Euro-Balkan Law and Economics Review

Data di pubblicazione: 22 settembre 2020

ANDUENA GJEVORI*

COVID-19 and State aid in Serbia: A test for the new State Aid Commission

CONTENT: I. Introduction. II. Notice of the Serbian State Aid Commission. III. Transposition of the EU Commission Temporary Framework. IV. Final remarks.

1. Introduction

The state of emergency was declared in Serbia on the 15th of March 2020, after the registration of the first COVID-19 patients. Following this, restrictive measures were introduced by the Government aiming to prevent the spread of COVID-19 and to preserve a functional health care system. Consequently, all educational institutions were closed and all private/public gatherings were not allowed. The borders were closed along with the national transport. Businesses were temporarilyy suspended, while the Government did encourage work from home. Curfews became stricter.

* Visiting Lecturer/Researcher University of Bari "Aldo Moro", Faculty of Economy, Department of Economy and Finance. The author would especially like to thank Prof Giovanni Luchena and the anonymous reviewers for their valuable comments.

Aiming to mitigate the consequences of the COVID-19 outbreak in the economy of the country, the Government did approve on the 10th of April a decree providing financial support to businesses.[1] It contained, *inter alia*, deferral of taxes and social security contributions for businesses along with wage subsidies for employees protecting jobs. Additionally, another decree of the Government of Serbia approved on the same day, provided for loans at subsidised interest rates to business aiming to maintain liquidity and working capital.[2] Whereas on the 16th of April, a decree establishing a public guarantee scheme on loans was going to be approved.[3]

The above-mentioned decrees approved by the Serbian Government do also enable State aid. The European Commission through the Stabilisation and Association Agreement with Serbia, has provided the establishment of an internal State aid control system. Within such a system Serbia should prohibit any State aid which distorts or threatens to distort competition by favouring certain undertakings.[4] The Serbian State Aid Commission should be notified by every central and local state institution of any new subsidy scheme they intend to grant. It is this monitoring State aid authority which decides to whether to approve, block or impose conditions on the notified aid schemes, evaluating their impact on the free competition in the market.

[1] Official Journal of Serbia No. 54/2020 and 16/2020.
[2] Official Journal of Serbia No. 54/2020 and 16/2020.
[3] Official Journal of Serbia No. 57/2020.
[4] See Article 73 (1) (iii) Stabilisation and Association Agreement with Serbia.

The Serbian State Aid Commission, on the 17th of March 2020 issued a notice clarifying the existing State aid tools which could be used by the authorities, to mitigate the socio-economic impact of the COVID-19.[5] Following the Communication of the 13 March 2020 of the European Commission,[6] the Serbian State aid monitoring authority, clarified the various possibilities available within the existing State aid legal framework. Moreover, it expressed its promptness to deal very quickly with the notifications from the State aid granting authorities.[7]

Further, on the 10th of April 2020, the Serbian Government was going to partially transpose into the national legal order the Temporary Framework of the EU Commission providing for State aid measures to support the economy during the COVID-19 outbreak.[8]

2. Notice of the Serbian State Aid Commission

The Serbian State Aid Commission recalls through its Notice of 17th of March 2020 the different existing State aid tools, under the national legal

---

[5] Notice on the application of State aid rules in relation to the new circumstances COVID-19, 17 March 2020, Serbian State Aid Commission. Available at http://www.kkdp.gov.rs/index.php. Last assessed 30 June 2020.

[6] Communication from the Commission to the European Parliament, the European Council, the Council, the European Central Bank, the European Investment Bank and the euro group on a Coordinated economic response to the COVID-19 Outbreak, COM(2020)112 final, 13 March 2020.

[7] http://www.kkdp.gov.rs/index.php. Last assessed 30 June 2020.

[8] Communication from the Commission on a Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, C (2020) 1862 final, 19 March 2020.

framework, available to State aid granting authorities in order to mitigate the impact of the COVID-19 outbreak.[9]

First, the State aid granting authorities, may adopt measures of general application that fall outside the scope of the State aid rules into power in Serbia. These may include wage subsidies or exceptions from payment of certain taxes (e.g. corporate tax, value added tax etc.) or social contributions available to all undertakings. The Serbian State Aid Commission does not have to be involved in the above-mentioned cases.

Second, State aid measures may be adopted under the *de minimis* Regulation[10] and need not to be approved, *ex ante,* by the Serbian State Aid Commission.

Third, Article 5 (1) of the Serbian State aid law[11] mirroring Article 107 (2) (b) of the Treaty on the Functioning of the European Union (TFEU) enables the country to compensate companies for the damage directly caused by exceptional occurrences, such as the COVID-19 outbreak. Using past and recent decisional practice of the European Commission, the Serbian State Aid Commission advices to use as a legal base Article 5 (1) of the State aid law in order to design State aid schemes directed to

---

[9] Supra note (5).

[10] Regulation on the rules of State aid granting Official Journal of Serbia, no. 13/2010, 100/2011, 91/2012, 37/2013, 97/2013 and 119/14. Article 95 of the Regulation on the rules of State aid granting provides: "*de minimis* state aid can be granted to a single enterprise amounting at RSD 23,000,000.00 at any time during three consecutive fiscal years." Available at http://www.kkdp.gov.rs/eng/regulation-on-rules-for-state-aid-granting.php. Last assessed 30 June 2020.

[11] Law on State Aid Control, Official Journal of Serbia No. 73/2019.

sectors particularly damaged such as aviation and tourism. Later on, the Government issued a regulation on conditions and criteria of State aid to make good the damage caused by the COVID-19 outbreak.[12] Pursuant to it, considering COVID-19 an exceptional occurrence, State aid granted on the basis of Article 5 (1) Serbian State Aid Law (Article 107 (2) (b) TFEU) should satisfy the following criteria: (i) there is direct link between COVID-19 outbreak and the damage that is suffered; (ii) the amount of aid may cover 100% of the damage or loss, however it may not go beyond the total cost of the damage.

Fourth, Article 5 (3) the Serbian law on State aid mirroring Article 107 (3) (c) TFEU, provides for aid to facilitate the development of certain economic activities or of certain economic areas in the Republic of Serbia. Temporary and urgent aid can be granted to companies facing bankruptcy due to the COVID-19 outbreak under the Serbian Regulation on State aid granting, subject to the State Aid Commission approval.[13] Whereas, pursuant to the EU Guidelines on Rescue and Restructuring State aid, rescue aid may also be granting to undertakings which are not in difficulty, but are in acute liquidity need due to the outbreak of COVID-19 considered an "exceptional and unforeseen circumstance".[14] The rescue aid can be in the form of loans or guarantees on loans.

---

[12] Official Journal of Serbia No. 54/2020.

[13] Supra note (10).

[14] Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty, OJ C 249, 31.7.2014, para.29.

Finally, Article 5 (2) of the Serbian State aid law modelled according to Article 107 (3) (b) TFEU, the legal basis of the Regulation approved by the Government of Serbia, analysed below, provides compatible forms of State aid measures aiming to remedy a serious disturbance in the economy of the country, such as COVID-19 outbreak.

3. Transposition of the EU Commission Temporary Framework

On 10 April 2020 the Government of Serbia approved the regulation on the conditions and criteria of State aid measures remedying a serious disturbance in the economy of the country, such as COVID-19 outbreak (the Regulation).[15] The Regulation partially approximates the Serbian State aid legislation with the EU Commission Temporary Framework for State aid measures to support the economy in the COVID-19 outbreak.[16] In particular, the Regulation provides additional temporary available tools for State aid granting authorities in order to provide liquidity and access to finance to businesses affected by the COVID-19 outbreak.

First, the Serbian authorities may design schemes to grant aid in the form of direct grants, repayable advances and tax advantages aiming to address urgent liquidity needs for business. The Regulation provides, *inter alia*, that aid given in one of the above-mentioned forms cannot exceed

[15] Official Journal of Serbia No. 54/2020.
[16] Supra note (8).

800,000 Euro per business and that it must be granted no later than 31 December 2020.

Second, aid in the form of guarantees on loans can also be offered respecting certain circumstances. The Regulation provides that the guarantee premiums must be set at a minimum level, subject to the business's size and the maturity of the principal loan. Additionally, the guarantees on loans can be granted for a limited period and loan amount. While the loan amount depends on the annual wage bill of the State aid beneficiary, annual turnover, liquidity needs, the duration of the guarantee is limited to six years. The public guarantee can cover up to 90% of the loan principal where losses are attributed proportionality and under the same conditions to the State and the credit institution, nevertheless only 35% where losses are first attributed to the State.

Third, Serbian authorities may also grant investment and working capital loans at subsidised interest rates to businesses. With regard to the maturity and the amount of the loans that may be granted, the Regulation provides the same limits as in the case of guarantee schemes.

Fourth, aid in the form of wage subsidies for employees, is another available aid measure according to the above-mentioned Regulation. It provides for the compatibility criteria of such a measure, aiming to protect jobs, when it constitutes aid. State aid granting authorities in Serbia can contribute to wage costs of certain businesses to prevent lay-off of personnel. This is conditioned to aid being granted to businesses from regions or sectors mainly affected by the COVID-19 outbreak and for a period of no longer than twelve months. Additionally, the wage subsidy cannot exceed 80% of the monthly gross salary of the individual. Whereas, the combined support with tax deferrals and deferrals of social security payments, may not lead to over-compensation of the wage costs of the personnel concerned.

Fifth, aid in the form of deferral of taxes and/or of social security contributions may be an important measure to reduce liquidity limitations and preserve employment. State aid granting authorities in Serbia can provide targeted deferrals of taxes or of social security contributions in those sectors, regions or types of companies particularly hit by the COVID-19 outbreak.

Finally, the Regulation provides for short-term export credit insurance. While in the European Union there is legislation with regard to short-term export credit insurance[17] the above-mentioned Regulation does not refer to any Serbian appropriate legislation. However, Serbia will not cover marketable risks by short-term export credit insurance. Only non-marketable risks - COVID-19 – can be covered. Additionally, the Regulation provides for a list of "non-marketable countries".

However, it is unclear if not problematic lack of transposition of the guarantees aiming to minimise any incorrect indirect aid to financial intermediaries when aid both aid in form of guarantees and loans is channelled through credit or financial institutions. The Temporary Framework aiming to limit undue distortions of competition provides

[17] Communication from the Commission to the Member States on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to short-term export-credit insurance Text with EEA relevance, OJ C 392, 19.12.2012, p. 1-7.

safeguards that aid in form of guarantees and loans channelled through credit institutions or other financial institutions is, to the largest extent possible passed on the final beneficiary.18 Further, approximation of the Regulation with the following amendments to the Temporary Framework is again partial,19 or missing.20 It seems like Serbia is not interested in State aid for research.

4. Final remarks

A new Law on State Aid has entered into force in Serbia on the 1st of January 2020.[21] One the main novelties introduced by the above-mentioned law was a more independent State aid monitoring authority in Serbia. To this aim a number of guarantees are provided by the 2019 State Aid Law.[22] The current Serbian Commission of State Aid Control, established by the end of December 2019[23] was immediately confronted with COVID-19 State aid measures.

---

[18] Supra note (8) paras 28-31.
[19] Communication from the Commission on the Amendment to the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, C (2020) 2215 final, 3 April 2020.
[20] Communication from the Commission on the Amendment to the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, C (2020) 3156 final, 8 May 2020.
[21] Law on State Aid Control, Official Journal of Serbia No. 73/2019.
[22] See articles 9-24 of the Law on State Aid Control, Official Journal of Serbia No. 73/2019.
[23] The current State Aid Commission has been established on the 23rd of December 2020. http://www.kkdp.gov.rs/o-nama.php. Last assessed 30 June 2020.

Since 17 March, the Serbian State Aid Commission issued a notice providing the views of the Commission related to the application of the existing State aid rules in the framework of the new circumstances caused by the COVID-19 outbreak. Additionally, the Government of Serbia on the 10th of April has approved a Regulation approximating the Serbian State aid legislation with the EU State aid soft-law namely, the Temporary Framework for State aid measures to support the economy in the COVID-19 outbreak. While the alignment of the Serbian State aid legislation with the EU Commission's State aid Temporary Framework is a positive step, it is however a partial alignment. It is unclear if not problematic lack of transposition of the guarantees aiming to minimise any incorrect indirect aid to financial intermediaries when aid both in form of guarantees and loans is channelled through credit or financial institutions. The Temporary Framework aiming to limit undue distortions of competition provides safeguards that aid in form of guarantees and loans channelled through credit institutions or other financial institutions is, to the largest extent possible passed on the final beneficiary.[24] Additionally, aid in the form of short-term export credit insurance might create problems while being implemented in the Serbian legal order. The above-mentioned Regulation uses terms such as "marketable risks", "commercial risks" and "political risks" without defining them. While in the European Union there is a Framework with

---

[24] Supra note (8) paras 28-31.

regard to short-term export credit insurance,[25] the Regulation of the Serbian Government does not refer to any national appropriate legislation. Whereas the Regulation on the rules for granting State aid part of the Serbian legal framework, contains only one article providing for the basic principle that normally marketable risks shall not be covered by export-credit insurance supported by the State.[26]Further, approximation of the Serbian Regulation with the following amendments to the Temporary Framework is again partial.[27]It seems like Serbia is not interested in State aid for research and development.

On the other hand, the State Aid Commission has failed to assess if the compatibility criteria established under the above-mentioned Regulation, protecting competition, were respected by the Serbian State aid granting authorities. COVID-19 State aid measures enabled by the financial package, providing *inter alia* for loans at subsidised interests, public guarantee scheme on loans, wage subsidies, were put into effect without

[25] Communication from the Commission to the Member States on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to short-term export-credit insurance Text with EEA relevance, OJ C 392, 19.12.2012, p. 1-7.

[26] Regulation on the rules of State aid granting Official Journal of Serbia, no. 13/2010, 100/2011, 91/2012, 37/2013, 97/2013 and 119/14.Article 98 provides: "State guarantees for short-term export credit insurance against market risks shall be prohibited, and they shall be allowed only for export credit insurance against non-market risks."

[27] Communication from the Commission on the Amendment to the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, C (2020) 2215 final, 3 April 2020. Communication from the Commission on the Amendment to the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, C (2020) 3156 final, 8 May 2020.

the *ex-ante* scrutiny of the Serbian State Aid Commission.[28] Every central and local institution has to inform the Serbian State Aid Commission of any new subsidy scheme they intend to grant. Such plans may not be put into effect unless and until the above-mentioned Commission has authorised them. "Put into effect" means that legislative measures enabling the aid to be granted without any further formalities have been approved.[29]

[28] See decisions of the State Aid Commission: No. 401-00-00045/2020-01/2, dated 15 May 2020; No 110-00-00017/2020-01 /2, dated 15 May 2020; No. 110-00-00016/2020-01/2 dated 28 May 2020. Available at: http://www.kkdp.gov.rs/odluke-komisije-01-01-2020.php. Last assessed 30 June 2020.

[29] Commission letter to the Member States, SG (89) D5521, 27 April 1989 on the definition for putting an aid into effect. European Commission: Competition law in the European Communities, Rules applicable to State aid, Volume IIA. 30 June 1998 pg. 58.