



C&S CLIENT BRIEFINGS



Brussels, January 2025

Maria Segura Catalán, Marianne Clayton and Christopher M. Vollert from Clayton & Segura State Aid Lawyers report regularly on the most relevant developments from the capital of Europe on state aid matters.

State Aid Report – January 2025

The new year 2025 is starting with lots of ambitious new year resolutions for some of us. With the new European Commission (Commission) proposing a competitive compass for the EU and Executive Vice President Ribera announcing the imminent adoption of a new State aid framework, we can already anticipate a busy year on the state aid horizon. While the Commission and the EFTA Surveillance Authority (ESA) have started the new year in a cautiously relaxed manner when it comes to the adoption of state aid decisions, the courts already were more active. But let's start with the news from the scene and of course, it's all about ongoing projects of DG COMP and the clean, just and competitive transition of state aid law.

NEWS FROM THE SCENE

Commission Staff Working Document:
“A Competitiveness Compass for the EU”

The Commission (Commission) has published the EU Compass to regain competitiveness and secure sustainable prosperity.

The Compass highlights three key pillars:

- 1) **Closing the innovation gap:** Key initiatives include ‘AI Gigafactories’, sector-specific action plans, and an EU Start-up and Scale-up Strategy, along with a 28th legal regime to simplify regulations and lower barriers for innovative companies in the Single Market.
- 2) **A joint roadmap for decarbonisation and competitiveness:** Key initiatives include the Clean Industrial Deal to drive competitiveness-led decarbonisation, an Affordable Energy Action Plan to lower costs, and an Industrial Decarbonisation

Accelerator Act to streamline permitting to sectors in transition.

- 3) **Reducing excessive dependencies and increasing security:** To enhance security and reduce dependencies, the EU will leverage strategic partnerships and its extensive trade network. The Competitiveness Compass introduces Clean Trade and Investment Partnerships to secure critical resources like raw materials, clean energy, and sustainable fuels. Additionally, a review of Public Procurement rules will enable a European preference for key sectors and technologies within the internal market.

The three pillars are supported by five horizontal enablers: simplification, lowering barriers to the Single Market, financing competitiveness, promoting skills and quality jobs and better coordination of policies at EU and national level.

For more information, see the Commission’s [PR](#).



Commission Executive Vice President Ribera presents current work projects relating to state aid

On 20 January 2025, the Executive Vice-President of the Commission, Teresa Ribera, gave a keynote speech at the Forum Europa Brussels Breakfast. She addressed specific proposals the Commission is already working on:

“Let me give you (...) concrete proposals we are already working on.

We are already working on a new State aid framework to accelerate renewable energy investments and industrial decarbonisation, ensuring sufficient clean tech manufacturing capacity in Europe while preventing wasteful subsidy races between Member States, as stated in the mission letter that President von der Leyen addressed to me. This new framework will give all 27 Member States the tools to support and accelerate critical investments to address real market failures, and not just serve national interests.

(...)

We will simplify, speed up and bring to life new Important Projects of Common European Interest, together with Member States.”

For further information, see the EVP’s [speech](#).

To read more about the tasks and responsibilities of EVP Ribera, see our PR [here](#).

T-334/22: Restrictive admissibility criteria prevent scrutiny of PostNord State aid decision

On 29 January, the General Court (GC) rendered its judgment in the Case *Danske Fragtmænd v Commission* (T-334/22) concerning Commission Decision [SA.49668](#) approving the state aid granted by Denmark and Sweden to PostNord AB and Post Danmark A/S.

In 2017, Denmark and Sweden agreed to provide financial support to PostNord and Post Danmark through capital injections and an internal contribution to address digitalisation challenges and implement a new production model. The Commission considered in its decision that the capital injections from Denmark and Sweden to PostNord were unlawful state aid, while the

NEWS FROM THE COURTS

internal contribution from PostNord to Post Danmark was not considered state aid.

Danske Fragtmænd, a company active on the Danish market for road transport of goods and parcel distribution services, challenged the mentioned decision. However, its action was declared inadmissible.

The GC stated that the applicant failed to prove that the capital injections significantly impacted its competitive position, despite other potential factors. Moreover, it ruled that the applicant did not demonstrate that Post Danmark’s benefit from the support scheme was likely to substantially affect its competitive position in the Danish and Nordic postal markets. Therefore, it was not individually concerned by the decision and lacked standing to bring proceedings against it.

For more information, see the [GC’s Judgment](#).

C-490/23 P: The Court of Justice provides further guidance on the statement of reasons in state aid decisions

On 23 January, the Court of Justice (ECJ) delivered its judgment in the appeal brought by Italian airline *Neos SpA* and set aside the judgment of the General Court (GC) of 24 May 2023 ([T-268-21 Ryanair v Commission \(Italy; aid scheme; COVID-19\)](#)).

The General Court had annulled the Commission’s decision on Italy’s COVID-19 aid scheme for airlines ([SA.59029](#)) was based on the finding that the Commission had failed to adequately justify its analysis of whether a specific condition of the scheme related to Rome I Regulation and Article 56 TFEU regarding the payment of a minimum remuneration to employees.

The ECJ set this judgment aside and clarified that, given the extremely large number of provisions and principles of EU law that may be infringed by the grant of aid, the Commission is not required to explicitly address all such provisions in its reasoning, unless they are clearly relevant or infringed, without undermining the effectiveness of the State aid control procedure.

For further information, see the ECJ’s [judgment](#).



C-588/23: ECJ rules on extension of state aid recovery to companies with economic continuity

On 16 January, the Court of Justice (ECJ) has issued a landmark judgment a preliminary ruling case (C-588/23 *Scai v Regione Campania*) that clarifies the scope of national authorities' power to recover state aid in cases involving economic continuity between companies. The judgment, which stems from a dispute between *Scai Srl* (*Scai*) and *Regione Campania* (Italy), addresses whether national authorities can extend state aid recovery obligations to a company not directly identified in the European Commission's (Commission's) recovery decision.

The case arose after the Commission had ordered the recovery of incompatible state aid granted to *Buonotourist*. Following *Buonotourist's* bankruptcy, *Regione Campania* sought to recover the funds from *Scai*, arguing that there was economic continuity between the two entities. *Scai* contested this claim, asserting that it had not been part of the Commission's decision and should not be held liable for the recovery.

The regional administrative court of Campania requested the ECJ to clarify whether EU law prevents national authorities from ordering the recovery of state aid from a different company than the one identified in the Commission's decision. The ECJ confirmed that in case there is economic continuity between the new company and the original beneficiary, national authorities can extend recovery obligations to other companies if the economic advantage from the aid has been transferred due to changes in business ownership or other related circumstances.

For further information, see the ECJ's [judgment](#).

C-547/23 P: Next episode in the Madeira Free Zone saga: Court of Justice confirms Commission decision

On 16 January, the ECJ has upheld the [General Court's \(GC\) ruling](#) in the case C-547/23 P of *Região Autónoma da Madeira (RAM) v. European Commission*, confirming that state aid granted under Regime III of the Madeira Free Zone (ZFM) contravenes state aid rules and must be recovered.

The aid, granted to companies in Madeira from 2007 to 2020, included tax reductions with conditions on job

creation and economic activity. The European Commission found it incompatible aid, including aid to companies operating outside Madeira and insufficient monitoring of job creation. Portugal must now recover the remaining aid, including interest.

For further information, see the ECJ's [judgment](#).

For other recent GC judgments on actions for annulment of the Commission's decision SA.21259 see our PRs [here](#) (on T-702/22), [here](#) (on T-724/22 and T-725/22) and [here](#) (on T-713/22 and T-720/22).

NEWS FROM THE EUROPEAN COMMISSION

Commission seeks feedback on secondary legislation for the Net-Zero Industry Act

On 27 January, the Commission launched four calls for public feedback on secondary legislation relating to the [Net-Zero Industry Act \(NZIA\) Regulation 2024/1735](#).

These rules, consisting of three implementing regulations and one delegated regulation, are designed to support the NZIA's goal of establishing a regulatory framework that enhances the competitiveness of EU industries and promotes technologies essential for decarbonisation. The input received will be used for the Commission's preparation of the final draft acts. After, they will be presented to the experts' groups and comitology committees of the EU countries before the Commission's final approval.

These are the four different calls with their respective deadlines to submit observations:

Call:

[Delegated act on primarily used components under the NZIA](#)

[Implementing Act on strategic project selection criteria](#)

[Implementing Act on main specific components relevant for the NZIA access to markets chapter](#)

[Implementing Act on non-price criteria in renewable energy auctions](#)

Deadline:

20 Feb. 2025

20 Feb. 2025

20 Feb. 2025

21 Feb. 2025



Given the implications of these proposals for the public support that potential beneficiaries will be able to obtain, both at national and EU level, we strongly encourage you to make your voice heard. Clayton & Segura can help you formulate your observations.

For more information see the Commission's [PR](#).

Commission approves Polish aid for chemical company PCC under the Regional Aid Guidelines

On 23 January, the Commission approved aid amounting to EUR 23 million (SA.38330), granted by Poland to the chemical company PCC MCAA Sp. z o.o. ('PCC') for the development of a new plant. The aid was granted in 2012 and 2013 for PCC's investing in a new plant to produce ultra-pure monochloroacetic acid in Brzeg Dolny, Poland. The support consists of two measures: (i) a direct grant of EUR 16 million, and (ii) a tax exemption of up to EUR 7 million. Poland did not notify the support to the Commission as it considered that it was exempted from notification under the [2008 General Block Exemption Regulation](#) ('2008 GBER').

The Commission assessed these measures under the [2007-2013 Regional Aid Guidelines](#) (RAG) applicable at the time of the grant. It concluded that the aid had an incentive effect, encouraging PCC to invest in the disadvantaged *Brzeg Dolny* region. Moreover, the Commission considered that the aid did not exceed the regional ceiling, that market conditions allowed for future growth despite overcapacity claims from complainants, and that the measures' positive impacts outweighed any potential competition distortions.

For more information, see the Commission's [PR](#).

Commission approves EUR 4.06 billion German aid for four Floating LNG Terminals

On 20 December 2024, the Commission approved a EUR 4.06 billion German state aid measure (SA.105137) to support the operation of four Floating Storage and Regassification Units (FSRUs) for importing Liquefied Natural Gas (LNG).

Operated by Deutsche Energy Terminal (DET), the measure aligns with the REPowerEU Plan, which aims to diversify energy supplies and ensure gas security in the EU. Germany chartered the FSRUs during the energy

crisis triggered by Russia's invasion of Ukraine and the cessation of pipeline gas supplies. Located in Brunsbüttel, Wilhelmshaven, and Stade, these FSRUs offer a temporary solution until permanent onshore LNG terminals are completed. The aid compensates DET for operational losses incurred due to high charter costs during the crisis, with safeguards in place to prevent market distortions. The Commission found the measure necessary, proportionate, and compliant with Article 107(3)(b) TFEU.

For more information, see the [PR](#).

NEWS FROM THE EFTA SURVEILLANCE AUTHORITY

Iceland accepts Appropriate Measures to Remove Existing State Aid to waste management company Sorpa

Iceland has committed to eliminate the existing state aid granted to Sorpa, a waste-management company exempt from paying income tax due to its status as a municipal cooperative.

Iceland has formally accepted the measures proposed by ESA and confirmed that they will be fully implemented by 1 January 2027. To comply with the state aid rules, ESA required (i) that Sorpa's activities on the markets for waste management be incorporated into a limited liability company subject to income tax, (ii) a market price is paid for the disposing of non-domestic waste at recycling stations and for the waste transfer and (iii) market terms apply to the utilisation of real estate and equipment related to the operations of the economic activities.

This acceptance makes the appropriate measures legally binding, meaning that any aid granted in breach of these measures will be considered new and incompatible state aid subject to recovery from the date of implementation onwards.

For more information, see ESA's [PR](#)



Postal sector in Norway: ESA opens investigation into alleged state aid to Posten

On 19 December 2024, ESA launched a formal investigation into potential State aid provided by Norway to Posten, the country’s postal incumbent, starting from 2016. The investigation follows a complaint from Helthjem, a post and parcel company owned by three Norwegian media houses, alleging that the aid in question may be unlawful and incompatible with EEA rules, and that it has distorted competition in Norway’s parcel delivery market.

Posten is responsible for providing nationwide postal services under universal service obligations funded through the state budget. ESA’s investigation focuses on the compensation awarded to Posten for these obligations and whether it constitutes state aid. If so, ESA will assess whether it qualifies as new or existing aid and determine its compatibility with the state aid rules.

A summary of ESA’s decision will be published in the Official Journal of the European Union and the EEA Supplement inviting interested parties to submit comments within one month of publication. Clayton &

Segura will keep you updated on this link and can help you prepare comments.

For further information, see the [PR](#).

STATE AID CALENDAR

Upcoming:

- 5 Feb. 2025** GC Judgment T-743/21
Ryanair v Commission (TAP II ; aide au sauvetage; COVID-19)
- 13 Feb. 2025** ECJ Judgment, joined cases C-244/23 P, C-245/23 P, C-246/23 P
Commission v Carpatair, Wizz Air Hungary v Carpatair and Commission, AITTV v Carpatair and Commission
- 26 Feb. 2025** GC Hearing T-784/22
Zásilkovna v Commission
- 27 Feb. 2025** Opinion AG Medina C-59/23 P
Austria v Commission (Paks II)

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Until next time, have a good start to 2025, and don’t forget to follow us [on LinkedIn](#) or contact us at info@claytonsegura.com for your favourite EU state aid newsletter!



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