SAM: Practically perfect in every way?!

With this first issue of 2015, it seems appropriate to look back and reflect on the events of the previous year. In general, we will probably remember 2014 for Frozen, the Sochi Olympics, turmoil in Ukraine, the World Cup, the outbreak of ebola, increased terrorist threats and the ice bucket challenge. While looking back, many will very likely be humming the catchy tune ‘Happy’ by Pharrell Williams.

For the State aid community more specifically, 2014 was a highly interesting and inspiring year. We have had descriptions such as ‘Scary Times’ and ‘Where is State Aid Law Heading to?’ pointing to some uncertainty in light of the extensive modernisation exercise. SAM certainly was one of the highlights to typify the 2014 State aid scene. Many revised and updated documents saw the light of day and created opportunities for animated debate. Therefore, I would like to reflect on the modernisation process and briefly point to some current concerns.

A wise friend once acquainted me with the saying that growing older does not mean that we (have to) grow up. Some might agree with this statement, while others might not. For some, it could be applicable no matter what they claim. For State aid control, this saying certainly does not seem to hold. The European Commission has done a tremendous effort for what has been called the greatest overhaul of our rules in more than 50 years. In contrast to State aid rules, the saying, at least partly, appears to hold for me. Watching Disney’s Mary Poppins with my godchild during the holidays, my imagination did not seem to have any difficulty in finding numerous similarities.

As the practically perfect governess arrived by means of eastern wind at Cherry Tree Lane, SAM landed in the offices of DG COMP at a moment when change was required. An extraordinary modernisation exercise led to considerable modifications of the rules. The main goal, as described by the Commission, is to foster growth, focus enforcement on biggest impact cases, streamline rules and speed up decision making. Most of the revised documents have been or will be discussed in our ESTAL issues. The part that probably inspired most debate and will cause substantial changes in daily business was the arrival of the new and extended GBER. New categories were added, thresholds as well as intensities were increased and rules were simplified. These modifications are well balanced with monitoring, transparency and evaluation. As an economist, it was exactly this introduction of ex-post evaluation for large schemes, as is mentioned in Article 1.2(a) of the GBER that caught my attention. This again widens the scope for the interplay between law and economics, a most fascinating world. It also constitutes a very welcome change towards a closed policy cycle where evaluation would ideally lead to organisational learning and improved future aid measures. As stated by William Thomson in the nineteenth century: ‘To measure is to know. If you can not measure it, you can not improve it.’ Sound evaluation can both study whether schemes have reached their goals and whether there has been a distortive impact on competition. Important is hence to look at positive as well as possible negative effects of an aid and adapt future measures according to lessons learnt.

It however also means a substantial amount of work/resources for the Member States to take on (or outsource) this important task. Testing for a correlation, but especially for causal effects is not always straightforward. Also, constructing a valid counterfactual (what the situation would have been without the aid) or finding the right control group can be tricky. This triggers the question: Where is the spoon full of sugar to help the medicine go down? It is in efficiencies. The scope of the GBER now allows for most aid measures to be put into effect...
without notification. Furthermore, the Commission strives to work together with the Member States to even increase the percentage of aid measures under the GBER. Numbers in the proximity of 90% have been cited. This should create significant efficiencies for the Member States and companies. In addition, the Commission will be able to focus on most distorting cases. At the same time, this increased use of the GBER potentially creates uncertainties for the undertakings concerned. For example, they have to trust that the government granting the aid rightfully applies the rules. Sound communication and transparency, also towards the companies, is of vital importance. In summary, I would say that every fruitful project needs a proper slogan. ‘Gberise’ without a doubt has a certain ring to it, which can only lead to a known, accepted and extensively used tool.

Now that the wind has turned and SAM has more or less come to an end, we hope that everyone is well prepared to correctly apply the rules and face new challenges. As flying a kite together brings considerable added value compared to flying alone, a joint effort of Member States and the Commission will be necessary to ensure a responsible State aid control, remediating market failures in support of the economy, while avoiding adverse effects. Under the GBER, transparency and monitoring should safeguard us from potential problems. Member States clearly need to ‘step in time’ and apply the rules with the same interpretation and logic in order to ensure a truly level playing field. Obviously, Mary Poppins is never too far away to return when this is deemed necessary.

I am confident that some of the topics mentioned above will, also in 2015, keep the debates going. It will be interesting to see what will come out of the practical experience with all the revised and updated documents. This will provide numerous opportunities for reflection and evaluation by the end of the year. I also especially look forward to the extra attention that will be given in our upcoming issues to the interplay between State aid and tax law which is at the moment high on the agenda and a concern far beyond the world of State aid.

Ending this first editorial of 2015, I would like to express my gratitude towards several colleagues from the State aid community. I thank all contributors and readers of the journal for their vital input and feedback. Thank you to Lexxion’s team, my co-managing editor, Michael Honoré, and the members of the editorial board for the inspiring cooperation.

I am honoured to dedicate my first editorial to Wolfgang Andreae and Andreas Bartosch. Thank you for your confidence and support. It is a privilege to be working together with both of you on this wonderful journal.

Let’s go fly a kite!

Caroline Buts