

European Recovery and Resilience Facility

What is it and what you should know from a State aid perspective

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Meet the Presenters



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Recovery &
Resilience
Facility (RRF) -
Overview

How will it be
implemented?

How to spot
State aid?

How to comply
with State aid
rules?

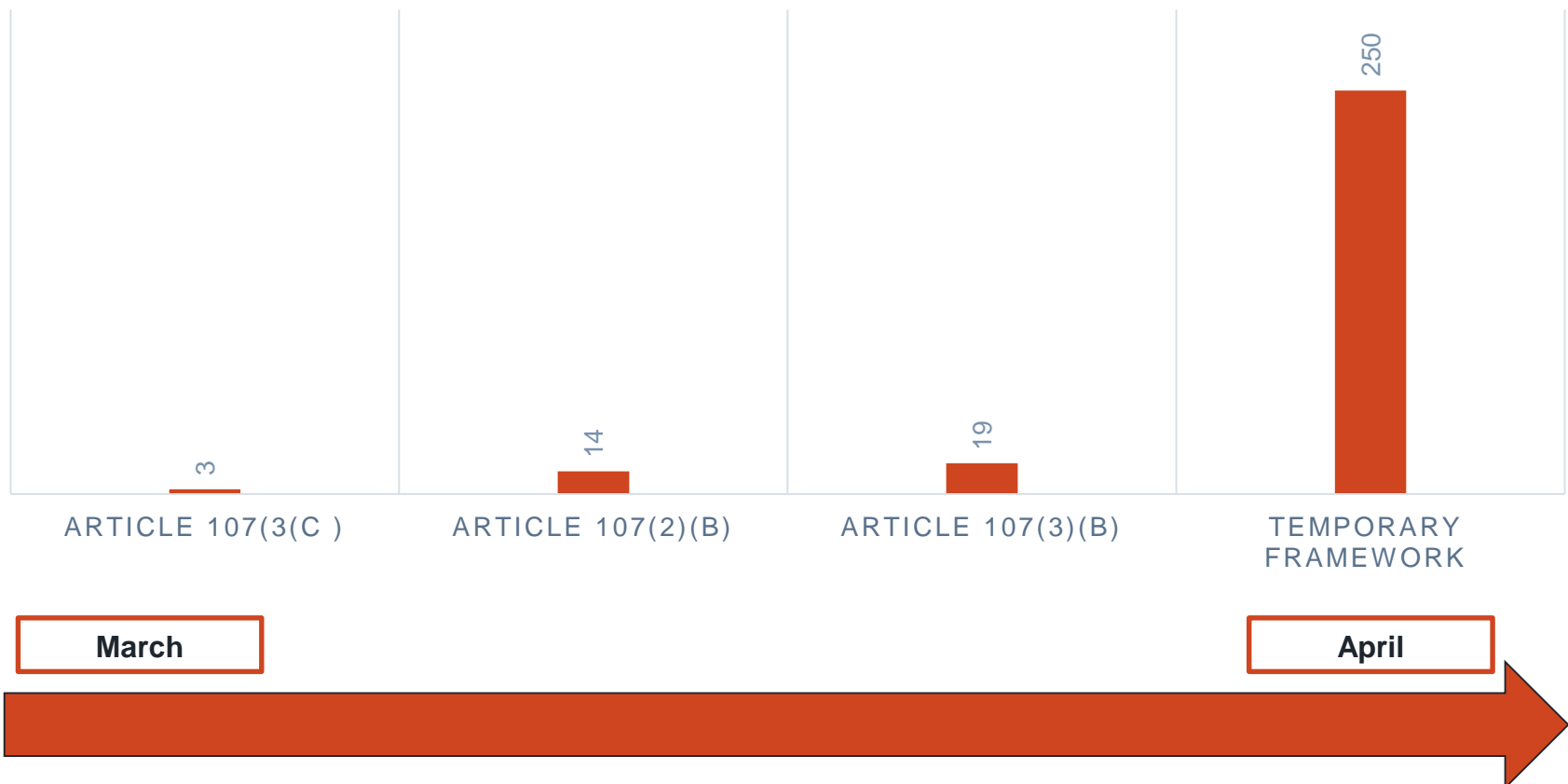
1. Recovery and Resilience Facility

Overview

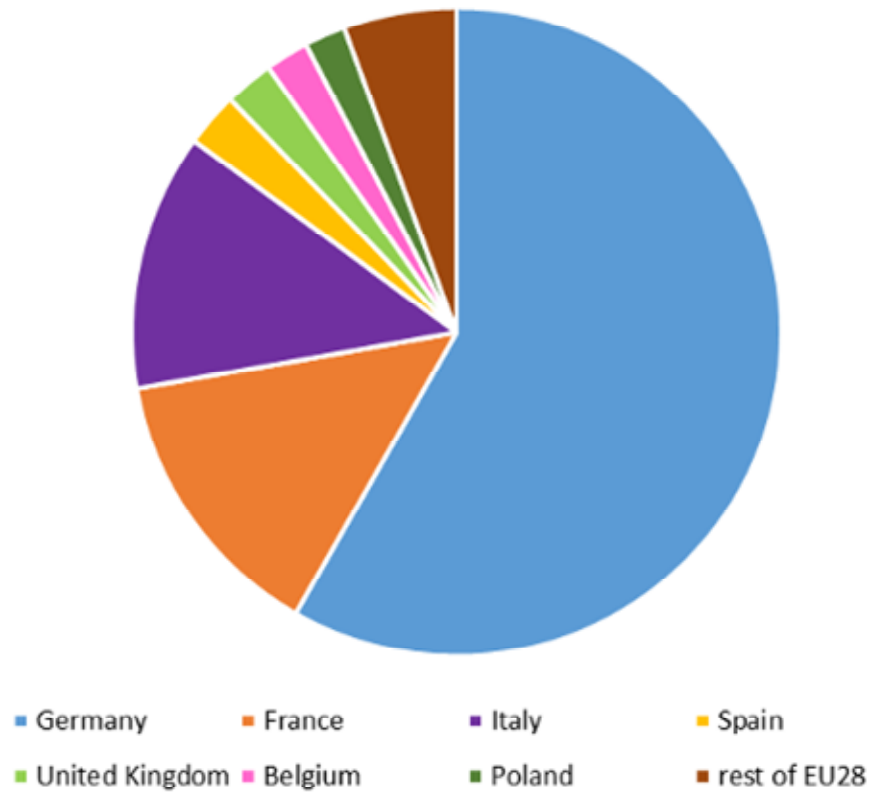


OVER €2.5 BILLION AND COUNTING

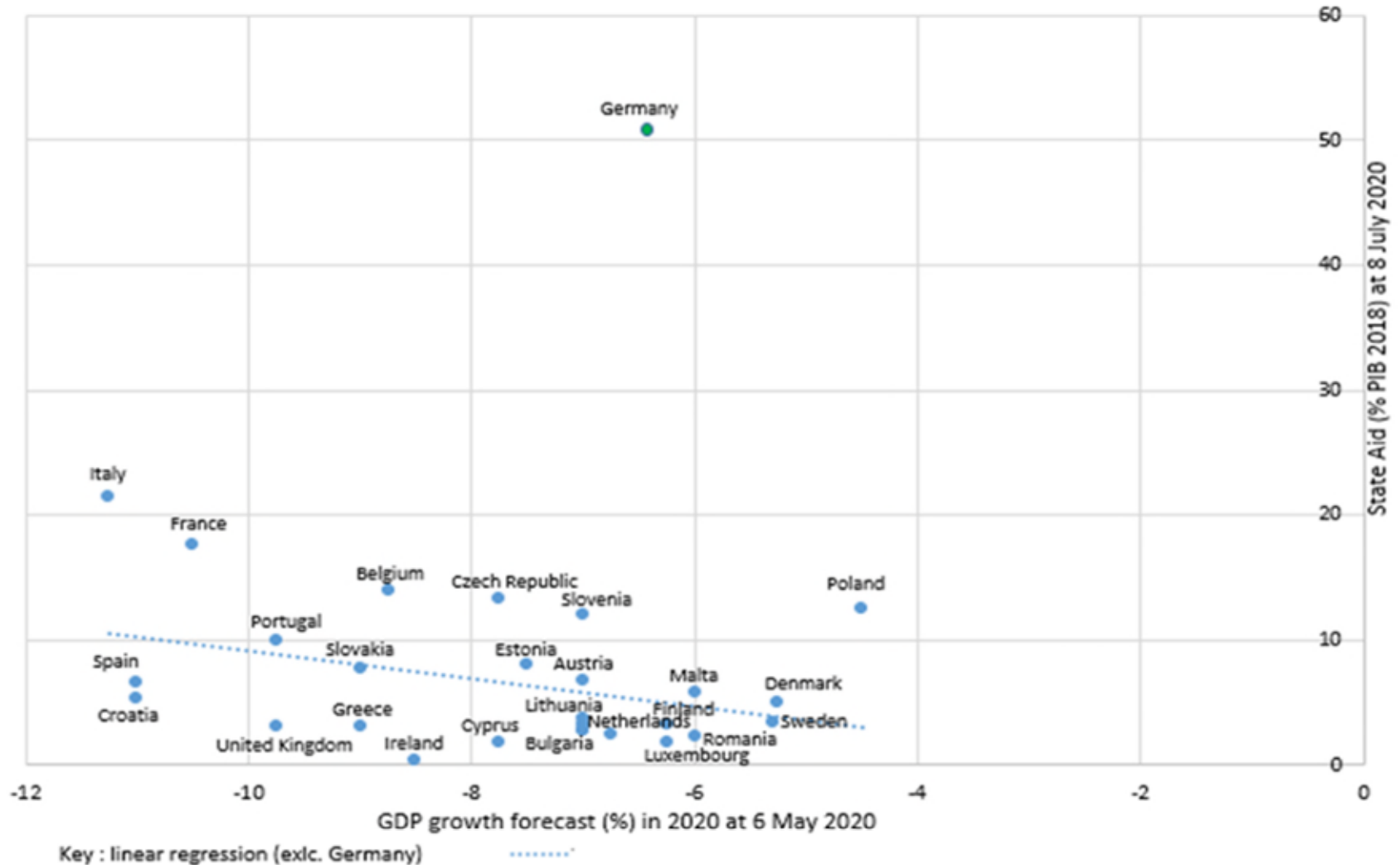
■ Number of State aid measures approved by the European Commission



State aid response to COVID-19 so far (2)



State aid response to COVID-19 so far (3)



RRF: what is it?

In May 2020 the European Commission presented a major Recovery Plan for Europe through the NextGenerationEU (NGEU), a recovery instrument that would raise funds to support financing in EU 27 Member States

FINANCIAL SUPPORT TO BOTH PUBLIC INVESTMENTS AND REFORMS



Built on three pillars:

Instruments to support Member State efforts to recover from the crisis.

Measures to boost private *investment* and support ailing companies.

Reinforcement of key EU programmes to accelerate the green and digital *reforms*.

- **37% for green investments and reforms.**
- **20% for digital investments and reforms.**
- **70% allocated based on population, GDP per capita and average unemployment rate between 2015-2019.**
 - **30% allocated based on loss in real GDP in 2020 and 2021.**

A reform is defined as:

- The action or process of making changes and improvements with significant impact and long-lasting effects on the function of a market, structure of an institution, the administration or relevant policies, such as the twin transition.

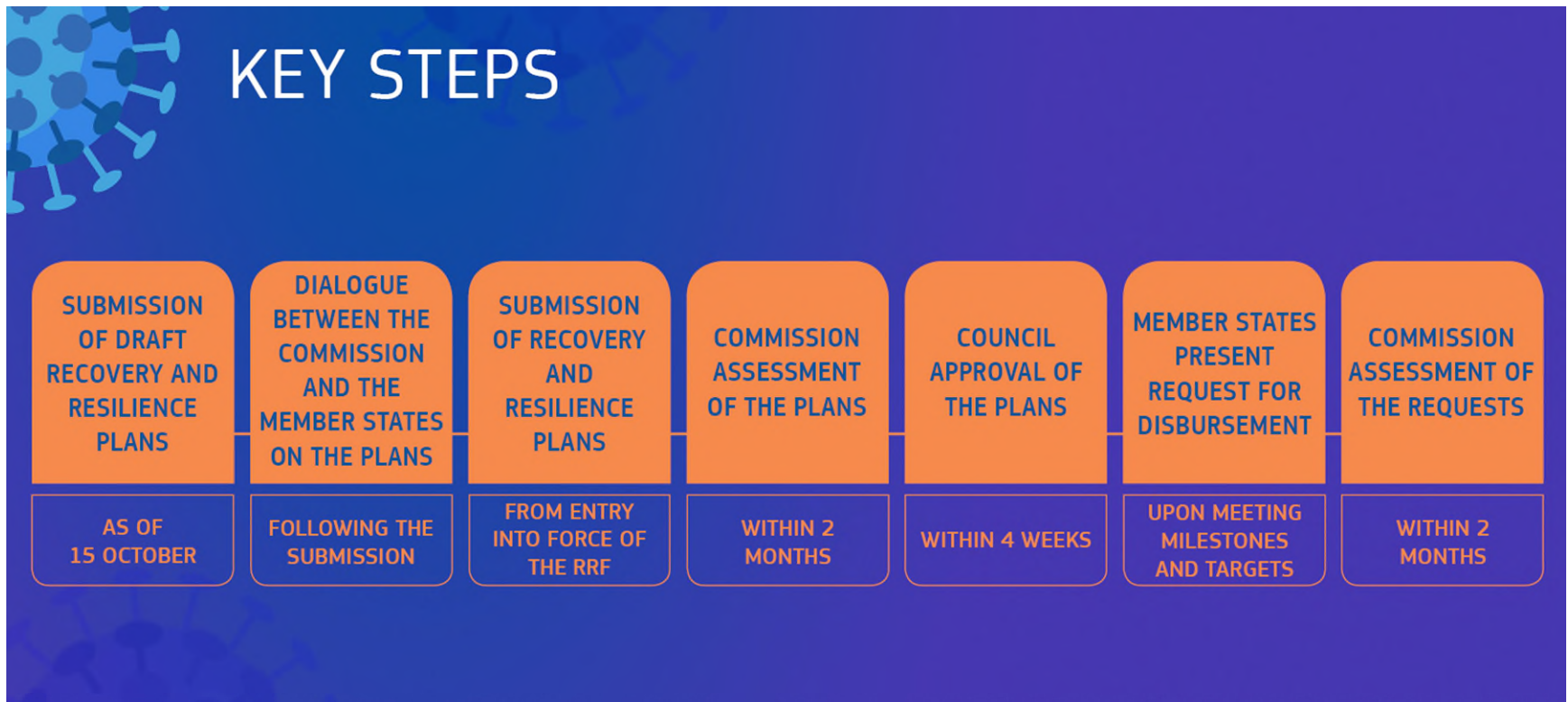
Investment is defined as:

- An expenditure on an activity, project or other action, that is expected to bring beneficial results to society, within the scope of the RFF. The investment can be public or (incentivized) private sector investment.
- **Private investments could be incentivized through public investment schemes, including financial instruments, subsidies and other instruments, provided State aid rules are complied with.**

2. Recovery and Resilience Facility

How will it be implemented?





FLAGSHIP AREAS FOR INVESTMENTS AND REFORMS

POWER UP

CLEAN TECHNOLOGIES AND RENEWABLES

RENOVATE

ENERGY EFFICIENCY OF BUILDINGS

RECHARGE AND REFUEL

SUSTAINABLE TRANSPORT AND CHARGING STATIONS

CONNECT

ROLL-OUT OF RAPID BROADBAND SERVICES

MODERNISE

DIGITALISATION OF PUBLIC ADMINISTRATION

SCALE-UP

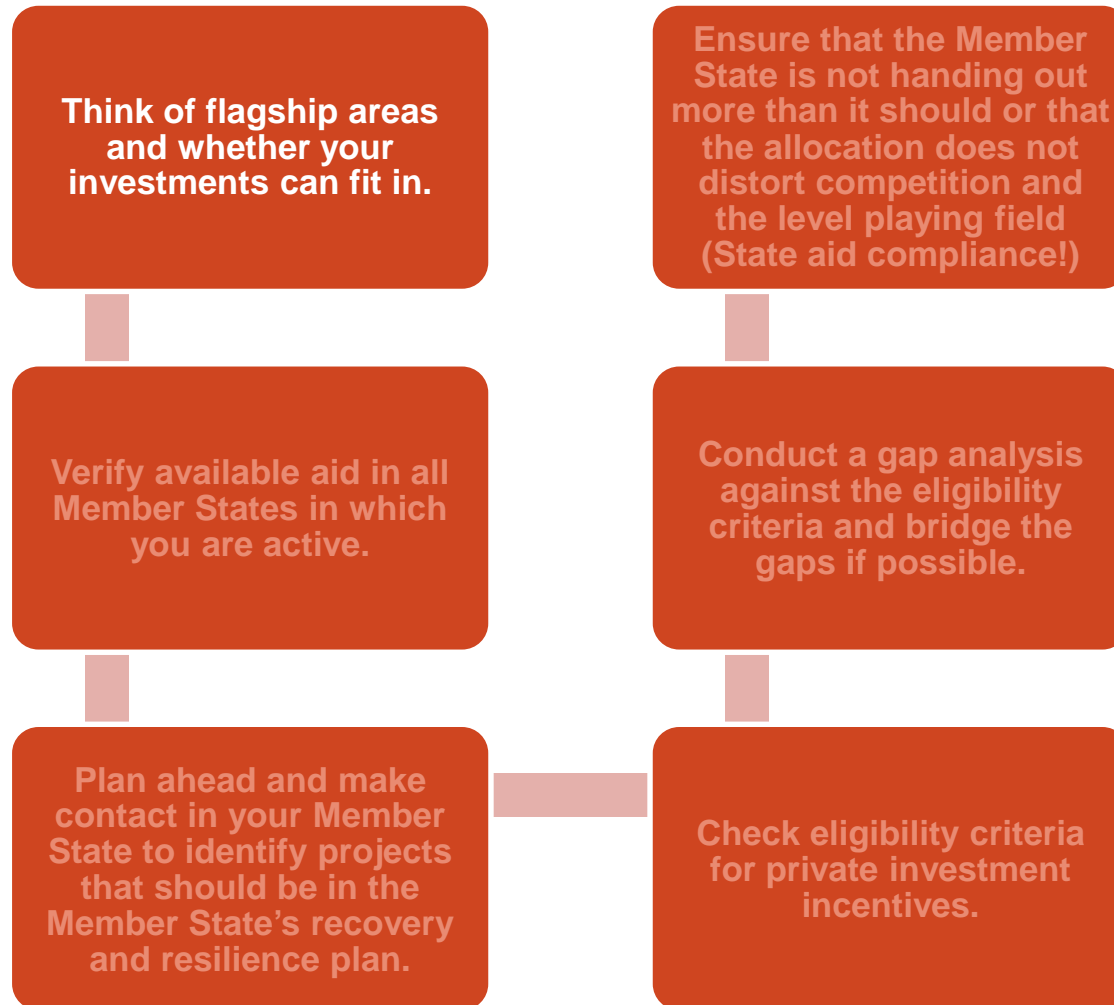
DATA CLOUD CAPACITIES AND SUSTAINABLE PROCESSORS

RESKILL AND UPSKILL

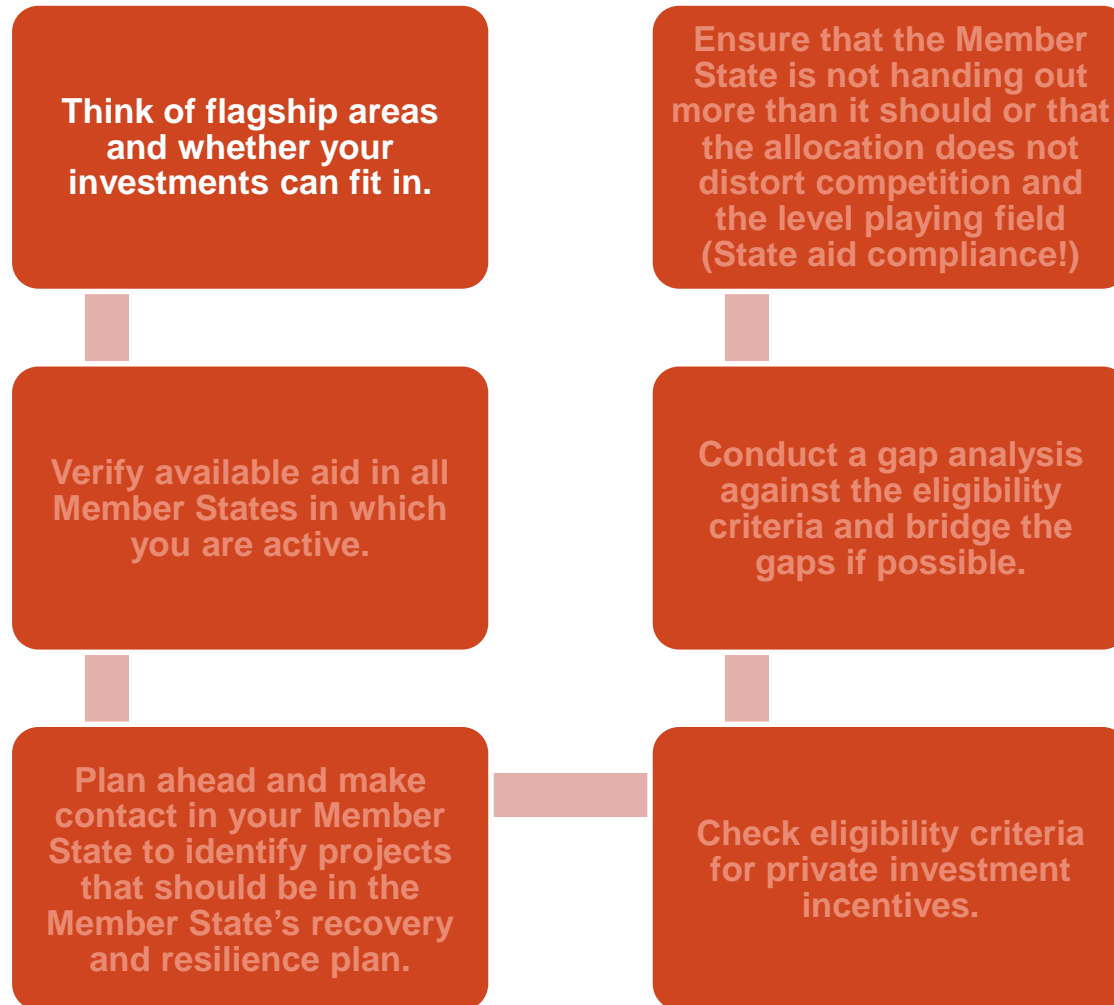
EDUCATION AND TRAINING TO SUPPORT DIGITAL SKILLS

- Investments can take the form of **direct** investments
 - e.g. financing a project with public money.
- Or be implemented in more **indirect** ways, such as:
 - Building renovations to improve energy and resource efficiency,
 - Measures to help digitalise small businesses,
 - Development of research and technology infrastructures or large-scale low-carbon technology demonstrators.
- This can take the form of financial instruments, support schemes, subsidies and other facilities.

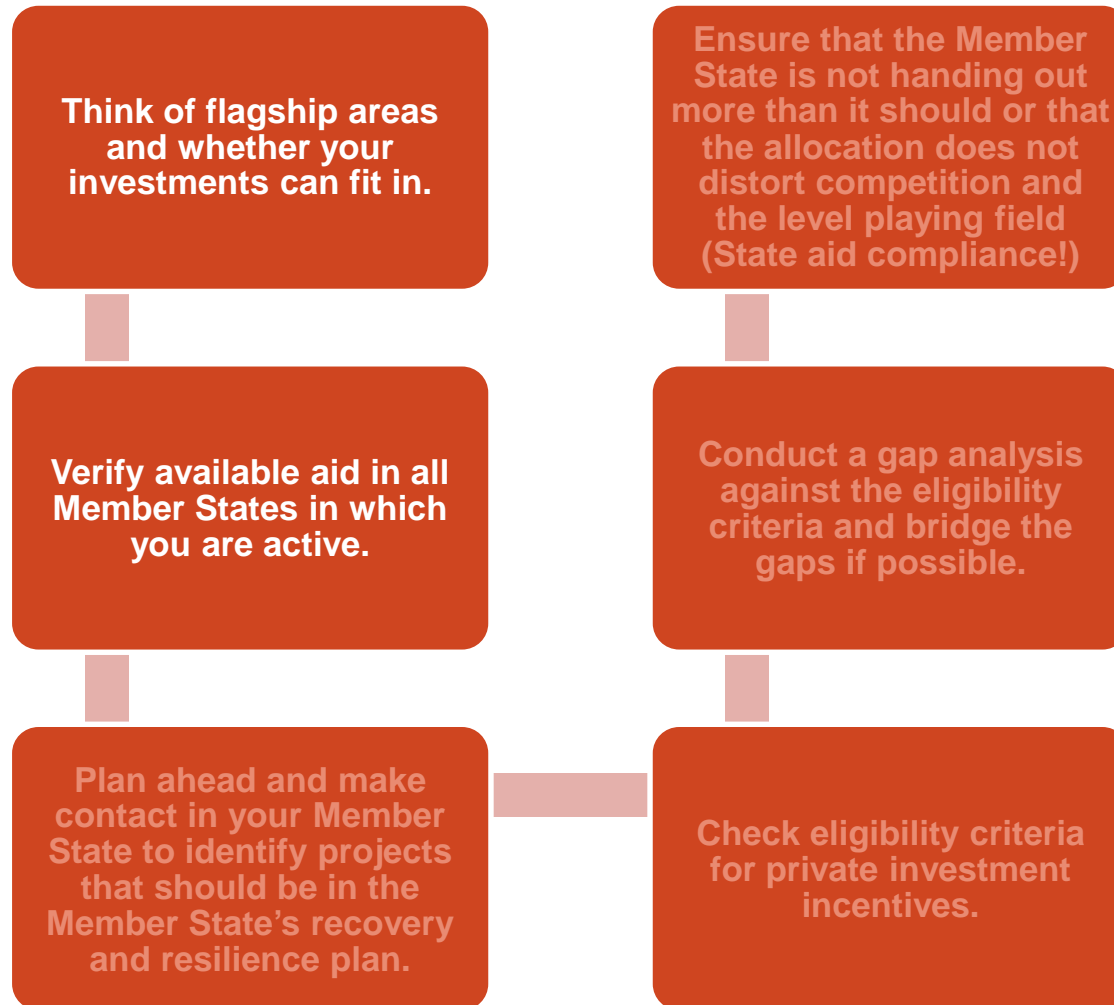
Maximize opportunities for your business



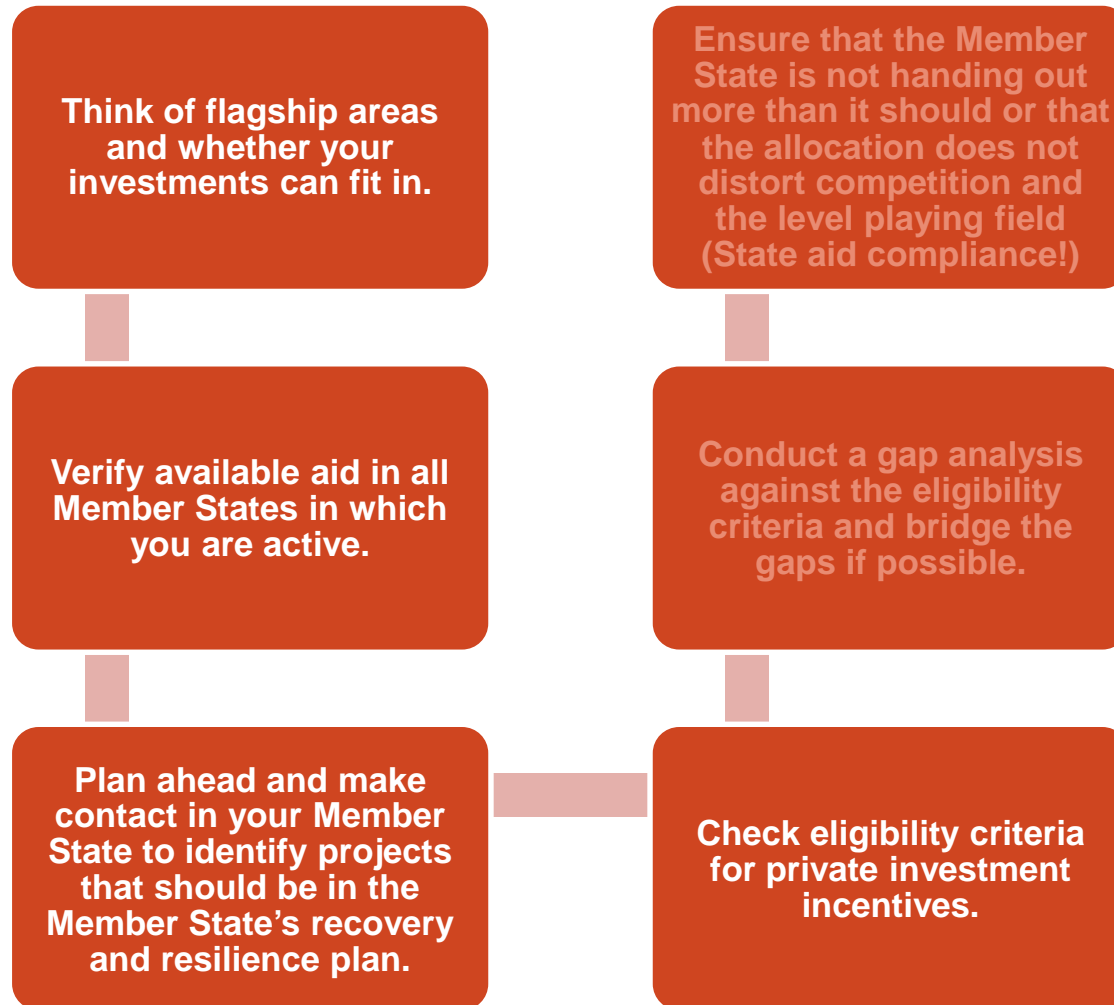
Maximize opportunities for your business



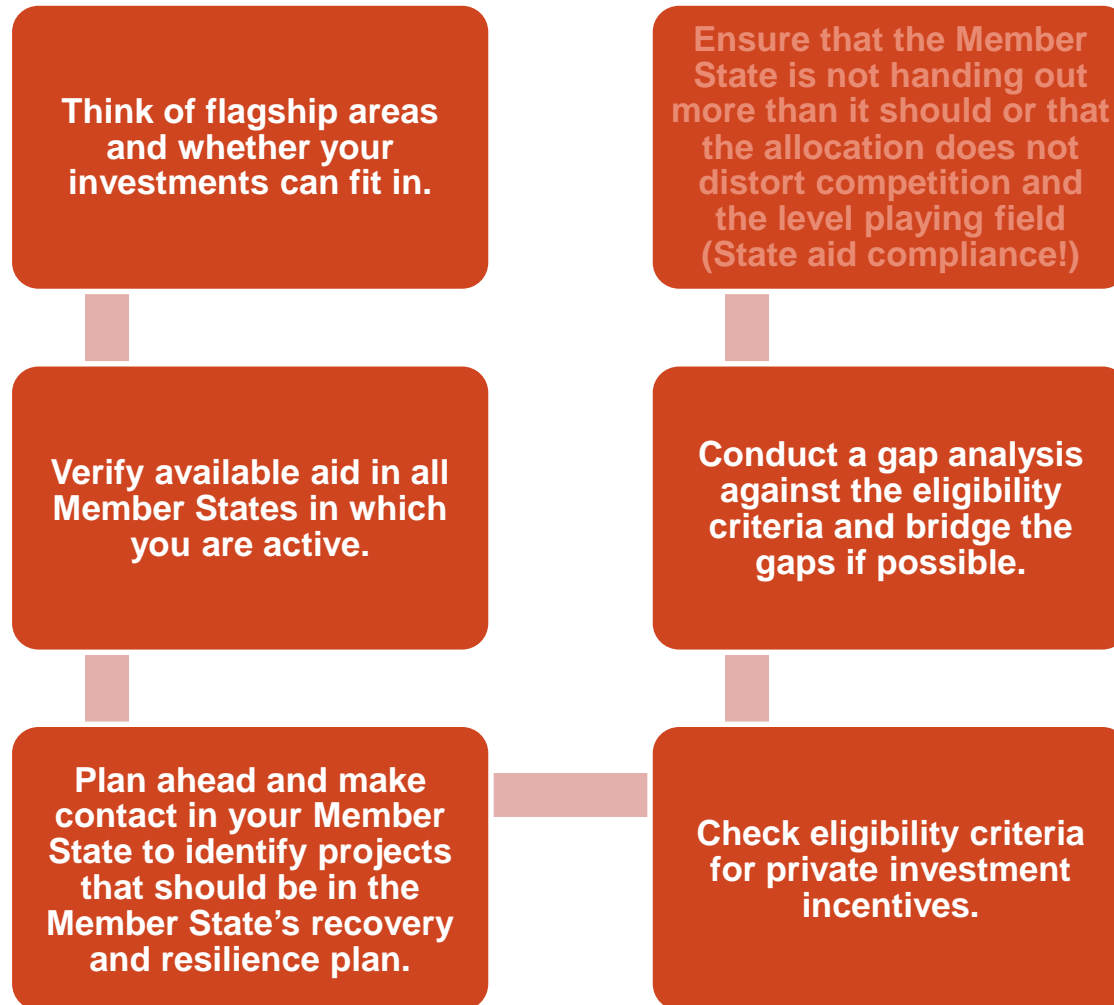
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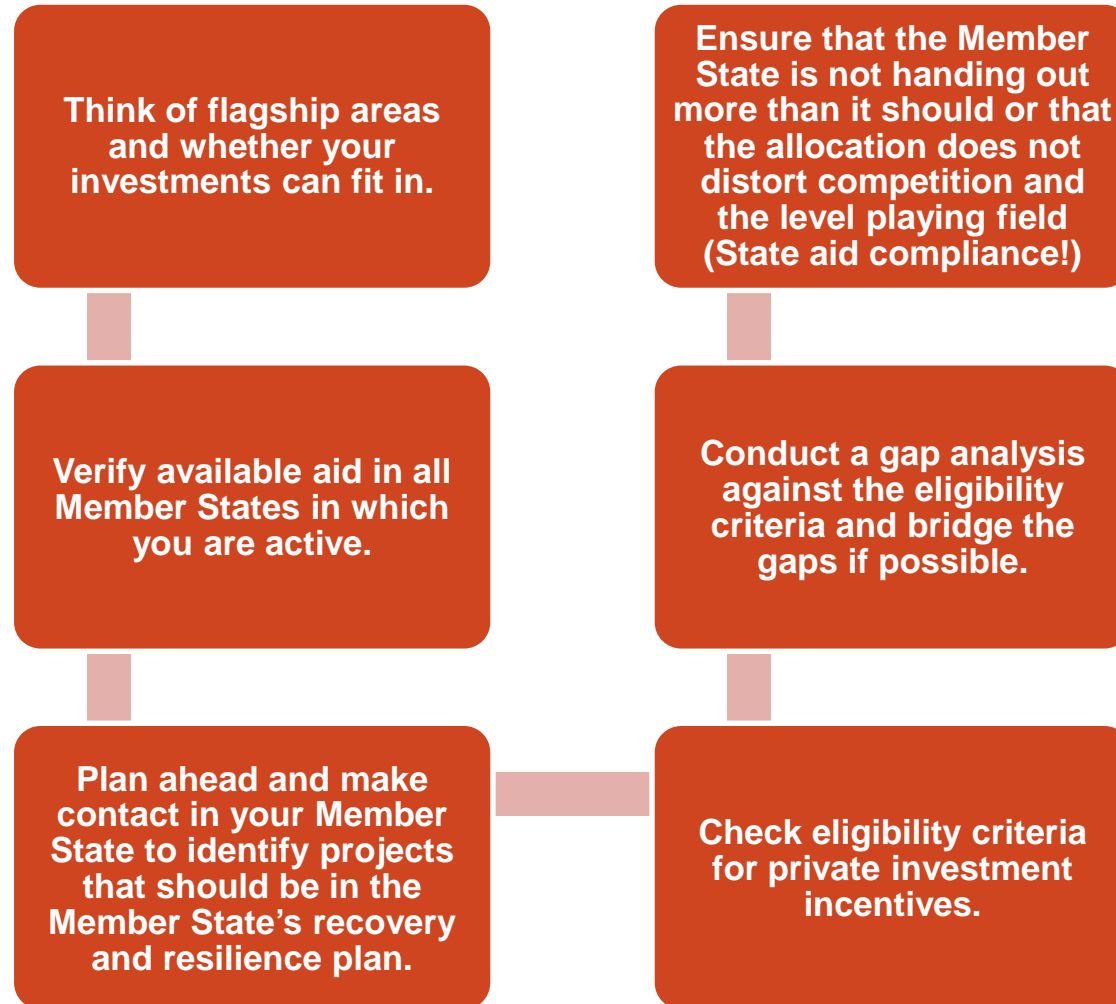
Maximize opportunities for your business



Maximize opportunities for your business



Maximize opportunities for your business



*“Union funds channelled through the authorities of Member States **become State resources and can constitute State aid** if all the other criteria of Article 107 TFEU are satisfied.”*

*“**State aid rules fully apply to the measures funded by the Recovery and Resilience Facility.**”*

*“As a rule, State aid measures must be **notified to and cleared by the Commission before funds are granted**, unless they comply with the conditions of the applicable **General Block Exemption Regulation** declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 TFEU.”*

3. How to spot State aid

What you need to know for the RRF



Why subject to State aid?

Rationale and principle:

- A topic much in the news these days: ensuring a level playing field.
- Unique set of rules in an “internal context”.
- Rules apply to all EU Member States.
- Beneficiary can be forced to repay aid if it does not meet the EU criteria.

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Sword and shield:

- State aid law can be a powerful tool in the hands of a complainant.
- The flip side is that companies need to ensure State aid compliance to avoid having to pay aid back.

What is State aid?

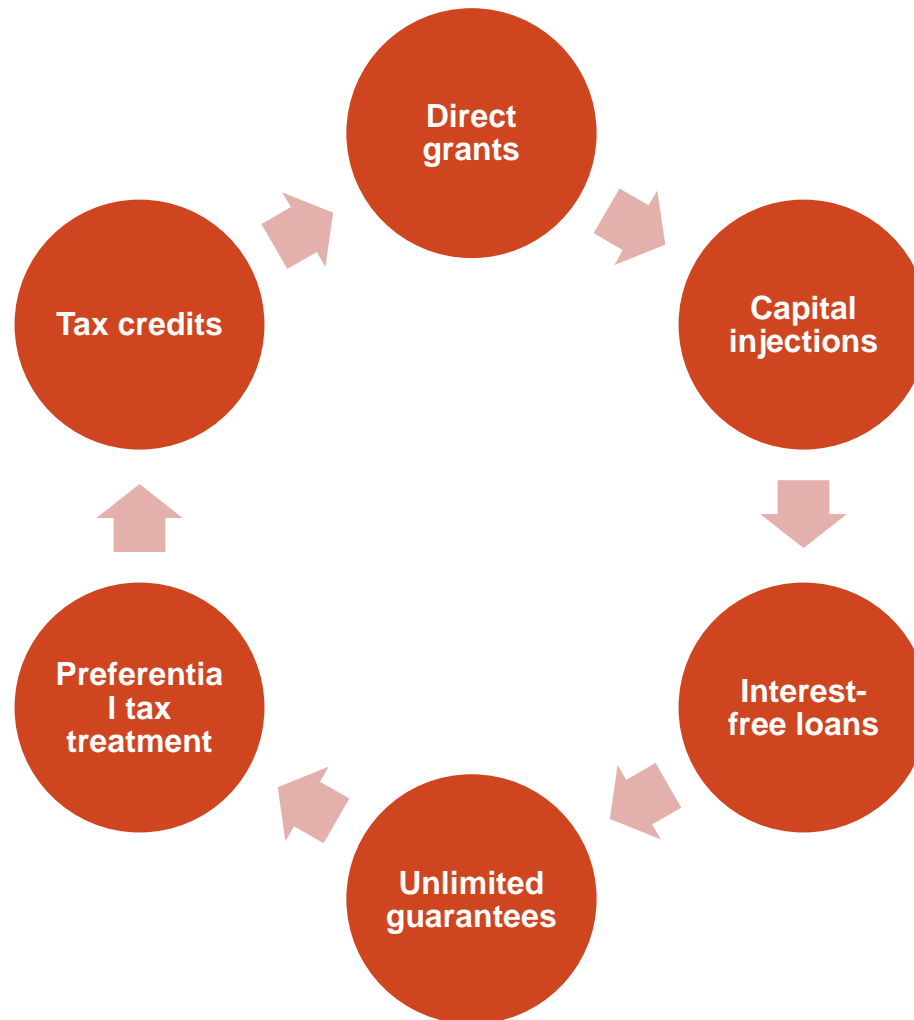


“Aid granted by a Member State or through State resources in any form **whatsoever**”

“that distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods”

“in so far as it affects trade between Member States”

Aid in any form whatsoever



But also:

- A company purchases from the State below market price.
- A company sells to the State above market price.
- State forgives debt in the context of insolvency proceedings.
- Infrastructure built by the State exclusively benefits a company.
- A company wins an arbitral award against an EU Member State.

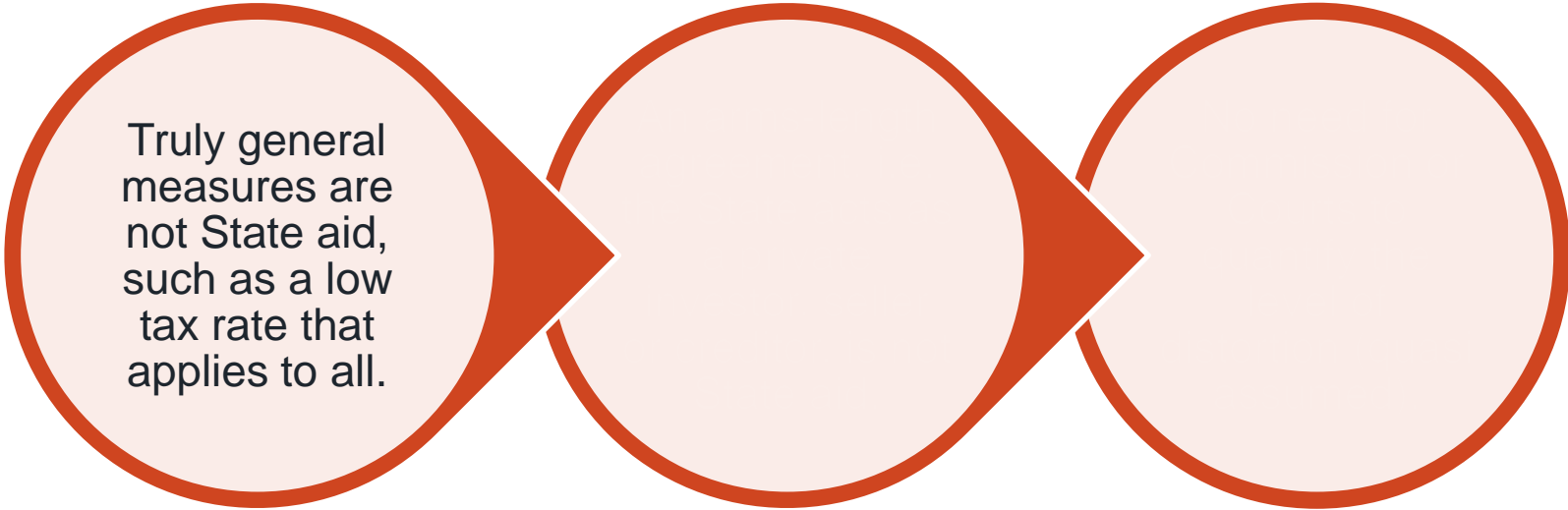
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A very broad net.

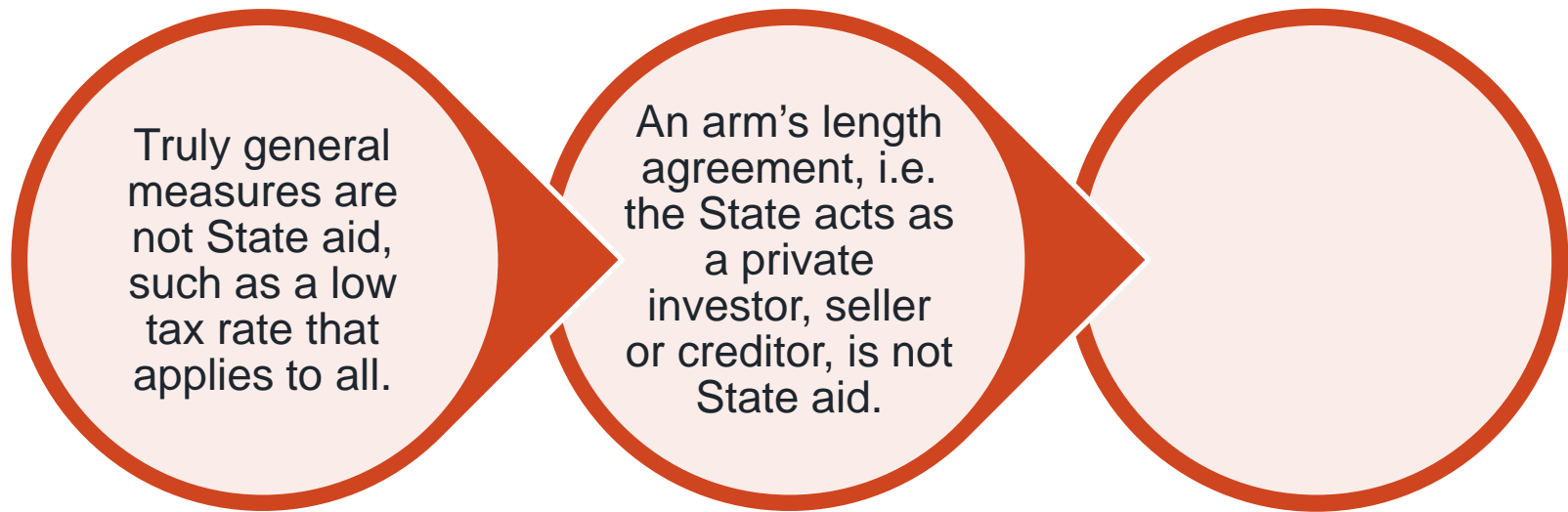
But some exceptions are surprising: a State rule that private users have to pay a fee to a utility may not be State aid because no State money is transferred.

A selective advantage that distorts competition

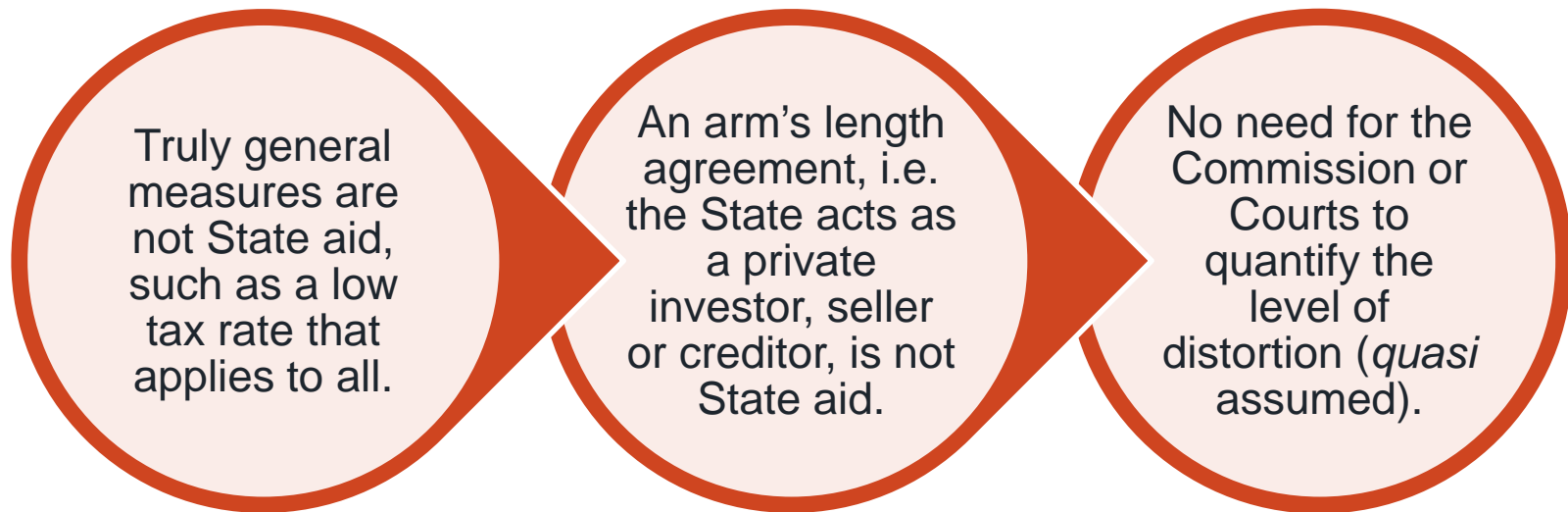


Truly general
measures are
not State aid,
such as a low
tax rate that
applies to all.

A selective advantage that distorts competition



A selective advantage that distorts competition



4. How to comply with State aid rules

What you need to know for the RRF



A measure is State aid. What now?

- First rule: Member States must not grant State aid without first notifying it to the European Commission for approval – unless:

1

It is *de minimis*

- Value of the aid is below €200,000

2

It is exempt from notification

- For example, under the General Block Exemption Regulation (GBER)

3

It comes directly from EU funds

- EU funds granted directly to undertakings are not State aid.
- **NB:** EU funds channeled through national authorities become State resources and may be State aid.

- Certain categories of State aid can be implemented without being notified to the European Commission.
- The Commission has decided that these types of State aid deliver benefits that outweigh any distortions of competition they may cause.
- Member States can implement measures that meet the conditions of GBER without prior Commission approval.

By far the majority of new State aid is implemented under GBER.

In 2018, Member States implemented 1,666 new GBER measures which represented 95% of all new State aid measures.

Total value of 'GBER aid': €45 billion.

What categories of aid does GBER cover?

Regional aid

Aid for SMEs

Aid for R&D&I

Training aid

Aid for
disadvantaged
workers

Environmental
aid

Natural
disaster aid

Aid for
transport in
remote regions

Aid for
broadband
infrastructure

Aid for culture
and heritage

Aid for audio-
visual works

Aid for sports
infrastructure

Aid for local
infrastructure

- The Regulation sets out general conditions that all measures must satisfy and specific criteria for each category of aid, e.g.:
 - Eligible beneficiaries,
 - Maximum aid intensity (i.e., the maximum proportion of costs that can be funded with aid),
 - Eligible expenses.
- Measures that meet all these criteria can be implemented without notification.

What if the Member State does not comply?

- If a measure is State aid, and not exempt from notification, but it has **not** been notified and approved, it was granted **unlawfully**.
- The European Commission or a national Court can order the Member State to stop implementing the aid.
- The aid does not have to be paid back, but it is suspended until it is notified and approved (provisional recovery is possible but rare.)

The worst case scenario: recovery

- If aid was granted unlawfully and it is not approved by the European Commission, it is illegal.
- The Commission will order the Member State to recover the aid.
- Recovery means that the beneficiary pays the aid back to the Member State (not to the Commission).
- Recovery is not a fine: it is intended to restore the market to the position it was in before the aid was granted.
- Recovery will follow an investigation that can easily take 2-3 years.

Facts:

- Your competitor was one of several companies that have been granted exceptional tax relief in Luxembourg.
- Luxembourg did not notify the tax relief measure to the Commission for approval.

Next steps:

- Action before the national court.
- Complaint to the Commission.

National court

- Must suspend the measure if State aid exists.
- May order recovery of any aid already granted.

European
Commission

- Will consider complaint and should make a preliminary examination.
- May open a formal investigation.
 - If not, you can appeal.
- Measure will be suspended throughout the investigation process.
- *Outcome 1*: not aid/approved aid.
 - You can appeal to EU Courts.
- *Outcome 2*: illegal State aid.
 - Aid should be repaid.
 - Member State and beneficiary can appeal.

Facts:

- Romania proposes a new measure to invest State funds in commercial building projects.
- You are interested in using the measure to help build a new manufacturing facility.
- Romania notifies the measure to the Commission for approval.

Next steps:

- You are an 'interested party' during the Commission's review process.

Preliminary examination:

- In principle takes 2 months – in practice, usually longer.
- Has 3 outcomes: no aid, approved aid, or requires further investigation.

Formal investigation:

- In principle max. 18 months – often longer.
- Aid can be approved (in whole or partially); the measure might have to be modified; or the aid can be blocked.

Your rights:

- Limited role during preliminary examination.
- Will receive a copy of the decision to open formal investigation (or not).
- During investigation: will be invited to submit comments; can request meeting with DG Competition; should work closely with the Member State.
- Can appeal a negative decision (prohibiting the aid) to European courts.

Thank you

Global Coverage

Abu Dhabi	Manchester
Atlanta	Miami
Beijing	Milan
Berlin	Moscow
Birmingham	New Jersey
Böblingen	New York
Bratislava	Palo Alto
Brussels	Paris
Cincinnati	Perth
Cleveland	Phoenix
Columbus	Prague
Dallas	Riyadh
Darwin	San Francisco
Denver	Santo Domingo
Dubai	Seoul
Frankfurt	Shanghai
Hong Kong	Singapore
Houston	Sydney
Leeds	Tampa
London	Tokyo
Los Angeles	Warsaw
Madrid	Washington DC

Africa
Brazil
Caribbean/Central America
India
Israel
Mexico
Turkey
Ukraine

■ Office locations
■ Regional desks and strategic alliances

