

**STATE AID TO UKRAINIAN BUSINESS UNDER THE
CONDITIONS OF MARTIAL LAW**

The general rules of granting of state aid in the European Union are defined in the Consolidated version of the Treaty on the Functioning of the European Union. In Article 107 of the Treaty is stated that any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market. However, there are exemptions from the general rule of incompatibility of state aid. In particular, according to part 3 of Article 107 of the Treaty the following may be considered to be compatible with the internal market: (a) aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment, and of the regions referred to in Article 349, in view of their structural, economic and social situation; (b) aid to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State; (c) aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest; (d) aid to promote culture and heritage conservation where such aid does not affect trading conditions and competition in the Union to an extent that is contrary to the common interest; (e) such other categories of aid as may be specified by decision of the Council on a proposal from the Commission [1].

Therefore, due to these provisions of the Treaty state aid can cause the violation of the rules of free economic competition. However there are cases, when such aid is permissible and can be allowed because of its positive effects.

In Ukrainian legislation the same approach to the rules of state aid granting is prescribed. Namely, in the Article 2 of the Law of Ukraine «On state aid to business entities» [2] is stated that state aid is not permissible, if another is not defined in the Law.

Due to Article 6 the state aid is allowed if it is granted for the following purposes: 1) support of socio-economic development of regions where the standard of living is low or the level of unemployment is high; 2) implementation of national development programs or solving of social and economic problems of a national interest; 3) support of certain types of economic activity or certain economic spheres, or business entities in certain economic zones, if it does not contradict the international treaties of Ukraine; 4) support of culture, creative industries, tourism and preservation of cultural heritage, if the impact of such state aid on competition is insignificant.

The Cabinet of Ministers of Ukraine determines the criteria for assessing the admissibility of certain categories of state aid, in particular, the following categories: 1) state aid to the regions' development; 2) state support of medium and small enterprises; 3) state aid for the professional training of employees; 4) state aid for employment of certain categories of employees and creation of new working places; 5) state aid to the restoration of solvency and restructuring of business entities; 6) state aid for the environment protection; 7) state aid for conducting of scientific research, technical development and innovative activities; 8) state aid for the protection of certain economic spheres; 9) state aid for the overcoming of consequences of COVID-19 pandemic.

Therefore, the Law of Ukraine «On state aid to business entities» outlines the strict rules of defining when the state aid is permissible and compatible with economic competition.

However in the conditions of full-scale military aggression of Russian Federation against Ukraine the President of Ukraine adopted the Decree «On the imposition of martial law in Ukraine» of February 24, 2022 [3]. As a result lots of spheres of state regulation had undergone changes. These changes affected the rules of state aid as well. On April 33, 2022 the Law of Ukraine «On Amendments to Clause 5² of Chapter 9 «Final and Transitional Provisions» of the Law of Ukraine «On State Aid to Business Entities» about application of its provisions during martial law» [4] came into force. The Law simplifies the mechanism of state aid granting under the conditions of martial and within one year after its termination or cancellation, namely:

- during the martial law, the provisions of Articles 6, 7, 9, 10, 11, 12, 13, 14, 15, 16 of the Law «On state aid to business entities» and other legal provisions arising from the specified Articles shall not be applied;

- state aid that is granted during the martial law is permissible;
- providers of state aid are exempted from the obligation to notify about new state aid and about proposals to amend the conditions of current state aid, if such state aid is given during the martial law and within one year after its termination and cancellation.

All state aid that will be provided during martial law will be permissible state aid even without notification of the Antimonopoly Committee of Ukraine.

During martial law providers of state aid do not submit information about current state aid, namely:

- about state aid, that was granted in 2021;
- about minor state aid, that was granted in 2021.

Besides, during the martial law and within one year after its cancellation or termination providers of state aid are exempted from the obligation to notify about new state aid, as well as about changes in the current state aid [5].

Such changes are aimed at ensuring the stable and effective functioning of Ukrainian business entities under extremely challenging conditions of war. It should be emphasized that such legislative provisions completely agree with general rules of state aid granting in EU. This means that no compensatory measures will be applied to Ukrainian business entities that received state aid during martial law, if such entities are the participants of export-import operations and export their products or services to EU-countries.

Another important issue to emphasize is the adoption of the decision by European Union to provide to Ukraine macro-financial assistance. The peculiarities of provision of such assistance are outlined in the Decision (EU) 2022/1628 of the European Parliament and of the Council of 20 September 2022 providing exceptional macro-financial assistance to Ukraine, reinforcing the common provisioning fund by guarantees by Member States and by specific provisioning for some financial liabilities related to Ukraine guaranteed under Decision No 466/2014/EU, and amending Decision (EU) 2022/1201.

Thus, in items 3 and 5 of this Decision is stated: «Russia's unprovoked and unjustified war of aggression against Ukraine since 24 February 2022 has caused Ukraine a loss of market access and a drastic drop in public revenues, while public expenditure to address the humanitarian situation and to maintain the continuity of State services has increased markedly. In

that very uncertain and volatile situation, the best estimates of Ukraine's funding needs by the International Monetary Fund (IMF) point to an extraordinary financing gap of around USD 39 billion in 2022, of which around half could be met if the international support pledged thus far were fully disbursed. The swift provision by the Union of the macro-financial assistance to Ukraine under this Decision is, under the current extraordinary circumstances, considered to be an appropriate short-term response to the sizeable risks to Ukraine's macro-financial stability. The further amount of up to EUR 5 billion of Union's exceptional macro-financial assistance under this Decision is to support Ukraine's macro-financial stabilisation, strengthen the immediate resilience of the country and sustain its capacity towards recovery, thereby contributing to the public debt sustainability of Ukraine and its ability to ultimately be in a position to repay its financial obligations.

The Union's exceptional macro-financial assistance should support the Union's external policy towards Ukraine. The Commission and the European External Action Service should work closely together throughout the macro-financial assistance operation in order to coordinate, and ensure the consistency of, Union external policy» [6].

To sum up, it should be highlighted that under extremely harsh conditions of war in Ukraine state support is the necessary prerequisite for the economic functioning, that's why new rules of state aid granting and macro-economic assistance from the EU side will indisputably serve the aim of supporting the economy of Ukraine.

List of sources:

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ДО ПИТАННЯ ГАРАНТІЙ ПРАВ НА ОБ'ЄКТИ НЕРУХОМОГО МАЙНА, ЯКІ БУДУТЬ СПОРУДЖЕНІ В МАЙБУТНЬОМУ

Реформування містобудівного законодавства та впровадження е-бізнесу у глобальних телекомунікаційних мережах в Україні дозволило цифровізувати відносини державного регулювання будівництва через єдину державну електронну систему у сфері будівництва, ліквідувати Державну архітектурно-будівельну інспекцію та вдосконалити чинну нормативно-правову базу в частині архітектурно-будівельного контролю, створити правові механізми для гарантування державою речових прав на об'єкти незавершеного будівництва та майбутні об'єкти нерухомості.

15 серпня 2022 року був прийнятий Закон України «Про гарантування речових прав на об'єкти нерухомого майна, які будуть споруджені в майбутньому» (далі Закон про гарантування), яким вперше регламентовані нові підходи до гарантій прав суб'єктів, що інвестують у будівництво: через рекламування будівництва, державну реєстрацію права на майбутній об'єкт нерухомості та різного роду обтяження на такі об'єкти, нотаріальну форму посвідчення договорів, встановлення гарантійної частки з метою попередження недобудови об'єктів будівництва та оперативного-господарські санкцій у разі порушень зі сторони забудовника.

Будівельний ринок в Україні має чимало прикладів незавершених будівництвом об'єктів, подвійних перепродаж та неможливості