State aid regulations in Poland

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Poland/EU relations

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The Europe Agreement

- Signed on 16.12.1991
- Came into force on 1.02.1994
- Art. 68 and 70 – approximation of laws
- Art. 63 – competition
Art. 63.1 (iii) of the Europe Agreement

„Incompatible with the proper functioning of the Agreement, in so far as they may affect trade between the Community and Poland is any public aid which distors or threatents to distort competition by favouring certain undertakings or the production of certain goods.”
Art. 63.2 of the Europe Agreement

„ Any practices contrary to this Article shall be assessed on the basis of criteria arising from the application of the rules of Articles 92 of the Treaty establishing the European Community (currently 107 of the Treaty).”
3. „The Association Council shall, within three years of the entry into force of this Agreement, adopt by decision the necessary rules for the implementation of paragraph 1 and 2. Until these rules are adopted, the provisions of the Agreement on interpretation and application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade shall be applied as the rules for the implementation of par. 1 (iii) and related parts of paragraph 2.”
Art. 63.4 a of the Europe Agreement

„For the purposes of applying the provisions of par. 1 (iii), the Parties recognize that during the first five years after the entry into force of this Agreement, any public aid granted by Poland shall be assessed taking into account the fact that Poland shall be regarded as an area identical to those areas of the Community described in Art. 92 (3) a of the Treaty establishing the European Community (currently Art. 107 (3) of the Treaty). The Association Council shall, taking into account the economic situation of Poland, decide whether that period should be extended by further periods of five years.”
Art. 63.4 b of the Europe Agreement

„Each Party shall ensure transparency in the area of public aid, inter alia by reporting annually to the other Party on the total amount and the distribution of the aid given and by providing, upon request, information on aid schemes. Upon request by one Party, the other Party shall provide information on particular individual cases of public aid.”
Accession negotiations

• Three necessary elements for closing:
  - The necessary legislative framework,
  - An adequate administrative capacity
  - Credible enforcement record

• One of the most difficult chapter
  (Special economic zones, aid for steel and iron industry, environmental protection aid)
The Polish state aid regulations

1. Before Accession
   • The State Aid Law of 2000
   • The State Aid Law of 2002

2. After Accession
   • The State Aid Law of 2004
Difficulties

• Scope of the state aid regulations - decisions, guidelines, regulations and jurisprudence of the courts
• The requirements of the national Constitutional Law
• Changes in the EU Law
The State Aid Law of 2000

• The OCCP President – the supervising authority

• Prohibition with exceptions

• Material and procedural provisions

• Different system of the state aid control
The State Aid Law of 2002

• Interpretations doubts
• Approximation to the new EU Law
• State aid schemes and individual aid
Scope of the State Aid Law

• The State Aid Law determined:
  - conditions for admissibility
  - rules for granting of state aid
  - rules for supervising of state aid
Definition of state aid

• 4 basic criteria:
  - State aid resources
  - Economic advantage
  - Selectivity
  - Influence on trade between MS
State aid resources

- „granted directly out of national public founds or
- granted out of such funds granted to other entities or
- reduces or
- may reduce these founds”
Economic advantage

• „(...) conferring of financial benefits to a given entrepreneur related to business activities conducted by him, in particular by making expenditures of national public funds or reducing the amounts of benefits due from the entrepreneur to the public finance sector (...)”
Selectivity

• “distorts or threatens to distort competition by favouring certain entrepreneurs or production of certain goods.”
The influence on trade between Member States

- Not directly expressed
- References to the Europe Agreement
- *De minimis* rule
Forms of state aid

1. An open catalogue of possible aid forms:
   - subsidies, tax relives and tax exemptions
   - extra capital (injection) provided to the entrepreneurs on more favourable terms and conditions than the market ones,
   - loans and credits granted to the entrepreneurs on more favourable terms and conditions than the market ones (...)

2. The Regulation of the Council of Ministers detailed criteria for recognising as aid the benefits given to the entrepreneur, taking into account the usual investment practice
Definitions

- Aid scheme
- Individual aid
- Entrepreneur
- Public entrepreneur
- New investment
- Creating new jobs
- Large investment projects
- Technical infrastructure
No definitions

- Existing aid
- De minimis aid
- Unlawful aid
- Misused aid
- Undertaking
- Micro, small and medium-sized enterprise
- Regional, rescue, restructuring, horizontal aid
- Interested parties
- Monitoring
General conditions for admissibility of aid

• General prohibition
• Legal requirements for granting aid
• Reference to the Europe Agreement
• Exceptions from the prohibition
Principles of the State Aid Law

• Transparency – application procedures and reporting
• Proportionality – amount of aid, its duration and scope to scale of the problem to be solved
• Additionality – engagement of entrepreneur’s resources, aid intensity
Regulations

• 21 Regulations:
  - Regional aid
  - Horizontal aid
  - Aid for sensitive sectors
  - Procedural issues (reporting, efficiency and effectiveness)
Regional aid

1. General conditions in the State Aid Law:
   - Element of the regional policy
   - Proportional
   - Not exceed the maximum aid intensity
   - Be consistent with sectoral structure of the regional economy

2. Regulation of the Council of Ministers
   Regions, maximum amounts of aid to these regions, detailed terms and conditions, types of costs
Horizontal aid

• General conditions in the State Aid Law
• No definition of the horizontal aid
• Regulations (restructuring or rescuing companies, R&D, environmental protection, training aid)
• Provisions of the Law - employment aid and S&M’s aid
Aid to sensitive sectors

- General conditions in the State Aid Law
- Regulations on:
  - coal mining
  - steel and iron industry
  - synthetic fibres
  - maritime transport
  - shipbuilding
  - motor industry
Procedural issues

- Supervising of state aid
- Monitoring of state aid
- Reporting to the Council of Ministers
- Exchange of information with the EU
- Evaluating the efficiency and effectiveness of aid
Supervising of state aid

1. Opinion of the OCCP President on:
   - aid schemes (30 days)
   - decisions or agreements (individual aid cases – 60 days)

2. Interim procedure (established by the European Commission)
Aid scheme

„The scheme, including the normative act, specifying the rules, conditions and forms for granting aid, and specifying or containing legal bases for granting such aid.”
Individual aid

„Aid granting of which:

a) is not covered by the aid scheme or,

b) is covered by the aid scheme and moreover

- pursuant to terms and conditions provided for in the opinion, is a subject to the obligation of applying for the opinion

- is aimed to support large investment projects.”
Procedural issues

• Reimbursement (unlawful and misused aid)
• Control of the efficiency and effectiveness
• Fines
State aid after Accession

• Direct applicability of the EU Law
• New procedures
• The role of the OCCP President
• Analyses of solutions applicable in MS

• no uniform model
• exceptionally resulting from statutory provisions (Finland, Spain), administrative practice (Denmark, Germany, Italy), internal acts (France, Sweden, Great Britain)
• Ministry of Economy (Finland, Ireland, Sweden, Great Britain), Ministry of External Relations (France, Spain, Portugal), Ministry on European Union (Italy)
• Office for Competition (Denmark)
The State Aid Law of 2004

• Procedural issues:
  - Notification procedure
  - Co-operation with the European Commission and other authorities
  - Proceedings before the EU Courts
  - Recovery of illegal aid
  - State aid monitoring