Study regarding the State Aid in the context of Budgetary Instruments for Economic Development

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Abstract: - The matter of state aid is a controversial one because it presupposes losses to the state budget, an effective support offered to economic agents or to a category of economic agents, effects on the competition. State aid is strongly connected to budget resources, to the allocation of public expenditures, to sectorial, financial and social policies. This is why they have a special legal status.

Key-Words: State aid, de minims aid, authorization, control, monitoring.

1. Introduction

The state can support economic development through legal or institutional measures, through budget allocations in the form of public expenditures. State aid fits into this large framework. *The matter of state aid is a controversial one because it presupposes losses to the state budget, an effective support offered to economic agents or to a category of economic agents, effects on the competition.* This is why state aid is in the attention of lawmakers.

In Romania, state aid is regulated according to the letter and spirit of community legislation, by Government Emergency Ordinance no. 117/2006 regarding the national procedures in the field of state aid, approved by Law no 137/2007. In the preamble of this ordinance it is stipulated that community legislation in the field of state aid is applied directly in Romania, and the authorization competences are transferred from the Romanian Competition Council to the European Commission. The ordinance targets the regulation of national procedures in the field of state aid, in order to be able to apply articles 87-89 of the European Community Treaty and the secondary legislation adopted based on these articles.

2 The notion and forms of state aid

The notion of state aid is not defined in the ordinance, but it does mention that terms specific to the field of state aids are used in the understanding of the community legislation [1].

Article 87 paragraph (1) of the EC Treaty (the consolidated Nice version) states: „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, insofar as it affects trade between Member States, be incompatible with the common market”.

Council Regulation no. 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty defines *aid* as being any measure which meets all the criteria established by art. 92 paragraph (1) of the Treaty (art. 87 paragraph 1 of the consolidated Nice version).

Thus, for a measure to be qualified as *state aid* it must meet cumulatively four *criteria.* Firstly, the measure must imply a *transfer of state resources* in the form of subsidies or interest reductions, loan guaranties, liquidity assistance, tax exemptions. Secondly, the aid must materialize into an *economic advantage* that the company would not have benefited from normally [2]. Thirdly, state aid must be *selective* and must affect the competition balance. Selectivity is what differentiates state aid from other measures that apply to all companies in all the economic branches of a Member State. A measure is considered effective if the authorities applying it enjoy a certain discretionary power, if it is not applied across the entire territory of the Member

State or if it does not apply to all the companies. Selectivity is thus, *geographical and material* [3]. Fourthly, the aid must have a potential effect on the competition and trade between Member States. It suffices if it can be shown that the beneficiary is involved in an economic activity and acts on a market that comprises trade activities between Member States. The European Commission considers that state aid comprised of small sums (*de* minims) does not have a potential effect on competition and trade between Member States. This kind of aid does not fall under art. 87 paragraphs (1) of the EC Treaty. According to Commission Regulation no. 1998/2006, *de minimis* aids are exempted from the obligation to notify, and the total value of de minimis aids cannot surpass 200.000 Euros during three financial terms and 100.000 for the road sector.

Aid measures that meet the criteria mentioned in article 87 paragraph (1) of the EC Treaty are basically *incompatible* with the common Market. Nevertheless, the principle of incompatibility does not go so far as to totally forbid. Article 87 paragraph (2) mentions the situations in which *the aid is compatible* [4] with the common Market, and paragraph (3) of the same article states a number of cases in which state aid *can be considered compatible* [5].

We distinguish between three main categories of aid that compatible with the common Market:

1) *regional*, allocated for regional development;

2)*sectorial*, allocated for branches of the economy, like the energy producing branch, the postal services, the audiovisual and radio broadcasting, the agriculture, forestry and fish breeding, the transportation;

3)*horizontal*, which have to solve issues that can appear in any region and in any sector*:* aid for combating climate changes and for the protection of the environment; aid for research, development and innovation; aid for rescuing and restructuring of companies in difficulty; aid for small and medium companies; aid for the labour force; aids for professional training; aid for the risk liquidities; aid for services of general economic interest.

We are talking about *exceptions* stated by the EC Treaty in the matter of state aids. The existence of these exceptions implies that the European Commission verify the state aid draft resolutions, according to the provisions of article 88 of the EC Treaty.

Council Regulation no. 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty defines *abusive aid* as aid used by the beneficiary while breaking the Commission decision, and *illegal aid* as aid allocated while breaking the criteria stated by article 93 paragraph (3) (or article 87 paragraph 3 of the consolidated version) concerning aids compatible with the common Market.

State aid can be allocated as schemes of state aid or as individual state aid. The state aid scheme is any document based on which individual allocations can be made to companies generally or in abstract, as well as any document based on which the aid, not related to a certain project, can be allocated to one or several companies for a specified period of time and/or in an unspecified amount. *The individual aid is* any state aid which is not allocated based on a scheme or which is based on a scheme but has to be individually notified.

Through Decision no. 6545/2007, the European Commission has authorised, for Romania, “The state aid scheme concerning the financing of research and development and innovation projects, according to the National Plan for research, development and innovation II”, targeting all activity branches and all the regions of Romania, for the interval 2007-2013, with a value of 4825 million lei from the state budget, the supplier being the Ministry for Education and Research. Also, in 2008, the Commission has authorised through Decision no. 6201 “The aid scheme concerning regional development through direct stimulation of large investment projects, targeting all the fields of activity (with some exceptions) and all Romanian regions, for the 2008-2012 interval”, with a value of 575 million euro from the state budget, and the Ministry of Economy and Finance as supplier.

3 The implications of state aid on the state budget

The financial meaning of the state aid is obvious, as it consists in a transfer of budget resources and offers the beneficiary an advantage which would normally entail its budget. Undoubtedly, the state aid represents a way to support economic agents, and is welcomed especially under unfavourable economic conditions. Public aids can contribute to the development of efficient economic entities and to the creation of new work places. There is a paradox concerning these issues in opinions expressed by specialists. They claim that the aid should not be offered to inefficient economic entities, but on the other hand, they talk about the efforts carried out by states to make economic agents’ activity more efficient, about the help offered to exit the crisis and the support offered to small and medium companies. Several explanations are needed.

Both efficient and inefficient economic agents can ask for state aid. The efficient ones, most often large companies, try to obtain aids for research and development in order to increase the quality and diversify products, for new investments, for environment protection. Of course, obtaining state support on these issues will lead to an increase in efficiency (cost reduction, production volume increases, and profit increase) and benefits for the consumers (diverse and high-quality products, price reductions). One may imagine that this *increase in efficiency* will reverberate on the competition environment also, of course, depending on several factors like: the market share of a product, the degree of market concentration etc. That is why state aid must have a special legal status.

As we were mentioning, inefficient economic agents can also access state aids. They can benefit from government programs, the state being interested both at an economic and social level. *The issue is: how many resources, for what period and how many times is the state willing to invest in these companies,* especially under the circumstances of low budget resources (not only in poor countries). In times of economic crisis, the situation is desperate. Budget incomes decrease but the number of inefficient economic agents increases and they need support. The above mentioned issues (how much, how long, how many times) come to light more abruptly. Under the circumstances of the current world crisis, on 26 November 2008 the Commission approved the communication named “A European Economic Recovery Plan” (the recovery plan) to restart the European economy [6]. The plan includes short-term measures to stimulate demand, save jobs and restore confidence as well as long-term measures to accomplish “intelligent investments”. Within this framework, temporary changes were brought to the state aid legislation and several anti crisis measures were adopted. For Romania, in 2009, the Commission has authorised the following state aid schemes, comprised in anti crisis measures: “The state aid scheme to save economic agents from the portfolio of the Authority for State Assets Recovery and the Ministry of Economy in order to surmount the effects of the world economic and financial crisis”, for the 2009-2010 interval, with a value of 30 million euro, the provider being the ASAR and the Ministry of Economy [7] and “The state aid scheme to facilitate the access to financing during the economic and financial crisis, comprising state guarantees offered to medium and large companies” for the 2009-2010 interval, with a value of 20.34 million lei, with Eximbank as provider [8].

In conclusion, we are not trying to be peremptory and by it contradict ourselves with “invaluable” but incoherent speeches. *The economic and social effects of state aids* are important and that is why in the EU there are provisions that hinder the freedom to ask for public funds. To the European Commission, state aids are a form of interference in supporting an economic action.

We distinguish between the following *ways if granting the state aid* , the enumeration being an exemplificative one and not a limiting one: subsidies; granting government guarantees; annulling or spreading out of payments or taking over of losses; exemptions, reductions or postponements in paying taxes; the reduction of the taxable amount; offering loans with preferential interest; the state or public institution participation with liquidity if the profit rate is lower than that anticipated by a prudent private investor; price reductions for supplied goods and for state provided services.

The most visible and most controversial of all are subsidies. They are a form of protection for the income of the beneficiaries and/or support for the prices asked by them, compensations for inefficiency, with the potential to distort the competition both nationally and internationally. They are prohibited in international conventions mainly because they break a basic principle of the free trade: the principle of non-discrimination [9]. Internal subsidies awarded selectively (based on material or geographic criteria) favour the beneficiaries and influence the competition balance. Subsidies awarded for exports aim to maintain a price and can lead to dumping; therefore, in this case, both are outside of honest commercial practices and fair competition. The World Trade Organization identifies three categories of subsidies: *forbidden subsidies,* like export subsidies; *subsidies that can determine an economic action* and which harm the interests of other WTO members; *agriculture subsidies*, which have a special status.

The complexity of forms, ways and effects of public aids require a state effort to regulate them through laws and an institutional effort to analyse and monitor them.

In Romania, the community legislation in the field of state aids is applied directly and the Union Commission has the competence to *authorize* state aids. The state aid provider files, a notification or an information chart which will be forwarded for approval to the Romanian Competition Council. After approval, the Competition Council forwards

the document to the Union Commission for authorization. At the same time, the Competition Council, accompanied by the provider, will present the document in front of the Commission. After a Decision is issued by the Commission, the Competition Council will inform the provider of the measures taken. During the state aid period, the provider has the task of checking the conditions imposed by the Commission. Annually, the providers must send the Competition Council reports regarding the state aid. The role of the Competition Council in the monitoring process of state aiding is, based on reports received from suppliers, to draw up the *inventory of state aids, the annual state aid Report* in Romania, as well as other reports that result from Romania being a member state of the EU. Also, the Competition Council holds the *State Aid Registry. De minimis* aid schemes are drawn up by the providing authority (ministry, agency, city hall etc) in accordance with the provisions of *Commission Regulation no. 1998/2006 of 15 December 2006 concerning the application of Articles 87 and 88 of the Treaty to de minimis aid*. The providing authority sends the legal document by which the de minimis aid scheme is approved to the Competition Council.
In order to improve the collaboration between persons involved, the Competition Council has developed the Romanian State Aid Network (RSAN), comprising a team of experts made up of state aid specialists within the Competition Council and the institutions providing state aid. The program aims to offer permanent technical assistance to institutions charged with implementing state aid in order to economically develop the country while obeying community legislation and reducing the risk of affecting the competition and trade with the Member States. The program has been created on a multiyear basis, starting in the second half of 2008. The end of the program has been set for 31 December 2010, with the possibility of extending it. The RSAN has developed several projects, of which we mention: Project „Defining policies and practical proceedings within RSAN" (POL-RSAN) and Project „A new State aid advocacy in Romania" (AID ADVOCACY).

4 Conclusion

State aid is strongly connected to budget resources, with the allocation of budget expenditures, with the necessity to keep the fiscal balance or otherwise said, with the fiscal policy of the state. The fiscal policy could constitute an instrument to protect and encourage certain economic branches, fiscal interference has targets like: stimulating investments in certain domains, increasing the quality of products, stimulating exports, protecting the environment. At the same time state aid strongly interferes with sectorial policies (agriculture, industry, commerce etc), with financial and social policies [10], and with legislative and institutional strategies.

References:

[1] Bernard Castagne□de, *Pre□cis de fiscalite□ internationale*, Presses Universitaires de France, Paris, 2006, pp.41-42.
[2] Commission Decision no. 3460/04.05.2009.
[3] Commission Decision no. 4501/05.06.2009.
[4] Titus Prescure, Course on commercial competition law, Rosetti Publishing House, Bucharest, 2004, pp.140.
[5] Alexandru Ţiclea, Constantin Tufan, *Social Security Law,* Global Lex Publishing House, Bucharest, 2005.
[6] Iulian Văcărel, and others, *Public Finance,* Didactic and Pedagogical Publishing House, Bucharest, 2006;
[7] Dan Drosu Şaguna, Dan Şova, *Public financial law*, Publishing House C.H. Beck, Bucharest
[8] Alexandru Ţiclea, *Treaty on Labor Law*, Legal University Publishing House, Bucharest
[9] Alexandru Athanasiu, Luminiţa Dima, *Labor Law,* All Beck Publishing House, Bucharest, 2005.