

Study No. 29

STATE AID IN THE REPUBLIC OF NORTH MACEDONIA

Critical review on the regulatory framework



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**STATE AID IN THE REPUBLIC OF NORTH MACEDONIA:
Critical review on the regulatory framework**

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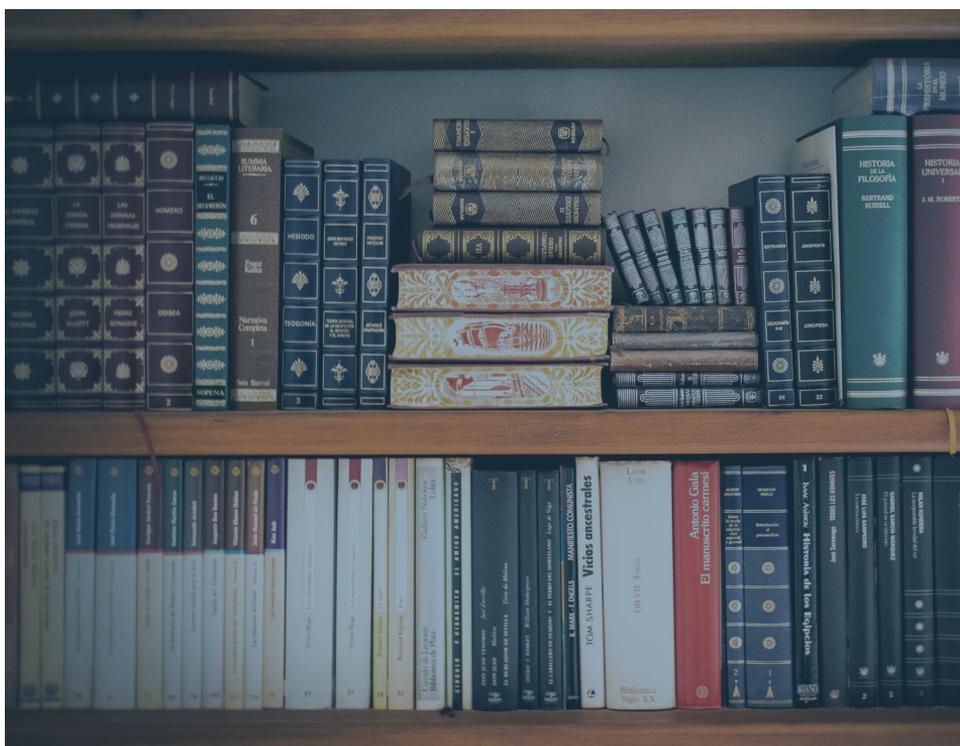
1. INTRODUCTION

The granting and control of State aid in the Republic of North Macedonia is regulated with the Law on State Aid Control, adopted in 2010 (“Official Gazette of the Republic of Macedonia” no. 145/2010), replacing the first Law on State Aid adopted in 2003 (“Official Gazette of the Republic of Macedonia” no. 24/2003). The new Law on State Aid Control (“Official Gazette of the Republic of Macedonia” no. 145/2010) is aligned with the relevant EU legislation, i.e. with Article 107, 108 and 109 of the Treaty on the Functioning of the European Union (TFEU, 2008) and the pertinent secondary legislation. According to Article 69 paragraph 3(a) of the Stabilisation and Association Agreement between the Republic of Macedonia and the European Communities and their Member States (“Official Gazette of the Republic of Macedonia – International Agreements” no. 28/2001, p. 13), when it comes to the assessment and transparency of State aid in their entirety, the Republic of North Macedonia has to be treated equally as the EU Member States, i.e. it has to fully comply with all the rules and criteria that arise from the State aid acquis. Consequently, the Law on State Aid Control (“Official Gazette of the Republic of Macedonia” no. 145/2010) is mostly identical with the Council Regulation (EU) 2015/1589 (2015) adopted by the Council of the EU, which is the reason why this study will focus on the Law, with proper demonstration of the differences and shortcomings wherever there is a need.

Pursuant to Article 42 of the TFEU (2008), competition rules are not implemented in the same way in the sectors of agriculture and fishery – there are specific by-laws and provisions, while State aid in these sectors is regulated with the European Union Guidelines for State aid in the agricultural and forestry sectors and in rural areas 2014 to 2020 (2014), the Communication from the Commission — Guidelines for the examination of State aid to the fishery and aquaculture sector (2015), and the Communication from the Commission amending the Guidelines for

the examination of State aid to the fishery and aquaculture sector C/2018/7667 (2018). Accordingly, the Law on State Aid Control (“Official Gazette of the Republic of Macedonia” no. 145/2010) in the Republic of North Macedonia does not apply to State aid granted in the sectors of agriculture and fishery (Article 3, paragraph 2) – State aid in these sectors is regulated with Title VII of the Law on Agriculture and Rural Development (“Official Gazette of the Republic of Macedonia” no. 49/2010, 53/2011, 126/2012, 15/2013, 69/2013, 106/2013, 177/2014, 25/2015, 73/2015, 83/2015, 154/2015, 11/2016, 53/2016, 120/2016, 163/2016, 74/2017, 83/2018, 27/2019, 152/2019, 244/2019 and 275/2019 – consolidated text) and Title IX of the Law on Fisheries and Aquaculture (“Official Gazette of the Republic of Macedonia” no. 7/2008, 67/2010, 47/2011, 95/2012, 164/2013, 116/2014, 154/2015, 193/2015, 39/2016 and 83/2018 – consolidated text).

These rules will be reviewed in the study as well, and a separate section is created for the analysis of the Law on Financial Support of Investments (“Official Gazette of the Republic of North Macedonia” no. 83/2018, 98/2019 and 124/2019 – consolidated text), as the largest government program for granting State aid to companies (Commission for the Protection of Competition, 2019, pp. 42-45).





2. MEANING OF STATE AID AND PROCEDURE FOR GRANTING

►2.1. WHAT IS STATE AID?

According to the Law on State Aid Control (“Official Gazette of the Republic of Macedonia” no. 145/2010), State aid is defined as every expenditure and every reduced revenue of the State, in any form, which distorts or has the potential to distort the fair competition and trade within the Republic of North Macedonia, as well as the trade between the Republic of North Macedonia and the EU Member States, „by giving an economic advantage to a certain undertaking which would not be possible without the awarded State aid or by favouring the production of certain goods or the provision of certain services“ (Article 5 and Article 3, paragraph 1). The Law also lists the most common forms in which aid can be granted:

- subsidies,
- debt relief or debt transfer,
- exemption, relief or delay of the payment of public fees,
- granting loans on preferential terms,
- issuing guarantees by the grantors of State aid on preferential terms,
- investments carried out by the grantors of State aid with a rate of return lower than the rate of return on investments which can be expected when carrying out an investment under normal market conditions,
 - reducing the prices of goods and/or services below the market prices by the grantors of State aid, especially when selling stocks, buildings or land owned by the grantors of State aid. (Article 5, paragraph 2)

This definition is in line with Article 107(t) of the TFEU (2008). This provision contains the following conditions that a certain measure has to fulfill in order to be considered State aid:

1. It is granted by the state or through state resources,
2. It favours certain undertakings or the production of certain goods,
3. It distorts or threatens to distort competition,
4. It has the potential to affect trade within the EU. (National Audit Office, n.d.)

All of these conditions have to be met¹ (National Audit Office, 2004, p.6).



¹Although these conditions are not mentioned in a separate document by the CPC, the CPC applies them in its decisions on granting State aid ([Source](#))

►BOX 1: ELEMENTS OF STATE AID

State resources – these are all resources awarded by public institutions-grantors of State aid, including measures financed from European funds that are directly controlled by the State (National Audit Office, 2004, p.6). Pursuant to Article 6 of the Law on State Aid Control (“Official Gazette of the Republic of Macedonia” no. 145/2010), State aid in the Republic of North Macedonia can be granted by: the Government, ministries, units of local self-government, other bodies and legal persons.

Advantage and selectivity – The meaning of certain terms has to be made clear. The term undertaking, pursuant to Article 4 item 7 of the Law on State Aid Control (“Official Gazette of the Republic of Macedonia” no. 145/2010), is defined as any entity that carries out an economic activity, including public enterprises, not-for-profit organizations, sole traders etc. (National Audit Office, 2004, p.7). An economic activity, pursuant to Article 5 item 4 of the Law on the Protection of Competition (“Official Gazette of the Republic of Macedonia” no. 145/2010, 136/2011, 41/2014, 53/2016 and 83/2018 – consolidated text), means “trade in goods and/or services on the market regardless of whether the goal of such trade is making a profit or not”. According to National Audit Office (n.d.), an economic advantage can appear in the form of a direct advantage (subsidies etc.) or an indirect advantage (tax reliefs, sale of State land under the market price etc.). The selectivity refers not only to aid granted to individual undertakings, but also to certain types of undertakings, certain sectors, regions or types of products (National Audit Office, n.d.).

Distortion of competition – In order for the aid to constitute State aid, the measure has to, realistically or potentially, strengthen the position of the beneficiary in relation to its competitors (Department of Business, Enterprise and Innovation, n.d.; National Audit Office, 2004, p.9). The improvement of the competitive position of the beneficiary is reflected through the improvement of several factors, including but not limited to: “the market share and position, the financial power, the access to sources of supply or the market, the connection with other undertakings” etc. (Law on the Protection of Competition, 2010, Article 10, paragraph 1). Due to practical reasons, the distortion of competition “is generally found to exist when the State grants a financial advantage to an undertaking in

a liberalised sector where there is, or could be, competition” (Commission Notice on the notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union, 2016, paragraph 187). However, the position of the beneficiary does not have to be improved in relation to its competitors, it is sufficient that the beneficiary improves the position in relation to itself before and after the granting of aid, or in other words, it is sufficient that there is a reduction in the expenses that the beneficiary would otherwise have to cover during its everyday operations (paragraph 189). The distortion of competition should be taken into consideration even if it is small or non-material, i.e. even if the amount of aid is low or the undertaking is small, but nevertheless it has to be proven that it is not purely hypothetical (paragraph 189 and paragraph 195).

When the distortion of competition is evaluated, the starting point are the markets where the effect is the greatest or the most visible (European Commission, n.d.(a), paragraph 55), whereas identification is made regarding the producers-competitors operating on the product and service markets – including the producers of complementary goods and services, the competitors operating on the input markets at the first level of the supply chain and the consumers (paragraph 53 and Box 2). In doing so, both short-term and long-term effects are taken into consideration, which are primarily reflected through a change in the behavior of the aid beneficiary, which can then provoke a change in the behavior of the competitors and cause negative consequences for the consumers and other stakeholders (paragraph 46-49).

Effect on intra-EU trade – every aid granted for a certain economic activity which can affect intra-EU trade constitutes State aid. This applies to any product or service subject to intra-EU trade, even if the undertaking itself is not an exporter (National Audit Office, 2004, p.9). This, however, excludes activities carried out solely on a local level, such as a hairdresser or a restaurant (National Audit Office, n.d.), although there are no clear definitions regarding such activities (National Audit Office, 2004, p.9). In addition, aid of minor importance i.e. **de minimis aid** does not constitute State aid either, and this is because it is regarded not to have a significant effect on trade due to the low amount (National Audit Office, 2004, p.8). Pursuant to Article 4 item 4 of the Law on State Aid Control (“Official Gazette of the Republic of Macedonia” no. 145/2010), *de minimis* is aid (having multiple

conditions, n.b.) “that can be granted in all sectors, except in the sector of coal production, if the amount of awarded aid per beneficiary does not exceed 200.000 euros in total for a period of three years, or 100.000 euros in total in the sector of road transportation for a period of three years”.

►2.2. COMPETENT AUTHORITY

Pursuant to Article 10 of the Law on State Aid Control (“Official Gazette of the Republic of Macedonia” no. 145/2010), the competent authority for assessing and monitoring State aid is the Commission for the Protection of Competition (further: CPC), an independent State authority established in 2003 (Decision on establishing the Commission for State aid, 2003), shortly after the adoption of the first Law on State Aid (“Official Gazette of the Republic of Macedonia” no. 24/2003). The CPC, among other things, is responsible for overseeing the implementation of the Law on the Protection of Competition (“Official Gazette of the Republic of Macedonia” no. 145/2010, 136/2011, 41/2014, 53/2016 and 83/2018 – consolidated text), and plays an important role in the monitoring, analysis and sustainment of the fair competition in the Republic of North Macedonia (Law on the Protection of Competition, 2010, Article 28, paragraph 1). It is comprised of a President, four members and a professional department (Article 26, paragraph 2), in which there is a special Sector for State aid control (Commission for the Protection of Competition, n.d.). The CPC receives its funding from the Budget of the RNM, and it submits reports about its work to the Assembly (Law on the Protection of Competition, 2010, Article 26, paragraph 4 and 6).

In the EU, which has an exclusive competence in the area of competition policy (TFEU, 2008, art.3(1)(b)), the assessment and monitoring of State aid is carried out by the European Commission, whereas the national competition authorities are in charge of enforcing the relevant legislation (European Commission, 2016, pp.2-3). More specifically, the monitoring and control is carried out by the DG COMP for all sectors, except for agriculture - DG AGRI, and fishery - DG MARE (European Commission, n.d.(b)). In the EU an Advisory Committee on State aid is also established, which pursuant to Article 34 of the Council Regulation (EU) 2015/1589 (2015), as the name itself implies, is established for the purpose of advising the European Commission when adopting decisions on procedural matters, such as forms, deadlines and the like.

►2.3. PROCEDURE FOR GRANTING STATE AID

There is a general prohibition for granting State aid (Law on State Aid Control, 2010, Article 7). However, there are certain exceptions from this prohibition implemented in the legislation, which are going to be mentioned in the following section.

State aid can be granted as an aid scheme or individual aid (Article 13, paragraph 1). Simply put, the difference between them is that for individual aid, an additional approval by the CPC is always necessary (Article 4, items 1 and 2).

Prior to granting new or making amendments to existing State aid, every grantor has to submit a notification to the CPC, which should include all information necessary for the CPC to be able to properly assess the aid in question (Article 13, paragraph 1 and Article 14, paragraph 1). After the submission of a complete notification, the CPC has to adopt a decision (Article 16, paragraph 1) on whether the aid constitutes State aid, and if it does – whether it is compatible with the internal market or not. The decision on compatibility can be adopted directly or after implementing a formal investigation procedure, whereby the CPC can approve the aid conditionally or unconditionally (Article 15). If the CPC does not adopt a decision before the given deadline, the grantor has the right to grant the aid with a prior notification to the CPC (Article 16, paragraph 3).

There are certain differences in relation to the EU legislation. In the EU, the Member State is the one that submits a notification about a plan for granting aid and additional information requested by the European Commission (Council Regulation (EU) 2015/1589, 2015, art.2). Furthermore, pursuant to Article 5 of the Council Regulation (EU) 2015/1589 (2015), if the Member State does not submit a complete notification before the given deadline, the notification is considered to be withdrawn, unless the deadline is postponed or the Member State proclaims that the information cannot be further completed. The Member State can also withdraw the notification on its own initiative (Council Regulation (EU) 2015/1589, 2015, art. 10).

►2.4. EXCLUDED CATEGORIES FROM THE GENERAL PROHIBITION FOR GRANTING STATE AID IN THE REPUBLIC OF NORTH MACEDONIA

According to the Law on State Aid Control (“Official Gazette of the Republic of Macedonia” no. 145/2010), the granting of State aid is always allowed in the following instances:

a) the aid has a social character, awarded to individual consumers, if by doing so there is no discrimination regarding the origin of the products and/or services, or;

b) the aid is used to make good the damage caused by natural disasters or other exceptional events, including military activities. (Article 8, paragraph 1)

Granting may be allowed in the case of:

a) regional aid for promoting the economic development of areas in North Macedonia where the standard of living is extremely low or where there is serious underemployment;

b) aid to remedy a serious disturbance in the national economy or to promote the execution of projects of significant economic interest for North Macedonia;

c) aid for rescuing and restructuring undertakings in difficulties;

d) aid to promote culture and heritage conservation where such aid does not significantly affect trading conditions and market competition;

e) horizontal aid and

f) other types of State aid granted on the basis of the act mentioned in paragraph (3) of this Article (other State aid where the conditions and procedure for granting are prescribed by the Government of the Republic of North Macedonia on a proposal from the CPC, n.b.). (Article 8, paragraph 2)

These provisions are in line with Article 107(2)(3) of the TFEU (2008), having the difference of the addition of rescue and restructuring aid in the Law. For this category of aid, the ‘one time, last time’ principle is applied (Decree on establishing the conditions and procedure for granting aid for rescue and restructuring of firms in difficulty, 2003, Article 13, paragraph 1). According to the European Commission, this principle is applied in order to avoid artificial preserving of inefficient firms. The Commission states that the exit of inefficient firms from the market is a normal process in a market economy and that they should not rely on constant

rescuing by the State (Communication from the Commission — Community guidelines on State aid for rescuing and restructuring firms in difficulty, 2004, paragraph 5 and paragraph 4).

Decrees have been adopted about several of the categories of aid that may be compatible with the internal market, in which there are criteria that should be met so that that type of aid is considered compatible (maximum aid intensity, conditions that the beneficiary has to comply with after the granting of aid, and the like, n.b.). In accordance with the Law on State Aid Control (“Official Gazette of the Republic of Macedonia” no. 145/2010), decrees have been adopted (Commission for the Protection of Competition, n.d.) on:

- regional aid – targeting initial investments and job creation resulting from those investments (Article 4, item 11 of the Law on State Aid Control),
- rescue and restructuring aid – aid for undertakings facing short-term or long-term difficulties (Article 4, items 12 and 13 of the Law on State Aid Control),
- horizontal aid – aid that can be granted in all sectors and regions, including services of general economic interest. Other categories are aid for: employment, training, SMEs, research and development and innovations, and environmental protection. Horizontal aid can also be granted in the form of venture capital (Article 4, item 14 of the Law on State Aid Control).

When assessing the compatibility of State aid with the internal market, the European Commission generally relies on weighting the positive and negative effects of the State aid, known as the balancing test. If the test shows that the positive effects – achieving objectives of common interest, are greater than the negative – distortion of competition and effect on trade, the State aid shall be considered compatible (European Commission, n.d.(a), paragraph 4 and paragraph 57).

►2.5. STATE AID IN THE SECTOR OF AGRICULTURE AND FISHERY

Pursuant to Article 93 of the Law on Agriculture and Rural Development (“Official Gazette of the Republic of Macedonia” no. 49/2010, 53/2011, 126/2012, 15/2013, 69/2013, 106/2013, 177/2014, 25/2015, 73/2015, 83/2015, 154/2015, 11/2016, 53/2016, 120/2016, 163/2016, 74/2017, 83/2018, 27/2019, 152/2019, 244/2019 and 275/2019 – consolidated text), State aid in the sector of agriculture is granted as an additional support to the measures included in the programs from the Law, which refer to: direct payments, financial support for rural development etc. (Article 3, paragraph 2 and Article 92). State aid is aimed towards “production, processing and sale of certain agricultural products or for providing certain services in the sector of agriculture” (Article 93), whereby specific categories are provided starting from Article 93-a up to Article 107 – this also includes certain conditions for granting aid and the amount of the respective aid, including de minimis aid for agricultural entities (Article 107, paragraph 1). The same applies to the sector of fishery, where the categories are provided starting from Article 102-b up to Article 102-i of the Law on Fisheries and Aquaculture (“Official Gazette of the Republic of Macedonia” no. 7/2008, 67/2010, 47/2011, 95/2012, 164/2013, 116/2014, 154/2015, 193/2015, 39/2016 and 83/2018 – consolidated text), having the difference that State aid in this sector is considered to be the financial assets granted through the measures in the annual programme (Article 102).

State aid in the sectors of agriculture and fishery can be granted by the State authorities and the units of local self-government, while the Ministry of Agriculture, Forestry and Water Management keeps a record of the awarded aid (Law on Agriculture and Rural Development, 2010, Article 93 and Article 109, paragraph 1; Law on Fisheries and Aquaculture, 2008, Article 102-a, paragraph 4 and paragraph 3). State aid measures in the sector of agriculture are implemented by the Agency for Financial Support of Agriculture and Rural Development (Law on Establishing an Agency for Financial Support of Agriculture and Rural Development, 2007, Article 6, paragraph 1, line 6).

Detailed information on the conditions for granting various categories of State aid are provided in the EU legislation as well, where generally, State aid in the sectors of agriculture and fishery is considered compatible when the positive effects outweigh the negative (European Union Guidelines for State aid in the

agricultural and forestry sectors and in rural areas 2014 to 2020, 2014, paragraph 38; Communication from the Commission — Guidelines for the examination of State aid to the fishery and aquaculture sector, 2015, paragraph 23).





3. MONITORING AND CONTROL AFTER THE GRANTING OF STATE AID

►3.1. PROCEDURES IMPLEMENTED WHEN THE RULES FROM THE LAW ON STATE AID CONTROL ARE NOT COMPLIED WITH

Pursuant to Article 4 item 5 of the Law on State Aid Control (“Official Gazette of the Republic of Macedonia” no. 145/2010), if the grantor, with the exception of existing and de minimis aid, grants aid after submitting a notification, but before the deadline for adopting a decision by the CPC or “without the CPC’s approval of granting”, this constitutes **unlawful aid**. Based on preliminary conversations with the CPC, it was found that the part “without the CPC’s approval of granting” (Law on State Aid Control, 2010, Article 4, item 5) refers to both aid that is granted despite the negative decision by the CPC and aid granted without prior notification to the CPC, or so called non-notified aid. When it comes to the non-notified aid, the CPC states that there is a significant problem regarding the lack of information about its existence, arising from the fact that the grantors do not cooperate with the CPC as they should when granting State aid, as well as from the fact that the CPC is unable to establish any cooperation with certain grantors and with the public enterprises at the central and the local level. The increased cooperation on the side of the grantors is necessary in order to reduce the existence of non-notified, unlawful aid.

The legislation also mentions the term **misused aid**. Pursuant to Article 4, item 6 of the Law on State Aid Control (“Official Gazette of the Republic of Macedonia” no. 145/2010), “every aid granted in contravention to the decision from Article 15 of this law which approves the granting of State aid (positive decision, n.b.)” constitutes **misused aid**. The definition of **misused aid** according to Article 1(g) of the Council Regulation (EU) 2015/1589 (2015) is as follows: “aid used by the beneficiary in contravention of a decision taken pursuant to ... Article 4(3) or Article 9(3) or (4) of this Regulation”, where, again, this refers to a positive decision for granting State

aid, conditionally or unconditionally. However, the difference between the two definitions is that the Macedonian legislation points out the grantor, whereas the EU legislation points out the beneficiary². When we talk about misused aid with regards to the beneficiary, generally we talk about aid used to achieve a different objective than the one for which the aid was granted or for the case when the beneficiary does not fulfill the obligations listed in the decision (Hofmann, H. C., and Micheau, C. (Eds.), 2016, pp. 368-370). For example, in the case of regional aid, misused aid would be the aid that the undertaking uses to cover expenses not related with an initial investment or job creation (Hofmann, H. C., and Micheau, C. (Eds.), 2016, p. 369), or in the case of rescue and restructuring aid, misused aid would be the aid used by the beneficiary without appropriately implementing the restructuring plan (Lienemeyer, M., and Mazurkiewicz-Gorgol, A., 2008, section 3.1). On the other hand, the aid with regards to the grantor also constitutes misused aid, more specifically when the grantor fails “to comply with the conditions imposed at the time of approval of aid” (‘Italian Republic v European Commission’, 2015, paragraph 67). This means that the definition of misused aid in the Law on State Aid Control (“Official Gazette of the Republic of Macedonia” no. 145/2010) is not wrong per se, but the fact that the beneficiary is not mentioned as well represents a shortcoming. This is significant from the aspect of the additional distortion of competition that can arise due to the behavior of the beneficiary and from the aspect of the regulation of the same.

An initiative for assessing potentially unlawful or misused aid and its compatibility with the internal market can be given by the interested parties or the CPC itself (Law on State Aid Control, 2010, Article 18, paragraph 1). Before adopting the final decision on the compatibility, the CPC can adopt a decision on interim suspension or provisional recovery of the granted aid (Article 19), as well as other interim measures in order to prevent the distortion of competition (Law on the Protection of Competition, 2010, Article 51, paragraph 1, as referred to in the Law on State Aid Control, 2010, Article 11, paragraph 1).

²An example of a decision where the CPC declares granted aid to be misused is available at p. 22 in the “Official Gazette of the Republic of Macedonia” no. 209/2018 ([Source](#))

The provisional recovery of the aid is possible only if the following conditions are met³:

- it is a measure that constitutes State aid,
- urgent action is necessary and
- there is a serious risk of causing significant and irreparable damage to a certain competitor. (Law on State Aid Control, 2010, Article 19, paragraph 2)

In the EU legislation it is added that “The Commission may authorise the Member State to couple the refunding of the aid with the payment of rescue aid to the firm concerned” (Council Regulation (EU) 2015/1589, 2015, art.13(2)). In addition, if the Member State does not comply with the suspension or recovery injunction, the European Commission reserves the right to submit a complaint to the Court of Justice of the EU on the basis of infringement of the TFEU (Council Regulation (EU) 2015/1589, 2015, art.14).

If the CPC adopts a final decision that the unlawful aid is not compatible with the internal market according to the rules for the protection of competition, the grantor of aid will be obliged to recover the aid from the beneficiary with a default interest (Law on State Aid Control, 2010, Article 21). The CPC cannot adopt a decision on recovering the unlawful incompatible aid after a period of 10 years, or 20 years including the delays due to an administrative dispute before the competent court (Article 22).

³The provisional recovery is implemented only in the case of unlawful aid, not in the case of misused aid (Law on State Aid Control, 2010, Article 23 and Article 19; Council Regulation (EU) 2015/1589, 2015, recital(28)).

►3.2. PROCESS OF MONITORING AND CONTROL

The CPC can carry out monitoring and control of the awarded State aid in several ways:

- through the annual reports submitted by the grantors of State aid (Law on State Aid Control, 2010, Article 24, paragraph 1),
- by requesting information from the undertakings on its own initiative (Law on the Protection of Competition, 2010, Article 49, paragraph 1, as referred to in the Law on State Aid Control, 2010, Article 11, paragraph 1),
- through on-site monitoring visits (Law on the Protection of Competition, 2010, Article 50, paragraph 1, as referred to in the Law on State Aid Control, 2010, Article 11, paragraph 1) – which would be especially useful when the beneficiaries misuse the aid and the data provided by the grantors is not sufficient to establish this is happening (Hofmann, H. C., and Micheau, C. (Eds.), 2016, p. 370)⁴, or
- through “investigation in a certain sector of the economy or a certain types of agreements in different sectors of the economy”, which is initiated in case any doubts arise regarding distortion of competition (Law on the Protection of Competition, 2010, Article 48, paragraph 1, as referred to in the Law on State Aid Control, 2010, Article 11, paragraph 1).

⁴The on-site monitoring visits implemented in case there are doubts about misused aid are also mentioned in Article 27 and recital(36) of the Council Regulation (EU) 2015/1589 (2015), however according to the information provided by the CPC, they are usually not implemented in practice when it comes to regulating State aid.

If the CPC finds that the existing State aid is no longer compatible (Law on State Aid Control, 2010, Article 25, paragraph 1), given the continuous changes in the market conditions, the CPC proposes the following measures to the grantor:

- substantial changes of the aid scheme,
- changes in the procedure for granting aid based on the aid scheme and
- abolishment of the aid scheme. (Article 25, paragraph 2)

If the grantor does not comply with these measures, the CPC initiates a formal investigation procedure for assessing the compatibility of the State aid (Article 25, paragraph 4).

►3.3. TRANSPARENCY

The transparency of granting of State aid is treated as an important issue within the EU. With the State Aid Modernisation (SAM) initiative, the European Commission requested for increased transparency, which resulted in changes made in 2014 in several by-laws on various categories of aid (European Commission, 2014). With those changes the Member States are now obliged, on a comprehensive and dedicated website (in this case that would be the website of the CPC, n.b.), in a format that allows for easy searching, to publish data for each aid measure regardless of whether the measure is an aid scheme or individual aid granted outside of a scheme. This, among other things, includes data about the aid beneficiaries, such as the name and the characteristics of the beneficiary, the objective, aid instrument, amount of the aid and the date of granting – this does not apply to aid granted to an undertaking in an amount lower than 500.000 euros, or 60.000 euros for primary agricultural production and 30.000 euros for fishery (Communication from the Commission amending the Communications from the Commission on EU Guidelines for the application of State aid rules in relation to the rapid deployment of broadband networks, on Guidelines on regional State aid for 2014-2020, on State aid for films and other audiovisual works, on Guidelines on State aid to promote risk finance investments and on Guidelines on State aid to airports and airlines, 2014, section I, paragraph 4, paragraph 7 and section II.2(a)(b); European Union Guidelines for State aid in the agricultural and forestry sectors and in rural areas 2014 to 2020, 2014, paragraph

128(c); Communication from the Commission — Guidelines for the examination of State aid to the fishery and aquaculture sector, 2015, paragraph 69(c)).

Such data is not available on the website of the CPC, and the abovementioned provisions are not included in the Macedonian legislation at all. Transparency is also lacking during the process of granting aid – pursuant to Article 29 of the Law on State Aid Control (“Official Gazette of the Republic of Macedonia” no. 145/2010), the CPC has an obligation to publish the notifications and the decisions on granting State aid on its website, however only the decisions adopted in 2019 are available (Commission on the Protection of Competition, n.d.). The decisions adopted by the CPC and the court’s judgements are published in the “Official Gazette of the Republic of North Macedonia” (Law on State Aid Control, 2010, Article 29, paragraph 1 and 2), however the CPC itself also believes that an online registry of State aid⁵ would provide for a better transparency. According to the preliminary conversations, the reason for not fulfilling part of the transparency obligations is the insufficient administrative capacity in the Sector for State aid control, as well as the shortage of staff specialized in ICT.

The transparency is significant because on one hand, the taxpayers and the civil society can monitor how the public money are spent and can provide recommendations on improving the public policies, and on the other hand – and this is especially important for the competitors, the compliance of the granted aid with the legislation can be better monitored (Communication from the Commission amending the Communications from the Commission on EU Guidelines for the application of State aid rules in relation to the rapid deployment of broadband networks, on Guidelines on regional State aid for 2014-2020, on State aid for films and other audiovisual works, on Guidelines on State aid to promote risk finance investments and on Guidelines on State aid to airports and airlines, 2014, section I, paragraph 2 and paragraph 3).

⁵The online registry of State aid in the EU, following the rules for listing the beneficiaries and the amount of State aid awarded to each of them, is available on the following [link](#)
The decisions on granting are also organized in a registry, including the approved aid schemes: [link](#)

►3.4. RESULTS OF THE WORK AND CAPACITIES OF THE CPC

According to the Annual Report on the Work of the CPC in 2018 (Commission for the Protection of Competition, 2019), the awareness about the importance of the area of competition among the grantors of State aid has been significantly increased, visible through the improved cooperation between them and the CPC (p. 50 and 51); significant progress has been made as well regarding the harmonization with the EU legislation, although the obligation remains to work on this continuously due to the constant changes (p. 54), as well as to make the appropriate changes regarding the shortcomings.

The CPC declares that it lacks funds and staff and is in need of professional development for the existing staff in order to operate more efficiently (p. 53 and 54). According to the financial report, the payroll in 2018 amounted to 14.915.835 denars, which represents 80,8% of the total realized expenses (p. 55). This means that the increase in the budget of the CPC will allow for an increase in the number of employees as well, especially highly-educated employees (p. 54). This should be highlighted as an important issue when drafting the Budget of the RNM, “since the area of protection of competition and the implementation of that branch of law in practice, is the primary objective of the European Union” (p. 54), which means that a strengthened institutional capacity of the CPC will facilitate and speed up the process of accession of the Republic of North Macedonia to the EU.



4. ANALYSIS OF THE LAW ON FINANCIAL SUPPORT OF INVESTMENTS THROUGH THE PRISM OF STATE AID RULES

The Law on Financial Support of Investments was adopted in May 2018 (“Official Gazette of the Republic of North Macedonia” no. 83/2018, 98/2019 and 124/2019 – consolidated text). It represents the largest aid scheme according to the amount of approved aid in 2018, totaling 18.180.650 euros (Commission for the Protection of Competition, 2019, pp. 42-45). This Law supports the realization of the Plan for Economic Growth (Ministry of Economy, 2019), which is integrated in the Industrial Strategy of the RNM 2018-2027 (Ministry of Economy, 2018, p. 54 and p. 56).

The Law on Financial Support of Investments (“Official Gazette of the Republic of North Macedonia” no. 83/2018, 98/2019 and 124/2019 – consolidated text) is aimed towards encouraging investments, promoting the competitiveness of companies and increasing employment, for the purpose of achieving improved economic growth and development (Article 3). It supports the successful private companies, regardless of whether they are foreign or domestic (Article 9, paragraph 1 and paragraph 4, line 1; Ministry of Economy, 2018, p. 26 and p. 57). The Law includes two sets of measures. The first set of measures includes financial support of investments:

- 1.1 Support for new employments;
- 1.2 Support for establishing and promoting the cooperation with suppliers from the Republic of North Macedonia;
- 1.3 Support for establishing organizational forms for technological development and research;
- 1.4 Support for investment projects of significant economic interest;
- 1.5 Support for increasing capital investments and revenues; and
- 1.6 Support for purchasing assets of undertakings in difficulties. (Law on Financial Support of Investments, 2018, Article 14, paragraph 1)

The second set of measures aims towards supporting export (Ministry of Economy, 2018, p. 25, p. 68 and p. 69). These measures are:

2.1 Support for increasing the competitiveness on the market;

2.2 Support for entering new markets and for sales growth. (Law on Financial Support of Investments, 2018, Article 14, paragraph 2)

The undertakings can apply for multiple types of financial support, as well as combine the aid awarded based on this Law with another aid scheme or individual aid, as long as the total amount does not exceed 50% of the eligible costs (Law on Financial Support of Investments, 2018, Article 14, paragraph 3 and Article 8, paragraph 1). The Government is the grantor of aid, whereas the competent authorities for conducting the procedure of granting are the Directorate for Technological Industrial Development Zones and the Agency for Foreign Investments and Export Promotion (Article 34, paragraph 1 and Article 36, paragraph 1). The Directorate is also responsible for keeping records and for submitting an annual report to the CPC for the total granted aid based on this Law (Article 41, paragraph 1).

The Law on Financial Support of Investments (“Official Gazette of the Republic of North Macedonia” no. 83/2018, 98/2019 and 124/2019 – consolidated text) is generally in compliance with the State aid rules. Given that this is an aid scheme, (Article 2), it is sufficient that it is approved once from the CPC and then aid can be granted to undertakings that meet the conditions, according to the procedure provided for in the Law (Articles 37-39). Although it is clearly stated that the purpose of the Law is improved economic growth and development through the support of investments, as mentioned above, some uncertainties arise regarding the specific exception from the general prohibition according to which the granting of financial support is allowed, especially since the decision by which the CPC approves this Law as an aid scheme is not available on the website (Commission for the Protection of Competition, n.d.). The definitions and the general provisions – starting from Article 4 up to Article 8 – as well as the title itself, imply that this is about regional aid, especially since Article 9 paragraph 1 line 1 points out that financial support may be granted to undertakings which “have started an initial investment”. Regional aid by definition is aid granted for initial investments and job creation resulting from those investments, where the term initial investments

refers to: establishment of a new undertaking, expansion of the production capacity, product diversification or acquisition over an undertaking in difficulties (Decree on the conditions and procedure for granting regional aid, 2013, Article 2 and Article 3, paragraph 1). However, when individual measures, i.e. types of financial support are being analysed, it can be noticed that not every measure represents granting of aid for expenses arising from an initial investment. This is also confirmed in the Industrial Strategy of the RNM 2018-2027, visible through the incorporation of the measures in different strategic goals (Ministry of Economy, 2018, p. 55 and p. 56).

Measures 1.4, 1.5 and 1.6 are implicitly aimed towards supporting initial investments (Law on Financial Support of Investments, 2018, Article 22, Article 23, Article 25 and Article 27; Ministry of Economy, 2018, p. 57), however measure 1.4, due to the name itself, can also be observed as the exception “aid ... to promote the execution of projects of significant economic interest” (Law on State Aid Control, 2010, Article 8, paragraph 2, point b). Measure 1.1 could be considered to be regional aid, however it is not explicitly stated that it is related to job creation that arises from an initial investment (Law on Financial Support of Investments, 2018, Article 15). Measure 2.1, although essentially represents a measure for promoting export, could also fall under the exception ‘regional aid’ because it partially covers investment expenses, however in the Industrial Strategy of the RNM 2018-2027 it is stated that the goal of the investment is to contribute to increasing the competitiveness on new markets (Ministry of Economy, 2018, p. 69), which does not necessarily mean that it is an initial investment.

In contrast, it is clear that measures 1.2, 1.3 and 2.2 are intended for other types of expenses:

- Measure 1.2, which aims towards promoting the cooperation between the multinational corporations (MNC) and the domestic suppliers, represents aid that covers 1% from the total procurements of the MNC, under the condition that 15% from the procurements for inputs used in the production process are made from domestic suppliers (Law on Financial Support of Investments, 2018, Article 17, paragraph 1 and paragraph 2; Ministry of Economy, 2018, p. 61). It remains unclear what type of exception this is, because aid for such types of expenses is not explicitly mentioned in the decrees arising from the Law on

State Aid Control (“Official Gazette of the Republic of Macedonia” no. 145/2010) or the rest of the excluded categories listed in Article 8 of that Law.

- Measure 1.3, granted for the promotion of technological development and research, represents horizontal aid because the eligible costs that can be partially covered with the financial support (Law on Financial Support of Investments, 2018, Article 20, paragraph 3 and paragraph 4) are completely identical with the eligible costs for research and development projects, listed in Article 6 paragraph 3 of the Decree on the conditions and procedure for granting horizontal aid (“Official Gazette of the Republic of Macedonia” no. 3/2014, p. 2).

- Measure 2.2 partially covers the expenses incurred by undertakings for activities intended to increase export, although indirectly, such as: attendance to fairs, business meetings with foreign enterprises, marketing and the like (Law on Financial Support of Investments, 2018, Article 31, paragraph 1; Ministry of Economy, 2018, p. 68). This measure actually constitutes de minimis aid, since the maximum allowed amount per beneficiary is 30.000 euros, regardless of the length of the time period in which the funds are being provided (Law on Financial Support of Investments, 2018, Article 31, paragraph 2 and paragraph 4).

According to these observations, the initial investment that has already started represents a condition, not necessarily an objective that the financial support is directed towards. Moreover, the granting of aid is not even allowed if the application is submitted for an investment that has already started, because the overall goal of State aid is to encourage the undertaking to carry out an activity which it would not carry out had the aid not been granted, i.e. to give an incentive effect (Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty Text with EEA relevance, 2014, art.6(1)(2); Communication from the Commission — Framework for State aid for research and development and innovation, 2014, paragraph 63; Communication from the Commission — Criteria for the analysis of the compatibility with the internal market of State aid to promote the execution of important projects of common European interest, 2014, paragraph 28). The fact that each application for granting financial support

based on the Law on Financial Support of Investments (“Official Gazette of the Republic of North Macedonia” no. 83/2018, 98/2019 and 124/2019 – consolidated text) is accompanied with a letter of intent and a business plan for an investment project (Article 37, paragraph 2), suggests that the undertakings submit an application for aid for an investment that is yet to start, however according to the information on the Government’s website, the undertakings can apply for investment expenses that have already been incurred (Government of the Republic of North Macedonia, n.d.)⁶.

A potential problem also arises with regards to the transparency. More specifically, on the website of the CPC there is no data available for aid granted to undertakings within the framework of this Law in amount bigger than 500.000 euros (Commission for the Protection of Competition, n.d.), however due to the lack of information itself, it cannot be stated that certain undertakings have received financial support that exceeds this amount⁷.

⁶In this particular case, the problem lies in the fact that the incentive effect as a condition for granting aid is not mentioned in the Macedonian legislation. The definition of State aid mentions an “economic advantage to a certain undertaking which would not be possible without the awarded State aid” (Law on State Aid Control, 2010, Article 5, paragraph 1), however an economic advantage means an investment carried out by the State, which a private investor would not carry out in that undertaking under normal market conditions (Commission Notice on the notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union, 2016, paragraph 74). The incentive effect is actually about whether or not the beneficiary would carry out the activity, i.e. whether the undertaking itself would start an investment.

⁷The transparency provisions relevant to the Law on Financial Support of Investments (speaking of which are not included in the Macedonian legislation, n.b.) are:

- Article 9 of the Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty Text with EEA relevance (2014);
- paragraph 119 of the Communication from the Commission — Framework for State aid for research and development and innovation (2014);
- paragraph 45 and paragraph 46 of the Communication from the Commission — Criteria for the analysis of the compatibility with the internal market of State aid to promote the execution of important projects of common European interest (2014)



5. CONCLUSION

State aid is generally prohibited due to the potential distortion of competition and the potential disturbance to the functioning of the free market. This is the reason why specific laws and by-laws have been adopted in this area which allow granting only in certain situations, and the granting has to be previously approved by the CPC.

The legislation in the Republic of North Macedonia which regulates this area is mostly aligned with Title VII from Part 3 of the TFEU (2008). Anyhow, generally speaking, the EU legislation regarding State aid is far more extensive than the Macedonian, and with more details. In the Republic of North Macedonia, the Law on State Aid Control („Official Gazette of the Republic of Macedonia“ no. 145/2010) is the only law regulating State aid, along with the pertinent laws on State aid in the sectors of agriculture and fishery which still hold less weight, and it is also accompanied with the Law on the Protection of Competition (“Official Gazette of the Republic of Macedonia“ no. 145/2010, 136/2011, 41/2014, 53/2016 and 83/2018 – consolidated text).

Although in the most part the Law on State Aid Control (“Official Gazette of the Republic of Macedonia” no. 145/2010) is aligned with the EU legislation, the lack of certain details might cause uncertainties when making an interpretation. A lack of directions by the CPC on what exactly constitutes State aid is noticeable, and there is also a need to appropriately adjust the definition of misused aid (Law on State Aid Control, 2010, Article 4, item 6), so that the CPC can use the possibilities it already has to control the distortion of competition that can arise after the granting of State aid due to the behavior of the beneficiary. Furthermore, the transparency provisions should be included in the relevant laws and decrees and implemented in order to allow for better monitoring of the spending of public money, which still requires increasing the cooperation between the CPC and the

grantors of State aid. The cooperation also needs to be increased regarding the notifying of the CPC by the grantors before awarding State aid, which will reduce the number of cases of unlawful aid. Certainly, there is also a need to increase the funding of the CPC, so that the number of employees can be increased and further professional development can be provided according to the needs, which will contribute to more efficient harmonization with the EU legislation, more efficient and more comprehensive assessment and monitoring of State aid, as well as better public transparency provided through the website.



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