

CONCERNS REGARDING THE ASSISTANCE OF STATE

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Abstract: *The assistance of state represents a new juridical institution in the Romanian legal system and it belongs to the administrative law branch. As a result of Romania's integration into the European Union, the Romanian state is obliged to implement and apply the communitarian law in order to put into force the European rules regarding the assistance of the state. According to these regulations, the economic agents have no access anymore to tax exemption and delaying payment of their budgetary flow rates. Thus, there are no longer permitted advantages of any kind in the favor of the economic agents excepting the measures referred to in the specific laws.*

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1. The role of state aid in the treaty establishing the European Community

The state aid supports the internal market, prohibits the granting of illegal subventions or of other competitive advantages. It completes the provisions on competition between undertakings stipulated by the Treaty Establishing the European Community, further referred to as the EC Treaty.

It is admitted that distortion of competition is justified under certain circumstances, when serving a general interest, for example in disadvantaged regions or in order to compensate the negative effects of an economic crisis.

2. The advantages of filing legal actions in national courts

A legal action in national courts means enforcing coercive measures, interim ones included. The plaintiff only has to show that the measure in question represents state aid granted without Commission support. Also, national courts can decide the awarding of compensations – damages.

The complaints falling under the incidence of European legislation are combined with those under national legislation.

3. Art.87 (1) of the EC Treaty

“Save as otherwise provided in this Treaty, any aid granted by a Member State or through State

resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the common market”.

4. Art.87 (1) of the EC Treaty – Conditions

Aid is provided by the state or financed from state resources.

“The concept of aid is thus wider than that of a subsidy because it embraces not only positive benefits, such as subsidies themselves, but also interventions which, in various forms, mitigate the charges which are normally included in the budget of an undertaking and which, without therefore being subsidies in the strict meaning of the word, are similar in character and have the same effect” – Case C-387/92 Banco Exterior de Espana.

The limitations of state aid definition – “ In this case, the obligation imposed on private electricity supply undertakings to purchase electricity produced from renewable energy sources at fixed minimum prices does not involve any direct or indirect transfer of State resources to undertakings which produce that type of electricity. Therefore, the allocation of the financial burden arising from that obligation for those private electricity supply undertakings as between them and other private undertakings cannot constitute a direct or indirect transfer of State resources either.

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In those circumstances, the fact that the purchase obligation is imposed by statute and confers an undeniable advantage on certain undertakings is not capable of conferring upon it the character of State aid within the meaning of Article 87 (1) of the Treaty” – Case C-379/98 *Preussen Elektra*.

The granting of aid favours certain undertakings or the production of certain goods.

Advantages resulting from granting of aid are: this concept refers to an individual undertaking at the discretion of the provider of state aid (case 241/94 *France vs.the Commission*), to a sector (that may cover an entire industrial sector or certain types of undertakings – case C-200/97 *Ecotrade*) or to undertakings of a certain region.

Situations in which no advantage can be granted: compensations for providing mandatory financial public services (case C-280/00 *Altmark*), the market economy investor principle (case T-228/99 *Westdeutsche Landesbank*), acquisitions by public auctions, the internal logic of the fiscal system (case C-487/06P *British Aggregates Association*).

The concept of undertaking – “in the context of competition law the concept of an undertaking encompasses every entity engaged in an economic activity, regardless of the status of the entity and the way in which it is financed” – case C-41/90 *Hofner& Elser vs.Macroton GmbH*.

Aid distorts or threatens to distort competition.

It is allowed to start from the presumption that any public aid granted to a company distorts or, when the aid has been only proposed and not yet approved, threatens to distort competition – extraordinary situations excepted (for example the absence on the common market of identical or substitutable products to those created by the recipient of the grant. – Case 730/79 *Philip Morris vs. the Commission*.

“when state financial aid strengthens the position of an undertaking compared with other undertakings competing in intra-community trade the latter must be regarded as affected by the aid” – Case 730/79 *Philip Morris vs. the Commission*.

Aid up to 200,000 Euros granted to an undertaking for a 3 year period – exceptions: the coal sector, firms in difficulty, aid tied to the use

References

1. Official Journal of the European Communities, *The Consolidated Treaty Establishing the European Community*, no. C325/33/2002.

of domestic over imported goods, or the acquisition vehicles by transport companies.

5. Art.87 (2) and (3) and art.86 (2) of the EC Treaty

The disposals stipulate upon situations in which the aid is compatible with the common market: aid to make good the damage caused by natural disasters or exceptional occurrences.

The situations in which the Commission may approve the granting of aid are: to remedy a serious disturbance in the economy of a Member State, regional aid for environmental conservation, culture, R&D (research and development), training, etc, services of general interest.

6. The requirement of notification of the commission

Art.88 (3) of the Treaty and art.2 and 3 of the Procedural Regulations require the Member States to inform the Commission of any plans to grant or alter state aid, and to not implement such prior to approval by the Commission – Case 120/70 *Loren vs. Germany*.

7. Role of the national court and coercive measures

The role of the national court is to protect the rights of the individuals and of the companies resulting from the provisions of art.88 (3) of the Treaty that has a direct effect, and not to grant a state aid unless approved by the Commission – Case C – 454/90 *FNCE*, Case 120/70 *Lorenz vs. Germany*.

The national court may ask questions like that has there been a state aid granted in the sense of the definition given in art.87 (1) prior to approval by the Commission.

National courts need to guarantee individuals or legal entities who may invoke such a violation that all its consequences will be taken into consideration according to national legislation, regarding both the validity of the measures for granting the aid and the recovery of the financial support granted by violation of this provision or of possible provisional measures.

2. Block Exemption Regulation 800/2008 for certain categories of aid.
3. Commission Decision of 28 November 2005 regarding state aid.