

The Adjustment Programme of the Croatian State Aid System to the EU State Aid System

Under the Stabilisation and Association Agreement concluded between the Republic of Croatia and the European Communities and their Member States (Official Gazette – International Treaties, Nos. 14/01, 14/02, hereinafter: the SAA) and the Interim Agreement on Trade and Trade-related Matters concluded between the Republic of Croatia and the European Communities (Official Gazette – International Treaties, Nos. 15/01, 3/02, 14/02, hereinafter: the Interim Agreement) the Republic of Croatia assumed the obligations regarding the establishment of a state aid system complying with the state aid system in the European Union.

The Programme seeks to:

- I. Assess the level of legal harmonisation of the state aid system in the Republic of Croatia with that in the European Union;
- II. Define the principal tasks of the Competition Agency, central public administration authorities, local and regional self-government units, and legal persons authorised to implement the state aid system in the Republic of Croatia.

I. The level of legal approximation of the state aid system in the Republic of Croatia to that of the European Union

The state aid system in the European Union is based on the statutory and secondary legislation as well as on the case law of the European Court of Justice. The related pieces of legislation are the integral part of the *acquis communautaire*, which the candidate countries are required to incorporate into their legislation and legal system. Through the implementation of the above mentioned, the obligation of the formal and legal harmonisation of the legislation and legal system pursuant to the Interim Agreement and the SAA concluded between the Republic of Croatia and the European Union is considered to be fulfilled.

The Republic of Croatia adopted the State Aid Act (Official Gazette No. 47/03), which entered into force on 2 April 2003, and the Regulation on State Aid (Official Gazette No. 121/03) which entered into force on 6 August 2003. These legal acts established the state aid system in the Republic of Croatia which is in conformity with its commitments arising from Article 35 of the Interim Agreement and Article 70 of the SAA. Under the stated provisions, the Republic of Croatia has taken the commitment to establish an independent public authority competent for the authorisation of the state aid schemes and individual state aid, and the recovery of state aid granted unlawfully, to ensure the transparency in awarding state aid, and submit annual reports on state aid to

the European Commission, to prepare a comprehensive list of the existing aid schemes and harmonise them with the criteria for the assessment of state aid in the European Community within the period of four years, as well as to make sure that the state aid distorting or threatening to distort competition by placing particular undertakings or products at a competitive disadvantage does not affect the trade between the European Community and the Republic of Croatia. Thus, state aid will be assessed on the basis of the criteria deriving from the application of the state aid rules under the Treaty establishing the European Community and the interpretation instruments adopted by the EC institutions.

The Competition Agency (hereinafter: the Agency) within its scope of activities, authorises, and monitors the implementation and recovery of general and individual state aid (excluding the area of agriculture and fisheries), ensuring thereby that the state aid system in the Republic of Croatia is administered by an autonomous and independent legal person with public authority. The Agency collects, processes and records the data on state aid, keeps the inventory of state aid and submits annual reports on state aid to the Croatian Parliament, thus ensuring the transparency and annual reporting on state aid. The Agency will draw up a list of existing aid schemes and other acts authorising or granting general state aid, and propose the resolutions on the harmonisation of the given aid with the State Aid Act to the Croatian Parliament by 1 January 2006 at the latest. Thus, the establishment of the existing general state aid schemes and their harmonization within the specified time period are legally ensured. The State Aid Act and the Regulation on State Aid incorporate the EU legislation and the relevant criteria in the area of state aid. Formal and legal conditions for the implementation of the Interim Agreement and the SAA in the part relating to the state aid system have thus been fulfilled.

Independent opinions on the Draft Bill Proposal on State Aid given by the foreign state aid experts within the framework of the European Commission assistance to the Ministry of European Integration in the process of harmonising the legislation of the Republic of Croatia with the EC legislation in the second half of 2002, validate that the Draft Bill on State Aid has fulfilled the obligations of the Republic of Croatia under Article 35 of the Interim Agreement and Article 70 of the SAA. The unofficial expert opinion of the European Commission from 2003 regarding the final Draft Bill Proposal on State Aid, containing some minor objections, positively evaluated the Draft Bill Proposal in question, which was adopted as the State Aid Act keeping the majority of the originally drafted provisions. Another draft expert opinion on the State Aid Act and the Regulation on state aid has been submitted to the Agency in April 2004 by foreign state aid experts, who have supported the Agency within the CARDS Programme relating to the implementation of the state aid system. The relevant opinion stated that there is room for legal improvements relating to some provisions of the regulations in question, as well as the need to provide additional legal solutions regulating particular industries.

The European Commission Opinion on the Application of Croatia for Membership of the European Union (*Avis*) of 20 April 2004 assured in the part relating to competition, that in 2003 Croatia took important steps in establishing the legal framework for the state

aid system. However, the emphasis was made on the implementation of the system in practice, which requires the strengthening of the Agency's administrative capacity, ensuring the implementation and establishing of the legal powers of the Agency, institutional capacity building for all the participants involved in the process and making further effort in the fulfilment of the preconditions aimed at improving the level of transparency of state aid data, as well as referring to other state aid forms which are less anticompetitive. After the aforementioned objectives have been implemented, the state aid system in the Republic of Croatia will be considered to be brought into compliance with the EU *acquis* in the field of state aid.

The recent activities of the Competition Agency have proven that a legal framework, by virtue of which a state aid system harmonised with the European Union system was established in the Republic of Croatia, exists. The European Commission is a competent authority approving proposed state aid and ordering the recovery thereof in the Member States, whereas the judicial review of the decisions relating to state aid is provided by the European Court of Justice. The Competition Agency, under the State Aid Act, has a similar role to that of the European Commission concerning the approval and recovery of state aid pending Croatia's membership in the European Union, whereas judicial protection against the decisions of the Agency is provided by the Administrative Court of the Republic of Croatia.

In view of the fact that the state aid system in the Republic of Croatia has been established, that it is generally brought into compliance with the system in force in the European Union, and that, in line with the evolvement of the European Union legislation, it will be further improved and harmonised as required, it should be emphasised that the state aid system in the Republic of Croatia must be implemented pursuant to the State Aid Act and the Stabilisation and Association Agreement.

II. Principal tasks of the Competition Agency, central public administration authorities, local and regional self-government units, authorised legal persons and other legal persons awarding or administering state aid within the framework of the implementation of the state aid system in Croatia.

The implementation of the State Aid Act requires a fair amount of professional engagement of all parties involved in the procedure for awarding of state aid in Croatia. Close co-operation is required between the providers of state aid and the Competition Agency in the procedures for approving state aid proposals and adjusting the existing state aid schemes to the criteria set forth in the State Aid Act and the Regulation. This Programme defines the obligations of all state aid providers and of the Competition Agency in the process of the implementation of the state aid system in the Republic of Croatia pursuant to the State Aid Act.

State Aid Inventory

Pursuant to the Act, the state aid inventory is kept by the Competition Agency, which submits annual reports on state aid to the Croatian Parliament. The inventory is kept according to the methodology used by the European Commission. Pursuant to the Act, the Agency collects, processes and records data on state aid, primarily through the notifying procedure of the state aid proposals and reporting the state aid providers on the progress of execution of general state aid. In that way, the transparency of state aid, which is the key feature of the state aid system in the European Community, is going to be ensured.

Implementing authority: Competition Agency

Time period: second half of 2004

Notification of State Aid Enactment Proposals

The procedure of notification state aid enactment proposals will be conducted by the ministries and other public administration authorities or local and regional self-government units or other legal persons, which, before submitting legislative or other proposals relating to general state aid (for unspecified state aid beneficiaries) to the Government of the Republic of Croatia, must submit the general state aid proposal to the Agency for prior opinion pursuant to Article 79 of the Regulation. According to the State Aid Act, proposals forwarded to the Government without the previous positive opinion of the Agency shall be returned to the proponent for elaboration.

The provider of individual state aid submits to the Agency a proposal on the authorisation, i.e. granting of state aid in the form of a notification of the state aid proposal supported by additional information pursuant to Article 80 of the Regulation. The period prescribed to the Agency for deciding on individual state aid proposal is 60 days following the day of the receipt of the complete proposal; thus, the state aid provider is expected to ensure timely preparation and submittal of proposals to the Agency.

In drawing up the proposals, the provisions of Article 4 of the Regulation shall be taken into account. This is also useful for the timely preparation of the undertakings for their business activities within the conditions of the EU common market and for raising the level of their actual and sustainable competitiveness.

Implementing authority: central public administration authorities, local and regional self-government units, authorised legal persons and other legal persons awarding or administering state aid

Time period: Permanent

Preparation of the State Budget

Important for timely co-ordination of the state policy relating to awarding state aid for the following year is the preparation of the state budget, budgets of local and regional self-government units, or the financial plan of the extra-budgetary beneficiary. Therefore, pursuant to Article 81 of the Regulation, the state aid provider intending to include the state aid proposal in the above mentioned budgets or financial plans must submit such proposals to the Agency for approval by 15 June of the current year. Likewise, the authorities responsible under the Budget Act for drafting the budgets and consolidated budgets of the State and local and regional self-government units shall not include the state aid proposals in the draft budget and consolidated budget unless they are approved by the Agency. Furthermore, pursuant to Article 3 of the Regulation, state aid may be included in the draft state budget or draft budgets of local and regional self-government units if it meets the requirements prescribed by the Regulation, which is under the responsibility of the competent authority in charge of administering specific general state aid in line with the Regulation.

Implementing authority: central public administration authorities, local and regional self-government units

Time period: 15 June of the current year

List and harmonisation of applicable legal acts

A list of current schemes and other acts whereby state aid had been approved or granted before the entry into force of the State Aid Act shall be compiled by the Agency and forwarded to the Parliament by 1 January 2006, along with the proposed conclusions for their alignment. In compiling the list it is vital that the state authorities and legal persons administering state aid co-operate with the Agency by providing it with the required data.

The Agency, central public administration authorities, local and regional self-government units, authorised legal persons and other legal persons awarding and administering state aid shall harmonise the existing legal acts pursuant to the Alignment Programme of the Existing State Aid to the Criteria Stipulated in Article 70 (2) of the Stabilisation and Association Agreement (measure 216 of the Implementation Plan for the Stabilisation and Association Agreement).

Implementing authority: Competition Agency, central public administration authorities, local and regional self-government units, authorised legal persons and other legal persons awarding or administering state aid

Time period: 1 January 2006

Conclusion

The implementation of the state aid system, according to the experience of the European Commission in monitoring the EU candidate countries, requires sufficient professional and administrative capacities of the authority responsible for authorising state aid, and the same applies to the state aid providers. The effects of implementing the state aid system ought to be transparent not just in reports but also in practice, i.e., through decisions on particular cases being dealt with in the procedures before the Agency. In this way the required indicators will be provided to enable the European Commission to monitor the implementation of the state aid system in practice and to assess the degree of adjustment of undertakings to the market rules. In the procedure of introducing state aid inventory and establishing the methods of administering state aid and the state aid system as a whole, the Agency is being assisted by the EU experts under the CARDS Programme scheduled for implementation until the end of 2005. The CARDS Programme also involves professional training of the parties involved in the state aid allocating procedure with the emphasis on the ministries which are traditionally the biggest providers of state aid. This should also increase the level of expertise necessary for the implementation of this Programme and the regulations in the area of state aid. In respect of the previously mentioned, five seminars and thematic workshops will be held between 12 May and 8 July designed for the state aid providers and the Agency.

Proposed Conclusions

I. The Adjustment Programme of the Croatian State Aid System to the EU State Aid System is adopted and the Competition Agency is herewith empowered to publish the given Programme in the Official Gazette.

II. The implementation of the state aid system is a priority requiring continuous co-operation of all state aid providers with the Competition Agency, which is a pre-condition for operative implementation of the State Aid Act and the fulfilment of international obligations assumed by the Republic of Croatia in respect of state aid. Therefore, public administration authorities, local and regional self-government units, authorised legal person and the Competition Agency are in charge of the implementation of this Programme.

III. The Agency submits at least one annual report on the implementation of this Programme to the Croatian Government by 30. May of the current year.

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