Enforcement of State aid rules by the national courts

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DISCLAIMER
The views expressed are purely those of the speaker and do not necessarily reflect the views of the European Commission.
The essential role of national courts

Commission

Notion of aid
107 (1) TFEU

Unlawful aid
108 (3) TFEU

Implementation, recovery decision
Article 16 (3) of the Procedural Regulation

Incompatible aid
107 (2) + (3) TFEU

National courts
Background

1995
Notice on cooperation between national courts and the Commission in the State aid field

1999
First Procedural Regulation 659/1999

2006
Study on the enforcement of State aid law at national level

2009
Notice on the enforcement of State aid law by national courts

2015
New Procedural Regulation 2015/1589

2019
New Study on the Enforcement of State aid rules by the national courts
The current Notice has contributed to the increased awareness of the role of national courts in State aid enforcement.

National courts are becoming more active with regards to private enforcement of State aid, especially as concerns the direct effect of the standstill clause and actions for damages.

COMP's trainings and State aid advocacy may have also made national courts and concerned parties more aware of the remedies available before national courts.

Cooperation tools have been used to a limited extent.

**Is State aid enforcement a reality? Can we do more = STUDY**
What has DG COMP done?

- Launched a public tender and award a contract to a consortium: Spark Legal Network, the European University Institute (EUI), Ecorys and Caselex (July 2018)

**STUDY MUST**

- Present the state of play of SA enforcement by NC, 28 MS
- Summarise relevant rulings and draft a country report by MS
- Assess the use of the cooperation tools
- Identify and provide the link to the relevant SA rulings by MS
- Identify best practices which can be spread EU wide
And Now? To reflect on the Notice

- Does the current notice reflect the state of play described in the Study?
- What can be done to boost SA enforcement by NC?
- Lessons on the use of the cooperation tools
- Recent EU case law
In concrete: Enforcement

• More private than public enforcement HOWEVER:

  Private enforcement: \( \frac{2}{3} \) of the cases were rejected and only 5 damages actions uphold (1%) interim measures (2%). Reference to the statistics presented by EUI

  Public enforcement: Better trend i.e. effective enforcement EC decision (EUI) but after 10 years of Notice and a consolidate recovery practice: there are still doubts. How to link the recovery and enforcement notice? Reference to the statistics presented by EUI

• Solution?
  • more targeted training to competent courts?
  • review of the notice to clarify existing rules and provide further detail on the possible remedies?
Limited use of the cooperation tools:
Doubts on effectiveness, confused procedural steps, etc.

Opinion
29 (1) Regulation
2015/1589

Information
29 (1) Regulation
2015/1589

Amicus curiae
29 (2) Regulation
2015/1589
(Commission initiative)

Question for a preliminary ruling
267 TFEU
Thanks for your attention

Let us all work together to make of direct enforcement of State aid a reality