



REPUBLIC OF SERBIA

Ministry of Finance

LAW ON STATE AID CONTROL

Published in
"Official Gazette of the Republic of Serbia" No. 51/09

Belgrade, July 2009

LAW ON STATE AID CONTROL

Scope and Subject of the Law

Article 1

This Law shall regulate the general terms and procedure for the state aid control with a view to ensure protection of free competition on the market, through implementation of the principles of the market economy and encouraging the economic development, transparency in the state aid granting, as well as fulfilling undertaken obligations related to international agreements that contain provisions on state aid.

Provisions of this Law shall not apply to agricultural and fisheries products.

Meaning of Terms

Article 2

The terms used in this Law shall have the following meaning:

- 1) *state aid* is any actual or potential public expenditure or realised decrease in public revenue which confers to state aid beneficiary a more favourable market position in respect to the competitors and as a result causes or threatens to cause distortion of the market competition.
- 2) *state aid grantor* is the Republic of Serbia, the autonomous province and local self-government unit, through their competent bodies, and any legal person managing and/or having disposal over public funds and allocating the state aid in any form whatsoever.
- 3) *state aid beneficiary* is any legal or natural person which, in their business operations concerning production and/or trade of goods and/or providing of services on the market, use state aid in any form whatsoever .
- 4) *complete state aid notification* is the set of all data and information listed in the state aid notification, including such as the state aid applicant is required to provide to the Commission for State Aid Control (hereinafter referred to as: the Commission) at its request, based on which the Commission can make decisions within ex ante and ex post control of state aid.

Unallowed State Aid

Article 3

Regardless of the form in which it was granted, any state aid that distorts or threatens to distort market competition, other than different rule has not been layed down by this Law, or is contrary to internationally ratified treaties, shall be deemed unallowed.

Allowed State Aid

Article 4

In accordance with this Law, state aid shall be allowed when:

- 1) having a social character and granted to individual consumers, provided that such aid is granted without discrimination related to the origin of the goods, namely products concerned;
- 2) granted to make good the damage caused by natural disasters or other exceptional occurrences.

State Aid that may be considered to be allowed

Article 5

In accordance with this Law, state aid may be considered to be allowed when granted:

- 1) to promote the economic development of areas of the Republic of Serbia where the standard of living is abnormally low or where there is serious unemployment;
- 2) to remedy a serious disturbance in the economy of the Republic of Serbia or to promote the execution of an important project of the Republic of Serbia;
- 3) to facilitate the development of certain economic activities or of certain economic areas in the Republic of Serbia, where such aid does not adversely affect or threaten to affect the market competition;
- 4) to promote protection and preservation of culture heritage.

Commission

Article 6

The control of state aid, in line with this Law, will be accomplished by the Commission, setting up by the Government upon the proposal of: the ministry responsible for finances; the ministry responsible for economy and regional development; the ministry responsible for infrastructure; the ministry responsible for environmental protection; the Commission for Protection of Competition.

The representative of the ministry responsible for finances (hereinafter referred to as: the Ministry) shall at the same time be the Chairperson of the Commission, and the representative of the Commission for Protection of Competition shall be the Deputy Chairperson.

The Commission shall be composed of five members.

A person who is a citizen of the Republic of Serbia may be nominated for the member of the Commission, provided such person has at least a university degree and possess expert knowledge in the field of state aid, competition, and/or EU legislation.

Member of the Commission shall be remunerated for its engagement in the Commission, as determined by the Government.

The Commission shall adopt its rules of procedure.

The Commission shall be operationally independent.

Financial and Technical Requirements for the activities of the Commission

Article 7

Funds for the activities of the Commission shall be provided from the budget of the Republic of Serbia.

The Ministry shall provide the premises and other technical requirements for the activities of the Commission.

Commission' Member Appointment and Mandate Cessation

Article 8

Member of the Commission shall be appointed for a period of five years and can be reappointed, at the proposal of the same proposer.

Mandate of the Commission member shall cease:

- 1) upon expiry of the period for which he/she is appointed;
- 2) if he/she acts contrary to the provisions hereof;
- 3) if he/she does not respect the provisions of the Commission's Rules of Procedure;
- 4) if unconditionally sentenced to a prison term of at least six months;
- 5) at personal request, by submitting a letter of resignation.

Competency of the Commission

Article 9

The Commission:

- 1) within ex ante control shall decide on whether notified state aid is allowed;
- 2) within ex post control shall decide on whether granted state aid is allowed;
- 3) shall make decisions and conclusions in the procedure of ex ante or ex post control;
- 4) shall submit to the Government an annual report on state aid granted in the Republic of Serbia;
- 5) in performance of its responsibilities, to cooperate with the Supreme Audit Institution, the Republic authority for budget inspection, the autonomous province department, namely department of the local self-government unit responsible for budget inspection, and with other domestic and international authorities, organizations, and institutions;
- 6) shall publish on its Internet page decisions that it adopts in the procedure of ex ante and ex post control, the annual report on state aid granted in the Republic of Serbia after it has been adopted by the Government, as well as other data and information that it deems to be relevant to the application of this Law;
- 7) shall perform other tasks in accordance with this Law.

Specialist, Administrative and Technical Activities for the Commission

Article 10

Specialist, administrative and technical activities for the Commission shall be performed by the Ministry, in particular:

- 1) Collect and process the notifications and other data about state aid;
- 2) Prepare the decision of the Commission in the procedures of ex ante and ex post control;
- 3) Keep records of state aid;
- 4) Prepare proposal of annual report on state aid granted in the Republic of Serbia, to be submitted by the Commission to the Government;
- 5) cooperate with the Supreme Audit Institution, the Republic authority for budget inspection, the autonomous province department, namely department of the local self-government unit responsible for budget inspection, and with other domestic and international authorities, organizations, and institutions in the field of state aid control.

In addition to the tasks referred to in paragraph 1 of this Article, the Ministry also performs the tasks of preparing legal acts, regulating state aid control, as well as proposals of amendments thereto and other tasks in accordance with this Law.

State Aid Notification

Article 11

State aid grantor shall be under obligation to, before granting the state aid, notify the state aid to the Commission.

Proposer of the regulation constituting the grounds for state aid granting shall, before forwarding it for adoption, notify the draft and/or the proposal of such regulation to the Commission.

In the event of any changes to the notified state aid after the notification referred to in paragraphs 1 and 2 of this Article, the state aid grantor and/or the proposer of the regulation shall notify such change to the Commission.

The state aid grantor or proposer of the regulation shall be entitled to withdraw the notification, in the capacity of a state aid applicant, before the Commission makes its decision.

The state aid applicant from paragraph 4 of this Article shall be responsible for the truthfulness and correctness or accuracy of information, in the sense of a complete state aid notification.

State Aid Scheme and Individual State Aid

Article 12

State aid shall be notified as:

- 1) a state aid scheme, or
- 2) individual state aid

State aid scheme is a set of all acts constituting the grounds for state aid granting to beneficiaries which are not previously designated (known), and drafts and /or proposals of regulations which will constitute the grounds for state aid granting after their adoption to beneficiaries which are not previously designated (known), and which are, in accordance with Article 11 paragraph 2 of this Law, subject to mandatory previous notification to the Commission, before they are forwarded for adoption.

The individual state aid is the state aid granted:

- 1) based on the state aid grantor's act, to the previously designated beneficiary, and which is not based on a state aid scheme, or
- 2) based on the state aid scheme, for which the Commission has already taken decision according to article 13 paragraph 5 of this Law, with the obligation of previous notification before the state aid is granted to individual beneficiary.

Ex ante control

Article 13

The Commission shall commence the ex ante control upon receipt of a complete state aid notification.

If the Commission finds that the notification from paragraph 1 of this Article does not concern state aid, it shall adopt a decision where this is stated and shall inform the submitting party accordingly.

If it finds that the notification does concern the state aid, the Commission shall decide whether notified state aid is allowed within a period that cannot be longer than 60 days as of the date of receipt of the complete notification.

If the applicant from paragraph 2 of this Article shall not provide or refuse to provide the Commission with all of the requested information which constitutes a complete state aid notification in the sense of this Law, the Commission shall adopt a decision denying the state aid notification as incomplete and send it to the applicant.

If upon receiving the complete notification, the Commission shall determine that the notified state aid is not contrary to the provisions of this Law, it shall adopt a decision which deems the state aid as allowed and send it to the applicant.

If upon receiving the complete notification, the Commission shall determine that the notified state aid is fully or partially contrary to the provisions of this Law, it shall adopt a conclusion with which the applicant is assigned a deadline for correcting non-compliance, with proposed measures, for achieving compliance.

If the applicant fails to act on the Commission's proposal, the Commission shall adopt a decision deeming the notified state aid as unallowed and send it to the applicant.

The decision that the Commission shall adopt in ex ante control shall be sent to the state aid applicant within a period that cannot be longer than 30 days as of the date when the decision is adopted.

Communicating with the State Aid Beneficiary

Article 14

Prior to granting of state aid, the state aid grantor shall be required to send to the state aid beneficiary a copy of the Commission's decision that is relevant to the particular beneficiary, or to inform the beneficiary of the manner and place where information can be received as to the content of such decision.

Standstill Clause

Article 15

Until the adoption of the Commission's decision from Article 13 of this Law, namely until the conclusion of the ex ante control, notified state aid cannot be granted.

If the Commission shall adopt the decision as per Article 13 paragraph 7 of this Law, the state aid to which such decision relates, cannot be granted.

Ex Post Control

Article 16

The Commission shall conduct ex post control based on its own information or based on the information obtained from whatsoever source that suggests that it concerns the state aid that has been granted and/or is in use or has been used contrary to the provisions of this Law.

Within further procedure of ex post control, the Commission shall order the state aid grantor to submit additional information and fix the deadline for submittal of such information.

The Commission shall conduct ex post control and take the decision referred to in Article 13 of this Law based on the additional information, namely based on the available information, if the state aid grantor fails to act pursuant to the Commission's order as per paragraph 2 of this Article.

Before the decision referred to in paragraph 3 of this Article is taken, the Commission may order that the state aid grantor suspends further granting of state aid, if it finds that any further granting of such aid would cause more serious distortion to market competition.

Rights of Interested Parties

Article 17

Any person with legal interests can file a request with the Commission for initiating the ex post control.

After verifying the information in the request, the Commission shall adopt a decision in the sense of Article 13 of this Law and inform the party that filed the request about it.

Repayment of State Aid

Article 18

If, within the ex post control, the Commission finds any flaws, it shall fix a deadline within which the state aid grantor shall be under obligation to remedy such flaws.

If the state aid grantor fails to remedy the flaws within the specified deadline and fails to inform the Commission about it in writing, within 5 days after the expiry of deadline referred to in paragraph 1 of this Article, the Commission shall take the decision on unallowed state aid.

By its decision referred to in paragraph 2 of this Article, the Commission shall order the state aid grantor to, without delay, take measures to recover the state aid amount that was granted, increased by default interest prescribed by law, from the day of using such aid until the date of recovering the used amount. By the same decision the state aid grantor shall be ordered to immediately discontinue further granting of the unused portion of state aid.

After expiry of the period of ten years after the day when the state aid was granted, the Commission shall not be able to order the recovery of state aid.

Informing Competent Authorities and Departments

Article 19

About taking the decision referred to in Article 18 paragraph 2 of this Law, the Commission shall inform the Supreme Audit Institution, the Republic authority for budget inspection, the autonomous province department, namely department of the local self-government unit responsible for budget inspection.

About the measures taken as referred to in paragraph 1 of this Article, the Commission shall submit the information to the Government.

Finality of the Commission's Decision. Administrative dispute

Article 20

The Commission's decision referred to in Article 13 paragraphs 2, 4, 5 and 7, Article 16 paragraph 3 and Article 18 paragraph 2 of this Law shall be final and an administrative dispute can be initiated against it.

An administrative dispute can be initiated even if the Commission shall not adopt a decision within the period specified in Article 13 paragraph 3 of this Law.

The lawsuit by which the administrative dispute was instigated shall not stay the execution of the Commission's decision referred to in paragraph 1 of this Article.

Participation in State Aid Control Procedure

Article 21

In the state aid control procedure, a member of the Commission shall respect the provisions of the law governing the prevention of the conflict of interest in discharge of public functions.

A member of the Commission who is at the same time a representative of the state aid grantor, or the proposer of the regulation constituting the grounds for state aid granting, may provide additional information within the state aid control procedure but shall not have the right to take part in the decision-making process.

A representative of the state aid grantor, or the proposer of the regulation constituting the grounds for state aid granting who is not a member of the Commission shall be entitled to participate in the state aid control procedure to provide additional information but shall not have the right to take part in the decision-making process.

The Commission may also invite representatives of other authorities, organizations and professional associations to provide further information of relevance for decision-making, but they shall not have the right to take part in the decision-making process.

Confidentiality of Information

Article 22

Members of the Commission and persons employed with the Ministry shall be under obligation to, even after termination of their mandates, namely termination of their employment, keep confidential the information obtained within the state aid control procedure that the state aid grantor or beneficiary have designated as professional secrecy.

Information referred to in paragraph 1 of this Article shall not be disclosed or communicated to third persons without explicit written consent of the person whom they concern, unless the competent authority is required by law to do so.

Reporting

Article 23

Based on the information collected from the state aid grantors, the Ministry shall prepare the proposal of annual report on the state aid granted in the Republic of Serbia, which the Commission shall submit to the Government.

The Ministry shall specify in more detail the methodology for annual report drafting, deadline for submittal of data to the Ministry, and deadline for submittal of the proposal of annual report referred to in paragraph 1 of this Article.

The regulations within the competence of the Government

Article 24

The Government shall specify in more detail the manner and procedure for state aid scheme and individual state aid notification, including the rules for granting, namely assessing whether notified or granted state aid is allowed.

Transitional and Final Provisions

Article 25

Provisions for implementing this Law shall be adopted by the date of its application.

Until the date of application of this Law the Government shall set up the Commission.

Within a period that cannot exceed one year as of the date of commencement of the application of this Law, the Government shall adopt a programme of compliance of state aid schemes and individual state aid with this Law, which are effective until that time and continue to be so after the date of commencement of the application of this Law.

The Commission shall adopt its rules of procedure within 30 days after the Commission's setting up date.

Entering into Force of this Law

Article 26

This Law shall enter into force on the eighth day from the date of its publication in the "Official Gazette of the Republic of Serbia", and shall apply as of January 1, 2010.