



Council of the  
European Union

Brussels, 5 November 2020  
(OR. en)

12593/20  
ADD 5

RC 14  
COMPET 534  
ECO 48  
MI 448  
RECH 431  
IND 198  
ENV 686  
REGIO 263  
TELECOM 205  
ENER 405  
EF 271  
TRANS 509  
CCG 44  
AVIATION 202

#### COVER NOTE

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From: Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director

date of receipt: 30 October 2020

To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

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No. Cion doc.: SWD(2020) 258 final

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Subject: COMMISSION STAFF WORKING DOCUMENT  
EXECUTIVE SUMMARY OF THE FITNESS CHECK of the 2012 State aid modernisation package, railways guidelines and short-term export credit insurance

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Delegations will find attached document SWD(2020) 258 final.

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Encl.: SWD(2020) 258 final



Brussels, 30.10.2020  
SWD(2020) 258 final

**COMMISSION STAFF WORKING DOCUMENT**

**EXECUTIVE SUMMARY OF THE FITNESS CHECK**

**of the 2012 State aid modernisation package, railways guidelines and short-term export  
credit insurance**

{SEC(2020) 372 final} - {SWD(2020) 257 final}

## Context and objectives

The current Fitness Check provides a comprehensive policy evaluation of the **State aid modernisation** (“SAM”) reform comprising the following State aid rules: General Block Exemption Regulation, *de minimis* Regulation, Regional Aid Guidelines, Research, Development and Innovation Framework, Important Projects of Common European Interest Communication, Risk Finance Guidelines, Aviation Guidelines, Energy and Environmental Aid Guidelines and Rescue and Restructuring Guidelines. In addition, the Short-term export-credit insurance Communication and the Railway Guidelines also form part of the current evaluation exercise. The present Fitness Check aims at assessing SAM as a whole and not carrying out individual evaluations of the specific rules.

SAM was a reform of EU State aid policy launched in 2012. The Commission considered that a more focused framework for the assessment of State aid measures would allow Member States to better contribute both to the implementation of the Europe 2020 strategy for sustainable growth as well as to budgetary consolidation. The objectives of SAM were threefold: (1) to foster sustainable, smart and inclusive growth in a competitive internal market by means of so-called “good aid” (aid that is well-designed, targeted at identified market failures and objectives of common interest, and the least distortive); (2) to focus Commission's ex-ante scrutiny on cases with the biggest impact on the internal market; and (3) to streamline the rules and provide for faster decisions. In view of these objectives, the Commission revised a number of State aid rules in 2013 and 2014.

The Fitness Check assesses if those **State aid rules are still “fit for purpose”** taking into account the general SAM objectives and the specific objectives of the legal frameworks relevant for the rules under examination (including the developments in legislation since the adoption of SAM). The Fitness Check is conducted with a view to the approaching expiry of some of the rules and the fact that some of the rules were already in place before SAM. Regarding current and future challenges, the current Fitness Check in particular tries to assess the extent to which State aid rules are still fit for purpose in order to support the new political objectives of the Commission, including a European Green Deal, as well as the new Digital and Industrial Strategies, while acknowledging that the information available and part of the analysis predates the more recent policy initiatives and priorities. As regards the COVID-19 crisis, given that these developments are very recent, the present Fitness Check does and cannot evaluate its effects on the rules.

The purpose of the current Fitness Check is to examine the SAM performance against five criteria: effectiveness, efficiency, relevance, coherence and EU added value. This is a retrospective exercise with the aim of establishing what has worked well or poorly, and it compares actual performance to earlier expectations. The findings will serve as a basis for drawing policy conclusions on how well SAM and the rules at stake have been performing, whether SAM is on the right track and if not, why. It will examine whether there is a need for making any changes. The Fitness Check will feed into the revision and update process of the relevant State aid regulatory framework and also determine whether non-regulatory actions (such as advocacy, training, etc.) are needed.

Five external studies and several public consultation activities supported the Fitness Check. Data sources included the State Aid Scoreboard that comprises aid expenditure reported by

Member States. In addition, among others, internal Commission data and DG Competition's case practice supported the assessment.

The main limitation of this exercise stems from the fact that in some of the areas the impact of the SAM rules is not tangible yet. Other major limitations include the difficulty to find available data on all the different topics covered by the rules and the general problem with measuring the impact of State aid rules.

### **Main findings**

The current Fitness Check finds that, overall, the SAM architecture and State aid rules which were reformed under the SAM initiative, are broadly fit for purpose. Certain specific rules may need revision and/or update, including clarifications, further streamlining and simplification, as well as adjustments to reflect recent legislative developments, current priorities, market and technology developments.

The results of the Fitness Check also need to be interpreted in the light of the COVID-19 crisis because future policy-making cannot disregard the imbalances created in the Member States' economies due to it. The fact-finding and assessment were done pre-COVID-19. While, overall, the conclusions of the Fitness Check appear to be sound to the majority of the rules to a large extent, there might be certain areas, such as aviation for instance, where uncertainties due to the COVID-19 crisis concerning the validity of conclusions reached might be more pronounced.

The analysis suggests that SAM as a whole largely met its triple objective and hence is **effective** as a State aid architecture. As regards the General Block Exemption Regulation, while there might still be scope for a further increase of expenditure under the current block-exemption rules in the coming years, in line with the approach to focus on cases with a big impact on competition, the current system also ensures that the Commission keeps examining a limited number of measures involving large amounts which have to be notified. The implementation of the common assessment principles seems to have led to a clearer methodological framework for the various State aid rules contributing to the achievement of the objective of fostering "good aid". In addition, SAM seems to have contributed to a significant clarification of the relevant State aid rules, even though some problematic areas have still been identified.

The individual rules seem to have, to a large extent, also proven to be effective in achieving their specific objectives, even though the present Fitness Check has also revealed various issues that may need further clarification or fine-tuning.

With regard to **efficiency**, the available evidence also suggests that the SAM rules have to a certain extent allowed to decrease administrative burden, albeit there still seems to be room for improvement, in particular with regard to the clarification of certain definitions and concepts. Moreover, the analysis also suggests that the SAM rules, in light of the achieved objective of "good aid", allowed for a more efficient State expenditure. It appears that benefits derive from SAM, not only for public authorities, but also for undertakings and indirectly for consumers. The benefits deriving from SAM, seem to outweigh the costs associated.

As to the **relevance** of the rules, the Fitness Check indicated that the overall SAM objectives are appropriate for meeting the needs within the EU. It also suggests that the objectives of the

individual State aid rules have been to a large extent appropriate for meeting the needs within the EU so far, but that they do not fully reflect recent EU policy developments and Commission priorities for the future, in particular the Green Deal, as well as the Digital and Industrial Strategies. The potential impact and the uncertainties brought by the COVID-19 crisis cannot be evaluated yet. The analysis suggests that the State aid rules under the Fitness Check are to a certain extent adapted to subsequent market developments and technological advances, but further adaptation in specific areas and a certain degree of flexibility may be needed in the future, depending on the specific rule.

As regards **internal coherence**, it appears that the SAM rules form a rather coherent package, albeit some technical alignments may be necessary. Certain SAM provisions, such as on the requirement for transparency and ex-post evaluation of the implemented national measures slightly diverge. The Railway Guidelines and STEC, which predate the reform, should be adapted to SAM.

With regard to **external coherence**, the analysis suggests that the State aid rules under the Fitness Check are to a certain extent coherent with other EU policies and legislation. It appears however that the rules do not always reflect more recent legislative developments after their adoption. New EU policies and legislation stemming from the Commission's priorities, in particular the Green Deal, as well as the Digital and Industrial Strategies, are not mirrored/implemented yet.

Overall the existence of the State aid rules evaluated under the Fitness Check has a clear **EU added value** that is acknowledged by stakeholders as it brings similarities in the design of Member States compensation schemes, reduces administrative costs and provides clarity, stability and predictability.

The assessment in the current Fitness Check suggests that, *overall*, the SAM architecture and State aid rules which were reformed under the SAM initiative, are **broadly fit for purpose**. SAM seems to be largely effective in reaching its triple objective, and in particular, through the objective of “good aid”, State resources are channelled to where it really matters. **There is no need to reform the State aid system of SAM as such.**

However, **the individual rules need revision and/or update**, including clarifications, further streamlining and simplification, as well as adjustments to reflect recent legislative developments, current priorities, market and technology developments.

The rules also need to be aligned to future challenges and Commission priorities. This is in particular important as State aid can, and should contribute to the Green Deal, as well as the Digital and Industrial Strategies. This is key, given the past and, most crucially, future budgetary constraints. In particular, the GBER, Regional aid Guidelines, RDI Framework, IPCEI Communication, Risk Finance Guidelines and the EEAG need to be adapted in the short term, also in light of the new EU priorities. STEC also needs to be revised to align it to SAM. In addition, adaptations of the de minimis Regulation, Aviation Guidelines and Rescue and Restructuring Guidelines are needed in the medium term. The Railway Guidelines are outdated and need a complete overhaul.