

The notion of State aid

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Overview

- The 'market economy investor principle'-test
- Who is the beneficiary of aid?
- The 'selectivity' requirement: deposit guarantee schemes

The 'Market Economy Investor Principle' - test



No (functioning) market

- State investment is aid regardless of terms:
 - State forced to step in for lack of market investors
 - Risks too large and too acute to be able to be absorbed by the market
 - Exception: significant private concomitant participation
- Terms of State investment may be relevant when determining aid amount/intensity
- State exit is different: open sale (even at distressed price) excludes existence of aid

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- Modification to previously approved repayment terms
- EU Commission: supplemental measure for the benefit of aid recipient – subject to approval
- General Court: should have tested whether modification passes MEIP test
 - Appeal pending
- If deal with aid recipient exists, and State's position improves/does not deteriorate as a result of modification
 - Compare: Namur NDD – 'alteration of aid' subject to approval only where substantive change in aid
 - Changes between 'rescue' and 'restructuring' package

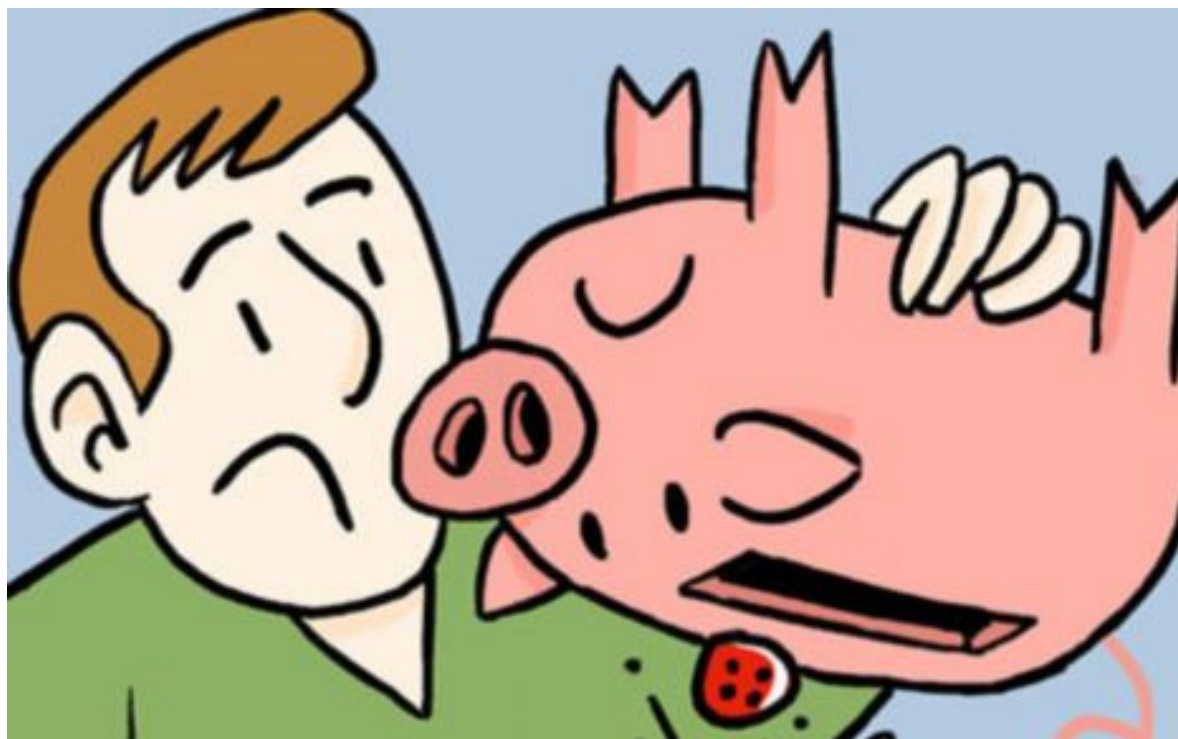
Who is the beneficiary of aid?



Potential beneficiaries

- Distressed bank
 - recapitalisation
 - nationalisation (even if without recapitalisation)
- Bank in liquidation
- Sale of viable activities (after nationalisation)
 - purchaser
 - activities themselves
- Shareholder(s)
 - of nationalised bank (Fortis v. Hypo real Estate)
 - of 'bad bank'
- Creditors?
 - Subordinated debt?
 - Depositors?

The 'selectivity' requirement: deposit guarantee schemes



Not a 'selective' measure

- EU-wide uniform protection of €100.000
- No distortion of competition as between financial institutions
 - Relaxation of existing law
- Scope of deposit guarantee schemes
 - Products generally associated with savings deposits
 - Life insurance
 - Certificates issued by cooperatives

Thank you for your attention

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