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STATE AID WITHIN THE FRAMEWORK OF COMPETITION POLICY (THE EXPERIENCE OF THE EUROPEAN UNION)

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The urgency of the discussed issue is caused by a particular importance of a supranational control of the state aid to enterprises participating in the European markets. The European Union's experience is important to be studied and disseminated.

The main aim of the study: *to justify the need to establish the control over state aid 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 methods used in the study: *historical and comparative methods, case-studies, content analysis.*

The results: *the author has distinguished and described four main phases in the evolution of law and policy in the field of State aid of the European Union. The criteria were established to determine the government actions as state aid and intervention methods were analyzed. The paper describes the main steps to assess the impact of state aid and the steps in the field of application of the legislation in the Republic of Moldova.*

Key words:

Competition policy, state aid, intervention methods, harmonization of competition law.

Introduction

European Union policy in the field of competition is one of the pillars on which the economy of the European area rests; the latter is built on the principle of «market economy with free competition», under the Treaty on European Union. In this context, State Aid monitoring has an important role in the competition policy of the European Union. Thus, since the signing of the Treaty of Rome in 1957, the policy on the state aid is an integral part of competition policy and the European Commission is responsible for the prevention of undue distortions of competition through the provision of the state aid by the Member States. The unique experience of EU state aid serves the success of its application in other partner countries.

State Aid: main concept

The control over the state aid is necessary for maintaining equity in the activities of all companies operating in the European market, regardless of the Member State in which it is. State aid measures, which provide selective unjustified advantages to certain enterprises, prevent or constrain the market power of the most competitive enterprises, reducing the common European competitiveness. Such measures may lead to market power in certain companies, for example, when an enterprise that does not receive state aid (for example, non-resident companies) have to reduce their presence in the market, or when state aid is used to erect barriers to entry into the market. Consequences of such a distortion of competition are the most tangible for consumers who may be faced with higher prices, lower quality and reduced number of new products.

In the first half of the 80s there was a crisis of the old industries, such as steel, chemicals and textiles. The restructuring process has become inevitable. So-

me governments immediately began to assist those dying industry through massive investment flows as a temporary incentive. This assistance has had a strong distorting effect on competition; in the second half of the 80s subsidies have been substantially reduced and have been mainly aimed at the promotion of research and development.

Since the signing of the Treaty of Rome in 1957, the state aid policy is an integral part of competition policy, and the European Commission became responsible for the prevention of undue distortions of competition through the provision of state aid by Member States. The control of state aid is of particular 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. State aid measures, which provide selective unjustified advantages to certain enterprises, prevent or constrain the market power of the most competitive enterprises, reducing the common European competitiveness [1].

Supervision of state aid in the European Union is based on the so-called system of «prior authorization». The procedure involves, first of all, pre-notification, namely, that the Member States are obliged to inform the European Commission of any plan of state aid provision and are not allowed to provide it as long as they do not get permission from the Commission. Under the provisions of the Treaty on the Functioning of the European Union, the European Commission primarily, assesses aid declared for its compliance or noncompliance with the state aid under Article 107 (1). If the measures are qualified as state aid, the Commission examines whether the aid falls under clause (Article 107 (2) or 107 (3)). If a State hastens to provide state aid, without notifying the Commission and without obtaining its permission,

such assistance will be immediately considered «illegal». However, the Commission will analyze the compatibility of aid with the common market. In case of incompatibility, it will issue a decision to recover from the recipient the equivalent amount of the appropriate assistance.

Here there are some of the most important reasons for the implementation of supranational control of state aid in the European Union [2–8]. Firstly, it comes to cross-border externalities. They arise when national authorities do not take into account the negative effects of their intervention to other European countries. For example, let us consider a situation when state aid to rescue and restructure is provided to a company in a difficult position, which produces goods sold outside the country in the markets of other countries of the European Union. Let's suppose that this industry is also in decline, leading some manufacturers to a forced exit from the market. The course of exit from the market depends on the firm ability to survive as long as possible in the relevant industry [7]. The decision of the authorities to provide some aid to a company in this market will distort the course of exit, which will lead to the accelerated exit from the market of the foreign competitors.

In a perfectly competitive environment, the state aid granted to companies, will have an impact on the profit of the firm, but will not change the level of competitiveness of the market. In an imperfectly competitive environment, the price level rises, and the amount of goods of foreign manufacturers in the market drops.

If a product which is a result of the state aid is not exported to the markets of other member countries, but remains in the country of origin for consumers, the prohibition of the state aid can have a positive effect in the future to improve the social welfare, if the price of the state aid is sufficiently large, and the goods are replaceable [4].

Despite the existence of negative externalities between regions, the state aid at the level of integrated economy can have a very beneficial effect on attracting foreign investment and, consequently, on the efficient allocation of capital between the regions, bringing economic benefits to the region concerned.

Accordingly, the negative externalities are an important reason for the supranational control of the means of state aid in the European Union, especially to prevent agreements on state aid, which can cause negative externalities in relation to other countries without sufficient positive results for the domestic economy [5].

Domestic market is another reason of the supranational control of the state aid in the European Union, and that is because it is one of the pillars of the European economy, and the level of the European market integration determines the degree of economic progress, which can be achieved only increasing competition [9]. State aid may be a barrier in this sense, primarily because it can have negative consequen-

ces for other member countries, but also because it leads to a distortion of competition between enterprises, affecting the effective functioning of the European market mechanisms. Supranational control of the state aid can be regarded as a mechanism to ensure compliance with the general principle, namely the principle of the European market. In fact, the implementation of supranational control of the state aid, as well as the principle of the common market, has one goal – to ensure the free flow of goods and services in conditions of a normal competition [2].

The basic condition for approving the state aid in the European Union is to achieve a common European interest. In this case there is a question about how, according to what standard the state aid will be considered as a common European interest. The most common view is that once the state aid contributes to the public welfare in the EU, it can be considered as a common European interest [8].

On the other hand, the effect of the state aid to the consumer may be different in short and long term perspectives. The short-term benefits may turn into loss in the long term perspective, affecting the behavior of beneficiaries, as well as the short term loss can be compensated in the future. If as a result of the state aid the anticompetitive activities occur, banning new competitors' entry into the market, the expulsion of existing competitors, it will have negative impact on consumers in the long term perspective. Consumption standard is important as far as the state aid increases the profit of the recipient. The state aid which is compatible with consumer welfare standard is also compatible with the standard of the general welfare, but not vice versa [10].

In the case of the state aid provision, one of the most important principles for the European Union is the effect on competition. The effect on competition is as large as the long term negative impact on the consumer is. The approach that minimizes the impact on competition is important for maintaining a balance in the European economy in the long term perspective. Key provisions of the European Community relating to the definition and control of the state aid are set out in Articles 107–109 of the Treaty on the Functioning of the European Union (87–89 of the Treaty on European Union) [11]. The rules under the above articles and their interpretation were developed in the jurisprudence of the European Court and Commission secondary legislation – directives, notices, guidelines and legal framework. If we consider the evolution of the law and policy on the state aid of the European Union, we can distinguish four main stages of [3]:

- 1) reconstruction and modernization (1945–1965) – during these years a mixed economic policy was held, the state aid was provided to the important private enterprises, mainly targeting to attract and encourage foreign investment;
- 2) industrial imperative and the opening of borders (1965–1974) – there was an intensification of the means of the horizontal state aid, that is in favor

of concentration, of stimulating external growth and landscaping of the territory, which was accompanied by development programs and policies on sectors based on the principle of mentioning the «national champions»;

- 3) industrial perestroika (1974–1981) – due to technological programs and the state aid to underdeveloped sectors, the government enhanced the policy of direct intervention in the economy. The assistance for activities in the field of research and development was enhanced;
- 4) over-industrialization, with subsequent restructuring (1981–1988) – the efforts to integrate industry and research were intensified, economists were focused on the industrial sector; a number of measures aimed at developing small and mid size enterprises were taken, their task was to consolidate the national productive system.

Since 1988 a policy for improving the overall economic environment for entrepreneurship has been promoting. The aid provided by the state has been directed to development of research and innovation, to increase of business environment attractiveness, etc. Policy on sectors entered a new phase, and the state redirected the intervention policy to the tax and legal area. The principle of an open economy and free competition was launched by the Treaty of Rome (Articles 85–94) to the level of general policy [12].

In the European Union there are five positions – the minimum aid, aid for small and medium enterprises, for education, for employment, aid for national regional investment. Other types of the state aid, excepting the above mentioned, must undergo the process of notification to the Commission.

In order to consider certain measures as a state these must meet the following conditions:

- Transfer of the State resources;
- Provision of benefits to the recipient, which can lead to distortion of competition;
- Selectively provision in favor of a company or a particular economic activity;
- Effect on the trade between Member States [13].

Only when all these conditions are met, we are talking about the state aid stipulated in Article 107 (1) TFEU.

As mentioned above, according to Article 107 (1), the state aid is incompatible with the competitive environment, although the prohibition is not absolute. The state aid may be granted only when it is an exception or the permission was obtained to deliver it, and it is stipulated in Articles 107 (2) and 107 (3). The legal basis for such indulgences should be narrowly interpreted, given the importance of the effective monitoring of the state aid and of supporting the fair competition system in the European Union.

The existence of these exceptions induces the Commission's requirement for a prior notification of the state aid measures according to the Article 108 of the Treaty. This article provides that Member States shall notify the Commission of any plans for the state aid before the implementation of such mea-

asures. Article gives the Commission the right to decide whether the proposed measures fall under the indulgences or the state should abolish or alter such aid.

If the state aid falls under one of the categories of assistance referred to in Article 107 (2), it is automatically recognized as exceptional. In this article the first category of the exceptional state aid is the aid to individual consumers (not enterprises), and social assistance. The second category is aimed at mitigating the effects of natural disasters or emergencies. And the last category is aimed to compensate the effects of the division of Germany after the war.

If the aid is subject to the provisions of Article 107 (3), it is not automatically recognized as exceptional, although it may be compatible with the common market. These situations are:

- aid to promote the economic development of the regions in which the standard of living is abnormally low;
- aid aimed at facilitating the implementation of an important project of common European interest or to corrections of serious violations in the economy of a Member State;
- aid aimed at promoting the development of certain economic activities or regions, if it does not change the terms of trade to an extent contrary to the common interest;
- aid aimed at the development of culture and the preservation of cultural heritage;
- other categories of aid established by the Board, in the most cases, on the proposal of the Commission.

In this context, the European Union has developed the so-called Plan on the State aid «Less and Better Targeted State Aid – a road map for state aid reform 2005 to 2009». According to the action plan, the state aid should only be used when it is the most appropriate tool to achieve clearly defined goals, when creates necessary and right incentives, it is proportionate, and when the effect of competition distortion is minimal. Therefore, the assessment of compatibility of the state aid consists in balancing the negative effects of the state aid in relation to the competitive environment with positive effects for achieving common interests.

Among the tools proposed for a more thorough economic analysis of the state aid it is proposed to apply a more detailed assessment of failures, analysis of the state aid in terms of solutions to overcome failures and exploration of the opportunities to minimize the negative impact on the competitive environment [14].

The political goal of the aid is, on the one hand, the achievement of a balance between the needs and the affordability of the state intervention in the market economy, and, on the other hand, the protection of fair competition within the common area. Therefore, a significant part of the European competition law regulates the state aid. The state aid plays an important role in creating a viable and functional mar-

ket economy. In this context, the implementation of efficient and correct policy on state aid is a very important component of the EU enlargement process.

EU enlargement towards Central and Eastern Europe has attracted particular attention to the harmonization of policies in the area of the state aid of the candidate countries. This is largely determined by the fact that prior to joining the governments of the candidate countries in transition had more freedom in providing state aid, as there was no hard and fast rules or principles relating to the protection of the competitive environment distortion, which can be caused by the state aid. Before the transition period in Central and Eastern Europe the subsidies have been widely used. The real production costs were not reflected in the price, which led to record loss or to a significant profit of some companies, «failures», which were immediately covered by state subsidies and taxes. As production costs were different from one company to another, the appropriate subsidies included specific elements to each enterprise.

During the transition to a market economy, the countries of Central and Eastern Europe tried to reduce budget subsidies and gradually move towards price liberalization. Thus, the majority of budget subsidies provided to companies, were eliminated in those sectors where the process of price liberalization began. In addition, income taxes were balanced; sales taxes and temporary exemptions were abolished.

At the beginning of these changes a sudden imbalance in the economy occurred. State-owned enterprises faced serious difficulties caused by a decrease in domestic demand due to the liberalization of imports, decrease in exports due to the collapse of the Council for Mutual Economic Assistance, liquidity problems due to insolvency of the trade partners of the former Soviet Union, and so on. The above problems had a domino effect, which resulted in an increase in debts between enterprises. In addition, the share unemployment increased. In this situation, the governments began to take measures aimed at survival of firms, delivering assistance to the state companies. It should be noted that in a planned economy many companies were monopolies or oligopolies and their failure led to the chain collapse of suppliers that depended on these companies.

These facts lead to the conclusion that the history of the state aid in the countries of Central and Eastern Europe is controversial. Thus, the principles of the state aid policy have been paid much attention in the process of EU enlargement in the area of Central and Eastern Europe.

In the early 1990s, they began to use the European Agreements, which led to a new approach to trade between the EU and the countries of Central and Eastern Europe. Under these agreements countries pledged to harmonize their legislation with the EU legislation, including the rules of competition in sectors involved in trade between the two sides.

Three years later, the European Council set the Copenhagen criteria to be met by the candidate coun-

tries for accession to the EU. Each applicant must establish authorities to verify the compatibility of the state aid in the European market, and if it is established that government measures are incompatible with EU law, countries are obliged to adapt them to European standards, or eliminate them.

Since autumn 2002, with the completion of the observation state aid schemes the candidates have a clear view of the enlargement process and negotiations [15]. Thus, in order to avoid the «import» of incompatible state aid in the European Union at the time of accession a complex mechanism was created to consider the aid measures by May 2004 and beyond. It was named a «mechanism of existing aid» and its aim was to provide guarantees to the European Union in the adaptation of the state aid rules of the acceding countries. The mechanism does not apply to agriculture and transport, as these areas are governed by specific regulations.

The situation with the state aid in the former communist countries was more difficult, because the subsidies were delivered on a large scale to maintain the operability of the important industries. All agreements signed prior to the accession, including those with the former communist countries, envisaged the adaptation of the policies and practices in the area of the state aid to the European Union standards.

In the negotiation before the accession, the European Commission asked each candidate to establish a body that monitors the state aid. These bodies have been established in the candidate countries as independent institutions or were incorporated into the structure of the competition authorities or other ministries. The purpose of the national authorities in this area was to ensure functioning and effective use of the monitoring state aid system. After joining, the respective credentials have been automatically moved from the national monitoring authorities to the European Commission [6].

State aid implementation. Case of Republic of Moldova

In the Republic of Moldova there are two categories of state aid: state aid granted on the basis of laws and government regulations; state aid granted on the basis of an administrative act. According to the IMF (International Monetary Fund), the volume of state aid in recent years tends to growth (Table).

Table. *The volume of state aid*

Year	Million lei	Million euro	Share of budget expenditures
2007	1640	136	13,48
2008	1131	87	7,70
2009	1342	96	7,45
2010	1416	118	8,65

The share of state aid funding is approximately equal to funding in education or slightly less than funding in the health sector. Mechanism for state aid distributing from the fund for subsidizing agricultural producers of the Republic of Moldova is in the ca-

tegrity of «yellow» according to WTO (World Trade Organization) criteria. That is, a category that creates the risk of distortions of competition. Investigating the structure of state aid to the Republic of Moldova, in accordance with the form of its presentation, we can distinguish the following categories:

- subsidies;
- repayment of debts to the state budget;
- exemption from taxes and duties;
- cancellation of normal profits at the expense of public funds (for the most part this is the result of mismanagement of public funds);
- debts on loans, guaranteed by the state, taken by business entities directly from foreign and local financial institutions;
- loans with preferential interest rate;
- others.

Ultimately, public assistance and related costs are covered by taxpayers. Misallocation of public resources has a devastating effect on the development of a normal competitive environment and the national economy in general. Theoretically, any assistance provided for the business entity distorting competition, as it reduces the costs of the recipient and gives it an advantage over its competitors. In order to prevent the effects of distortions of the competitive environment and the international obligations assumed by the Republic of Moldova, The Law of State Aid no. 139/15.06.2012 was adopted.

Control of state aid is also an important issue for ensuring a favorable competitive environment and promoting economic development. Implementation

of a transparent system for monitoring and controlling state aid is strongly recommended. For this purpose, with World Bank support, national monitoring system is developed.

Conclusions

Parallel to the establishment of the regulatory framework for state aid in the Republic of Moldova it is necessary to establish a mechanism to assess the impact of state aid on the competitive environment. The basis of assessment of the state aid impact is a comparative analysis of its positive and negative effects on competition in terms of contribution to the economic problems of the state; it improves social welfare.

The main steps to assess the impact of state aid:

1. Identification of state aid.
2. Correctness of the assessment objectives.
3. Assessment of the impact provided by the assistance: for receivers, for competitors, for consumers.
4. Assessment of the impact of state aid for social welfare.
5. Comparison of costs and benefits.

These steps may be considered compatible with a normal competitive environment following categories of aid:

- 1) to remedy a serious disturbance in the economy;
- 2) to support training of employees and creating new jobs;
- 3) to protect environment;
- 4) to develop region.

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ГОСУДАРСТВЕННАЯ ПОМОЩЬ В КОНТЕКСТЕ ЕВРОПЕЙСКОЙ КОНКУРЕНТНОЙ ПОЛИТИКИ (ОПЫТ ЕВРОПЕЙСКОГО СОЮЗА)

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Актуальность работы обусловлена важностью проблемы внедрения наднационального контроля за государственной помощью предприятиям государств-членов Евросоюза, опыт которого показателен в этом вопросе.

Цель работы: обоснование необходимости установления контроля за государственной помощью, который имеет особое значение в контексте европейской конкурентной политики для поддержания справедливого уровня деятельности всех предприятий на европейских рынках независимо от государства, на территории которого они работают.

Методы исследования: исторический метод, компаративный метод, методы кейс-стади и контент-анализа.

Результаты: Были выделены и описаны четыре основных этапа в развитии законодательства и политики в области государственной поддержки в рамках Европейского Союза. Были установлены критерии для определения действий правительства в качестве государственной помощи, а также проанализированы методы государственного вмешательства. Описаны главные шаги для оценки воздействия государственной помощи. Описаны шаги по применению законодательства в республике Молдова.

Ключевые слова:

Конкурентная политика, государственная помощь, интервенционные методы, гармонизация законодательства в области конкуренции.