

STATE AIDS AND ECONOMIC COMPETITIVENESS FROM THE EUROPEAN UNION PERSPECTIVE

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***Abstract:** Forbidden by the Treaty establishing the European Economic Community (EEC Treaty), but permitted in exceptional cases, State aids are constantly under the “eye” of the European executive as regards the granting mechanisms, as well as concerning its monitoring. In order to undertake a more efficient control of State aids, the European Commission has adopted a new Block Exemption Regulation which came into force in 20 days from its publication in the EU Official Journal¹, respectively on 29th of August 2008. In this article I shall present certain aspects of the new normative act.*

***Key words:** State aid, exemption, notification, control, EU, competitiveness.*

From its signing in 1957, the Treaty establishing the European Economic Community is imposing to the Member States and the Community to achieve the economic policy objectives in accordance with the principle of an open market economy with free competition. This is why, any acts or deeds having as scope or as result the distortion of the free competition and thereby potentially leading to the malfunction of the single market, to the creation of disequilibrium or discontinuity in intra-Community rapports – this being also the case of State aid granting – are forbidden.

It is clear that any form of State aid, of public funds subsidy affects the principles concerning the functioning of the market economy. This is why the issue of subsidies and State aids was always heavily debated at international and multilateral level. A good example for an adequate framework for promoting such debates was the commercial multilateral negotiations carried out under the aegis of the former General Agreement on Tariffs and Trade (GATT, 1947) and, more recently, within the World Trade Organization (WTO). As a result, the Agreement on export subsidies and countervailing measures was negotiated under the WTO aegis. By this multilateral agreement, the WTO countries established the necessary disciplines and limits in the field without forbidding certain types of subsidies. Moreover, the WTO countries agreed on sanctioning the breach of these rules by introducing countervailing duties, thereby avoiding the major distortion of competition rules.

As a result, we can affirm that State aids and the related disciplines are not a Romanian or an EU invention, they have an international vocation.

In this context, Romania – as GATT country since 1971 and WTO state from 1995 – has had already assumed in multilateral plan its commitment to observe the provisions and the disciplines of the Agreement, independently from the EU accession process. However, we must not forget how difficult were the negotiations on the competition chapter carried out with the European

¹ European Commission, *Commission Regulation (EC) No. 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty (General block exemption Regulation)*, published in Official Journal of the European Union L 214/9.8.2008, pp 3-48.

Union. These negotiations were among the last ones concluded, thus risking to compromise the accession process, especially as a result of not understanding the need for an adequate application of the very necessary disciplines in the field of State aid.

When these negotiations were carried out intensively, I - as President of the Competition Council - and my collaborators and experts in the field of State confronted many challenges. We had to convince the Romanian authorities to accept the ex-ante control of State aids in accordance with the adopted legislation containing the principles and rules for State aid granting, as well as the related authorizing and monitoring mechanisms, in order for State aid granting to not constitute a form of management or a privatization manner of State-owned companies. Furthermore, the managers of these companies needed to increase their awareness on the fact that it is not a normal practice to remedy the situation by using public funds every time when the companies faced financial difficulties as a result of more or less objective causes. Unquestionably, the most important challenge was to fight the theory heavily embraced by the Romanian society that the EU accession would have led to the elimination of any form of State aid, thus affecting seriously the competitiveness of the Romanian economy.

As an important “actor” on the international market, the European Union could not permit a different approach from the one provided by the multilateral agreements, taking into consideration that it played an active role within their negotiation. Nowadays, we can all agree that the fears regarding the elimination of the State aids were totally ungrounded. Of course, the need for a strict observance of the commitments on State aid assumed by EU and its Member States it continues within WTO continues to be valid.

It’s true, by its new *Strategic Guidelines* in the field of State aid the European Commission insists on “less but more targeted aids”² and not on renouncing them. Therefore, the Lisbon Strategy - aiming at increasing the competitiveness of the European economy so as to move on the first word place - links permanently State aids with competitiveness.

It must be underlined that the this *State aid* concept was interpreted by the European Commission and by the European Court of Justice in a very wide sense, thereby including any public aid granted by central authorities, as well as the aids granted by the local or regional authorities³. Moreover, the aid may be sourced even from private or other bodies directly or indirectly influenced heavily by the State. In the interpretation of the European Commission and of the Community instances, in order for a measure or an economic transaction involving the State to be considered State aid, the following four conditions must be met cumulatively:

- the measure must involve *the use of State resources*;
- the measure must distort or to threaten to distort competition by giving an *advantage for the beneficiary firm /firms, for certain products or regions*;
- the measure must be *selective*;
- the measure must affect the trade between Member States.

The specific State aid procedure forces the Member States to notify any State aid measure that are going to be actually granted only after receiving the authorization of the European Commission.

The State aid reform, which was started after the adoption of the Lisbon Strategy, also envisaged the simplification of the procedures in the process of State aid allocation by extending the State

² European Commission, *White paper on damages actions for breach of the EC antitrust rules*, (COM/2008/165). Luxembourg: EUR-OP*, 2008

³ See also Hirsch Günter (et al.), *Competition law: European Community practice and procedure: article-by-article commentary*, London: Sweet & Maxwell, 2008

aids exempted from the notification obligation and the authorization by the European Commission. In other words, this fact means that Member States may grant State aid faster and thereby reducing the bureaucracy - a profitable aspect mainly for the potential State aid beneficiaries.

As a result, the three regulation concerning the State aids exempted from the notification (job creation, professional training, SMEs) have been replaced by a single exemption regulation⁴, which extends, in the present conditions, the exemption over the following State aid categories:

- a) regional aids;
- b) aids for investments for SMEs and job creation;
- c) aids for establishing undertakings by women;
- d) aids for consultancy for SMEs and for their participation at fairs;
- e) aids under the form of risk capital;
- f) aids for research, development and innovation;
- g) training aids;
- h) aids for disadvantaged persons or with disabilities.

The new regulation do not applies to individual aids and aid schemes where the amounts exceed the following levels:

- a) 7.5 mil. Euro/undertaking/project – for SMEs (small and medium-sized enterprises) investments or employment;
- b) 7.5 mil. Euro/undertaking/project – for investment projects;
- c) 2 mil. Euro/undertaking/project – for consultancy aids for SMEs;
- d) 2 mil. Euro/undertaking/project – for SMEs participation in trade fairs;
- e) For research and development projects and feasibility studies:
 - 20 mil. Euro/undertaking/project/feasibility study – if the project consist predominantly of fundamental research;
 - 10 mil. Euro/undertaking/project/feasibility study - if the project consist predominantly of industrial research;
 - 7.5 mil. Euro/undertaking/project/feasibility study – for all others projects;
 - If the project is an Eureka project the ceiling is set at twice the amount of the first three types;
- f) 5 mil. Euro/undertaking/project - for industrial property rights costs for SMEs aids;
- g) 2 mil. Euro/undertaking/project – for training aids;
- h) 5 mil. Euro/undertaking/project/year – for aids for recruitments of disadvantaged workers;
- i) 10 mil. Euro/undertaking/project/year – for aids to employers to hire disabled persons in the form of salary payment;
- j) 10 mil. Euro/undertaking/project/year – aids to cover additional costs to employers to hire disabled persons.

Simplifying the State aid procedure regulation is a consequence of the need to establish common and harmonized definitions and common *horizontal* provisions⁵. Simplifying the regulation is essential for ensuring the awaited results of Lisbon agenda, especially for SMEs but also to increase the Member States responsibility in the State aid granting process, balancing positive and negative effects and to fulfill the multiplying effect.

⁴ According to: Nicolaidis Phedon, Kekeleki Mihalis, Buyskes Philip, *State aid policy in the European Community: principles and practice*, The Hague: Kluwer Law International, 2008

⁵ See also: Turner Jonathan, *Vertical agreements and EU competition law*, Oxford: Oxford University Press, 2008

The regulation does not apply to any individual aid and aid scheme which achieve its relevant requirements. In the same time, in order to ensure transparency and a more efficient State aid monitoring system, any individual aid granted based on this regulation has to include special mentions referring to appropriate provisions and national legal framework as a support for granting State aids.

Applying this regulation do not exclude responsibility to notify the State aid not covered by this regulation.

Moreover, the regulation specifies the cases when different State aids falling under this regulation can be added. For persons with disabilities, special provisions on adding different State aids must be implemented especially for investments aids.

When this regulation is going to expire (31 December 2013), all State aids schemes exempted based on this regulation, will continue to be exempted for a 6 months period, excepting the regional aids. These will remain valid until the expiration of the already approved regional maps.

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