

Nature of state aid: things every company needs to know 1/28/24



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This article kicks off a new series on state aid, a tool that municipalities and other public persons use to drive economic growth and support business across the country. This article explores the main principles of state aid, which every company needs to know because under the European Court of Justice's case law every company must act as a good steward and be able to establish whether the state aid received is legitimate.¹ Did you know that state aid is in fact forbidden and only permitted in exceptional cases?

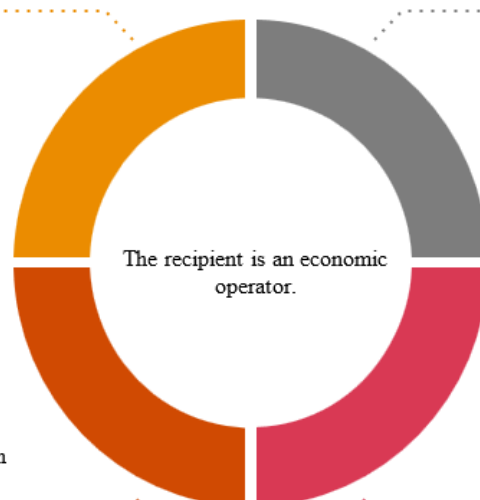
What is state aid?

We have often heard the term 'state aid', especially in recent years when the government offered assistance to overcome various crises. However, this term has a specific legal content, and not all financial assistance from central or local government funds qualifies as state aid. If aid is to qualify as state aid, it must simultaneously meet four criteria arising from the Treaty on the Functioning of the European Union (see image). For example, any universal aid the government provides to the entire public on similar conditions will not be treated as state aid. On the other hand, specific aid that is only awarded to particular companies will be assessed according to the four criteria.

State aid comes from central or local government or EU funds – **public resources**.

In various forms – direct payments, contributions to share capital, tax measures, debt write-offs, guarantees, loans, dividend waivers, property leases/sales, etc.

State aid is selective – it does not apply to all companies equally but rather depends on their size, activity or location.



An advantage is obtained – every economic benefit the company would be unable to obtain under normal market conditions without government intervention.

State aid affects trading and distorts competition on the common market.

Types of state aid

State aid can be provided in a variety of ways, such as direct payment, grant, contribution to share capital, tax exemption or relief, debt write-off, guarantee, loan, dividend waiver or property lease/sale inconsistent with market price. A waiver of public funds may also qualify as a state aid award.

Goals of state aid

State aid aims to protect the common market, to help the member states stay competitive, to use public resources efficiently towards achieving the EU's common goals, to drive regional development, and to minimise inequality.

Statistics show significant differences in state aid volumes awarded by the member states. It's therefore crucial that countries with budgetary constraints regulate their state aid to stop this inequality among the member states increasing.

The legal framework

State aid awards are governed by both EU law and Latvian national law. The EU rules are particularly important because they determine under what conditions and to what extent state aid can be provided to consider it compatible and to prevent it from distorting competition on the common market. Latvian law adds to EU law and lays down national conditions for implementation and monitoring.

Once it has been determined that the proposed aid qualifies as state aid, the provider (usually the ministry in charge of the industry, or a municipality) will identify the state aid legislation under which it's to be awarded and will submit the aid programme or project to the Ministry of Finance for preliminary evaluation. The most common and straightforward legislation on state aid awards is the De Minimis Regulation² and the General Block Exemption Regulation,³ yet in certain cases the proposed state aid needs approval from the European Commission (EC). In that case it's crucial that no project implementation work begins before the EC takes a positive decision.

Key takeaways

It's important for every company to understand the nature of state aid and the relevant rules in order to prevent illegitimate state aid and make sure the aid proposed or received is legitimate. State aid can offer significant advantages, but it's important that you know and follow all the rules and conditions to eliminate legal risks and avoid having to refund the state aid. If you need in-depth advice or assistance on state aid matters, our team of professionals are happy to help you. Our knowledge and experience will help you make the most of state aid to grow your business. Our next article will be exploring *de minimis* aid and related developments.

¹ CJEU Ruling C-5/89 of 20 September 1990 (Commission v Germany), ECLI:EU:C:1990:320, paragraphs 13-14

² Commission Regulation (EU) 2023/2831 of 13 December 2023 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid

³ Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty