



Department  
for Business  
Innovation & Skills

## How the UK Ensures Compliance with the State Aid Rules

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# UK Public Sector – A Taxonomy

- Central Government (UK, England)
  - Central Government Departments (BIS, Treasury, DECC etc)
  - Non-Departmental Public Bodies (Nuclear Decommissioning Authority, Lottery Distributors)
- Devolved Administrations (S, W, NI)
- Public Corporations (BBC)
- Local Authorities (elected Mayors, local councils)
  
- State aid conduits (e.g Local Enterprise Partnerships)



# State Aid Competence and Devolution

- Mixed Symmetric/Asymmetric Devolution between National and Devolved authorities (broadly Symmetric between Local Authorities)
  - Federal system - states or provinces share sovereignty with the centre and have comparable powers with each other,
  - Asymmetric system - sharply different powers and competences between territories
- UK competence (Westminster Parliament + UK Government)
  - Relations with the EU (e.g para 7(1) Schedule 5, Scotland Act 1998)
- But devolved competence for observing and implementing EU law obligations
  - E.g para 7(2) of Schedule 5, Scotland Act 1998)



# Importance of Case 88/03 – “Azores”

- Position in 2003
  - Commission – regional selectivity if a tax reduction [any regionally favourable treatment?] does not extend to the entire territory of a Member State,
  - United Kingdom’s concern - in an asymmetric devolution model any derogation from a UK wide measure would be regional aid
    - Scotland (variation of Income Tax rates (1998), Air Passenger Duty and tax on commercial exploitation of aggregates (2016))
    - Northern Ireland (taxes which are not substantially of the same character as taxes applying in the United Kingdom as a whole (1998))
    - Wales (variation of Income Tax rates (proposed))
- ECJ accepted UK argument
  - the decision must have been taken by a regional or local authority with a political and administrative status separate from that of the central government;
  - adopted without the central government being able to directly intervene as regards its content;
  - financial consequences of a reduction of the rate for undertakings in the region must not be offset by aid or subsidies from other regions or central government, the regional or local authority assuming the political and financial consequences of such a measure



# Basis of State aid Control in UK (1)

- Section 2 European Communities Act 1972 – general applicability of EU law in the UK
  - All such rights, powers, liabilities, obligations and restrictions from time to time created or arising by or under the Treaties, and all such remedies and procedures from time to time provided for by or under the Treaties .....are.... to be given legal effect or used in the United Kingdom
- No “State aid law” or statutory recognition of the standstill requirement needed
- Good “macro” compliance record –
  - “Since 2000, the Commission has ordered the recovery of illegal State Aid in 202 cases across all Member States. Of those, only four were UK measures. This compares with, for example, nine in Belgium; 20 in France; 50 in Germany; 41 in Italy; nine in the Netherlands; and 27 in Spain. These figures highlight the UK’s rigorous approach in comparison with other Member States”. (CCP BoC Review 2014)
- Current focus on “micro” compliance



# Basis of State aid control in UK (2)

- Decentralised implementation of State aid
- Department for Business, Innovation and Skills [generally] responsible for policy and notifications/counter-signature. Centre of expertise across public sector
  - GBER register
- Strategic policy and prioritisation
  - EGIS (Cabinet Office)
  - SAPU (BIS)
  - UKREP
  - State aid senior champions group (DGs in policy departments + devolveds)
- Dissemination of best practice
  - Working level champions + lawyers groups
  - BIS Guidance
  - “*Think State aid first*”
  - Departmental templates – entirety of approach from awareness and risk management to monitoring and evaluation
  - Regularity and Propriety of public expenditure (Managing Public Money, FD awareness)
  - Common clauses