

Why does it take so long to get state aid approved by Brussels?

The European Commission is responsible for ensuring governments comply with the EU's state aid rules. But are these rules applied fairly across all member states? Ruud van Druenen and Pieter Zwaan present an analysis of the time it takes for the Commission to process state aid cases. They find that although the duration of cases varies substantially, this variation is best explained by characteristics of the state aid measures themselves. They find no evidence that the Commission favours some member states over others when processing cases.

In the wake of the Covid-19 pandemic, state aid spending in the EU exploded. From the first half of 2020 onwards, EU member state governments, though to very different extents, spent massive amounts on state aid programmes to prevent firms from going bankrupt and their economies from collapsing. As a result, decision-making on the approval of state aid by the Commission moved to the centre of attention for national publics and policymakers in EU capitals.

In normal times, EU state aid control remains under the radar. Member states must notify the Commission about their intended aid measures, and the Commission then decides on their approval under the so-called [state aid notification procedure](#). Our understanding of what exactly is going on during this procedure is limited as it takes place behind closed doors. In 2011, the European Court of Auditors [sounded the alarm](#) over its lack of transparency.

This limited transparency, combined with the often long duration of the procedure, is problematic: as long as the Commission does not (dis)approve a measure, this imposes costs of legal uncertainty on member states. Eventually, this could deter members states from using this policy instrument, which may have negative social and economic consequences. The lack of transparency may also lead to rumours about whether the Commission treats all member states in a similar way or perhaps grants more leeway to more powerful member states.

The formal procedure

So, how does this process of notifying state aid measures work? Formally, the sole competence to interpret, apply and enforce the state aid rules have been attributed to the Commission under Article 108 of the Lisbon Treaty. In addition, rules for doing so have been laid down in various hard and soft law documents. Member states must notify the Commission and wait for approval (the 'stand still' obligation).

This process takes place in so-called preliminary investigations. At the end of such an investigation, the Commission approves the aid or decides to initiate more in-depth examinations in a formal investigation. Formally, this decision has to be taken within two months. If the Commission takes the view that it does not have all the required information, it may request additional information, which extends the deadline by two more months.

In reality, the dynamics of this procedure often turn out to be different. The procedure allows the Commission some room for manoeuvre, and it is crafted in such a way as to offer opportunities for extensive consultation between the Commission and member states. Several authors have pointed at the Commission's and the member states' tendency to engage in a process of mutual adjustment to find amicable solutions. For example, the Commission may provide suggestions on how to make use of legal exceptions by adjusting the planned aid measure. Formally, the preliminary investigation should be suspended if such adjustments are made. In practice, additional requests for information are made during the procedure to grant member states time to adjust their plans.

Explaining the duration of preliminary investigations

In a [recent study](#), we, together with our co-author Ellen Mastenbroek, tried to develop a more systematic understanding of what happens in preliminary investigations by looking into their duration and what factors affect this. Our examination of almost 1,000 state aid cases notified to the Commission between January 2015 and December 2018, resulted in several interesting findings.

To start with, we found that an overwhelming majority of notified state aid measures got approved at the end of a preliminary investigation. In only 1.5 per cent of cases did the Commission decide to start an in-depth examination of state aid measures in a formal investigation.

When we turn to the time needed to approve state aid measures, however, we find much variation. Interestingly, we found that in more than 70 per cent of cases, preliminary investigations took longer than the legally set two months, indicating that additional information requests are almost a standard part of the procedure: the average duration of the procedure is 169 days. This long duration is accompanied by a standard deviation of 195 days, indicating a large dispersion. Some cases were approved within weeks; others took a few years to be approved.

We sought to explain this variation in duration by analysing the impact of various political and non-political factors at both the level of member states and the level of state aid cases. We found that none of the 'member state factors' included in our analyses have an effect on the duration of investigations. This goes for the political factors, such as member states' political power or the level of public trust in the Commission, but also for the non-political factors, such as the quality of member states' bureaucratic apparatus.

Variation in duration was best explained by characteristics of the state aid measures themselves. The legal complexity of a measure, as well as the Treaty Article under which a state aid measure was assessed, turned out to be the best predictors. In addition, the Commission tended to approve economy-wide types of state aid, so-called horizontal aid, at an earlier point in time than aid targeted to specific sectors (vertical aid).

A fair process?

Our study therefore shows that the unfolding of the state aid notification procedure is affected by more than formal factors alone. While non-political state aid factors explain much of the variation in duration, political factors come into play as well. Unexpectedly, these political factors are not found at the member state level. As far as political concerns are considered, these are related to the Commission's policy preference for horizontal over vertical aid. This indicates that the Commission does not favour some member states over others.

While our findings do not cover the recent approval of state aid policies in the context of the Covid-19 pandemic, they temper speculation about the possible unfair treatment of the state aid plans of some member states. Based on existing practice, we believe that the Commission should not be approached too suspiciously in this regard. Of course, only future research can tell whether this stance is justified.

For more information, see the author's accompanying paper (co-authored with Ellen Mastebroek) in the [Journal of Common Market Studies](#)

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