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COMPETITION, STATE AIDS AND SUBSIDIES

Contribution from Poland

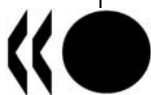
-- Session I --

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COMPETITION STATE AIDS AND SUBSIDIES

-- Poland --

1. Introduction

1. It is to be said at the outset that law on state aid in Poland is that of the European Union law. There is no Polish state aid law as such, and the way, as well as the extent to which state aid may be granted in Poland, is decided by the European Commission which is the only body in the European Union empowered to authorise granting it. It is also the case with regard to aid granted in Poland.

2. When it comes to granting state aid in Poland it may be delivered as:

- Aid granted under an aid scheme;
- Individual aid;
- Aid granted under block exemption regulation;¹
- *De minimis* aid.²

3. In general, the first two indents refer to aid which require winning the authorisation from the European Commission before it is granted. The main difference between them is that in order to obtain the European Commission's consent for an individual aid each instance of it needs to be notified to the European Commission separately, while in the case of an aid granted under an aid scheme only that scheme needs to be notified and the Commission's authorisation secured for the whole scheme. As long as the planned aid meets the conditions established in that scheme, Member States are free to decide whether to grant the aid or not. Member States do not have to notify such an aid to the Commission and it is granted under a scheme previously authorised by the Commission.

4. The third indent refers to aid which can be granted without notifying the aid to the Commission, as long as the aid does not exceed a ceiling set, and administrative bodies and state agencies which decide on granting that aid has the power to decide on their own whether to grant the aid sought or not. The EU rules do not determine form in which this kind of aid may be granted, so it can take any form.

5. The same rule applies to the *de minimis* aid which does not require any authorisation from the Commission. This aid, which should not exceed the ceiling of 200 000 Euros over any period of three

¹ Commission Regulation (EC) No 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty (General block exemption Regulation) – OJ L 214 of 9.8.2008.

² Commission Regulation (EC) No 1998/2006 of 15 December 2006 on the application of Articles 87 and 88 of the Treaty to *de minimis* aid (OJ L 379 of 28.12.2006).

years (and 100 000 Euros with regard to undertakings operating in road transport sector) is regarded as not affecting trade between Member States and not distorting or threatening to distort competition. It is possible for administrative bodies to grant that aid without bothering the Commission and seeking its authorisation. In most cases *de minimis* aid takes the form of rescheduling tax payments.

2. Goals Underlying Granting of State Aid in Poland

6. Any granting of state aid in Poland must take into account the underlying paradigm that it should facilitate reaching some important goals, goals whose importance exceeds the mere interests of a firm seeking the aid. So, even if firms seeking aid very often claim that they need state aid in order to protect employment level, and even if this is taken into account during the examination of the application (which is often the case), this will not help the firm to persuade the aid granting agency to grant the aid if it comes to the conclusion that such an aid will not serve the purpose it should.

7. Because of the above reasons, it is much easier to persuade an authority to grant an aid for firms operating in economically distressed regions. Such an aid facilitates economic and social development of these regions as well as helps people find new jobs in areas where any job is scarce. These aids benefit the whole communities and their importance exceeds the interests of firms receiving the aid.

8. Another goal which Poland, as also other states, wishes to obtain by granting aid is to foster innovation and development of new technologies. In order to reach that goal, local or regional authorities and agencies strive to attract new investments to their areas offering investors economic incentives in turn for those investors making new investments in their regions. In most cases incentives offered to those investors take the form of grants and tax waivers. Generally, this aid must be notified to the Commission and its consent must be secured before the aid is granted. Apart from the above requirement in order to obtain the aid sought investors must make the necessary investments, financing them with money not coming from an aid.

9. Protecting the environment is another goal which has been taken into consideration by Poland. As an example the scheme of state aid for bio fuels is worth mentioning. Because using bio fuels in transport instead of oil and gasoline can help reduce the carbon dioxide emissions into the atmosphere, it has great support from Polish government. However, the oil and gasoline are still much cheaper and much more available for an ordinary vehicle operator, so in order to induce car drivers to buy bio fuels their price needs to be comparable with that of oil and gasoline.

3. The Use of State Aid in Poland

10. Generally, granting of state aid in Poland is not dependent on sectors to which it is directed or whether the supported firm is a private one or government - owned (controlled). It does not matter either whether the aid seeking firm has Polish or foreign owners as long as the firm is established in Poland and pays its taxes there (otherwise Polish tax authorities would not be able to grant the aid i.e. rescheduling or waiving tax payments).

4. Aid to Ailing Companies, Especially in the Context of the Financial Crisis

11. In general, granting of aid for ailing firms can take any form but in most cases it takes the form of tax waivers, rescheduling their payment and granting of loans at below-market rates to selected firms, in

which instances the aid is granted under Community guidelines on state aid for rescuing and restructuring firms in difficulty.³

12. In order to obtain that aid the firm seeking it diagnoses the roots of its difficulties and sets up steps necessary to recover its ability to operate efficiently on the market. In most cases such firms claim that aid is necessary to protect employment in affected regions but in general these claims are not taken for granted without examination and in many instances, in order to recover from difficulties, firms need to make some concessions (i.e. laying off some employees). Such firms always, and this is the basic precondition imposed by the European Commission along with the requirement that restructuring process must be successful, have to make commitments concerning compensatory measures limiting the impact of that aid on competitors. This can be called “the aid price” and in many instances it takes the form of limiting the firm’s presence on the market (selling or closing a firm’s branch, imposing a cap on firm’s production volume, or limiting the amount of goods that firm is allowed to sell on the market, and so on).

13. Although some would say that Poland regularly engages into this kind of aid, due to the bothersome requirements imposed by the European Union legislature and the time needed to clarify all the Commission’s questions (in many instances it may take between a year or two), in fact this kind of aid has marginal significance.

14. These rules have not been changed in the financial crises apart from financial sector to which Poland is allowed to grant aid under two aid schemes (N 208/09 and N 302/09) authorised by the Commission. Although these schemes allow Poland to grant aid to financial institutions in the form of guarantees (N 208/09) and in the form of recapitalisation of financial institution’s assets (N 302/09), they have not been used so far by these institutions.

5. Conclusions

15. The rules under which aid is granted in Poland do not differ in substance from that which applies to other parts of the EU. This is because they are set at the EU level and the control mechanisms are uniform for the whole EU. The basic requirement underlying any grant of state aid is that while it should allow to reach goals which that aid aims to facilitate (economic, social and other) it must not make possible to affect trade between Member States, distort or threatening to distort competition.

16. The financial crises has not in substance changed these rules and even if Poland has the instruments for providing financial support for financial institutions, these programmes have not been so far used and there was not a necessity from these institutions to seek that aid from State.

³ Communication from the Commission - Community guidelines on state aid for rescuing and restructuring firms in difficulty (OJ C 244, of 1.10.2004).