

STATE AIDS ACT

(Promulgated in State Gazette, Nr. 28 of 19 March 2002, Enforcement since 20 June 2002)

CHAPTER ONE

GENERAL PROVISIONS

Subject-matter

Art.1. (1) This Act regulates the conditions and the terms of monitoring and control of state aids as well as the procedures of determining their compatibility with the principles of free competition.

(2) The assessment under Paragraph 1 is done in conformity with the commitments, undertaken by the Republic of Bulgaria pursuant to international treaties.

(3) **“State aid”** is any aid, granted by the State or through state or municipal resources, or on behalf of state or municipal resources, directly or through other persons, in any form whatsoever, which distorts or threatens to distort free competition by favoring certain enterprises, the production or the trade of certain goods, or the delivery of certain services.

(4) The provisions of this Act apply also to aid granted to undertakings, which are entrusted by the State or by a Municipality with the operation of services of public interest, insofar as its enforcement does not make de facto or de jure the performance of the particular tasks assigned to them impossible.

(5) This Act does not apply to state aid:

1. Granted in agriculture and in fisheries;
2. Exclusively intended for the defense industry.

(6) Aids to any particular undertaking to the total value of below 200 000 Levs within a period of three years, irrespective of the form or the aid and the source of the aid, with the exception of the aids:

1. To export oriented activities and such through which the local goods are favoured over the import ones;
2. In the field of the transport and the shipbuilding;
3. Intended for products, comprised by Protocol No 2 for the products, treated by the Treaty for the European Community for coal and steel, in connection with Article 17 of the European Agreement for Association between the European Communities and their member states from one part, and the Republic of Bulgaria from the other part,

Considered as compatible with the principles of free competition, and to them apply only the Provisions of Chapter Three.

State Aid Regime

Art.2. (1) State aid may be granted only where authorized under the stipulated in this Act order.

(2) The regime of Para. 1 applies to both individual aid and state aid schemes.

Permissible Aid

Art.3. The provision of state aid is permissible where the aid:

1. Has a social character and is granted to individual consumers, provided that such aid is granted without any discrimination related to the origin of the products concerned;

2. Is intended to make good the damage caused by a natural disaster or other exceptional occurrences.

Aid which may be taken as compatible

Art.4. The granting of state aid may be taken as permissible where the aid:

1. Promotes the economic development of areas where the standard of living is abnormally low or where there is serious unemployment;

2. Promotes the execution of a project of significant economic interest for the Republic of Bulgaria and for the countries with which the Republic of Bulgaria has established a state aids monitoring regime, or to remedy a serious disturbance in the economy of the Republic of Bulgaria;

3. Facilitates the development of certain business operations or of certain economic areas. Insofar as such aid does not adversely affect trading conditions to an extent contrary to the common interest of the Republic of Bulgaria and the countries with which it has established a state aids monitoring regime;

4. Promotes the culture and heritage conservation where such aid does not affect trading conditions and competition to an extent that is contrary to the mutual interest of the countries.

CHAPTER TWO

CONDITIONS AND TERMS FOR ASSESSMENT AND CONTROL OF THE STATE AIDS

Authority empowered to authorize and control the state aids

Art. 5. The Commission for the Protection of Competition , hereinafter addressed as the “Commission”, as a specialized and autonomous state authority, authorizes and controls the granting of state aids.

Standstill provision

Art. 6. Until The Commission makes a decision authorizing the aid, the aid should not be granted except in the cases under Art. 10, para.4 or Art. 11, para.3.

Notification obligation

Art. 7. (1) All, which intend to grant or alter an already granted state aid, are obliged to notify that to The Commission in advance.

(2) The notification shall contain data on:

1. the authority or the person, granting the aid;
2. the size, the type and the form of the aid, as well as its duration;
3. the legal basis for granting the aid;
4. the beneficiary;
5. other data, substantiated in the Rules for the Implementation of this Act.

Group exemption from the obligation to notify

Art. 8. (1) The Commission may give a ruling providing that the notification obligation shall not apply to a certain type of aids, when they meet the requirements under Art. 3 or Art. 4.

(2) In the decision made under Para.1, the Commission specifies the conditions, under which aid can be granted, as well as conditions under which aid is impermissible.

(3) The Decision made under Para.1 comes into force after it is promulgated in the State Gazette.

Initiating proceedings

Art. 9. (1) The Commission initiates proceedings:

1. Upon a notification under Art. 7
2. Upon a written request of a competing undertaking whose interests have been distorted or threatened by a distortion of this Act;
3. Upon its own initiative, in the case of distortion of Art. 7 or Art. 15, para.2, lit. 2 or lit. 3.

(2) In 7 days from the date of receiving the notification, request or making a decision under para.1, the Chairman of the Commission opens a case and assigns it to a member of the Commission-reporter and announced in written the concerned persons under para.1, lit.1 or lit.2, and in the cases under para.1, lit 3 – the grantor and the grantee (the beneficiary) of the aid where this is possible.

(3) Where incompleteness and inadequacy in the notification under Para.1, lit.1, in 5 days of its delivery the Commission announces the applicant about the necessity it to be clarified. The period under Para.2 starts to run after the date of their elimination.

Investigation

Art. 10. (1) The reporting member of the Commission conducts an investigation of the circumstances relevant to the case, by requiring:

1. Explanations, in writing or in an oral form, from the donor, from undertakings, and also from the central and local government authorities, where minutes are kept of the oral explanations and the minutes are signed by the reporting member and by the persons who have given the explanations;

2. Transcripts of private or official documents;

3. Opinions, in writing, from central and local government authorities.

(2) In conducting the investigation the reporting member of the Commission is assisted by the administration of the Commission for the Protection of Competition.

(3) All facts and circumstances, determined in the course of the investigation, are confidential, if they constitute an industrial, trade or another form of protected secret.

(4) The Commission pronounces with a decision within a period of two months of initiating the proceeding under Art.9, para.1, lit.1 If in this period the Commission does not pronounce, the state aid may be granted, except if the Commission has taken a decision for initiating an additional investigation under Art. 11.

(5) Where the case does not constitute factual or legal complexity, the Commission may make a decision within a period of twenty days of initiating a proceeding under Art. 9, para.1, lit.1.

(6) After the completion of the investigation, the persons, who have been involved in the proceedings, are provided an opportunity to get familiar with the materials collected in relation to the case.

Additional investigation

Art.11. (1) The Commission decides to initiate additional investigation where as result of the investigation under the terms of Art. 10 some concerns arouse that the aid may be incompatible with the principles of free competition.

(2) The Commission promulgates in the State Gazette a description of the state aid and an invitation to all concerned persons to present within a period of 30 days their statements.

(3) The Commission takes a decision within a period of three months from the decision under para.1. If in this period the Commission does not take a decision, the state aid may be granted by the condition that the grantor has notified in a written form in advance the Commission of that fact and it still has not announced its decision in 15-days from the receiving of the notification.

(4) When the proceedings are initiated under Art.9, para.1, lit.2 or 3, the period of taking a decision under para 3 does not apply.

(5) After the completion of the additional investigation, the parties in the proceedings are provided an opportunity to get familiar with the materials collected in relation to the case.

Proceedings of the meeting

Art. 12. (1) After the completion of the investigation or of the additional investigation, the reporting member submits a statement of findings to the Chairman of the Commission who convenes an open sitting within **three days**.

(2) The donor and the recipient of the aid are summoned to the sitting where that is possible, and in the cases under Art. 9, para.1, lit.2 – also the competing undertaking as well as their proceeding representatives if there are such.

(3) The notification of the persons under Para.2 about the meeting is done under the terms and procedures of the Civil Proceedings Code.

Evidences

Art. 13. Evidences in written form are allowed before the meetings of the Commission and the explanations of the persons under Art.12, para.2 are heard, where it is possible.

Proceedings of the meeting

Art. 14. (1) The meeting of the Commission starts by settling the preliminary questions relevant to the case, with regards to the regularity of the procedure.

(2) The persons, summoned to the meeting, can be asked questions under terms and procedures, specified by the Chairman.

(3) When the Chairman decides that the circumstances relevant to the case have been clarified, the Chairman offers the parties under para.2 the floor for them to express their opinions.

(4) After the clarification of the factual and the legal aspects of the case, the Chairman closes the meeting and sets the day, on which the Commission will declare its ruling. The Commission declares its ruling within 7 days after the closing of the meeting, at the latest.

Decision of the Commission

Art. 15. (1) In the event that, as a result of the proceedings the Commission establishes that the aid does not fall into the scope of Art.1, para.3, it declares with a substantiated decision, that there is no state aid.

(2) In the event that, as a result of the proceeding the Commission establishes that there is state aid, it announces a substantiated decision, by which:

1. It declares that the aid falls within the scope of the permissible aid under Art. 3 or Art. 4 and authorizes the granting of the aid;

2. It authorizes the aid conditionally, or imposes compulsory prescriptions for its use;

3. It declares that the aid is prohibited and refuses to authorize the aid to be granted;

4. It determines that the aid granted does not comply with the Act, and rules the recovery of the unlawful aid where it is possible;

(3) The Commission by its decision suspends the proceedings after abandonment (withdrawal) of the notification under Art. 9, para.1, lit.2.

(5) A copy of the decision of the Commission is sent to the Council of Ministers. Where the granting body is the Council of Ministers, a copy of the decision is sent to the National Assembly.

Content of the Decision of the Commission

Art. 16. (1) The Decision of the Commission is in writing, and contains:

1. The name of the authority, which has issued it;
2. The factual and the legal basis for making the decision;
3. A dispositive part;
4. Before which authority, and within what period of time the decision can be appealed;

(2) A Member of the Commission, who disagrees with the decision, signs it with a note of dissent. The note of dissent is attached to the decision.

(3) The decision of the Commission is subject to immediate execution.

Recovery of unlawfully granted state aid

Art. 17. (1) The Commission for the Protection of Competition may order the recovery of the aid or its financial equivalent by the undertaking which has received it where:

1. The aid falls within the scope of the provision of Art.1, para.3 and has been granted in breach of a decision under Art. 15, para.2, lit.2 or lit.3;
2. In the cases under Art. 15, para. 2, lit. 4.

(2) In the cases under Art. 1 an interest is also due equal to the reference interest rate, increased by 10 percentage points, accrued from the day when the receiver of the aid has had the possibility to start using it until its final reimbursement. The interest is due in favour of the republican budget.

Appealing of the Commission's decisions

Art. 18. (1) The decisions of the Commission of the Protection of the Competition are subject to be appealed before the Supreme Administrative Court, within fourteen days of their being declared, under the terms and procedures of the Civil Proceedings Code.

(2) The appealing of the decision does not stop its execution.

Limitation period

Art. 19. In case five years have elapsed since the aid has been granted or since the last disbursement under an aid scheme, no proceedings are initiated, or the proceedings initiated are terminated.

Annual report of the Commission

Art. 20. By 31 March of the current year, the Commission is to submit to the National Assembly an annual report on its activity under this Act and to make it public.

CHAPTER THREE

POWERS OF THE MINISTER OF FINANCE

Monitoring and ensuring transparency of state aids

Art. 21. (1) The Minister of Finance is the body, responsible for monitoring and transparency of the state aids on national, regional and local level. For the rules on monitoring and providing transparency of the State aids, the Minister of Finance issues a Directive.

(2) All the bodies of the central executive authority and the local self-government, as well as the persons which have powers to grant state aid in any form whatsoever, are obliged to submit to the Minister of Finance all the information he requires on aid already granted, or on their plans to grant state aid.

Annual report on the state aids

Art. 22. (1) The Minister of Finance draws up a consolidated Annual report on the state aids granted in the Republic of Bulgaria, and submits it under the appropriate order to the National Assembly, to the Council of Ministers and to the European Commission and publishes it. Copy of the report is to be sent to the Commission for Protection of Competition.

(2) By 31 March of the current year, the bodies of the central executive authority and the local self-government, as well as the other persons, which have granted state aids, submit to the Ministry of Finance an annual report on the state aids granted by them on the basis of the actual data for the preceding year.

State aids inventory

Art. 23. (1) The Ministry of Finance opens and maintains a State Aids Inventory, where all the available data on both aids granted and on the proposals to grant state aids on the national, regional and local level is currently entered.

(2) The Ministry of Finance submits every **six months** to the Commission information for aids, entered into Inventory, as well as on a concrete request of the Commission.

(3) The Commission submits to the Ministry of Finance:

1. Copies of the notifications received and of its decisions to initiate proceedings upon its own initiative;
2. Copies of the decisions made under Art. 15, as well as information as to whether the decision has been appealed.

CHAPTER FOUR

ADMINISTRATIVE PENALTY PROVISIONS

Art. 24. (1) Who grants state aid in breach of Art. 6 or Art. 7, is sanctioned by a property sanction to the amount of from 2,000 to 5,000 Levs.

(2) For a repeated offence under paragraph 1 the property sanction amounts from 5,000 to 10,000 Levs.

Art. 25. Who fails to comply with a decision of the Commission under Art. 15, para.2, lit.2, 3 or lit.4, is sanctioned by a property sanction to the amount of from 5,000 to 20,000 Levs.

Art. 26. (1) Who does not submit the evidence required by the Commission within the period specified, or fail to appear in person to testify before it, is sanctioned by a fine to the amount of 500 to 2,000 Levs.

(2) In case of repeated offence under paragraph 1, the fine is to the amount of from 1,000 to 5,000 Levs.

(3) In case of unimportant offences under paragraph 1 the Commission may impose a fine below the minimum amount specified.

Art. 27. The property sanctions and the fines under this Chapter are imposed by a decision of the Commission.

Art. 28. The decisions of the Commission are subject of appealing before the Supreme Administrative Court.

ADDITIONAL PROVISION

§ 1. Within the meaning of this Act:

1. **“Undertaking”** is every physical and legal person or civil society, which performs economic activity, independently of its ownership, the legal and organizational form.

2. **“Repeated offence”** is an offence done in an year of coming into force a decision of the Commission under which the offender has been sanctioned for the same type of offence.
3. **“Aid scheme”** is any measure on the basis of which, without further implementing measures being required, it may be granted:
- a) aid to undertakings meeting some previously define, generally formulated, criteria;
 - b) aid to one or several undertakings, which is not linked to a specific project for an indefinite period of time and/or for an indefinite amount.
4. **“Individual aid”** is the aid which has not been granted on the basis of an aid scheme;
5. **“Concerned person”** is each person, undertaking or association, whose interests could be affected by granting of an aid – the receiver of the aid, competing undertakings or organizations of competing undertakings.

TRANSITIONAL AND CONCLUDING PROVISIONS

§ 2. The state aids, granting of which has not come to an end by coming this Act into force, are brought in line with the requirements of this Act within **4 (four) months**. Each provider of such aid shall notify the Commission for the Protection of Competition and the Minister of Finance in **one month** of coming this Act into force.

§ 3. The provisions of the Law for the Protection of Competition shall apply to what not provided for in this Act.

§ 4. The existing cases being existing as pending proceedings on briefs for granting of state aids when this Act enters into force shall be concluded under the terms and the conditions of this Act.

§ 5. Within a period of **six months** from the entry into force of this Act the Commission for the Protection of the Competition shall declare a decision for the block exemption of from the obligation to notify for the aids that meet the requirements under Art.3 and Art.4

§ 6. In the Law for the Protection of Competition (promulgated in the State Gazette, issue 52 of 1998; issue 112 of 1998 – Decision No 22 of the Constitutional Court from 1998, amended, issue No 81 of 1999) the following amendments and supplements are introduced:

1. In art. 7 a new paragraph 3 is created:

“ (3) The Commission authorises and controls the granting of state aids under terms and conditions stated by an Act.”

2. Article 20 is abrogated.

3. In Art. 36, para.1, lit. 2 the words “or state aids” are deleted.

4. In Art. 48, para.1 the words “or state aids” are deleted.

5. In Art. 49 paragraph 3 is abrogated.

6. In Art. 55, para. 1, sub-paragraph 8 is abrogated.

§ 7. The implementation of this Act is assigned to the **Minister of Finance and to the Commission for the Protection of Competition.**

§ 8. In **three months** term after the promulgation of this Act in the State Gazette the Council of Ministers shall adopt Rules for the Implementation of the Act.

§ 9. The Minister of Finance issues the **Directive** under Art. 21, para. 1 in **two months** term after this Act comes into force.

§ 10. This Act shall come into force in **three months** after its promulgation in the State Gazette with the exception of § 8 that comes into force from the day of the promulgation of the Act in the State Gazette.

This Act is passed by the 39th National Assembly on **March 7th, 2002** and is affixed with the official seal of the National Assembly.

CHAIRMAN of the NATIONAL ASSEMBLY:

(signature)

Prof. Ognyan Guerdgikov