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Definition and characteristics of state aid

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Abstract

The paper deals with the definition of state aid and the determination of general characteristics of this institute particularly in terms of the decision-making practice of the Court of Justice and the Commission. Especially, this paper analyses the characteristics of state aid, i.e., “measure granted by a State or through State resources”, “economic advantage to particular undertaking (business) or sector (industry)”, “distortion of competition” and “effect on trade between the EU Member States”. Furthermore it also refers to a system of exceptions where it is possible to provide state aid.

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1. Introduction

State aid law is a specific part of European Union competition law. Having regard to the fact that a whole series of legal instruments of state aid will expire by the end of 2013 and taking into account the experiences with this institute, the European Commission (hereinafter referred to as “Commission”) decided to proceed to the modernization of the rules on state aid.

Objectives of the modernization of state aid and measures for their implementation the Commission are summarized in a communication “EU Modernization of the State Aid Rules”, COM (2012) 209, issued on May 8th 2012, to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions.

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The document states that: “The Commission is obliged to examine all allegations concerning potential aid without in practice being able to set priorities for complains handling. In addition the Commission is not always in a position to obtain complete and correct information from parties, which may prolong procedures. There is a need to streamline and reform procedures in order to deliver decisions within business-relevant timelines, in close cooperation with Member States.”

According to the Commission the above mentioned objective should be achieved by clarification and better explanation of the notion of state aid.

The aim of this paper is to analyze the characteristics of state aid, particularly in terms of the decision-making practice and interpretation of the Court of Justice and the Commission; this analysis might also facilitate the clarification and better explanation of the notion of state aid.

In this paper the methods of analysis and interpretation of current State aid law framework at the level of primary law and decision-making practice are used.

2. Definition and characteristics of state aid

Regulation of granting of the state aid in the European Union (hereinafter referred to as “EU”) is an integral part of the standards used for the protection of the economic competition.

State aid law framework is formed at the level of primary law by Article 107 to 109 Treaty on the Functioning of the European Union (hereinafter referred to as “TFEU”) (the former articles 87 to 89 of the Treaty establishing the European Community). Notion of state aid is defined by the legal definition contained in article 107 par. 1 TFEU, which lays that: “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, insofar as it affects trade between Member States, be incompatible with the common market.”

Decision-making practice as well as theory identifies the following 4 characteristics (attributes) of state aid (sometimes theory recognizes 5 or 6 characteristics (attributes); however these are the same characteristics, only divided into more details):

- Measure (aid) granted by a State or through State resources, in any form (includes the loss of public resources attributed to public bodies);
- Economic advantage to particular undertaking (business) or sector (industry) (confers a selective advantage to certain undertakings or the production of certain goods);
- Threat of disruption or distortion of competition within internal market of the EU, which is by the article 26 par. 2 TFEU (the former article 14 of the Treaty establishing the European Community) defined as an area without internal frontiers in which the free movement of goods, persons, services and capital in accordance with the Treaty's provisions;
- Effect on trade between EU Member States.

In order for a measure to be qualified as state aid, all the above mentioned characteristics (attributes) have to be met cumulatively.

To each of the characteristics (attributes) of state aid we can emphasize the following:

Attribute “Measure (aid) granted by a State or through State resources”

For the purposes of the state aid rules it is necessary to interpret the concept of “State” widely; so it should be interpreted as “public administration” or “public institutions”. In terms of state aid rules the “State” should be considered as regional, territorial or local government, public institutions, institutes, government facilities, public schools and universities, as well as other entities, which are directly or indirectly controlled by public administration. The concept of “State” is similar to term “state aid provider”, which is legally defined in the provision of par. 2 a) of the Act No. 215/2004 Coll., on Regulation of Certain Relationships within the Area of State Aid, as amended. According to above mentioned provision the state aid provider is the one who decides on the grant of state aid.

Concept of “State resources” is necessary to be interpreted widely again; it includes not only the “State funds” but also “public funds” and “funds from public resources“, i.e. the State budget resources and municipality (territorial self-governing units) budget resources. Public resources are also considered to be EU funds (e. g. the

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