



EMERGENCY LEGAL KIT FOR BUSINESS SERIES

Year 3, Issue 5, June 2016

STATE AID 101

1. Background

Where an economic advantage derived from state sources distorts or may distort competition by favouring certain undertakings or production sectors, such advantage is deemed as a State aid and it is subject to the European regulations concerning same. In this field, the European Union has almost exclusive regulatory powers, national legal provisions being limited to provisions concerning the national procedures on State aid and the manner of cooperation between competition authorities, on the one hand, and the suppliers and beneficiaries of State aid on the other hand.

State aid may take many forms (for example non-reimbursable grants, loan securities, low interest loans, exemptions or reductions from tax or social obligations, preferential prices upon purchasing goods or services from state entities, etc.) and it is granted either through aid schemes or ad hoc. While aid schemes are enactments that establish aid measures for several undertakings, in an abstract manner, ad hoc aid usually targets a single undertaking.

State aid measures are monitored by the competition authorities, for the purpose of analysing their compatibility with a normal competitive environment. The competition

authorities are the European Commission and the national authorities in charge of competition (in Romania, this being the Competition Council).

The European Commission monitors State aid measures at the European Union level, being the only competent authority to declare the illegality of State aid measures (and to decide their recovery), except for de minimis aid measures, which are under the remit of the international authorities, i.e. the Competition Council.

At the same time, the Competition Council monitors the State aid measures at national level, acting as the liaison authority between the European Commission, on the one hand and the public institutions, suppliers and beneficiaries of aid, on the other hand.

The authorities which intend to provide State aid, in any form, are required to notify the competition authorities on such measures before their implementation. However, there are certain categories of aid which, for various reasons, are considered from the outset as compatible with a normal competitive environment and are therefore exempted from notification.

Such a category of exempted aid is the "de minimis" aid, which is granted to an undertaking up to a ceiling of EUR 200,000 for a period of 3 consecutive fiscal years.

Other categories of exempted aid are those that meet the requirements provided by the European Commission General Block Exemption Regulation no. 651/2014. Such aid measures include the regional aid, aid to small and medium-sized enterprises ("SMEs"), investment aid, operating aid and aid for access to finance for SMEs', aid in favour of research, development and innovation, aid in favour of environmental protection.

2. Romanian State aid measures

Currently, SMEs can benefit from various schemes of State aid financed from European or national funds, for example counter schemes for research and development and creative industries, non-refundable grants for investments in industrial parks, loans with interest below market, environment and energy aid, regional aid and others.

For large enterprises are of interest, among others, the regional aid schemes administered by the Ministry of Public Finance under the Government Decision no. 807/2015 and the Government Decision no. 332/2014, based on which non-refundable grants, and respectively reimbursement of salary costs are awarded respectively, for initial investments of certain dimensions. Another scheme that also targets large enterprises is regulated by the Order of the deputy prime minister and of the minister of the regional development and public administration no. 2980/2013, with respect to certain facilities (e.g., certain local tax exemptions) granted for investments in industrial parks.

3. How to approach State aid

The persons that are interested in accessing State aid under a scheme exempted from notification, must thoroughly analyse the content of the scheme and of the corresponding applicants' guide. These documents together provide multiple conditions which have to be fulfilled by the applicant in order to receive the approval for financing, as well as the applicant's obligations further to the financing approval (failure to comply with such obligations may result in the obligation to reimburse the granted aid).

For instance, in case of regional aid measures, the investment project cannot be implemented before the approval for financing is granted, and the applicant must prove that it would not have carried out the investment in the area concerned, had the aid not been awarded thereto. Likewise, the maximum percentage that may be financed out of the eligible costs is established at EU level for every single area, and in some cases the aid cannot exceed the amount of contributions to the regional development pertaining to the relevant investment, calculated over a certain period.

Last, but not least, the date when the application for aid is submitted must be carefully considered, in order to fit in the periods when financing lines are opened, there being funds available to this end.

The aid measures applied for outside of an exempted scheme must be scrutinised internally both by the applicant and the concerned authority, in order to determine if they can be considered compatible with competition. Following a positive outcome of such assessment, the notification procedure should be strictly observed and all conditions required to obtain a favourable decision should be met.

This publication contains general information only, and it should not be considered as legal or other professional advice. This publication is not a substitute for such advice, nor should it be used as a basis for any decision or action that may affect your finances or your business. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser.

For additional information, please contact:



Alina Popescu

Co-Managing Partner

alina.popescu@maravela.ro



Ana Zaporojan

Associate

ana.zaporojan@maravela.ro