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FINANCIAL IMPACT OF APPLYING EU REGULATIONS ON COMPETITION AND COMPETITIVENESS

Editorial

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Abstract

Generally speaking, and considering the national macroeconomic pattern of the requirement for evolution of the economic market as source of the general economic and social development – pattern which must functionally rely on the cooperation between the macroeconomic and microeconomic environments, and looking at the economic market like at a puzzle full of an ordered, yet heterogeneous multitude of market actors, the issue of the state aids must be understood within the context of the implementation of strategies of development, at the macroeconomic level, as an investment which the macroeconomic administrator makes in view of the subsequent acquisition of added value; as we mentioned, the main purpose of the investment is the creation of added value, which is nothing else but one of the main fundaments of the monetary creation – aspect which is indissolubly related to the idea of evolution, more precisely, to the idea of economic development.

Bibliographic notes

As main norms of the policy on competition within the European Union, the law forbids the enterprises to:

- Agree on prices or to share the markets among them (Article 101 from the Treaty on the Functioning of the European Union (Treaty on the Functioning of the European Union - TFEU)];
- Abuse of a dominant position on a specific market in order to remove the smaller competitors (Article 102 from TFEU);
- Merge, as long as this operation would allow them to take control of the market. The large enterprises which activate within the EU business environment cannot merge without the approval of the European Commission, even if their headquarters is outside the EU (Regulation of economic concentration).

EU norms also regulate the aids of the member states for the enterprises (state aids), which are verified by the Commission (Article 107 from TFEU). For instance, if particular conditions are not observed, the following aids are forbidden:

- Loans and subsidies;
- Fiscal facilities;
- Goods and services provided at preferential prices;
- Public guarantees which increase the credit rating of an enterprise, compared to its competitors.

Also, it is not allowed to grant state aids, irrespective of their form, to the enterprises in difficulty for which there is no hope of becoming again economically viable.

Regarding the granting of state aids, according to the European opinion, within the context of the free competition on the internal market and, particularly, of opening the public services towards competition, the member states intervene sometimes by using public resources to promote particular economic activities, or to protect particular national industries; by favouring specific enterprises in relation with their competitors, the state aids can disturb competition.

The state aids are banned on grounds of the Treaty on the Functioning of the European Union. However, some exemptions authorize state aids justified on the grounds of objective of common interest, such as services of general economic interest, if they don’t distort competition in a degree that runs against the public interest. Therefore, monitoring the state aids by the European Commission aims to evaluate the balance between the positive and the negative effects of such aids (Berinde, 2007).

The European regulations on state aids apply only to the measures that meet all the criteria mentioned in Article 107, paragraph (1) from the Treaty on the Functioning of the European Union (TFEU), namely:

(a) Transfer state resources

The norms regarding the state aid include exclusively measures that involve the transfer of state resources (including from national, regional and local authorities, public banks and foundations, etc.). Furthermore, it is not necessary that the aid is provided by the stat as such. The aid can be granted by an intermediary public or private body appointed by the state. This aspect concerns, for instance, the case in which a private bank administrates an aid program for the SMEs financed by the state.

The financial transfers that are state aid can take various forms: subsidies, low interest rates, collaterals for loans, provisions due to the method of accelerated amortisement, capital injections, fiscal exemptions, etc.

(b) Economic advantage

The aid must materialize in an economic advantage which the company would have not otherwise had. Below there are some less obvious examples which meet this condition:

- A company purchases/rents public land at a price lower than the market price;
- A commercial company sells to the state land at a price higher than the market price;
- A commercial company has privileged, free access to infrastructure;
- A company gets risk capital from the state in better conditions than from a private investor.

(c) Selectiveness

The state aid must be selective, thus influencing the equilibrium between some companies and their competitors. “Selectiveness” is the one which differentiates the state aid from the so-called “general measures”, measures that apply to all economic sectors from a member state (for instance, most national fiscal measures).

A scheme is considered “selective” if the authorities that manage it enjoy some discretionary power. The criteria of selectiveness are also met if the scheme applies just to part of the territory of a particular member state.

(d) Effect of competition and trade

The aid must have a potential effect on the competition and trade between member states. It is enough to prove that the beneficiary is involved in particular economic activity and that it activates on a market in which there are trade activities between the member states.

The nature of the beneficiary is not relevant within this context (even a non-profit organisation can have economic activities).

The Commission considers that the aid in small amounts (de minimis aid) doesn't have a potential effect on the competition and trade between the member states. The Commission considers therefore that such aid is not governed by Article 107, paragraph (1) from TFEU.

In terms of the eligibility criteria for state aid within the European Union, the aid measures that meet the eligibility criteria stated in Article 107, paragraph (1) from TFEU are, in principle, incompatible with the common market. Nevertheless, the principle of compatibility doesn't extend to total ban. Article 107, paragraphs (2) and (3) from TFEU specify a number of cases in which the state aid can be considered acceptable (the so-called "exemptions"), referring to the compatible aids. The existence of these exceptions allows the European Commission to verify the state aid projects, as per Article 108 from TFEU.

This article stipulates that the member state must notify the Commission concerning any intention to grant state aid before doing it. The article also empowers the Commission to decide whether the proposed aid is compatible or to decide "suspending or modifying the aid by the particular member state".

In the exercise of its prerogatives, the Commission elaborated specific approaches depending on the size of the company, its location, the targeted industry, the purpose of the aid, etc. for the sake of transparency, predictability and legal security, the Commission made public its criteria that help checking the compatibility of the notified intentions of aid.

These publications were in the form of "Regulations", "Communications", "Frameworks", "Guidelines" and "Letters" to the member states.

One may distinguish three main categories of aid that are compatible according to Article 107, paragraph (3) letter (a) and Article 107, paragraph (3) letter (c) from TFEU:

(a) Regional aid

Article 107, paragraph (3) letter (a) and Article 107, paragraph (3) letter (c) from TFEU provide the basis for allowing the state aid intended to solve regional problems:

• Article 107, paragraph (3) letter (a) from TFEU applies to the state aid granted to promote the development of the "regions where the standard of living is abnormally low, or where there is a very low rate of employment".

• article 107, paragraph (3) letter (c) from TFEU deals with the aid for other regions (national) experiencing problems, "aids intended to facilitate the development … of particular economic regions". This article gives the member states the possibility to support regions that are disadvantaged compared to the national average. The list of the regions that qualify for this exception is also decided by the Commission, upon proposal by the member states. The member states can use national criteria to justify their proposal.

The criteria used to evaluate the regional aid are presented in the "Guidelines on national regional aid for 2007-2013".

(b) Other horizontal norms

The "horizontal" norms set the position of the Commission regarding specific categories of aid that are intended to approach problems that may appear in any industry and region.

Until now, the Commission adopted "Frameworks" and "Guidelines" or "Regulations for exemption by category", which set the criteria that must be applied to the following categories of aid:

• Aid to fight climate changes and for environmental protection;
• Aid for research, development and innovation;
• Aid to save and reorganize the companies in difficulty;
• Aid for small and medium enterprises;
• Aid for the employment of the labour force;
• Aid for training;
• Aid for risk capital;
• Aid for services of general economic interest.

(c) Sectoral norms

The Commission also adopted specific norms depending on the industry ("sectoral" norms), which define its position regarding the state aid in specific industries. The most important ones, within this context, are the following:

• Specific sectors

Special norms have been adopted in time for several sectors characterized by different problems or exigencies that had to be solved through a specific set of norms. Until the present moment, these include the sectors of audio-visual production, radio broadcasting, coal, electricity (irretrievable costs), mail services, shipyards. There are also specific restrictions concerning the aid for steel industry and for synthetic yarns industry.

• Agriculture, forestry, fisheries and aquaculture

The norms that apply to these sectors are mainly set by the Community guidelines for State aid in the agriculture and forestry sector for 2007-2013 and in the Guidelines for the examination of State aid to fisheries and aquaculture.

• Transportation

Most of the general norms regarding the state aid, including the de minimis regulation apply for road transportation, although there are some exceptions (for instance, generally, the transportation equipment is not eligible for aid; the aid for the purchase of vehicles for land transportation of

commodities is excluded from the de minimis regulation, and the de minimis ceiling was lowered to 100,000 Euros for the sector of land transportation).
The norms regarding the state aid also apply to other sectors of transportation (railways, air, sea and river).

(d) Specific instruments of aid
The Commission published several Communications which provide guidance for the use of the specific instruments of aid (guarantees, fiscal aid, injections of capital) or to calculate the amount of the aid.

Theoretical guide marks
At the microeconomic level, competitiveness refers mainly to the capacity of the companies to learn, to adapt rapidly to market conditions and to innovate.
At the macroeconomic level, competitiveness can be seen as a means to improve the standard of living while using optimally limited resources.
In the early 90s, speaking of competitiveness, Paul Krugman was saying that the companies are the entities competing between themselves, not the national states. To a certain extent, his statement cannot be contradicted. However, globalization and market imperfections make the public policy play an important role in the functioning of the economy, and compel the companies to consider the coordinates of their area of operation. Thus, competitiveness, in any of its forms, is strongly influenced by the public policies such as the fiscal policy, the budget policy, the competition policy, the general direction of the macroeconomic objectives, etc.
The policy in the field of competition exerts its influence on the competitiveness by means of the following two instruments:
- sanctioning the anti-competitiveness practices so as to reward the efficient companies and sanction the inefficient ones;
- directing the state aids, mainly towards horizontal objectives: regional development, research-development, SMEs development, professional training, etc.

The regulations and legal norms that restrict competition have adverse effects on competitiveness because they determine, first of all, a slower rate of the process of technological modernization.
On the other hand, the national norms in matter of competition, harmonized with the community norms, may have the beneficial effect of establishing equal opportunities on the market for all the economic actors.
The existence of a solid competitive environment which encourages the efficient companies to the detriment of the inefficient ones, may represent a stimulus for competitiveness through the following three levers:
- Ensuring an efficient allocation of resources;
- Stimulate the companies to organise their activity in a more efficient manner;
- Stimulate the innovating activity.

The more open are the markets to competition, the more visible are the beneficial effects on competition. The progress in liberalizing the market for services is a conclusive example in this direction. According to studies done within the European Union, the liberalization of the network industries – telecommunications, mail services, electric power, air and railways transportation, etc. – generated positive results for the consumers.
The opening of the European market of telecommunications decreased by 23%, from 1996 to 2000, and the tariffs were charged by the EU operators.
The national legislation in the matter of competition is harmonized with the community acquits [2], [3], [4], and the specific regulations are applied at European standards. These developments established part of the premises required for the consolidation of the national economy competitiveness, so as to enable it to get properly prepared against the challenges and to take advantage of the opportunities created by the mechanisms specific to the European market.

Theoretical approach – stating the problem
Conceptually, methodologically, and, particularly functionally, granting state aids on specific markets should take into consideration several criteria, the most important ones being:
- Fair support to competitiveness;
- Ensure equal opportunity to these aids;
- The investments should rely on real bases for future progresses in the specific areas.

Having made these clarifications and passing to the economic actuality, in fulfilling the objectives of this analysis, we will compare two macroeconomic market models:
- Model of the national economy;
- Model of the regional economy.

The approach of these two situations, in terms of what we specified above, is fundamentally different, mainly because both situations have, as general objective, the economic and social evolution, but market functionality and thus the design and implementation of development strategies differ, because:
- In the case of the national economy:
  - Returning to the puzzle pattern, which approximates the composition of the market from economic actors, the constitutive heterogeneity of the economic market has the following elements:
    - Heterogeneity between economic sectors;
    - Heterogeneity within a particular economic sector, within the competing entities;

o One of the aspects that must be taken into consideration when designing and implementing developmental strategies is an efficient contribution of the economic sectors to the formation of the GDP, the term *efficient* signifying here, the fructification of all economic strong points of the sectors to support the formation of the GDP;

o There also are aspects of national interest, such as:

▪ Protecting specific economic sectors from external competition;

▪ Utilization of resources for strategic economic sectors;

▪ Support some economic sectors whose contribution to the GDP is indirect (for instance, economic sectors of secondary importance, but who employ significant numbers of workers);

▪ Protecting, in terms of value, the national currency in relation with other currencies, by the temporary support of some sectors which have a high rate and speed of contribution to the formation of the GDP;

▪ Etc.

- In the case of the regional economy:

o The puzzle pattern of the economic market is multiplied in several variants whose heterogeneity is as follows:

▪ Heterogeneity between the national macroeconomic entities of the region;

▪ Heterogeneity between the economic sectors;

▪ Heterogeneity within a particular economic sector, within the competing entities.

We have to note, however, that during the early developmental stages at the regional level, macroeconomicaly speaking, we can talk about economic sectors only at the level of the macroeconomic entities composing the region, which is an additional element of heterogeneity of the regional economic market;

o The rules and interests of allocating public aids to the economic sector are very different and they depend on the specificity of the region; in the case of the European Union, they are stipulated by norms and regulations associated to the Competition Policy in agreement with the Treaty on the Functioning of the European Union [2], [3].

Aspects specific to the application of the norms of European competition policy

As comparative aspect between the two forms of macroeconomic markets, but this time seen in terms of the establishment of economic regions, the transfer of a macroeconomic system from the status of national to the status of component of a regional economic area means, in terms of the topic of this analysis, the change of the criteria and norms of granting state aids, just because the size, direction and problem specification are different for the two aspects of the market, even though, conceptually speaking, the central idea is the same; these differences are due both to the differences of functionality between the two forms of economic market, and to the associated differences of macroeconomic interests.

Regarding this aspect of the problem, we may highlight, in terms of quality, an economic impact of applying EU regulations on competition and competitiveness. From the list of EU Competition Policy norms ([2], [3]), the element which produces the economic impact is the provision of state aids, the rest of the elements being valid for the national economic market too. A related subject to this topic, which is not, however, the object of this analysis, but which deserves an analysis, is the economic impact of establishing regional economic markets – impact which has two forms: for the macroeconomic entities advantaged by the early evolutional stages of the regional markets, and for the macroeconomic entities disadvantaged by the early evolutional stages of the regional markets.

Returning to the issue of the economic impact due to the norms of granting state aids within the EU, comparatively speaking, differences exist between the two forms of market – regional market and national market –in terms of the eligibility criteria for state aids [4]:

- Market functionality with a higher level of complexity presumes a more restrictive set of rule on competition; for instance, the observance of the criterion according to which the state aid must not distort or threaten with distortion the existing or potential competition, would be an indicator of the much more restrictive eligibility conditions for state aid in the case of the regional market;

- Also, the concept of strategic economic sectors, being different in the case of the regional economic market, yields another element of restrictiveness in granting state aids in the case of the regional market compared to the national market;

- Another element of restrictiveness in granting state aids in the case of the regional market compared to the national market can appear in the case of labour force migration in the regional market, which might mean granting state aids, according to the norms of the national market, to economic entities whose support has no correspondent in the norms of the regional case, their competitiveness being thus potentially affected.

Essentially, as preliminary conclusion, granting state aids to the entities that participate in the regional market, is much more restrictive. This aspect, combined with that of the difference of economic advantage between the components of the regional market, at least during the early developmental stages of the regional economic market, raises problems to the competitiveness on the regional market: the lower competitiveness generally associated to the microeconomic entities from the economies composing the regional market, which are economically disadvantaged during the early developmental stages of the regional economic market, may worsen to the detriment of equity of access to the market. As addendum to the conclusion, the entities thus affected are the microeconomic entities and the individual national economies. Of course, this is just an aspect with theoretical role in approaching the problem of any particular regional economic market; at the level of the European market, where the treaties of functioning of the European Union and the afferent institutional infrastructure allow negotiations at the general political level, and under the circumstances in which the legislation of competition and competitiveness still need fine-tuning and completion as the European market evolves, it is unlikely that any European member state will get to such a situation of economic disadvantage – hypothetic situation that would only deepen the heterogeneity between the components of the European Union, creating thus problems to the common economic programs.

We still have, though, the problem of the difference of restrictiveness regarding the eligibility norms for state aids, between the two forms of economic market.

Regarding the European norms for state aids, the following issues are thought to be a rich source of restrictiveness:

- Unless specific criteria are observed, the following aids are banned:
  - Loans and subsidies;
  - Fiscal facilities;
  - Goods and services provided at preferential prices;
  - Public guarantees which improve the credit rating of a company compared to its competitors.

The main criteria are:

- The state aid must not distort or threaten with distortion the existing or potential competition:
  - Changing the market conditions for the competitors;
  - Selective favouring in relation with the other competitors.

- It is also not possible to grant state aids, irrespective of their form, to the enterprises in difficulty for which there is no hope of becoming again economically profitable. A problem arises here: the economic disadvantage of some member states immediately after accession to the EU, which remained or even worsened due to the perpetuation of the differences of initial economic conditions (reference to the regional heterogeneity), and to their worsening because of the insufficient competitiveness for the single market, makes them fail to qualify for state aids – situation in which, as mentioned in the beginning of our analysis, changes partially the function of investment of the state aid, with repercussions on the subsequent development of their (domains/entities) contribution to the GDP.

In conclusion, and as hypothesis, subsequently to the accession to the EU, the total volume of the state aids in the economy decreased. It is almost impossible to evaluate exactly the financial or economic impact of this decrease, because this decrease of the volume of the state aids in the economy may also be due to other factors, such as periods of budget restrictions.

General and specific problems of the economic impact in relation with the state aids

Arguments

Further to what we said earlier about the significance and role of the state aid, an aspect that has to be taken into consideration is that of targeting major objectives in germs of macroeconomic importance – the state aid can be considered to have a role of subsidiary instrument of macroeconomic policy too. The arguments for this point of view follow:

- The role proposed for the state aid is in no contradiction, what so ever, with the defining elements of the state aid or with the associated normative elements of applying it in practice;
- Taking into consideration this role of the state aid, this both completes the common significance of this form of economic support from public funds, and makes a justificatory and functional connection with the practical issues of managing this important instrument of macroeconomic policy. Such vision on the general problems of granting state aids (which must entail a complex administrative process consisting of strategy, programs, plans of measures, verification, evaluation and, last but not least, correlation with the measures specific to the macroeconomic policies) is very necessary;
- This vision on the state aids responds to several problems regarding the use of public funds for such purposes, questions referring to the:
  - amount;
  - destination;
  - motivation;
- Such vision on the state aids is at the border of the economic and methodological protectionism and administratively speaking, one has to draw a line in the real cases, from this form of state intervention in the economy – form which may have an adverse effect on specific international economic agreements.

General problems

Thus, the state aids might be designed for various destinations and in relation with various motivations, such as:

- Stimulate the activity of some novel economic sectors;
- Support the activity of strategic economic sectors;
- Support the activity of less developed economic sectors (in terms of their contribution to the GDP), but which provide other direct or indirect economic advantages, such as impact on the demand, offer, employment, etc.;
- Restore the activity of important economic sectors, following the occurrence of economic shocks;
- Support the extra season activity of important economic sectors whose activity is season-related;
- Support the start of activity in important economic sectors / brands, with expected subsequent macroeconomic effect.

All these forms and motivations of the state aid are perfectly justified if this form of involvement of the state in economy is considered in terms of the mentioned vision; these forms of state aid suit perfectly the form of national macroeconomic system. Moreover, to complete the argument in support of validating this conceptual and methodological vision on the state aid in its mentioned forms, there are some principles of the macroeconomic administrative process:

- The state aids can be seen as serving the role of investments;
- Under the conditions in which the budget finds allow it, it is a more convenient variant (in terms of costs and associated conditions) to other forms of financial support;
- It is a formula which is much better associated to the general macroeconomic administrative process, than other forms of financing.

Given these considerations, one may also discuss the economic and financial impact of applying, as principle, this vision on the state aid, within a national economy.
Thus, the main forms of impact, following a qualitative evaluation, are

Specific problems

In agreement with the general topic of the analysis, the specific problems refer to the impact of applying the norms specific for the state aid, under the conditions of the presence of Romania within the macroeconomic framework of the European Union.
As already mentioned, the European economic market, in particular, and the process of European integration, in general, can be considered historically as pioneering processes in all the fields that are involved – situation in which, as it should normally be, there are parts of the legislative framework which are susceptible of changes according to the evolution of the processes and accumulation of experience. The problems of impact, seen comparatively with the case of the national economy, which the new regulations on the provision of state aids have, will be discussed here just briefly, making a qualitative evaluation, as in the previous case.
Thus, the main problem of providing state aids is that of the competition on the European market:

- The state aid must not distort or threaten with distortion the existing or potential competition on the single market, with particular reference to the:
  - Risk of changing the market conditions for the competitors;
  - Risk of selective favouring in relation with the other competitors.

Starting from these aspects, the problems of impact of the new regulations on the provision of state aids, seen comparatively with the case of the national economy, originate in the totally different market conditions between the two cases of economic market, national market and single market. On the single market, the conditions are more severe compared to those from the national market, given the much higher risks due to the higher complexity of the relations on the single market; the difference of the conditions of providing state aids comes from the differences of manifestation of the situations of competition. However, it is also true that a possible evaluation of the distortion or of the threat to distort the existing or potential competition is rather approximate, because we can only make a qualitative analysis. We may thus conclude that, compared to the case of the national economy, in the case of the regional economy, the eligibility conditions for state aids are restrictive; more than that, the role of the state aid as subsidiary instrument of macroeconomic policy is much smaller, and in the perspective of the evolution of the process of European integration such role is pointless, at least in relation with the aspects, still national, of the establishment of the national economies in domains and subdomains.
Thus, the main forms of impact, when making a qualitative evaluation of the process of granting state aids, according to the conditions of the national economic market, they are meaningless because we can no longer speak of a positive impact of the state aids seen from the following points of view:

- Economic:
  - Higher economic performance of the domestic market;
  - Stimulation of the economic relations within the domestic market;
  - Higher general competitiveness of the national products on the foreign markets;
- Financial:
  - Multiplication and consolidation of the domestic sources of gross revenue;

o Eliminate the impact and the associated risks specific to other forms of financing.

Of course, this point of view is purely theoretical, corresponding to several aspects such as:

- The still perfectible legislative framework of the process of European integration, with possible negotiations in support of the national interest;
- Existence of situations of legislative void, etc;

Nevertheless, there are forms for the partial continuation of allocating state aids – process that will probably be perfected, in a unitary variant, for the entire Union, when this means of intervention of the public funds in economy will be fundamented by a proper functional evolution of the European economic system.

Conclusions

The main elements of economic impact of applying the European regulations on competition and competitiveness have been identified in the field of the state aids for economic activity. They are due mainly to the fact that the difference of perception between the competition on the single European market and the competition on the former national markets required a more restrictive legislative framework.

Considering the state aid according to the vision presented in this paper, an investment and subsidiary instrument of macroeconomic policy is a necessity which originates in the continuous need for improvement of the macroeconomic administrative system to match the fast, substantial evolutions of the economic market. This vision, however, has its concrete and necessary place in the model of national economic market, but it loses its meaning under the conditions of the integrated macroeconomic system of the regional market. The present moment of evolution of the single European market, and of the European macroeconomic administrative system, can be taken as a moment within the stage of transition from a very complex macroeconomic role of the state aid, to a much smaller role probably targeted mainly towards the economically non-productive sectors. Thus, the economic and financial impact of changing the position of a specific national economy during this phenomenon of transition is, qualitatively speaking, decreasing and tending, probably, towards a much lower economic significance.

Actually, the size of this economic impact, represented by the difference of economic effects between the allocations of state aids in the two market models has, even in the case of the qualitative evaluation, just a theoretical value, because:

- In practice, the state aid was not used with a role associated to the hypothesis from which this paper started – situation which, according to the points of view presented above, is considered as the most complex and efficient application of the concept of state aids;
- Similarly, under the conditions of the regional market, the legislation is still being completed as consequence of the process of European integration, which is still in progress, and the strictness of applying the eligibility procedures for state aids is lower than the one theoretically presented in the analysis.

In reality, the economic impact has less constitutive elements and, would there be any method of quantification, the real value would be lower than the theoretical value presented in the analysis.

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