

Cumulating State aid – a pitfall for the non-prepared?

Essay by Dr Péter Staviczky, Fiscal Attaché - Responsible for State aid, Permanent Representation of Hungary to the European Union

State aid policy – as an integral part of the competition policy – aims at promoting the establishment of the four freedoms and other community objectives (such as environmental protection) within the European Union and thereby the completion of the internal market. This unique and fairly complex set of rules and case law try to create level playing field for all undertakings operating within the EU.

All Member States provide various financial supports (direct grants, tax allowances, preferential loans or guarantees, etc.) for undertakings operating within their territory or to encourage them to settle in that particular Member State. Without common State aid rules and effective supranational control it would be hard to avoid “subsidy race” among the Member States to support the development of their national economy. It should also be emphasised that undertakings dependent on State resources are never as innovative and as efficient as the ones operating under competitive circumstances. The main reason for State aid policy is therefore to maintain the undistorted competition in the internal market. By granting State aid competition is or may be affected by the behaviour of the Member States. The Treaty on the Functioning of the European Union assigned a supranational body, namely the European Commission, to control and monitor State aid granted by the Member States. In order to avoid undue distortion on the markets, all aid, not falling under exemptions defined by the Commission, should be notified to the Commission and can be granted only after receiving the green light from the EU’s executive.

In the past decades, for the greater transparency, the Commission has developed a set of rules, which specifies what type of aid is compatible with the function of the internal market. The main principles of authorizing the aid are: contribution to an objective of the Community, necessity and proportionality.



While the primary violators of the State aid rules are the Member States by not

notifying their aid granting intentions or granting higher amount of aid than allowed, the consequences are mainly on the beneficiaries. Incompatible aid should be paid back by the beneficiary to the State with interest. For this reason, it is crucial for all beneficiaries to be able to assess whether the aid to be granted is in line with the applicable State aid rules. This obligation requires profound knowledge of these special rules, which is even more important if they receive different types and/or forms of aid for a specific project. In general, the State aid rules of the European Union define the eligible costs of the project and also they fix a percentage what State resource can cover from these costs (aid intensity). The aid ceiling fixed in the rules, applies regardless of whether the support for the aided project is financed entirely from State resources or is partly financed by the Community (e.g. from Structural funds). The number of sources bears no importance either. The maximum aid intensity allowed cannot be exceeded. Aid payable in several instalments and eligible costs incurred during several years shall be discounted to its value at the moment of granting (present value of the aid element).



As one can see cumulation of State aid granted from different sources to the same project (same eligible costs) needs close cooperation between the beneficiary and the granting authorities. First, the beneficiary has to disclose for all aid grantors that it has applied for different sources of aid for the same project. Second, if the different aids are not granted at the same time, which rarely happens, the aid grantors and the beneficiary should take into account the earlier decisions and in order to respect the maximum intensity or amount prescribed. In practice, this means that if for instance a company receives direct grant and tax allowance for a greenfield investment, usually it receives the direct aid first and the tax allowance is drawn later on, when the company becomes profitable. Consequently the amount of the direct aid lowers the maximum tax allowance at the beneficiary’s disposal

and should the company use the full (original) amount of the tax benefit, the State aid rules would be breached.



The compliance with State aid rules became more and more important as in the past years the Commission puts greater emphasis on ex-post monitoring the aid schemes of the Member States as well. This practice leaves less and less space to irregularities without consequences. For this reason all the beneficiaries should act very carefully and have to be prudent when choosing which types of aid they apply for.

Dr Péter Staviczky
is speaker at the

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**Fiscal Attaché - Responsible for State aid,
Permanent Representation of Hungary to
the European Union**

Péter Staviczky works as Fiscal Attaché - Responsible for State aid, Permanent Representation of Hungary to the European Union. Previously, he worked in the Hungarian Ministry of Finance at the State Aid Monitoring Office in Budapest as Head of Unit of this Office. He has read Law at the Pázmány Péter Catholic University Faculty of Law (1996-2001) and Comparative Law at the International Faculty of the University Robert Schuman Strasbourg (1999-2002). Moreover, he has done banking-lawyer training in Deák Ferenc Institute for Postgraduate Education (2000-2002) and took part in the common European specialist course of the Ministry of Foreign Affairs and the French École National d'Administration in spring 2002.

He is an invited lecturer in numerous State aid seminars. He is co-author of a State Aid Handbook, where he wrote chapter on market economy investor principle. Furthermore, he gives regularly lectures to officials of regional governments, public enterprises as well as to representatives of banks and companies.