

Ziatina D.V.

National University “Odessa Law Academy”

Phd, associate professor of the Economic law and procedure department

STATE AID FOR INNOVATION IN THE CONTEXT OF EUROPEAN INTEGRATION

As far as the practice of harmonization of national legal provisions with European legal rules has already existed, the Ukrainian legal acts are on the way of their adaptation to the European ones. Association Agreement between EU and Ukraine stipulates the necessity of reconsideration of national practice of direct state support of business entities with a view to EU standards (Title 10, Part 2) [1]. According to Article 267 of the Association Agreement Ukraine shall in particular adopt national state aid legislation, and establish an operationally independent authority which is entrusted with the powers necessary for the full application of Article 262 of the Agreement within three years of the entry into force of this Agreement. Any new aid granted in Ukraine must be consistent with the provisions of Articles 262 and 264 of the Agreement within one year of the date of establishment of the authority. Ukraine shall establish, within five years of the entry into force of the Agreement, a comprehensive inventory of aid schemes instituted before the establishment of the authority referred to in paragraph 1 and shall align such aid schemes with the criteria referred to in Articles 262 and 264 of the Agreement within a period of no more than seven years from the entry into force of the Agreement.

Due to national legislation provisions independent authority with the powers in the sphere of state aid granting to the business entities is Antimonopoly Committee of Ukraine.

Article 107(1) of the Treaty on the Functioning of the European Union (‘the Treaty’) lays down the principle that State aid is prohibited. In certain cases, however,

such aid may be compatible with the internal market on the basis of Articles 107(2) and 107(3) of the Treaty”[2].

In order to fulfill Ukrainian obligations of harmonization of legislation the Law of Ukraine “About state aid” from 01.07.2014 was adopted [3]. All the provisions of this legislative act came into force on 02.08.2017. The Law outlines the criteria for evaluation of compatibility of specific categories of state aid, among which are the state aid to scientific research, technical development and innovation. It is ought to say, that due to the provisions of the Law of Ukraine “About state budget on 2018” [4] the amount of state financing on functioning of the Fund of states support of innovation is up to 50 billion UAH. This is, by no means, good tendency. On the other hand, to use the money sufficiently the clear strategy of state support of innovations should be worked out.

Development and support of the innovative sector, which is the basis for intensive economic growth of economies all over the world, is one of the main aims of the European Union. The Europe 2020 strategy [5] identifies research and development (‘R&D’) as a key driver for achieving the objectives of smart, sustainable and inclusive growth. To that effect, the Commission set out the headline target according to which 3% of the Union’s gross domestic product should be invested in R&D by 2020. In order to foster progress in the field of R&D&I (research, development and innovation), the Europe 2020 strategy in particular puts forward the ‘Innovation Union’ flagship initiative [6] aiming at improving framework conditions and access to finance for research and innovation in order to ensure that innovative ideas can be turned into products and services that create growth and jobs. The Europe 2020 communication noted that State aid policy can ‘actively and positively contribute ... by prompting and supporting initiatives for more innovative, efficient and greener technologies, while facilitating access to public support for investment, risk capital and funding for research and development’[7].

According to the provisions of the Framework for State aid for research and development and innovation (Framework) to assess whether a notified aid measure can be considered compatible with the internal market, the European Commission generally analyses whether the design of the aid measure ensures that the positive impact of the aid towards an objective of common interest exceeds its potential negative effects on trade and competition. In addition the Commission will consider an aid measure compatible with the Treaty only if it satisfies each of the following criteria:

- contribution to a well-defined objective of common interest;
- need for State intervention;
- appropriateness of the aid measure;
- incentive effect;
- proportionality of the aid (aid to the minimum);
- avoidance of undue negative effects on competition and trade between Member States;
- transparency of aid.

Furthermore, the European Commission has identified a series of R&D&I measures for which State aid may, under specific conditions, be compatible with the internal market:

- aid for R&D projects;
- aid for feasibility studies;
- aid for the construction and upgrade of research infrastructures;
- aid for innovation activities;
- aid for innovation clusters [7].

Another important provision of the Framework, that should be taking into account by national practice of state support of business entities, is that “the beneficiary of state aid must qualify as an undertaking, but that qualification does not depend upon its legal status, that is to say whether it is organized under public or

private law, or its economic nature, that is to say whether it seeks to make profits or not. Rather, what is decisive for that qualification as an undertaking of state aid is whether it carries out an economic activity consisting of offering products or services on a given market [7]”.

Finally, according to p. 56 of the Framework “state aid is not the only policy instrument available to Member States to promote R&D&I activities. It is important to keep in mind that there may be other, better placed instruments such as demand-side measures involving regulation, public procurement or standardisation, as well as an increase in funding of public research and education and general fiscal measures. The appropriateness of a policy instrument in a given situation is normally linked to the nature of the problem that is being addressed. For instance, reducing market barriers may be more appropriate than State aid to deal with a new entrant’s difficulty to appropriate R&D&I results. Increased investment in education may be more appropriate to deal with a lack of qualified personnel than awarding State aid [7]”.

Such provisions of the EU legislative acts give the possibility to understand the main targets of the state aid to R&D&I results. Also, they provide a clear vision of necessity of consideration of each case of state aid separately taking into account all peculiarities of the case and the possible positive benefits from the state support to the public interests. It goes without saying, that idea of replacing the direct state aid of certain business entities with indirect measures, such as reducing market barriers of increasing investment in education, would be more effective. By no means, such legal provisions and practical approach to state aid should be enshrined in national law.

Literature:

1. Угода про асоціацію між Україною, з однієї сторони, та Європейським Союзом, Європейським співтовариством з атомної енергії і їхніми державами-членами, з іншої сторони від 27.06.2014 р.// Офіційний вісник України від 26.09.2014. - 2014 р. - № 75. - том 1. - стор. 83. - стаття 2125.

2. Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union (OJ C 326, 26.10.2012, p. 47–390).
3. Про державну допомогу: Закон України від 01.07.2014 р. // Відомості Верховної Ради України. - 2014 р. - № 34. - ст. 1173.
4. Про Державний бюджет України на 2018 рік: Закон України від 07.12.2017 р. // Відомості Верховної Ради. – 2018. - № 3-4. - ст.26.
5. Communication from the Commission, ‘Europe 2020 — A strategy for smart, sustainable and inclusive growth’, COM (2010) 2020 final, 3.3.2010.
6. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, ‘European 2020 Flagship Initiative — Innovation Union’, COM(2010) 546 final, 6.10.2010.
7. Communication from the Commission, ‘Framework for State aid for research and development and innovation’, OJ C 198, 27.6.2014, p. 1–29.