

# STATE AID IN KOSOVO: A wake-up call!

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# STATE AID IN KOSOVO: A WAKE-UP CALL!

## I. Introduction

Under the umbrella of competition policy, highlighted attention has been attributed to the State Aid control by the European Union member states, especially during the last decade. It is a conventional wisdom that State Aid regulation is distinct from the ‘mainstream of the competition law’ tackling mergers, market domination and cartel enforcement. The main objective of the State Aid control lies on the preservation of market competition by guaranteeing that country’s interventions and assistance provided to private or public undertaking – through state resources – do not distort the market competition and trade.<sup>1</sup> Precisely, State Aid is the financial assistance provided by the Government to beneficiaries – “any natural or legal person, public or private, who performs an economic activity, and thereby participates in trade of goods and services” – accompanied by direct or indirect potential distortion of the competition by favoring certain beneficiaries.<sup>2</sup>

Proper legal provisions of State Aid control safeguard the functioning of the internal market and competition, by ensuring that certain undertakings do not gain competitive advantage through state aid. In general, state aid granted by institutions or state aid providers is prohibited given besides being unfair, it also promote one-sided competition by reducing marginal costs for the state aid beneficiaries, while imposing financial burdens on the taxpayers. On this line of thought, the main rationale provided by scholars for the significance of State Aid control has a dual-facet purpose, specifically microeconomic and macroeconomics, as it strives to balance the trade-off between market competition as well as social and public interest.<sup>3</sup>

The driving force, besides safeguarding the competition, leading to the introduction of national legal provisions on State Aid control is partially attributed to the European Integration perspective of the South East European (SEE) countries.<sup>4</sup> Kosovo jointly with other SEE countries have long before expressed their aspirations towards the European

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<sup>1</sup> Department for Business Innovation and Skills (2015), “*State Aid: The Basics Guide*”, Government of the United Kingdom, London, available at:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/443686/BIS-15-417-state-aid-the-basics-guide.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/443686/BIS-15-417-state-aid-the-basics-guide.pdf)

<sup>2</sup> Law on State Aid no. 05/L-100, available at:

<https://mf.rks-gov.net/desk/inc/media/AB373100-5DE7-45A4-BE96-CD1EF11E79AE.pdf>

<sup>3</sup> Yo Sop Choi (2010), “*EU Competition Policy Via Controlling State Aid*”, International Area Review, The Law Research Institute, Hankuk University of Foreign Studies, available at: <https://journals.sagepub.com/doi/abs/10.1177/223386591001300215>

<sup>4</sup> Marco Botta (2012), “*State aid control in South-East Europe: The Endless Transition*”, Working Paper from the Conference UACES 2012, University of Passau Panel - EU enlargement IV, Institute for European Integration Research (EIF), University of Vienna, available at: <https://www.uaces.org/documents/papers/1201/botta.pdf>

Integration. As part of the process, Kosovo – the last among the Western Balkan countries – signed the Stabilization and Association Agreement (SAA) in November 2015, which entered into force in April 2016.<sup>5</sup> Bearing in mind that most of the Agreement is based on the Acquis, Kosovo surely embarked on a difficult path of harmonizing and aligning the national legislation with the acquis.<sup>6</sup> This said, the European Commission stresses the importance of compatibility of the national legislation with the EU acquis, including the State Aid control legal provisions.<sup>7</sup> In general, the SEE countries have adopted and approximated national legal provisions on competition and state aid with the EU acquis. However, further approximation of the secondary by-laws is necessary in order for the existing legislation to be further aligned with the EU acquis, which is also the case for Kosovo.<sup>8</sup>

This study aims to analyze the legal framework regulating the state aid area by focusing on the national and EU regulation; provides a chronological order of events regarding the functionalization of the Department of State Aid and its Commission; highlights the priorities stemming from the European Reform Agenda and the National Programme for the Implementation of the SAA; as well as lists a set of recommendations tailored specifically for key stakeholders.

## II. Legal Framework

State Aid control in Kosovo is governed by the Law on State Aid which highlights the terms, procedures, conditions, and among others, the revocation procedures of state aid provided. It can take various forms, including state resources, subsidies, loans at preferential interest rates, disposal of land or buildings at a lower market value, and among others, debt write-offs which might provide an advantage to beneficiaries due to the selective and preferential treatment.<sup>9</sup> Apart from specifying the duties and responsibilities of the Department of State Aid as the main administrative body responsible for the control of state aid, and of the Commission representing the decision making body, the Law also specifies types of prohibited and un-prohibited aid granted to undertakings or certain beneficiaries which might have the tendency to distort the competition. Thus,

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<sup>5</sup> Unlike with the other Western Balkan countries, Kosovo signed the SAA with the EU as a single entity, which was made possible only after the Lisbon Treaty. The latter conferred the EU a legal personality, thus transferring to the Commission more powers – including also signing of international agreements. In Kosovo's case this was beneficial, given the issue of the 5 EU non-recognizers of its independence.

<sup>6</sup> Ereza Pula (2019), “(Un) leveling the field – A Competition Tale (II)!” , Group for Legal and Political Studies, Prishtine, available at: <http://www.legalpoliticalstudies.org/wp-content/uploads/2019/03/Unlevelling-the-competition-field-Eng.pdf>

<sup>7</sup> European Commission, State Aid Control, [accessed on: 15 Jul 2019], available at: [http://ec.europa.eu/competition/state\\_aid/overview/index\\_en.html](http://ec.europa.eu/competition/state_aid/overview/index_en.html)

<sup>8</sup> Dušan V. Popović (2018), “Institutional Design of State Aid Authorities in South East Europe: The Unfit Legal Transplant and Its Ramifications”, Competition Authorities in South Eastern Europe, available at: [https://link.springer.com/chapter/10.1007/978-3-319-76644-7\\_4](https://link.springer.com/chapter/10.1007/978-3-319-76644-7_4)

<sup>9</sup> European Commission, ‘Competition: State Aid Control’, available at: [http://ec.europa.eu/competition/state\\_aid/overview/index\\_en.html](http://ec.europa.eu/competition/state_aid/overview/index_en.html)

bearing in mind the affect state aid might have on competition, the Law prohibits any kind of state aid granted by aid providers – national public authorities, unless it is categorized as a compatible state aid.<sup>10</sup> The latter, which can be granted without prior approval of the Commission includes: -‘aid of a social character, granted to individual consumers, provided that such aid is granted without discrimination related to the origin of the products concerned; and aid intended for repair of damages caused by natural disasters or emergency events’.<sup>11</sup>

In order to facilitate the functionalization of the State Aid Department, the latter has drafted the State Aid Guideline which provides detailed explanations on the state aid, types of the state aid which do not constitute only grants but also other advantage forms, and amongst others, the procedures to be followed for notification of state aid.<sup>12</sup> The latter, the notification procedures, is further regulated by the Regulation on Procedures and Forms of State Aid Notification which was a requirement stemming from both the European Reform Agenda and the National Programme for Implementation of the SAA for year 2018. The provisions of the Regulation should be respected by all state aid provides and beneficiaries, relevant stakeholders and other actors controlling the granting of the state aid.<sup>13</sup> Specifically, institutions prior to granting any form of state aid, should notify the State Aid Department by filling the ‘General State Aid Notification Form’ based on which the Department of State Aid assesses the compatibility of the State Aid based on the law provisions. After a thorough review, the Department determines if the notification presents a form of state aid. Such an assessment is sent to the Commission which makes a decision if the aid to be granted is compatible or incompatible with the Law provisions. In the former case, the Commission authorizes the conditional or unconditional granting of the state aid, whereas in the latter case, if there is suspicion that the aid to be granted does not comply with the Law, the Commission will initiate formal investigation procedures.<sup>14</sup>

Even though the Regulation on Procedures and Forms of State Aid Notification details the process of notification of a state aid to be granted, this mechanism has not been functionalized or utilised yet by state aid providers.

As elaborated above, the rational for introducing the national legal provision regulating the state aid control is attributed to the European Integration process, specifically the implementation of the Stabilization and Association Agreement. Needless to restate it, the approximation and harmonization of the national legislation with the EU acquis represents the centerpiece of the SAA. This being said, Article 75 of the SAA between Kosovo and EU highlights the prohibition of any ‘state aid which distorts or threatens to distort competition

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<sup>10</sup> Law on State Aid no. 05/L-100, Article 3, 4, available at:

<https://mf.rks-gov.net/desk/inc/media/AB373100-5DE7-45A4-BE96-CD1EF11E79AE.pdf>

<sup>11</sup> Law on State Aid no. 05/L-100, Article 3, 4, available at:

<https://mf.rks-gov.net/desk/inc/media/AB373100-5DE7-45A4-BE96-CD1EF11E79AE.pdf>

<sup>12</sup> State Aid Department (2019), “*State Aid Guideline*”, Ministry of Finance, available at:

<https://mf.rks-gov.net/desk/inc/media/B7F80FAF-32A8-4DC0-BB5A-C959B70F4759.pdf>

<sup>13</sup> Regulation (GoK) No.19/2018 on Procedures and Forms of State Aid Notification, available at:

<https://mf.rks-gov.net/desk/inc/media/C6423C79-3933-4F7F-B0A3-AEFE0B44DOA3.pdf>

<sup>14</sup> Regulation (GoK) No.19/2018 on Procedures and Forms of State Aid Notification, available at:

<https://mf.rks-gov.net/desk/inc/media/C6423C79-3933-4F7F-B0A3-AEFE0B44DOA3.pdf>

by favouring certain undertakings or certain products'. This definition stems directly from the Article 107 (1) of the Treaty on the Functioning of the European Union (TFEU).<sup>15</sup> The SAA furthers this proposition by stating that the Parties (EU and Kosovo) have agreed that 'during the first five years after the entry into force of this Agreement, any state aid granted by Kosovo shall be assessed taking into account the fact that Kosovo shall be regarded as an area identical to those areas of the EU described in Article 107(3) (a) of the Treaty on the Functioning of the European Union'.<sup>16</sup>

The European Commission, in order to alleviate the cumbersome procedures of getting prior notification and approval for state aid from the Commission, has adopted the so-called General Block Exemption Regulations- GBER for State aid which specifies State Aid categories and certain conditions compatible with the Treaty. GBER not only simplifies the procedures of granting state resources, but also contributes towards providing aid channeled to objectives of common interest, such as the promotion of innovation and research, environmental protection, regional development, employment and entrepreneurship, and ground-breaking investment initiatives.<sup>17</sup>

In addition, the de minimis Regulation – or Regulation on Small Aid – has been specifically adopted for providing small aid not subject to state aid control mechanisms given it does not distort the trade and competition in the internal market. Aid fulfilling the criteria set by this Regulation do not need prior notification and approval from the Commission, thus decreasing also the administrative burden for the EU member states and companies. Main criteria of this Regulation is to 'maintain the ceiling of EUR 200 000 as the amount of de minimis aid that a single undertaking may receive per Member State over any period of three years', as long as it does not distort or threaten to distort the market competition.<sup>18</sup>

Apart from the SAA and EU acquis, the Central European Free Trade Agreement - CEFTA also provides clear prohibitions regarding the granting of the state aid, as follows - "any aid granted by a Party or through State resources in any form whatsoever which distorts or threatens to distort competition by favoring certain goods shall, in so far as it may affect trade between the Party concerned and other Parties to this Agreement [including Kosovo], be incompatible with the proper functioning of this Agreement".<sup>19</sup>

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<sup>15</sup> Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union 2012/C 326/01, available at: [https://eur-lex.europa.eu/eli/treaty/tfeu\\_2012/oj](https://eur-lex.europa.eu/eli/treaty/tfeu_2012/oj)

<sup>16</sup> Council of the European Union (2015), "Stabilisation and Association agreement between the European Union and the European Atomic Energy Community, of the one part, and Kosovo\*, of the other part", available at: [https://eeas.europa.eu/sites/eeas/files/stabilisation\\_and\\_association\\_agreement\\_eng\\_0.pdf](https://eeas.europa.eu/sites/eeas/files/stabilisation_and_association_agreement_eng_0.pdf)

<sup>17</sup> European Commission, Competition- State Aid, Legislation – Block Exemption Regulations, available at: [http://ec.europa.eu/competition/state\\_aid/legislation/block.html](http://ec.europa.eu/competition/state_aid/legislation/block.html)

European Commission (2016), "EU Competition Policy in Action: Comp in Action", available at: <http://ec.europa.eu/competition/publications/kd0216250enn.pdf>

<sup>18</sup> Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid, available at: [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2013.352.01.0001.01.ENG](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2013.352.01.0001.01.ENG)

<sup>19</sup> The Agreement on Amendment of and Accession to the Central European Free Trade Agreement (2006), available at: [http://www.mvteo.gov.ba/data/Home/Dokumenti/ANNEX\\_1CEFTA\\_2006ENG.pdf](http://www.mvteo.gov.ba/data/Home/Dokumenti/ANNEX_1CEFTA_2006ENG.pdf)



Reasoning from the above, the current legislative framework, specifically the Law on State Aid, is partially in compliance with Regulation (EU) 2015/1589 which provides detailed rules for the implementation of the Article 108 of the TFEU – Aids Granted by States. However, a thorough examination of the legal framework suggests that further approximation of Kosovo’s national legislation with the EU acquis is necessary, especially the secondary legislation including the De Minimis Regulation, Regulation on Regional Aid, as well as Regulation on Horizontal State Aid, as foreseen by the NPISAA 2019 - 2023.<sup>20</sup>

### **III. State Aid Department and Commission**

Initially, the administrative office for controlling state aid granted to undertakings, namely the Office of State Aid, was originally established within the Kosovo Competition Authority. The new Law on State Aid, which entered into force in 2017, specifies that the State Aid Department should be transferred within the Ministry of Finance.<sup>21</sup> Following its transfer, the Department of State Aid has continued to take necessary steps required for its daily functioning, including the hiring of 7 employees. Given state aid concept in Kosovo is a fairly new concept, the Department has drafted a detailed working plan to be followed by its employees, in order to facilitate its transitioning period.

Currently, the Department is putting tremendous effort to simultaneously achieve three main objectives, - drafting of the secondary legislation covering the state aid area; enhancing the department’s capacities; and fulfilling measures stemming from the Stabilization and Association Agreement. With regards to further enhancing the capacities, the Department has been receiving technical assistance from a project supported from the British Embassy, a twinning project between Kosovo and EU, and a project supported from IPA II.<sup>22</sup>

On the other hand, the Law on State Aid stipulated that the decision-making body for the State Aid Department, namely the State Aid Commission, should be composed of five members with expertise on the field. The members of the Commission are appointed by the Assembly of the Republic of Kosovo for a mandate of three years, with the possibility of being elected for an additional mandate. While exercising their mandate, members of the Commission should not carry a political appointed position or public function. The members of the State Aid Commission are responsible to adopt the rules of procedure which lay out the organization, the administrative decision making procedures, as well as necessary measure against conflict of interest.<sup>23</sup>

The appointment of the members for the State Aid Commission has been also one of the measures stemming from the European Reform Agenda (ERA) and the National

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<sup>20</sup> National Programme for the Implementation of the Stabilization and Association Agreement (NPISAA) 2019-2023

<sup>21</sup> Law on State Aid no. 05/L-100, Article 23 Transitional Provisions, available at:

<https://mf.rks-gov.net/desk/inc/media/AB373100-5DE7-45A4-BE96-CD1EF11E79AE.pdf>

<sup>22</sup> Personal interview with the Director of the State Aid Department, Mr. Agim Krasniqi, 22 Jul 2019

<sup>23</sup> Law on State Aid no. 05/L-100, Article 9 State Aid Commission, available at:

<https://mf.rks-gov.net/desk/inc/media/AB373100-5DE7-45A4-BE96-CD1EF11E79AE.pdf>

Programme for the Implementation of the SAA (NPISAA).<sup>24</sup> Thus, in July 2018 the Assembly initiated the appointment procedures for the Commission members, while in March of the succeeding year five members of the State Aid Commission were selected.<sup>25</sup> Yet, the 2019 EC Country Report voiced the operationalization of the State Aid Commission as crucial bearing in mind that the recommendations stemming from the previous Country Report remain still unaddressed, deterring the ex-ante notifications and the ex-post control of granted state aid.<sup>26</sup>

#### **IV. State Aid measures included in the ERA and NPISAA for 2018 – 2019**

Among the main priorities of the Department of State Aid is also the fulfillment of the measures stemming from the Stabilization and Association Agreement. Being among the most important agreements for Kosovo, the implementation of the Stabilization and Association Agreement is guided by two main frameworks - NPISAA and ERA - drafted specifically to accelerate its implementation. Both documents integrate measures and priorities to be implemented for various areas, including also the State Aid area.

ERA - Progress during 2018<sup>27</sup>: According to the European Reform Agenda, relevant institutions - Ministry of Finance and the Assembly of Kosovo - were responsible of fulfilling three measures during year 2018, specifically:

- approval of the secondary legislation for State Aid,
- functionalization of the Department for State Aid, and
- operationalization of the Commission for State Aid.

Apart from the functionalization of the Department of the State Aid during 2018, the other two measures were partially fulfilled. In this regard, the State Aid Commission was operationalized during the first quarter of 2019, whereas the approval of the secondary legislation was still work-in-progress by the end of 2018. Regarding the latter, it should be noted that during the last quarter of 2018, the Government approved one of the secondary legislation, namely the Regulation on State Aid Notification Procedures.

NPISAA - Progress during 2018 and 2019<sup>28</sup>: On a similar note, the table below portrays all the NPISAA measures which were supposed to be implemented by relevant institutions

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<sup>24</sup> National Programme for the Implementation of the Stabilization and Association Agreement (NPISAA) 2018-2022; European Reform Agenda (ERA) (2016), Kosovo – EU High Level Dialogue on Key Priorities

<sup>25</sup> Arbisa Shefkiu (2019), “Kuvendi kompletion Komisionin për Ndihmë Shtetërore sipas rekomandimeve të britanikëve”, Kallxo.com, [accessed on: 10 July], available at: <https://kallxo.com/kuvendi-kompletion-komisionin-per-ndihme-shteterore-sipas-rekomandimeve-te-britanikeve/>

<sup>26</sup> European Commission (2019), “Kosovo 2019 Report Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2019 Communication on EU Enlargement Policy”, Commission Staff Working Document, Brussels, available at: <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-kosovo-report.pdf>

<sup>27</sup> European Reform Agenda (ERA) (2016), Kosovo – EU High Level Dialogue on Key Priorities

<sup>28</sup>This section contains data only for the first part of the 2019, specifically from January until end of June.

during 2018 and the first part of 2019 (Jan – June). During 2018, the Ministry of Finance had to fulfill only two measures, both of which overlap with the priorities/measures included also in the European Reform Agenda, namely the Regulation on State Aid Notification Procedures and the functionalization of the Department of State Aid, both of which were fulfilled during year 2018<sup>29</sup>.

With regards to the first part of 2019, there were two foreseen measures to be implemented from the Ministry of Finance on the State Aid control area, specifically:

- the adoption of the De Minimis Regulation on State Aid, which, according to the Department of State Aid has been drafted and sent for approval, and
- drafting of the guidelines for creating the State Aid Inventory, which has been finalized with the assistance and expertise provided by the UK Embassy.<sup>30</sup>

Whereas, as depicted in the table 1, for the second part of 2019, NPISAA foresees seven (7) measures to be fulfilled from the Ministry of Finance, namely sub-legal acts, which are crucial towards the well-functioning of the Department for State and Aid and its Commission. The measures include the Regulation on Regional Aid, Regulation on Horizontal State Aid, specific measures to raise awareness on the rules of state aid for providers, and the creation of the state aid inventory.<sup>31</sup> It should also be noted, that an initial inventory for the State Aid has been already compiled, which is to be updated on regular basis. According to the representatives of the DSA, the initial inventory has been shared also with the EU office in Kosovo.<sup>32</sup>

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<sup>29</sup> National Programme for the Implementation of the Stabilization and Association Agreement (NPISAA) 2018-2022

<sup>30</sup> Personal interview with the Director of the State Aid Department, Mr. Agim Krasniqi, 22 Jul 2019

<sup>31</sup> National Programme for the Implementation of the Stabilization and Association Agreement (NPISAA) 2019-2023

<sup>32</sup> Personal interview with the Director of the State Aid Department, Mr. Agim Krasniqi, 22 Jul 2019

**Table 1:** State Aid priorities including in ERA 2018 and NPISAA 2018 - 2019

NO.	OBJECTIVES/REF. FRAMEWORK	NATIONAL ACTS TO BE ALIGNED	EU ACQUIS ACTS BE TRANSPOSED	RESPONSIBLE INSTITUTIONS
1.	Article 75, paragraphs 1a and 1b	Regulation on State Aid Notification Procedures adopted (supplemented-amended)	Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing the Commission Regulation (EC) No. 659/1999. Commission Regulation (EC) No. 271/2008 of 30 January 2008 supplementing the EC regulation No. 794/2004	MoF <b>Q2 2018</b>
2.	Article 74 and 75	Functionalization of the Department	Five (5) officials recruited	MoF <b>Q2 2018</b>
3.	Article 75, paragraphs 1a and 1b	De Minimis Regulation on State Aid (new Regulation), adopted	Commission Regulation (EU) No 1407/2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to De Minimis aid (18/12/2013- 2020)	MoF <b>Q2 2019</b>
4.	Article 74 and 75	Initiation of the Guidelines for Creating the State Aid Inventory	Guidelines for creating a State Aid Inventory, drafted	MoF <b>Q2 2019</b>
5.	Article 75, paragraphs 1a and 1b	Regulation on Regional Aid, adopted	Articles 101 to 109 of the Treaty on the Functioning of the European Union (TFEU)	MoF <b>Q4 2019</b>

6.	Article 75, paragraphs 1a and 1b	Regulation on Horizontal State Aid, adopted	Council Regulation No 2018/1911 of 26 November 2018 amending Regulation (EU) 2015/1588 of 13 July 2015 on the application of Articles	MoF Q4 2019
7.	Article 74 and 75	Raising awareness on the Rules of State Aid for providers and advocacy	Information sessions (training sessions, workshops with state aid providers)	MoF Q4 2019
8.	Article 74 and 75	Raising awareness on the Rules of State Aid for providers and advocacy	Completion of notification forms by state aid granting institution	MoF Q4 2019
9.	Article 74 and 75	Raising awareness on the Rules of State Aid for providers and advocacy	On the job training for at least seven (7) official	MoF Q4 2019
10.	Article 74 and 75	Raising awareness on the Rules of State Aid for providers and advocacy	At least two (2) workshops for state aid granting institutions held	MoF Q4 2019
11.	Article 74 and 75	Creating an Existing Inventory for State Aid	State Aid Inventorying, completed	MoF Q4 2019

## V. State Aid: An investment lever or a competition distorter

State aid control policies changed substantially during the last decade, as it was necessary to modernize the existing regulation due to the political and economic challenges identified within the Europe 2020 growth strategy.<sup>33</sup> By 2012, the European Commission published a communication on the EU State Aid Modernisation (SAM) which aimed towards a sustainable and inclusive economy through generation of jobs, productivity and social cohesion. To achieve this, the European Commission concentrated on two elements, the integrated market without national border, and the competition policy and state aid control in order to ensure the well-functioning of the market competition. Referring to the latter, the cornerstone of this communication highlights the need to promote ‘a sound use of

<sup>33</sup> Adina Claiici and Elisa Pau (2018), *Economics in State Aid*, Copenhagen Economics., available at: [https://globalcompetitionreview.com/reference/1172489/economics-in-state-aid#\\_ftnref2](https://globalcompetitionreview.com/reference/1172489/economics-in-state-aid#_ftnref2)

public resources for growth-oriented policies and limiting competition distortions that would undermine a level playing field in the internal market'.<sup>34</sup>

Apart from introducing the de minimis Regulation and the General Block Exemption Regulation, the European Commission was determined to further modernize the existing legal framework in order to achieve a faster growth and competitive internal market, and strengthen enforcement on cases with bigger impact through streamlining regulation towards a faster decision delivery.<sup>35</sup> All these initiatives have shown that State Aid could promote investment, but only if regulated and controlled properly. This has been proved by many cases in EU member states where state aid policy has channeled further investment and economic growth.

France: Construction of a new terminal - In 2015, the European Commission decided that €270 million dedicated for a project to build a new terminal in the Port of Calais does not distort competition and is in line with the EU states aid rules. The Commission based its decision on detailed financial analysis submitted by France, which suggested that the terminal's income solely is insufficient to cover the investment costs for the next 50 years. The Commission also concluded that the positive effects from this projects were going to outweigh any negative affect that this specific state aid might have on competition.<sup>36</sup>

Germany: Building 20 offshore wind farms - In late 2014, Germany notified the European Commission regarding the intention to support the construction of 20 offshore wind farms in the North Sea and the Baltic Sea, in the form of state aid which would be granted to the operators as a premium paid on top of the market electricity price. The Commission approved such a request by concluding that the project will help Germany achieve the 2020 targets for renewable energy; the project does not distort market competition given the aid provided is just sufficient to trigger this specific investment; and in the future, this project will be beneficial for competition given new electricity providers will be able to enter the German generation market.<sup>37</sup>

A more recent case concerns the approval of state aid to support six offshore wind farms in the French waters. After assessing the support under the EU State Aid rules, the European Commission decided in favor based on the argument that the aid will lead to reduction of the CO<sub>2</sub> emissions, and most importantly it will not distort the competition in the single market.<sup>38</sup>

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<sup>34</sup> European Commission (2012), Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *EU State Aid Modernisation (SAM)*, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52012DC0209&from=EN>

<sup>35</sup> European Commission (2016), '*EU Competition Policy in Action*', available at: <http://ec.europa.eu/competition/publications/kd0216250enn.pdf>

<sup>36</sup> European Commission - Press Release (2015), State aid: Commission approves €270 million in investment aid for the expansion of the Port of Calais, available at: [http://europa.eu/rapid/press-release\\_IP-15-5301\\_en.htm](http://europa.eu/rapid/press-release_IP-15-5301_en.htm)

<sup>37</sup> European Commission - Press Release (2015), State aid: Commission approves support to 20 offshore wind farms in Germany, available at: [http://europa.eu/rapid/press-release\\_MEX-15-4789\\_en.htm](http://europa.eu/rapid/press-release_MEX-15-4789_en.htm)

<sup>38</sup> European Commission - Press Release (2019), State aid: Commission approves support for six offshore wind farms in France, available at: [http://europa.eu/rapid/press-release\\_IP-19-4749\\_en.htm](http://europa.eu/rapid/press-release_IP-19-4749_en.htm)

Italy: Distributing newspapers at reduced tariffs - Italy assigned the Poste Italiane to distribute, at reduced tariffs, newspapers and publications of book publishers and non-profit organizations for the period 2017-2019. This service falls under the general economic interest – SGEI – which aims to preserve and foster media plurality and diversity through distributing certain categories of press at reduced rates. Given this, the European Commission assessed Italy's request and approved the aid of €171.74 million to compensate the Poste Italiane in order to cover the net cost borne for providing this service. Based on the EU State aid rules on public service compensation, Commission found out that this amount of state aid does not exceed the amount needed to compensate the net cost borne by Poste Italiane.<sup>39</sup>

However, as elaborated throughout the study, uncontrolled state aid granted to undertakings can have negative effects on the competition by offering preferential treatment to certain companies while posing financial burden to others as well as taxpayers. Such cases are strictly prohibited under the EU state aid rules, as attested by the cases below.

Gibraltar: Illegal tax advantages to multinational companies - The European Commission conducted a thorough investigation of the tax benefits given to several multinational companies by Gibraltar. The latter through a corporate tax exemption scheme and five tax rulings has given preferential treatment and selective benefits to a number of multinational companies. The Commission stated that such preferential treatment are prohibited under the EU state aid rules, and the unpaid taxes should be recovered in order to restore equal treatment among the other companies. Under the EU state aid, the incompatible State aid should be recovered, and the beneficiaries have to return the unpaid taxes to Gibraltar, amounting to €100 million, in order to remove the distortion of the competition. It should be noted that in such cases, apart from recovering the unpaid taxes, the companies in question are not penalized or fined. The decision of the Commission also led to the removal of the illegal tax exemptions by Gibraltar in order to prevent such cases in the future.<sup>40</sup>

United Kingdom: Tax scheme - A similar recent case concerns the UK tax scheme for which the Commission concluded that part of it violates the State aid rules. The main reason behind this decision lays in the fact that UK exempted specific multinational groups, with no justification, from the tax scheme. Thus, UK provided a selective advantage to some multinational companies, violating the principle of equally treatment of all the

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<sup>39</sup> European Commission - Press Release (2019), State aid: Commission approves €171.7 million compensation to Poste Italiane for distributing newspapers at reduced tariffs, available at: [http://europa.eu/rapid/press-release\\_IP-19-4473\\_en.htm](http://europa.eu/rapid/press-release_IP-19-4473_en.htm)

<sup>40</sup> European Commission - Press Release (2018), State aid: Commission concludes Gibraltar gave around €100 million of illegal tax advantages to multinational companies, available at: [http://europa.eu/rapid/press-release\\_IP-18-6889\\_en.htm](http://europa.eu/rapid/press-release_IP-18-6889_en.htm)

taxpayers. Given such events are illegal under the EU state aid rules, the UK has to recover the illegal State aid - the undue tax benefits - from the beneficiaries.<sup>41</sup>

Cases of incompatible state aid granted to companies have occurred also in Kosovo, however, without a proper assessment or detailed investigation from relevant institutions - namely the Department of State Aid and its Commission - leading to no decisions and corresponding revocation of state aid granted. This phenomenon has been highlighted also by the latest EC Country report with regards to aid granted to various sectors, such as the telecommunications sector, without following the procedures as foreseen by the legal framework.<sup>42</sup> Another case, which has been voiced recently by civil society in Kosovo, which also bypassed the notification and investigation procedures is the agreement signed between the Government of Kosovo and ContourGlobal for construction of a new power plant 'Kosova e Re'. The latter contains clear elements of incompatible state aid which distort the competition in the energy market.<sup>43</sup>

The current legal framework in Kosovo specifies that institutions which provided state aid are obliged to submit to the Department of State Aid all the data on existing aid schemes, six months after the entry into force of the Law on State aid. Moreover, the Law specifies that the Commission should ensure and investigate that all the state aid cases granted are in compliance with the state aid rules. The Commission may cease any state aid granted and initiate investigative procedures under the suspicion that the aid granted is in violation of the Law provisions.<sup>44</sup> However, there hasn't been any movement yet with regard to the so-called initiation of investigation procedures of aid cases granted in Kosovo, which are believed to have elements violating directly the state aid rules.

## VI. Way Forward

State Aid control in Kosovo is still in its early development steps. Being transferred to the Ministry of Finance in 2017, the operations of State Aid Department were hindered by the lack of a functional Commission - members of which were elected in March 2019. Given its significance on preserving competition and prohibiting the favoring of certain undertakings, State Aid control remains an integral part of a well-functioning market and

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<sup>41</sup> European Commission - Press Release (2019), State aid: Commission concludes part of UK tax scheme gave illegal tax advantages to certain multinational companies; remaining part does not constitute aid, available at: [http://europa.eu/rapid/press-release\\_IP-19-1948\\_en.htm](http://europa.eu/rapid/press-release_IP-19-1948_en.htm)

<sup>42</sup> European Commission (2019), "Kosovo 2019 Report Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2019 Communication on EU Enlargement Policy", Commission Staff Working Document, Brussels, available at:

<https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-kosovo-report.pdf>

<sup>43</sup> Koha Net (2019), "Marrëveshjet për ndërtimin e TC Kosova e Re, në kundërshtim me ligjet e Kosovës dhe BE-së", available at: <https://www.koha.net/arberi/162099/marreveshjet-per-ndertimin-e-tc-kosova-e-re-ne-kundershtim-me-ligjet-e-kosoves-dhe-be-se/>

<sup>44</sup> Law on State Aid no. 05/L-100, Article 3, 4, available at:

<https://mf.rks-gov.net/desk/inc/media/AB373100-5DE7-45A4-BE96-CD1EF11E79AE.pdf>



fair competition. For the Department of State Aid and its Commission to be fully functional and exercise their mandate, a tremendous dedication should be channeled to achieve the following:

- Align further the legal framework on state aid, with special emphasis on secondary legislation;
- Identify and finalize the inventory of the existing state aid schemes;
- Ensure the compliance of aid granted, either from central or local institutions, through investigation of existing aid in various sectors;
- Ensure the implementation of the Law, especially the revocation of aid in cases of noncompliance with the applicable provisions of the Law on State Aid;
- Provide trainings to the staff of the Department of State Aid and members of the Commission on how to enforce the legal framework governing the state aid;
- Provide trainings to state aid providers within institutions, especially regarding the notification procedures to be followed before granting a state aid;
- Establish cooperation and coordination among the State Aid Department and state aid providers such as relevant ministries, and institutions;
- Compatible state aid should be transparent and evaluated by the respective institutions in order to assess if the intended objectives are being met;
- Provide ex-ante control of state aid cases, including also compatible state aid and de minimis cases.

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## **Policy Analysis**

Policy Analysis in general is a policy advice paper which particularly aims to influence the key means through which policy decisions are made in both local and central levels of government. The purpose of Policy Analysis is to address, more in-depth, a particular problem, to examine the arguments related to a concerned policy, and to analyze the implementation of the policy. Through Policy Analysis, Group for Legal and Political studies seeks to stimulate wider comprehensive debate on the given issue via presenting informed policy-relevant choices and recommendations to the key stakeholders and parties of interest.



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