

The Experience and Problem of Defining the State Aid in the Republic of Moldova

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Abstract: *The Economic Integration of the Republic of Moldova in the European Union requires considerable effort in the view of adjusting the national legislation to the Communitarian acquis. Relying on the analyses of experience of the countries that became members of EU we can see that major difficulties have been encountered in the domain of state aid, which nowadays practically is not regulated in the Republic of Moldova. Taking into account the above mentioned, the definition of the concept of state aid is actual and necessary. Taking into consideration that in the legislation of the Republic of Moldova the state aid is not defined, in the result of the researches we propose the notion of state aid, that might be used to legitimate this concept in the Republic of Moldova. Thus, the state aid in the Republic of Moldova could be defined as any measure of support provided to the entities in a selective way, using (directly or indirectly) public financial resources, as a result of which the beneficiary receives an advantage and as a consequence it can or could distort the competition environment and could have negative effects on the trade between the Republic of Moldova and the European Union member countries.*

Keywords: *state aid, intervention, monitoring, legislation, difficulties, directly or indirectly, public financial resources, effort, effect*

Introduction

The state aid as a state intervention measure is deemed to be a component of the state's economic policy, namely of the competition policy. Based on this the monitoring of the state aid is necessary in the view of excluding some of the unfair conditions on the market which could distort the competition environment.

The promoted competition policy represents a system for ensuring all the participants on the internal market a competition on equal positions, and aims at encouraging the economic efficiency through the creation of a favorable environment for the innovation and technical progress, facts which appear to be advantages for the consumers who could buy goods and services in the most favorable conditions.

Unlike the policy of competition promotion in the narrow sense of it, in the case of state aid policy, the state appears in its capacity of direct participant to these relations, and the public authorities as providers of the state aid. On this ground, the relationships which refer to the granting of the state aid need a special approach.

1. The Concept of the State Aid

The state aid measures, which offer undue selective advantages for some undertakings, make difficult the actions of the market forces as to the rewarding of the most competitive undertakings, decreasing the general competitiveness as a result. Such measures may lead to the creation of some undertakings' power on the market, for instance the undertakings which are not granted any state aid must decrease their presence on the market, or in case the state aid is used in order to raise entry barriers on the market. As a result of such competition distortion, the consumers may face higher prices, lower quality and decreased innovation.

In the absence of a competition policy which would impose restrictions regarding the states' interventions on the market distorting the competition through the creation of discrimination among economic agents and without a control over such interventions, there cannot occur competition under loyalty and equality conditions and therefore the success on the internal market cannot be ensured.

The granting of aids can be absolutely justified either in case they correct the deficiencies which appeared on the market, or in case they are used as a tool of promoting the structural changes; in this context, the aids serve a common interest since they contribute to the development of competitive industrial structures, consequently having a decisive role in the creation of job vacancies. The state intervention can occur within various policies promoted by the state as for instance regional policies, policies of research, industrial policies, etc. However, such interventions might not prejudice the competition.

As a result, the goal of state aid policy is, on the one hand, to establish an equilibrium between the necessity and admissibility of the state's interventions on the market, and on the other hand, to protect the fair competition. Therefore, the significant bulk of the European legislation on competition consists of regulations on state aid.

The understanding of the fact that the state aid implies expenditures and it does not represent a miraculous solution which can solve immediately all the problems, is very important while assessing the principle on which the rules of the state aid are based.

The financing of the public intervention is grounded on the resources accumulated in the private sector. The tax payers would have to contribute financial resources for the state aid and the expenditures related to its implementation. Granting aid to the undertakings leads to the redirection of the funds from other sector policies. The state's resources are limited and they are necessary for many imperative domains, as the system of education, health care system, social security sector, etc. therefore it is necessary to make transparent decisions, taking into account the priorities.

By means of state aid advantages can be granted for some economic agents, fact that has a negative impact on the market forces, which might offer competitive advantages to the most advanced undertakings. As a result of such interventions, alongside with the distortion of the competition environment and the prejudices to the consumers' interests, the redistribution of the state's financial resources takes place to the detriment of other social, educational, public order policies, etc.

In this way, the state aid can have a double negative effect on the citizens through:

- a) Distorting the competition environment resulting in high prices, low quality, little innovation, etc.
- b) Inefficient use of the state's limited financial resources.

The state aid has significant impact on international level, since any of the state's intervention in the economy as a state aid distorts the international competition environment. In order to avoid the worthless competition among the states in granting the state aid to their local undertakings, the conclusion was made regarding the necessity of regulating the state aid.

The concept of the state aid can be approached from the juridical and economical point of view. Therefore, from the juridical point of view the state aid represents an administrative, normative or legislative act, which provides for and authorizes measures of support to the economic agents on the ground of either the state's or administrative territorial units' resources. In this way, they underline the fact that the state aid cannot be granted without the existence of a juridical document.

We consider that the state aid, first of all has a economical significance, since alongside with the technical methods of state's intervention in the economy, it comprises as well the assessment of the processes which are carried out both until and after such intervention.

It is worth mentioning the fact that the notion of the state aid does not refer to the form of this intervention but mostly to its economic effects. The state aid can come about both under direct form by means of budgetary allocations, subventions, etc, and under indirect form by means of fiscal facilities and other regulations which reflect themselves through a lost income in the public budget.

By the instrumentality of the state aid, the redistribution of the financial resources occur, a part of the GDP accumulated by the state is distributed to the economic agents, and thus the budgetary expenditures are influenced directly. The indirect state aid affects the amount of the public budget's income, because by these measures the income which can be obtained under ordinary conditions is lost. However, in both cases the competition environment is affected, fact which influences the activity of the economic agents and the efficiency of the market forces.

The importance and the influence of the state aid on a national and international level being recognized, it was legislated for the first time by the Treaty establishing the European Economic Community in 1957 of Rome, ultimately various aspects of this concept were undertaken by different international bodies O.M.C., O.E.C.D. etc.

The Art. 107 par.1 of the Treaty on Functioning of the European Union (hereinafter TFUE) stipulates that: „*Save as otherwise provided in the Treaties, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favoring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market*”. [1]

Therefore, a support measure adopted by the state shall be defined as a state aid in accordance with the Art. 87 of the Treaty of the European Community usually are prohibited if it fulfills the following four conditions [1]:

1. Implies the (direct or indirect) use of the public financial resources;
2. Provides advantages to the beneficiary/beneficiaries;
3. It is selective;
4. Distorts the competition having negative effects over the trade among the Member States.

Implies the (direct or indirect) use of the public financial resources. The public financial resources include the state's resources, those of the administrative territorial units and of the public institutions. The amount of the public financial resources is made up of the duties, taxes, contributions, non-fiscal income, gathered from natural and legal persons, taking into account their economic potential as well as other criteria stipulated in the legislation.

The amounting of the public expenditures and their distribution upon destinations and spending units is carried out in accordance with the objectives of the economic and social development strategy of the state and with the immediate priorities established by the competent public authorities.

The public financial resources use is made upon the strict keep of the law, under conditions of ensuring the financial equilibrium, economic and social efficiency. The public financial resources are made up and managed by means of a unitary system of budget, funds, namely: the state budget, social security budget, the budgets of the administrative territorial units, the funds of compulsory health insurance. The public resources are managed by the central or local public authorities, but besides the public authorities (at central, regional or local level) it is worth mentioning as well the legal entities under the private law (public institutions, state or municipal undertakings) which manage the state's heritage.

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For the purpose of appreciation whether the measure is carried out on the ground of the state's resources, it is required that the financing either comes directly or indirectly out of the public resources, or it could be assigned to the state. The measure can be assigned to the state, in case the local or central public authorities have the possibility to exercise their right of control or to influence the decision to use the resources. In this sense, there must be conducted an assessment of the relationship between the supplier of aid, the private legal person and the public authority from point of view of the juridical status and the control of the intensity.

The use of the state's resources covers not only measures which imply a direct expenditure from the state budget (for instance budgetary subsidies, or the subsidizing on the behalf of the state of some bank loans), but also forms of support which reduce the "entries" into the state's budget (for instance the annulment of the delay of the public debts payment, fiscal facilities, as tax reduction, reduction or the delay of the payments of the contributions to the social security system for the employees, etc).

The financial advantage provided to the beneficiaries. This condition was formulated in the community jurisprudence in such a way that the notion of state aid should comprise "any of the support measure, irrespective of its form, having the effect of reducing the expenditures redound to the economic agents, even if it is not about a subsidy in the strict sense of the word, but it is of the same nature and has the same effects". The second issue that should be raised is whether the state modifies the costs of certain undertakings, and therefore strengthens their position in comparison with the existent competitors. In case the aid implies an economic advantage which the undertaking would have not been able to obtain under usual conditions of business administration, then such an aid might be a state aid.

For instance, in case an undertaking purchases/hires a public property land at a lower price than the market price, or in case the undertaking obtains the insurance with capital of the risk on behalf of the state under conditions which are more favorable than the existence ones on behalf the private investors, this would be considered state aid.

In case of indirect support measures and mostly of those carried out by means of independent institutions or even of some private economic agents (for instance commercial banks) which acts on the behalf of the state, it is often difficult to identify whether this condition is fulfilled. The European Commission has developed an analytical instrument for the examination of such situations, the so-called "cautious private investor principle". The test is about comparing the behavior of the public or private agent who implements a certain measure suspected of contained state aid elements with that of a private investor actioning in similar circumstances.

Despite the apparent simplicity of the principle, this test is often difficult to apply, being complicated to identify the exact type of the hypothetical behavior which can be used as a comparison parameter. For instance, in case a public institution carries out a support measure adopted in the context of a certain economic strategy policy, its behavior shall be compared to that of a private company (or group of companies), which pursues to increase their revenues on a medium or long term.

The selectivity of the measure. Art. 107 TFUE can be applied only to those support measures which "favor certain undertakings or certain activity branches", or, in other words, which are of selective nature. [1]

Therefore, the community legislation makes a clear difference between the general support measures, which are applied (and which are not prohibited) for all the economic agents under the same conditions, regardless the branch in which they are active and the selective ones, which have a greater potential to distort the competition on the EU internal market.

The selectivity criterion is absent in the case of general measures, namely activities which are applied without distinction to all the undertakings from all the branches of economy, as for instance the fiscal or infrastructure measures throughout the country.

Distorting the competition. Theoretically, any aid granted to an economic agent distorts the competition (to the extent this exists), since it reduces the beneficiary's cost, thus offering it an advantage compared to its competitors. The competition distortion implies the existence or the appearance of the relevant market, on which the position of an economic agent is strengthened compared to other competitors, due to the granted aid. As a result, it is essential to define the relevant market of the product and the relevant geographic market.

2. The Partnership and Cooperation Agreement between the European Union and Moldova

In the European Union the prohibition of the state aid is applied only to those who *affect the trade among the Member States* taking account of both the form and the intensity of the aid. In case the aid measure strengthens the market position of an economic agent compared to other economic agents competing within the intra community trade, this trade shall be considered affected; in case an economic agent carries out activity on a sector affected of overcapacity, on which producers from different Member States compete, any aid received by the particular economic agent from the public authorities is liable to affect the trade among the Member States and to negatively impact the competition, since its constant presence on the market impedes the competitors to expand their segment on the market and reduces their chances to increase the exports.

The partnership and cooperation agreement between the European Union and the Republic of Moldova, Action Plan Republic of Moldova-European Union, stipulate the obligation of the Republic of Moldova to assume the community Acquis in the state aid domain. The Republic of Moldova undertook international obligations that it would refrain from granting state aid that harms or threatens to harm competition, as well that it would create a national mechanism for centralizing the information concerning state aid.

The Partnership and Cooperation Agreement between the European Union and Moldova (hereinafter referred to as "Agreement"), as well as the Action Plan Republic of Moldova-European Union, state that Moldova should undertake the Communitarian Acquis in the field of State Aid. [2]

Art 48 of the Agreement establishes the obligation of the Parties of the Agreement to act as to remedy or to eliminate through the implementation of its laws concerning competition or through other methods, restrictions referring to the competition of enterprises or those that result from the intervention of the state if these could affect the trade between the Community and the Republic of Moldova. If the European Union has a performing normative framework regarding the intervention of the state in the economic activity, then, comparing to it, the Republic of Moldova until now did not define legally state aids and did not yet introduce a mechanism of evidence on them. [2]

In the context of obligations established in the Action Plan European Union-Moldova, the National Agency for the Protection of Competition (NAPC) elaborated the draft law on state aid. Currently, the unique legal tool in the field of state aid in Moldova is the Law nr. 1103-XIV from 30.06.2000 on the Protection of Competition and, until the adoption of the Law on State Aid, NAPC will be guided by the Law on the Protection of Competition, especially art.9, that prohibits the groundless granting of fiscal or other facilities to economic agents, as to create for them a privileged situation in comparison with other economic agents acting on the same market. [3]

3. The State Aid in the Republic of Moldova

Currently, as far as a normative framework in the field of state aids is lacking, it is impossible to monitor and control the state aids granted in the Republic of Moldova. Thus, the state aids in Moldova can be divided in two categories:

- state aids granted on the basis of a normative act (laws and government decisions);
- state aids granted on the basis of an administrative act.

If the normative and legal acts are public, being published in the Official Gazette, then the administrative acts adopted by local public authorities and other institutions that manage public resources very often are not public and can only be discovered after a control over the management of public financial resources. Often the state aids granted on the basis of administrative acts are considered to be illegal and this is confirmed by the Reports of the Court of Accounts of the Republic of Moldova.

Analyzing the legal and normative acts adopted between 2003-2009 by the Parliament and Government of the Republic of Moldova, as well as the Reports of the Court of Accounts of the Republic of Moldova on the way of managing public financial resources between 2003-2009, a synthesis of state aids granted in the Republic of Moldova has been made.

Table 1

The analysis of state aid in the Republic of Moldova

	2003	2004	2005	2006	2007	2008	2009
GDP in current prices, thousands MDL	2761891 8	3203177 7	3765186 9	4475436 7	5342957 1	6284030 7	60043308
Average annual number of population, thousands persons	3618.3	3603.3	3594.55	3585.2	3576.9	3570.1	3567.5
State aid, thousands MDL	2174699	514474	603938	732796	1205980	994219	1329438
Weight of state aid in GDP, %	7.87	1.61	1.60	1.64	2.26	1.58	2.21
State aid per inhabitant	601	143	168	204	337	278	373

Looking at the state aids in the Republic of Moldova we can see that they have a significant weight in the GDP, which had a constant value of 1,6 % in the period of 2004-2006. A significant increase was registered in 2007. In the same time, it is necessary to mention that not all the state aids granted in Moldova have been reflected in this table. This is because, first of all, the evidence on state aid from local public authorities is lacking and so does also the information on the value of immobile goods transmitted to enterprises.

Also, there are some cases when state aids have been granted on the basis of some decisions which have not been made public. Thus, on the basis of secret Government Decisions nr. 599 from 15.05.2008 and nr. 156 from 15.02.2008, 9000 tones of wheat have been granted free of charge to the Company "Franzeluta" and 2000 tones to the Bread Manufactory of Balti.

It is important to mention that a significant weight of state aids in Moldova is granted to the agricultural sector. The monitoring of state aids granted to the agricultural sector is made at a higher level due to obligations toward the World Trade Organization.

In the Frame of medium term expenses for 2007-2009, it is mentioned that "one of the key problems of the agricultural sector is the elaboration and implementation of a new mechanism for subsidizing agricultural producers. Moldova has limited resources for subsidizing the agricultural sector. In this sense, the efficient use of the allocated budgetary resources is essential. This is why, a thorough selection of the directions of subventions use forms the point of view of their contribution in the achievement with maximum efficiency of Government objectives concerning economic growth and poverty reduction, is very important". In the frame of the above-mentioned, the Government adopted the Concept of the Subsidizing System of Agricultural Producers for 2008-2015. Through the given conception were approved the main principles in realizing agricultural policies through the application of the system of subsidizing agricultural producers, as well as the priority directions in the agricultural sector were highlighted, by mentioning the modernization of the agricultural sector and of the performing agricultural activities in the vegetal and pet sectors.

Conclusions

Analyzing the state aids granted in Moldova we see that there is a lack of unique support program for the autochthon enterprises. In many cases state aids are granted with a lack of transparency and with infringements to the law. The lack of normative framework in the field of state aid allows the majority of state interventions in the economy through financial support offered to enterprises to be qualified as infringements to the law. It is also obvious that in conditions when the legal framework of state aid lacks, many of the beneficiaries of state aid have been selected without an economic arguing, in function of circumstances.

State aids in the Republic of Moldova exist and this can not be ignored. But the current system of granting them is inefficient, non-transparent and bureaucratic. Taking into consideration the obligations of the Republic of Moldova on the international level and the tendency of integration into the European Union, the perspectives of the legislation of the Republic of Moldova are certain, it must be harmonized to the Communitarian Acquis, but this should be done in accordance with the specific of national economy development.

Proceeding from the content of the state aid notion accepted by the European Union and proceeding from the aspiration for integration of the Republic of Moldova, we believe that the state aid in the Republic of Moldova could be defined as any support measure granted to the undertakings under selection, using (directly or indirectly) the public financial resources, resulting in assigning an advantage to the beneficiary/beneficiaries and as a consequence the distorting of the competition environment may occur, as well the trade between the Republic of Moldova and the Member States may be negatively affected.

References

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- [3] Law nr. 1103-XIV from 30.06.2000 on the Protection of Competition

Supplementary recommended readings

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