile.php/filer%20og%20vedlegg/BUSINESSEUROPE%20posisjonsdokument%20om%20statsst%F8tterammeverk%20for%20forskning,%20utvikling%20og%20innovasjon,%2005.03.2012.pdf>

- capacity of single Member States of taking advantage of GBER application.
- availability of structural funds.

Future eligibility of “a” and “c” regions

Despite there are simulations²² carried out on the potential coverage of “a” and “c” regions post 2014, the crisis makes difficult any sharp forecasts since the distribution is based mainly on GDP which has been difficult to predict in the last 3 years. It can roughly be predicted that probably no major changes can happen in the next years in the distribution of “c” and “a” regions if the current criteria are applied. Therefore the distribution of the regions should remain the same as it is now (see the following map).

Map 1: current distribution of regions “a”



Source DG competition and based on EUROSTAT GDP per capita 2002

Since the envisaged changes will affect State aids outside the exemption foreseen by the 107(3) articles, the current region “c” and the rest of the regions will probably benefit more from SAM than the region “a” (displayed in the above map).

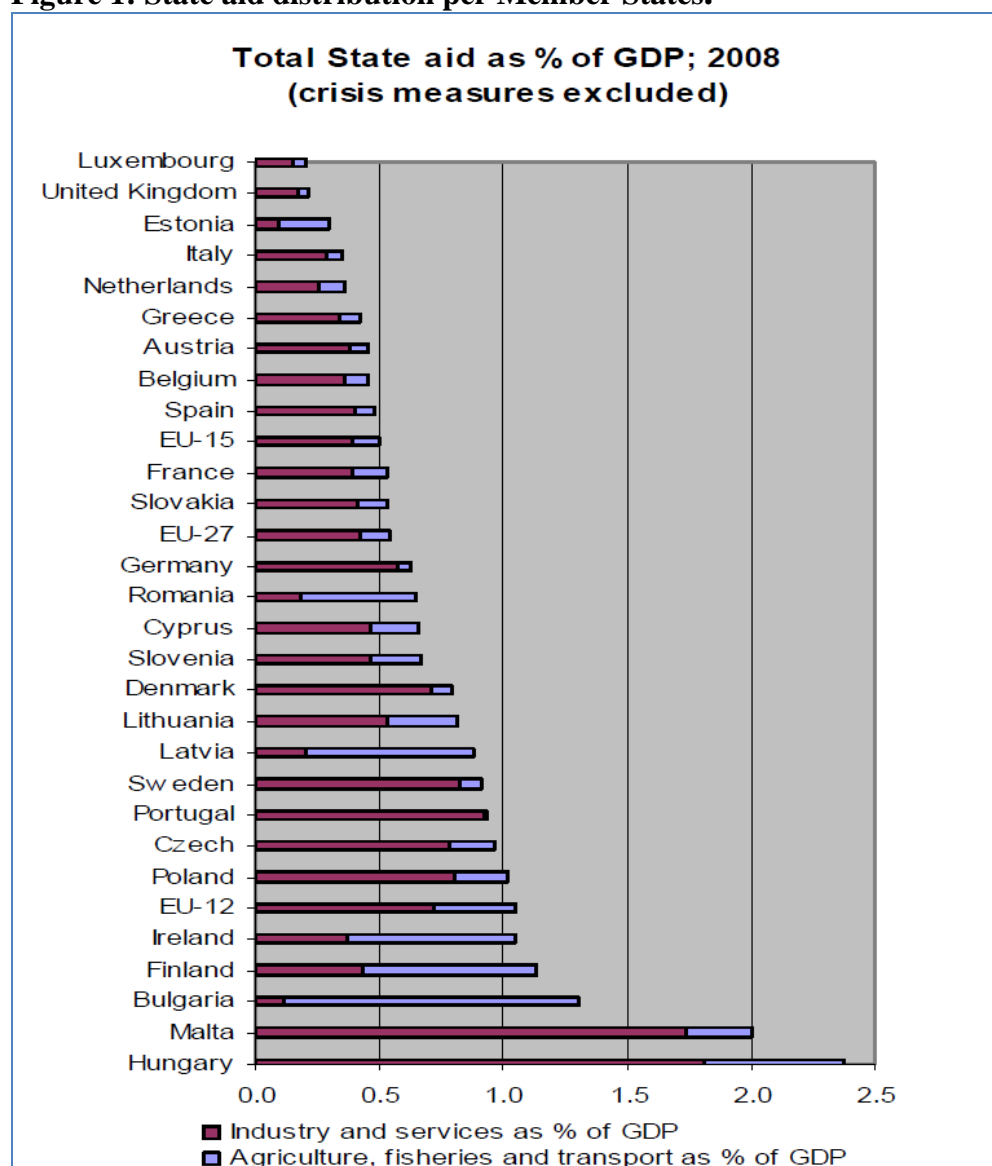
²² See EPRC study “to roll forward or roll back regional aid control 2014” (p. 63- 71)

because the reason being that regions “a” take already advantage of their status and do not need further facilitation while the rest of the region needs to find “shortcut” solution rather than the standard notification process.

The Member States propensity in delivering State aid

Naturally regions can benefit from SAM if at national level there is a positive attitude towards State aid as a policy tool. Although during the crisis the use of the State aid increased, there are still wide differences in their usage independently from the availability of European Funds or level of GDP (see the following table).

Figure 1: State aid distribution per Member States.



Source: Fact and figure form the State aid – scoreboard 2009 (update) com 2009 (611) final

The capacity of single Member States of taking advantage of GBER

There are also significant differences in the use of GBER among Member States without an evident correlation with the presence of “a” or “c” regions, level of GDP, and State aid utilisation (see the following table). So it is self-evident that Member States with a “tradition” of exploiting GBER will probably gain more advantages in its extension.

Table 1: Use of GBER by Member States

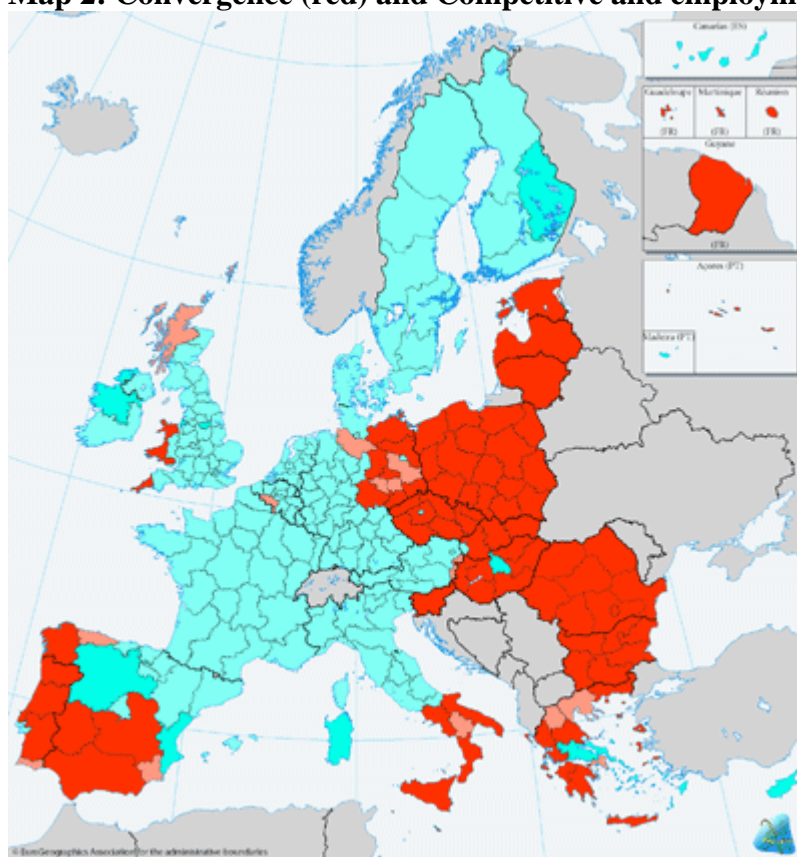
Member State	Number of GBER forms submitted by Member States		Total Number of GBER forms 2008 - 2009
	2008	2009	
EU27	194	963	1157
Belgium	2	19	21
Bulgaria	3	4	7
Czech Republic	23	37	60
Denmark	3	10	13
Germany	38	165	203
Estonia	7	18	25
Ireland	5	8	13
Greece	1	1	2
Spain	12	126	138
France	10	10	20
Italy	25	204	229
Cyprus	3	14	17
Latvia	5	8	13
Lithuania	8	12	20
Luxembourg	0	1	1
Hungary	0	20	20
Malta	3	7	10
Netherlands	11	28	39
Austria	11	41	52
Poland	1	114	115
Portugal	2	8	10
Romania	1	5	6
Slovenia	0	17	17
Slovakia	0	15	15
Finland	2	9	11
Sweden	0	4	4
United Kingdom	18	58	76

Source: Fiona Wishlade (2011), ‘To roll forward or roll back? Regional aid control 2014+’, European Policies Research Centre.

Availability of structural funds

SAM envisages changes to the Council Enabling Regulation to allow the Commission to declare that certain categories of aid related to EU funded project are compatible with the internal market and are therefore exempted from ex ante notification. Thus poor regions which benefit more from Structural Funds are likely to have major benefits since they might exploit the possibility to provide more easily State aids. The map below represent the present situation where regions are distributed accordingly to GDP. We do not apply major changes in the distribution (same rational applied above for the mapping of region “a” and “c”).

Map 2: Convergence (red) and Competitive and employment (blue) regions



Source: DG REGIO web site

Overall relevance

Table 2 below provides a synthetic overview of the possible relevance of SAM in different countries. The table shows the result of a multi-criteria analysis used to aggregate the different significant factors and provides an overall judgement about the relevance according to the score presented below:

Table 2: Multi – criteria scoring measuring relevance of SAM

Judgement	SCORE	Scarce presence of "a" regions	National Propensity to state aid (relativity to 27 average)	Use of GBER (increase between 2008-2009)	Relevance of Structural Funds (coverage convergence area)
High	3	total coverage	Higher	> 100%	Full coverage
Medium	2	partial coverage	equal (almost)	>50%	Partial Coverage
Low	1	absence	Lower	<= 50%	Absence

Source: own elaboration

Despite there are different situations, the table below shows that for most of the Member States the proposed changes are relevant and might help state aid to be applied in amore flexible manner. A part for 7 countries, SAM has a medium – high relevance for the majority of countries. These seven countries are the Czech Republic, Finland, France, Germany, Greece, Lithuania and Spain. In other worlds, most of the LRAs can benefit from the increasing of “the minimis” threshold, the extending the scope for GBER and the changing the Council enabling regulation.

Table 3: Relevance of SAM for different Member States

	Scarce presence of "a" regions	National Propensity to state aid	Use of GBER	Relevance of Structural Funds	Overall relevance of SAM
AUSTRIA	3	1	3	1	medium
BELGIUM	3	3	1	1	medium
CYPRUS	3	1	3	1	medium
CZECH REPUBLIC	1	1	1	3	low
DENMARK	3	2	3	1	high
ESTONIA	1	1	3	3	medium
FINLAND	1	1	3	1	low
FRANCE	3	2	1	1	low
GERMANY	1	2	3	1	low
GREECE	1	1	1	3	low
HUNGARY	1	2	3	3	high

IRELAND	2	3	1	2	medium
ITALY	2	1	3	2	medium
LATVIA	1	3	1	3	medium
LITHUANIA	1	1	1	3	low
LUXEMBOURG	3	3	3	1	high
MALTA	1	2	2	3	medium
NETHERLANDS	3	2	3	1	high
POLAND	1	1	3	3	medium
PORTUGAL	1	1	3	3	medium
SLOVAKIA	1	1	3	3	medium
SLOVENIA	1	1	3	3	medium
SPAIN	1	1	3	2	low
SWEDEN	1	1	3	3	medium
UNITED KINGDOM	2	3	3	3	high
BULGARIA	1	1	3	3	medium
ROMANIA	1	1	3	3	medium

Source: own calculations

5. Conclusions

A difficult assessment

The present document has tried to analyse the changes which will take place according to SAM at the LRAs level. It discussed the relevance and the effects on administrative burden in respect to the current situation. The analysis faced difficulties due to the general nature of the analysed document since there are more “orientations” and “willingness to change” rather than operational and concrete measures.

About both aspects (relevance and administrative burden), rather little is known at present, to effectively judge whether there will be an overall improvement or not for LRAs through the EU State aid modernisation. For example, it would be necessary to see whether the gain through more cases being exempted outweighs the additional administrative burden for case under notification obligations. A thorough assessment on this is only possible once all the details of the implementation of the State aid modernisation are known – both at the European and national level. At present for most areas there are no detailed proposals of how the SAM might be translated into more specific EU regulations. Therefore any assessment can only be rather general until a complete set of regulations is available. Furthermore, too little is known about how Member States might translate the regulations to come into national practice²³.

Administrative burden

The paper shows that there is very little evidence about the administrative burden of EU state aid regulations in general and only limited evidence on various types of impact assessments of possible state aid regulation changes. Therefore we envisage the following improvements:

- The increasing of the de minimis rule provides for more cases been excluded from the more burdensome notification obligations.

²³ From studies on the administrative burden in the field of EU Cohesion Policy, it appears that the translation of EU regulations into national and regional practice is a decisive moment. In many cases national and regional interpretations and regulations tend to be considerably tighter than the EU regulation and by that do add additional administrative burden or do not allow to benefit from EU attempts to ease the administrative workload. This phenomenon is widely called ‘gold plating’. SWECO (2011) has shown that national ‘gold plating’ is perceived to be relatively common in EU Regional Policies and is often linked to uncertainty.

- The extension of the areas covered by GBER provides for more cases been excluded from the more burdensome notification obligations. Also in the case of EU funded projects there might an opening for easing administrative procedures in future.
- The envisaged streamlining might provide for more certainty and easier administration of state aid in future.

At the same time the ex-ante and ex-post control procedures may become heavier in future, albeit for less cases (due to the larger number of exemptions mentioned above). Thus additional work on the ex-ante compliance might be seen as an one-off investment to reduce the burden in the long-run.

Furthermore, linked to the issue of ‘gold plating’, but also more generally the inertia of public administration implies time delays and costs associated with change of public procedures. There is a considerable inertia in practice. This implies that changes (including simplifications) are often not fully implemented or are implemented with a considerable time delay. The existence of actual inertia in practice, and the costs of implementing changes to the regulations are far not included in any studies available.

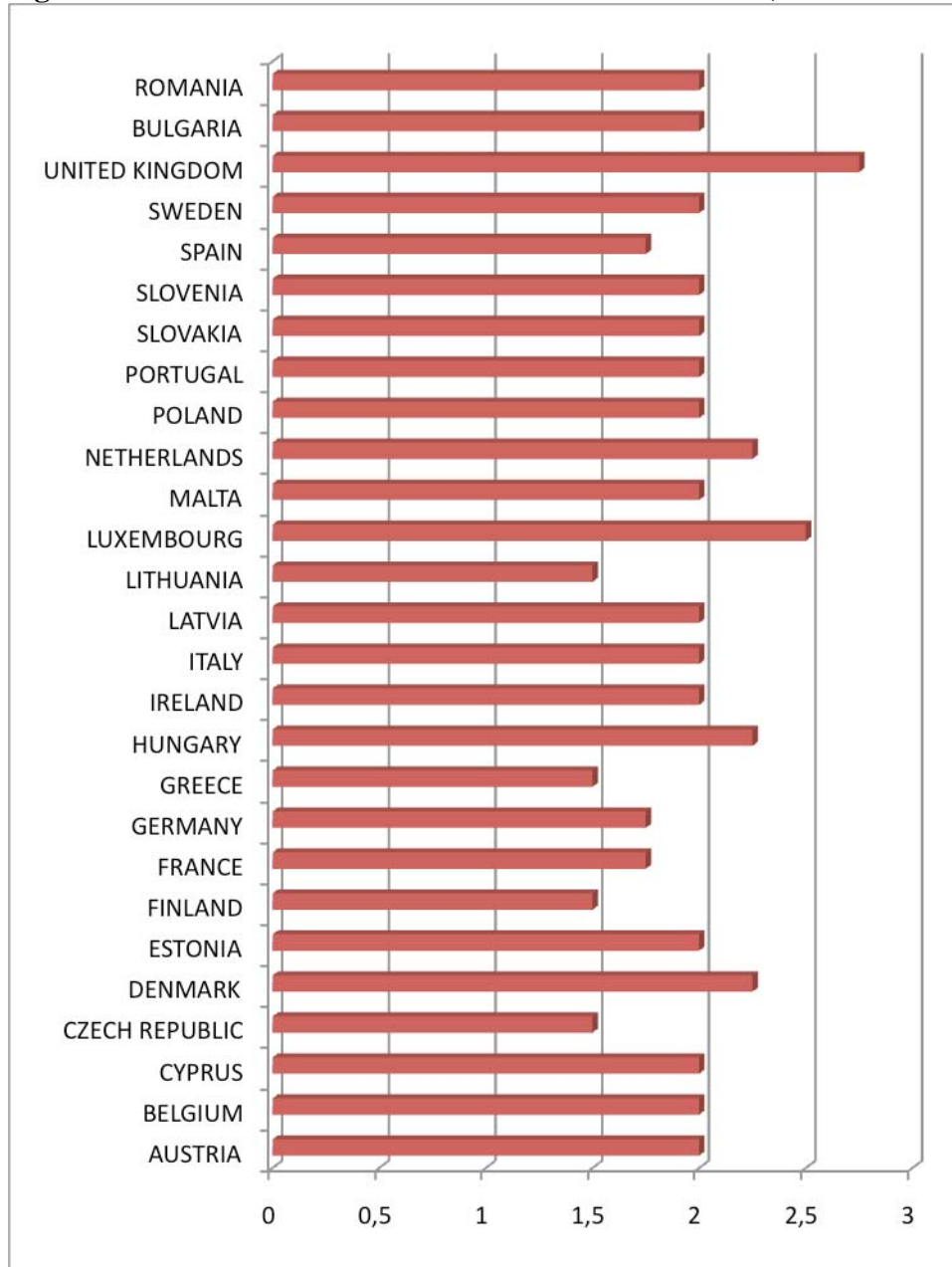
Potential relevance on the regions

The analysis shows that SAM might affect European Regions with a different intensity depending on:

- eligibility in “a” or “c” areas;
- propensity of the single Member States to deliver state aid;
- capacity of single Member States of taking advantage of GBER application;
- availability of Structural Funds.

The below figure provides a synthesis of the analysis performed in section 4.

Figure 2: relevance of SAM in different Member States (0 = minimum)



The analysis shows that the changes envisaged by SAM are potentially relevant for the majority of Member States. However, the Communication does not provide sufficient information for understanding the potential impact. For example the communication envisages a change in the *de minimis* threshold but it does not provide a quantification; it argues for enlarging the scope of GBER without identifying the new sectors. Therefore it is possible to understand the relevance and the “direction” of changes but it is not possible to understand the real “magnitude” of the SAM for LRAS.

Final recommendations

Regarding **administrative burden**, the SAM has the potentiality to decrease the administrative burden but it shall adopt more courageous changes toward EU funded projects. The Communication aims to introduce possible changes to the Council Enabling Regulation in order to have more simplified control for EU-funded projects. But more specifically the same document states “*Those new types of aid which could be covered by the Enabling Regulation could include for instance: aid granted to culture; aid to make good the damage caused by natural disasters: aid to (partly) EU-funded projects such as JESSICA and others*”. The term “partly” is not very clear and it risks to harm the effect of this change.

It is also probably useful to investigate the possibility that a simplified procedure is applied automatically to all the projects co-funded Structural Funds. In fact, from the very beginning of the programming period, all relevant information about possible grant scheme regarding state aids are potentially in the Operational Program which are scrutinised and negotiated with the services of the Commission. Thus there is already the possibility even if simplified, of an ex ante analysis of the future aid. The SAM can make a step further, it can move in the direction that all the all EU funded project can *de facto* be covered by the enabling regulation, included the infrastructure project. In fact the proposal does not directly give an answer to the new sentence of ECJ on state aid related to public funding (see section 2.2) of project infrastructure.

Last but not least, there is a need for a thorough study on administrative burden of EU State aid regulations and the envisaged changes. In times of constraint public resource it is important to assess whether new regulatory proposals actually increase or minimise the administrative workload and costs in the public sector. Such a study needs to consider all levels of administration to avoid blind spots when in a multi-level system tasks and costs are shifted between different levels.

More broadly, the changes envisaged by SAM are relevant for LRAs and partially can solve some issues. However, despite the great emphasis of the Communication in the necessity for a tight link between 2020 European Strategy and state aid control, it is still not evident which could be the concrete contribute for rapid and punctual response. In fact, the Communication seems to be too generic and not very responsive to the current situation but mainly based on a few basic economic aspects such as the competitiveness of the internal market or the need to support

economic growth. It does not take into account other aspects, which are very relevant to LRAs, such as social stability, social inclusion, industrial decline.

Many regions face unnoticed difficulties due to the crisis which do not imply only a low rate of growth of the national or local economy, but it is also concerned with poverty, social disaggregation and chronic unemployment, which may affect the whole community stability. Thus it is necessary that SAM shall take in account also how to make the State aid control policy more flexible to respond to global challenges and to contrast delocalisation process especially faced in bordering regions.

More concrete proposals can be:

- including further criteria in defining the eligibility of the regions rather than only the GDP, such as rate of unemployment, a market share analysis to identify the level of concentration in sectors, resources availability, presence of infrastructures, level of education, etc. In other words, it should be possible to evaluate the potential strength and weakness of a region or area in order to assess whether the State aid could be a useful tool in order to achieve the economic development and not only the economic growth of a particular area.

- having a different approach in the mapping by applying the more flexible approach used in the broadband networks. In the communication²⁴ the EC identified three distinguished areas:

- 1) the ‘black areas’ which do not need state intervention since companies already operate under competitive conditions;
- 2) the ‘white areas’ where instead state aid can be advocated to promote territorial cohesion and economic development objectives;
- 3) the ‘grey areas’, which represent the novel, are the areas where no affordable or adequate services (and/or goods) are offered to satisfy the needs of citizens or business users and where there are no less distortive measures to reach the same goals.

The intervention of the state aid in the ‘grey areas’ calls for a more detailed analysis and careful compatibility assessment in order to favor the development of a fair competition and prevent monopoly provision from affecting the quality of the services/goods and the level of price offered to the citizens.

²⁴ ²⁴ COM 2009/C 235/04.

- envisaging a clause for the revision of the zoning in case of endogenous economic shock (as the financial crisis). The state aid should be used in order to contrast the economic and social decline due to the crisis. If this clause is combined with a wider and much complete analysis of the economic weakness and strengths of a region, the state aid could be viewed as an useful tool to prevent the deepening of the crisis.