THE EUROPEAN UNION STATE AID: AN OVERVIEW

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Abstract: *This paper summarizes the economic significance of state aid and the main principles of European state aid control. It starts with a definition of state aid in European context and exceptions to the general ban of state aid. Then they are explored the motives for granting state aid, ranging from the correction of market failures over political motives to political economy considerations. They are described some procedures and coordination of granting state aid, then how state aid control fits into the framework of European competition policy before we comment extensively on the more economic approach to state aid control, as implemented by the European Commission, and the state aid action plan. Control of state aid is of increasing importance in the context of European competition policy in order to maintain a fair level of activity of all enterprises participating in the European markets, regardless of the Member State in which they reside. The theoretical fundamentals of state aid are important to be studied and applied. Were distinguished and described the main approaches in the evolution of economic theories in the field of State aid. Criteria were established to determine the government's actions as state aid and intervention methods analyzed. It is important to think about the implications of state aid at an early stage. Doing so allows assistance to be designed and given more quickly and effectively and avoids potential problems later. A program of assistance that does not follow the rules could be forced to close. Giving state aid illegally could result in the money having to be clawed back with possibly very serious consequences for the recipient. The European Commission monitors and controls state aid in the EU by requiring member states to notify the Commission in advance of proposed state aid in order to ensure compliance. If a European company believes that a competitor is receiving illegal aid then they should complain directly to the Commission on the complaints form. The Commission is obliged under the Procedural Regulation to act on any evidence of potential illegal aid and will therefore take complaints seriously, but all these aspects are described in the present research.*

Keywords: state aid, European Commission, EC Treaty, member state, government support.

JEL classification: F13; F53

1. State aid-general overview and definition

State aid is defined as an a**dvantage** in any form whatsoever conferred on a **selective basis to undertakings** by national public authorities. Therefore, subsidies granted to individuals or general measures open to all enterprises are not covered by this prohibition and do not constitute State aid (examples include general taxation measures or employment legislation).

State or through State resources promotions are selective incentives and may take various forms (e.g. For example grants, interest rate subsidies and tax exemptions, guarantees, government shares in a company or any part thereof, provision of goods and services on preferential terms, etc.). General measures, however, are not classified as State aid because they are not selective and apply to all companies irrespective of their size, location or sector. (Hancher,2012). The definition of State aid is based on the interpretation

of Article 107(1). The rules on State aid concern measures with which the public sector grants aid or other benefits to undertakings. The form of the aid is not significant. The general form of aid is direct aid to the recipient, but e.g. a rent lower than the market price of a real estate is considered aid. Undertakings are defined as entities engaged in economic activities regardless of their judicial form. The characteristics of an aid measure are laid down under Article 107(1). First of all, the case should involve channelling public resources (incl. municipalities and EU funding) to undertakings. In addition, the measure must distort, or risk to distort, competition by favoring the aid recipient. Another requirement of the aid is that it also affects trade between the Member States. The precondition for applying the State aid rules is that all these characteristics are fulfilled.

State aid is basically prohibited under Article 107(1). However, paragraphs 2 and 3 of Article 107 define the exemptions under which aid measures can be authorized. Member States cannot themselves assess the eligibility for aid, but a prior notification procedure is applied. Aid under Article 107 must, as a rule, be submitted to the Commission for approval before its implementation (Article 108(3). Aid granted without prior notification is illegal. In this case the undertaking can be ordered to pay the aid back.

Where a public body provides financial support to an undertaking, it is necessary to consider whether such support constitutes state aid. The EC Treaty declares that state aid, in whatever form, which could distort competition and affect trade by favoring certain undertakings or the production of certain goods, is illegal.(Biondi,2004).

1.1. Conditions for the financial support

Financial support must also meet all these conditions set out in article 107 for it to be considered as state aid:

-The support is granted by the state or through state resources

This includes all public and private bodies controlled by the state. State resources include tax exemptions and also funds not permanently belonging to the state but which the state may direct, such as EU Structural Funds.

-The support distorts or has the potential to distort competition

If the support strengthens the position of the beneficiary relative to other competitors then this criteria is likely to be met. The potential to distort competition does not have to be substantial or significant, and this criterion may apply to relatively small amounts of financial support (Phedon,2008).

-The support confers a selective advantage to an undertaking

a) A benefit to an undertaking, granted for free or on favorable (non-commercial) terms, could be state aid. This includes the direct transfer of resources, such as grants and soft loans, and also indirect assistance - for example, relief from charges that an undertaking normally has to bear, such as a tax exemption or the provision of services, loans, at a favorable rate. Support that targets particular businesses, locations, types of firm e.g. SMEs or sectors will be considered selective. By contrast; general tax measures, such as business taxation, when applied equally to all undertakings fail this test and are not considered as state aid.

b) The State Aid rules only apply in respect of financial support to undertakings, that is to say any entity which is engaged in economic activity. If support is provided to an entity engaged in a non-economic activity, then it cannot be state aid. Therefore, support given to individuals, through the social security system for example, would not be considered as state aid.

Economic activities are those which involve the placing of goods or services on a given market. It should be noted that it is not necessary for the goods or services to be supplied at a profit for them to be economic activities. Also, in determining whether an entity is an

undertaking it is important to look at the activity and not the form, thus public sector bodies and charities would be undertakings in respect of any economic activities that they undertake.(Blauberger,2012).

-The support affects trade between Member States

The Commission's interpretation of this is broad - it is sufficient that a product or service is tradeable between member states, even if the recipient of support does not itself export to other EU markets.(Bartosch,2009)

2. Procedures and coordination

The Commission is authorized under Article 108 of the EU Treaty to control State aid. The underlying principle of the State aid procedures is that the Commission must be notified in advance of all planned aid schemes or of individual aid not belonging to authorized aid schemes (Article 108(3)). For instance, aid granted by municipalities is individual aid outside any aid scheme.(Mihai,2008)

The objective of the notification procedure is that the Commission can verify the compatibility of any aid with the common market. New aid schemes or individual aid cannot be introduced or implemented before the Commission's authorization. Without the Commission's authorization the aid granted is useless, and it can be collected with interest from the undertakings that received the aid. If the responsible authority deems a measure to be State aid subject to Article 107, the measure must be notified to the European Commission. The Ministry of Employment and the Economy assists in matters of interpretation, but each authority is in the end responsible for assessing the State aid nature of a measure.

The aid notification is made in a coordinated manner through the Ministry's Labor and Trade department. During the notification process, the Ministry also acts as the contact link between the national authorities and the European Commission. In preparing aid schemes, the authorities should take into account that the notification procedure takes around 4 - 6 months. The measure cannot be implemented before the Commission's authorization. However, there is no need to make an aid notification, if the case involves *de minimis* –aid or is covered by the general block exemption regulation. The Ministry gives guidelines for procedures concerning the general block exemption regulation. A summary of block-exempted aid measures must be forwarded via the Ministry to the Commission to be published in the Official Journal of the European Communities. The EC Treaty states in particular, the circumstances under which State aid may be allowed. Permitted are: the development of disadvantaged regions, promoting small and medium-sized enterprises (SMEs), research and development (R & D), environmental protection, training, employment and culture. Among the most controversial types of State aid, requiring detailed consideration by the Commission, including rescue and restructuring aid, financial transactions between the state and state-owned enterprises, which include aid and aid to companies in certain sensitive sectors such as steel, shipbuilding and automotive –sector. It is not permitted general investment aid for large companies outside well-defined disadvantaged regions, export aid and aid to cover the operating costs of firms (operating aid).

If a company receives public funds under € 200,000 over a period of three years, this will not be regarded as State aid, since such amount does not affect trade between Member States. This simplification allows the Commission to focus on more important cases. Generally speaking, Member States are required to notify the Commission planned aid prior to their implementation means of a notification. A company which receives government support gains an advantage over its competitors. Therefore, the Treaty generally prohibits State aid unless it is justified by reasons of general economic

development. To ensure that this prohibition is respected and exemptions are applied equally across the European Union, the European Commission is in charge of ensuring that State aid complies with EU rules. The functioning of the internal market depends largely on a level playing field for economic operators. Subsidies that an EU Member State grants individual companies may distort free competition in a particular degree. Under aid not only direct financial assistance to companies, debt relief or subsidized loans are to be understood, but also guarantees, tax incentives or the provision of land, goods and services at special rates. To ensure fair competition in Europe to guarantee the EU Member States have given strict rules, the conditions under which aid is allowed and when not.

Basically, the Treaty on the Functioning of the European Union (TFEU) provides for a prohibition of State aid. However, this aid prohibition does not apply without exception. Aid compatible with the common market may approve the European Commission. For example, support in the field of regional development, labor market policy, environmental policy or research and technology policy can be considered compatible under certain conditions with the common market.

The control of state aid is the sole responsibility of the Commission and is this the right in policy areas where it has no subject matter jurisdiction (e.g. As tax policy, employment policy) to exercise their competition supervision. Therefore, all aid projects must be displayed or notified to the Commission ("notified") and approved by her.(Popescu,2014).

For basic issues of European State aid control policy at the national level, the Federal Ministry of Economy and Energy responsible. The Federal Ministry of Economy and Energy represents the Federal Republic of Germany in most state aid proceedings with the European Commission. Only in the special areas of agriculture, transport and social housing, this task is performed by the Federal Ministry of Food, Agriculture and Consumer Protection and the Federal Ministry of Transport, Building and Urban Development.(Bidilean,2011).

In particular, the responsibilities include the initial registration of individual aid or schemes in the European Commission, support of notification, and - according to European Commission approval of aid measures - the mediation between the Commission and the various national aid donors (federal and state ministries and local authorities) in the implementation of the measure (eg., in the form of annual reports), including any recovery procedures (with negative Commission decision).

3.State aid vs.not state aid

To be State aid, a measure needs to have these features:

-there has been an intervention by the State or through State resources which can take a variety of forms (e.g. grants, interest and tax reliefs, guarantees, government holdings of all or part of a company, or providing goods and services on preferential terms, etc.);

-the intervention gives the recipient an advantage on a selective basis, for example to specific companies or industry sectors, or to companies located in specific regions

-competition has been or may be distorted;

-the intervention is likely to affect trade between Member States.(Dragan,2013).

Despite the general prohibition of State aid, in some circumstances government interventions is necessary for a well-functioning and equitable economy. Therefore, the Treaty leaves room for a number of policy objectives for which State aid can be considered compatible. The legislation stipulates these exemptions. The laws are regularly reviewed to improve their efficiency and to respond to the European Councils' calls for less but better targeted State aid to boost the European economy. The Commission adopts new legislation is adopted in close cooperation with the Member States.

It is important to note that the European Court of Justice has sole competence over what is and what isn't a State aid. The only way we can determine for certain that State aid is present is to notify a measure to the European Commission for legal certainty. However the State Aid Unit is able to provide advice based on case precedents from the European Court, as well as direct guidance from the EC itself.

Table 1: Comparison between state aid and not state aid situation

Likely to constitute State aid:	Unlikely to be State aid:
Grants to firms for investment, research and development, employee training, etc. Loans and guarantees below market rates Free or subsidized consultancy advice Cash injections to, and writing off losses of, public enterprises Sale or lease of public land or property at discounted rates Selectively promoting companies using public funding Contracts not open to competitive tendering Discretionary deferral of or exemption from tax, social security and other payments to the State Legislation to protect or guarantee market share Funding/cash injections to social enterprises and charitable organizations who are engaged in economic activity Public funding of privately owned infrastructure	Aid to individuals, charities, organizations and public bodies not involved in an economic activity Commercial payments for services rendered, where a company is contracted by a public body in accordance with Scottish & EU competitive tendering requirements General measures, which can apply to all firms throughout the European Union, with no discretionary power

Source:Sutter Franz Philipp,*Das EG-Beihilfenverbot und sein Durchfuhrungsverbot in Steuersachen*

3.1. The European legislation in the state aid rules

The European legislation in the State aid field was modified starting with July 1st, 2014 (State Aid Modernization - SAM). Romania, through the Competition Council, along with

Sweden, Germany and Hungary, is part of the board of working group that aims at finding solutions for improving the cooperation both between Member States and cooperation between Member States and the European Commission to apply the new rules in the state aid field, the SAM implementation, State aid assessment, the obligation to ensure transparency in granting state aid, the best practices regarding compliance with the General Block Exemption Regulation. The General Block Exemption regulation consolidates into one text and harmonizes the rules that were previously existing in 5 separate regulations. The European Commission adopted the General Block Exemption regulation on the 29 August 2008, reducing the administrative burden for the public sector, the beneficiaries and the Commission. The GBER covers a range of pre-approved state aid areas that do not require individual approval from the European Commission in advance. Aid granted under cover of the regulation only has to be notified within 20 days of the aid being granted. The regulation authorizes aid in favor of SMEs, research, innovation, regional development, training, employment of disabled and disadvantaged workers, risk capital and environmental protection. The regulation also introduces aid measures supporting female entrepreneurship, such as aid for young innovative businesses, aid for newly created small businesses in assisted regions, and measures tackling problems like difficulties in access to finance faced by female entrepreneurs. Through the European reform in the state aid field, the European Commission wishes to realize itself an ex-post control on how the State aid rules are observed and the State aid facilities to be checked at national level. The European Commission's activities will focus more on complex cases and on the assessment of facilities after being granted and less on ex-ante analysis, therefore, the responsibility of the Member States on granting state aid will increase.

4.In conclusion

State aid is a Member State's financial aid to business which meets all the criteria in Article 1071 (1) of the Treaty on the Functioning of the European Union (The TFEU). Article 107(1)2 declares that State aid, in whatever form, which could distort competition and affect trade by favouring certain undertakings or the production of certain goods, is incompatible with the common market - unless the Treaty allows otherwise. The starting point of European Union State aid policy is that aid given by individual EU Member States to industrial and commercial undertakings is prohibited as incompatible with the Internal Market. This prohibition is not absolute and there are a number of areas where State aid is seen as necessary and fair. A complex framework of EU State aid rules is designed to ensure that such aid is compatible with the needs of the Internal Market. Within the framework set out in the TFEU and Council Regulations made under Article 109 TFEU, the European Commission has a key role in reviewing existing aid and in deciding on plans to grant or alter aid. In exceptional circumstances, the Council may decide that aid is compatible with the Internal Market and thereby block Commission action: however, the requirement for unanimity means that such decisions are made very rarely. The main purpose of EU state aid control is to limit the possible negative repercussions of national state aids on European market integration.

5. Acknowledgements

This paper has been financially supported within the project entitled *„SOCERT. Knowledge society, dynamism through research",* **contract number POSDRU/159/1.5/S/132406. This project is co-financed by European Social Fund through Sectoral Operational Programme for Human Resources Development 2007-2013. "**Investing in people!**"**

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