



State Aids Rules

Purpose of the policy

State aid control is one of the core elements of EU competition policy. Its aim is to minimize market distortions caused by state financial intervention and to guarantee a level playing field for all European companies in the Internal Market. EU state aid regulation is designed to control aid which has a negative effect on trade and competition between member states. However EU member states have national authorities overseeing state aid, which also ensure fair competition even when an aid has exclusively national impact.

Next to rather obvious forms of aid like state subsidies and tax breaks for certain companies there are less obvious forms of aid, for example:

- a firm buys/rents publicly owned land or buildings at less than the market price;
- a company enjoys privileged access to infrastructure without paying a fee;
- a public authority issues a guaranty to a firm without receiving a premium in return;
- a public authority invests in a company or enters a public private partnership under conditions which would not be acceptable to a private investor;
- a public authority pays more than a reasonable price for a (public) service.

The EU legislation is very restrictive about this kind of aid. Most types of aid are forbidden. Under certain conditions a minimum necessary amount of aid can be given in order to correct market failures and support common objectives like cohesion.

Current situation for Ukraine

In 2002, Ukraine was spending much more on State aid to industries (2% of GDP) than EU-25 (0,6% of GDP). This number does not include the aid hidden in such transactions as state guarantees or sale of public assets. The total amount involved might be much higher.

Ukraine is now in an advanced phase of the Deep Free Trade/ Association Agreement negotiations with the EU and State aid reform is part of that. In 2010, the authorities have progressed towards the preparation of law on State aid control. Ukraine will have to follow the principles of the *acquis communautaire* of the EU and be transparent as regards State aid granted in Ukraine. Among others, an independent surveillance body will have to be established. Adopting a legal framework and state aid control mechanisms is a normal practice in countries which have accessed the EU in the past and the others which have signed an association agreement with the EU.

Impact on Ukraine

Benefits of implementing State aid control in Ukraine can be summed up in four major points.

- Increased efficiency in the economy and reduced waste through inefficient state subsidization.
- Greater transparency in public spending.
- Due to the knowledge of State aid rules civil servants are better equipped in dealing with both local and foreign enterprises (including their well informed lawyers) and effectively control co-operation projects, privatization or investments.
- Improved business environment in the country. State aid policy and control increases transparency and predictability in relations between government and business and boosts mutual trust. Moreover, awareness of State aid issues among businesses helps the system control itself: well aware companies can use their legal rights to challenge unlawful State aid to

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their competitors in the national court. The same goes for non-governmental organisations. They can use state aid rules as a benchmark for public spending control. This has become a common practice in some of the EU Member States.

Issues for Ukraine

Ukrainian authorities should pay attention to the full range of State aid measures (meaning all types of direct and indirect benefits that the state transfers to businesses) because a proper *State aid control mechanism can have positive impact on the transformation of Ukrainian economy and public service*. In order to make full use of these benefits, it is necessary to focus on *implementation* of State aid control at *all levels of government* from early on. The less obvious but not less harmful State aid measures are often designed locally. Therefore information on state aid and advice to civil servants is needed permanently.

Responsible institutions and useful resources on topic

Our more detailed information report on State Aids (Ukrainian and English):

- o European Integration Policy Advice Project – EIPA Project <http://www.nrdevelopment.com/eipa.html>
- o Wider Europe <http://www.w-europe.org/?m=20101120> Project “Harmonisation of the Competition and Public Procurement Systems in Ukraine with the EU Standards” <http://competitionproject.org.ua/>

Specialist information (English):

- o UK Department for Business, Innovation and Skills <http://www.bis.gov.uk/>
- o BIS State Aid Branch has lead responsibility within UK government for co-ordination and development of State Aid policy <http://www.bis.gov.uk/policies/europe/state-aid>
- o The [website of the European Commission](#)
- o Begunski, L., ‘Creating a system for monitoring and control of State aid to Ukraine’, Kiyiv, 2010

Specialist information (Ukrainian):

- o Government of Ukraine <http://www.kmu.gov.ua/control/>
- o Government of Ukraine. Press-release about adoption of the Concept of the State Aid Reform in Ukraine http://www.kmu.gov.ua/control/publish/article?art_id=243285610
- o The Concept of the State Aid Reform in Ukraine <http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=81-2010-%F0>
- o Press-release about amendments to the Concept of the State Aid Reform in Ukraine Прес-реліз про вдосконалення Концепції реформування системи держвної допомоги <http://competitionproject.org.ua/en/publications/press-releases/123-stateaidconcept.html>