

# NEW RULES FOR TRANSPARENCY OF STATE AID IN SLOVAKIA

Silvia Matúšová  
Daniela Nováčková

*(Presented at "Public policies across the EU – objectives, efficiency and implications", 2<sup>nd</sup> Conference of the FISCAL DIALOGUE held in Prague on 23<sup>rd</sup> November 2018.)*

## ABSTRACT

*The aim of the paper is to assess the impact of EU regulations on the creation and development of state aid policy in the Slovak Republic in connection with proper functioning of the EU internal market and the strengthening of transparency. The present Slovak national system of state aid provision and control is significantly influenced by the regulations of modernization of state aid and by the implementation of principles of independence, transparency and publicity. The paper will examine the introduced measures of publicity related to state aid provision from public sources. In the paper we highlight the significance of transparency in the area of public finance provision to economic entities, which reduces uncertainty and enables enterprises to check whether the state aid provided to competitors was legal and legitimate.*

**Keywords:** public administration, public finance, transparency, publicity, state aid

**JEL Classification:** F 02 F15

## 1 INTRODUCTION

Effective and transparent utilization of public finances of the state is part of the public policy of the state. Public policy in Slovakia is affected by goals, values and policies of the European Union. In Slovakia, public finances are provided in the form of state aid or regional investment aid to economic entities. In the provision of the state aid, emphasis is given on effectiveness and transparency, aiming to prevent that the state aid provision should result in a preferential position of the recipient in relation to competitors on the market. The introduction of transparent procedures in the area of state aid provision can be regarded as a helpful tool towards public and other economic entities. The Antimonopoly Office of the Slovak Republic provides public, comprehensible and substantial on-time information on conditions, strategy and procedures in state aid provision. The unambiguous demonstration of transparency in the state aid area is the publication of reports on the provision of state aid for a given period which are officially available on the website of the Antimonopoly Office of the Slovak Republic.

Another attribute of transparency is the establishment of the Central Register of State Aid, which is an information system of public administration, including the state aid provisions in the Slovak Republic. Currently, the publicity of financial source provisions from the state budget to economic entities strengthens the transparency, thus lowering uncertainty and enabling economic entities to verify if the state aid provided to competitors was legal and legitimate.

In the paper we analyse the introduction of new rules of state aid provision in Slovakia with the emphasis to explicate the substance and the significance of transparency in the area of provision of public finances of the state to economic entities.

### 1.1 METHODOLOGY

The subject matter of the paper is the introduction of transparency in the state aid policy in Slovakia. Based on the description and the analysis of the theoretical framework, valid legal regulations, relevant literature, decisions of the Court of Justice (Luxembourg) and documents of the European Union, we examined the causes and the significance of transparency in the state aid area in a broader context.

As for the methodology tools utilised in the study, the focus was put on secondary (applied) research. The research paper also incorporates the synthesis of primary (basic) research. We focused on the analysis of the EU legal documents, including the EU state aid directives and their transposition into the Slovak legal order. Part of the methodology was also the analysis of the state aid and the impacts of provided state aid on public finances.

## 1. 2 LEGAL BASIS OF THE STATE AID

State aid is considered a new economic instrument that started to be developed and applied in Slovakia in 1995 as part of a competition policy in relation to the fulfilment of criteria connected with the preparation of the Slovak Republic for the membership in the European Union. The purpose of the protection of competition is not to take decisions with regard to the interests of competitors, consumers or the public interest, as the subject of protection primarily is neither the competitor nor the consumer but the competition itself as a key economic phenomenon. The competition law regulates unfair actions in situations where no adequate market pressure from competitors exists (Gubíniová, 2013, p. 54).

The legal basis of the state aid represents a new element which originates in the primary legislation of the European Union; the Slovak law stipulates the conditions of state aid provision. *“The state aid is any advantage granted by public authorities through state resources on a selective basis to any organisation that could potentially distort competition and trade in the European Union”* (Gov. UK, 2016). At present, the notion of “state funding” is also utilised (OJ EU L 352, 24.12.2013, art.1), and indicates the public finance – the state budget, or tax-payers’ contributions, respectively.

The present system of state aid provision in Slovakia is based on:

- a) Primacy of the EU law over national law (Costa v ENEL Case 6/64),
- b) Respecting the EU case-law, the primary reference for interpreting the Treaty of Functioning on the European Union is always the case-law of the Union Courts (OJ EU C 262, 19.7.2016, Para 3),
- c) Adherence to Slovak legal act on state aid and to primary and secondary EU legislation.

The current national system of provision and control of state aid is significantly

affected by the rules of modernisation of state aid and introduction of principles of independence, transparency and publicity. The primary legal form of the European Union, the Treaty on the Functioning of the European Union (TFEU), in provision of Article 107 (1) stipulates the general rule regulating state aid as follows: “*Save as otherwise provided in the Treaties, 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*” (OJ EU C 83.30.3.2010).

According to the case-law of the Court of Justice (Luxembourg), it is up to the Member State to cite possible grounds of compatibility and to demonstrate that the conditions for such compatibility are met (Case C-364/90, Italy v Commission, ECLI:EU:C:1993:157, paragraph 20).

Article 107 (1) of TFEU “*lays down the principle that State aid is prohibited. Article 107(1) of TFEU has the ultimate goal of ensuring the compatibility of national policies with the EU’s objective of achieving an internal market. It has therefore been pointed out that the “Treaty requires that the application of State aid rules must never produce a result which is contrary to the Treaty rules governing free movement*” (Biondi & Farley, 2011, 282).

In order to conclude whether the state aid is present, it must therefore be assessed whether the cumulative criteria listed in Article 107 (1) of TFEU are met (i.e. the transfer of state resources, imputability to the State, the selective advantage, a potential distortion of competition and effect on intra-EU trade) (Commission Decision (EU) 2015/1826). In certain cases, however, such aid may be compatible with the internal market on the basis of Articles 107(2) and 107(3) of TFEU.

In particular Articles 107(3)(a) and (c) of TFEU stipulate that the state is the “*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*” (OJ EU C 83.30.3.2010). This kind of state aid is known as regional aid. Regional aid promotes the economic, social and territorial cohesion of Member States and the Union as a whole. The main goals of regional aid are the support of economic development of the most disadvantaged areas, the decrease of existing regional

disparities and job creation. Regional differences create social and political problems which must be managed by governmental and regional bodies. The purpose of regional state aid is to create conditions for a more balanced allocation of economic activities in the given space. According to Hošoff (2008), the “*state aid should not principally be granted to such enterprise which does not have chance to compete in competition environment*”.

The goal of the policy of the European Union in the area of state aid is the generation of single conditions and rules for all Member States and for all stakeholders on the internal market. Under the influence of the European Communities, the Slovak Republic adopted law 231/1991, on State Aid, which stipulated provisions for legal regulations of state aid provision to economic entities. The legal regulation was adopted in the Slovak Republic in accordance with EC/EU secondary legislation. The above Slovak law was part of negotiations on the accession of the Slovak Republic to the European Communities.

The primary legal regulation of the EU is amended by a broad spectrum of secondary acts, especially regulations and directives concerning state aid.

Based on the above mentioned law, the State Aid Office in Bratislava was established as an independent authority in the state administration, with the mission to assess, evaluate and authorise state aid, to control state aid provision and to register state aid. The State Aid Office did not provide state aid and did not intervene in decisions on which entities should be granted state aid.

The State Aid Office was dismissed in 2004 and state aid policy was transferred under the Ministry of Finance of the Slovak Republic. The legal regulation on state aid was applied seamlessly until 2015 when the preparation of new legal regulations started, in connection with the reform of state aid rules (2014). Principally, from 2004 until 2016, the state aid policy was in the competence of the Ministry of Finance of the Slovak Republic.

In the period of negotiations of the Slovak Republic on the accession to the EU, the state aid was included in the negotiation chapter named Competition Policy. The European Commission did not object to the fact that state aid policy was managed by a state administration body. Following the adoption of modernisation of state aid regulations and the Europe 2020 Strategy, the Slovak Republic started to implement a substantial institutional change in the state aid policy, with the

aim to support common goals of the European Union and to strengthen competition. The Europe 2020 growth strategy recognises the role of state aid for growth and its capacity “to actively and positively contribute to the Europe 2020 objectives 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” (COM (2010) 2020 final 3.3.2010, p. 20).

The modernisation of the EU regulations on state aid has strengthened the accountability of Member States in the assessment of conformity of state aid regulations with new regulations which concern group exemptions. The key element of the State Aid Modernisation Programme was the transparency of state aid provision. “*Transparency of State aid is, therefore, essential for the correct application of Treaty on the functioning of the European Union rules and leads to better compliance, greater accountability, peer review and ultimately more effective public spending*” (OJ L 187, 26.6.2014, pp. 1–78).

“*Transparency means giving market participants relevant information about those public interventions that might have potentially distortive effects on competition and on intra-EU trade, i.e. government aid that confers selective advantages to companies*” (European Commission, 2016).

The request regarding transparency concerns all state aid in general, with the exception of minor aid, not exceeding 500,000 Euro, in agricultural industry not exceeding 60.000 Euro.

Catalán and Clayton discuss the reforms of EU state aid announced in 2012 and the institutional framework of state aid control within the EU (Catalán & Clayton, 2013, pp. 21–34). The basic goals of the state aid system modernisation include the promotion of sustainable and intelligent growth on a competitive internal market, focus on ex ante cases with the most extensive impact on the internal market, closer cooperation of Member States in enforcing state aid rules and optimisation of legislation and the acceleration of the decision-making processes (Vítek, 2014).

On the level of European Union, the Commission Regulation (EU) No 651/2014 of 17 June 2014 was adopted, declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (entry

into force on 1 July 2016), regulated transparency in Article 9 (OJ EU L 187, 26.6.2014). Due to the “*secondary legal act, all member states shall be obliged to secure the publication on a comprehensive state aid website, at national or regional level (summary information)*”. The European Commission determined clear rules for the publication of information on granted state aid. The creation of common rules for the publication of information on state aid increases the transparency and prevents discrimination.

## 2 IMPLEMENTING NEW EU RULES FOR STATE AID IN SLOVAKIA

General rules on state aid are regulated in the Treaty on Functioning of the European Union and in EU secondary acts. The European Commission adopted the rules on the modernisation of state aid. In the Communication on State Aid Modernisation of 8 May 2012, the Commission announced three objectives pursued in the modernisation of State aid control:

- (a) *To foster sustainable, smart and inclusive growth in a competitive internal market;*
- (b) *To focus Commission ex ante scrutiny on cases with the biggest impact on the internal market while strengthening the cooperation with Member States in State aid enforcement;*
- (c) *To streamline the rules and provide for faster decisions (COM/2012/0209 final).*

These rules had broadly affected the factual dimension of new Slovak legal regulations on state aid with the aim to harmonise Slovak legal adaptation with the recommendation of the European Commission and the achievement of the Strategy Europa 2020 objectives. All Member States implemented modernised regulations on state aid into their legal orders with the purpose to create conditions for reasonable functioning of the internal market and the protection of competition rules.

The new act on state aid respects the rules of modernisation of state aid and delimitates solely the basic rules for state aid and state aid *de minimis*, with respect to Article 109 of TFEU, which stipulates that the legislation on state aid and state aid *de minimis* is adopted by the European Union.

The Slovak law indicates the Antimonopoly Office of the Slovak Republic as the coordinator of state aid. This means that the state aid policy is not in the competence of the Ministry of Finance of the Slovak Republic, which used to be the coordinator of state aid, but was not an independent body. The Ministry of Finance had always implemented the policy of political parties. This intervention into institutional competences of state administration bodies was determined by the Position of the Commission Services on the development of the Partnership Agreement and programmes in Slovakia for the period 2014–2020.

The European Commission has unambiguously pointed out that Slovakia should secure the independence of the state aid coordinator from bodies providing the aid (Ministry of Finance of the Slovak Republic).

In this respect, we have to remind that in the period of the negotiations on Slovakia's membership in the EU, the European Commission did not object to the fact that the state aid coordinator was the Ministry of Finance of the Slovak Republic.

In connection with the introduction of new institutes in state aid area (the test of equilibrium, the stimulation effect and the case-law development) and the development of secondary legal acts, certain rules were changed and an institutional change in state aid area was introduced in Slovakia. The Antimonopoly Office of the Slovak Republic is a state authority for the protection of competition, whereas state aid area in the EU is the subject matter of the same Directorate General as the protection of competition. Based on these facts, we consider it appropriate that state aid policy is in the competence of the Antimonopoly Office of the Slovak Republic as state aid policy also considers the rules of competition protection and proper functioning of the internal market. The state aid is an economic instrument that can influence trade among Member States and may negatively affect competition. The system of state aid provision is based on several facts of which competition is of the greatest significance. The president of the Antimonopoly Office of the Slovak Republic, under the Statute of the Antimonopoly Office, is not a member of the Slovak government. This suggests that the state aid coordinator is not part of the political cycle and changes and in this way, the relative independence of the state aid coordinator is ensured. The institutional independence of the Antimonopoly Office of the Slovak Republic is demonstra-



ted by the fact, that the Office neither accepts directions from the Slovak government, nor is the body obliged to subordinate to political interests of governing political parties. The Antimonopoly Office of the Slovak Republic, in accordance with Section 16, Article 5 of Act 358/2015 Coll., on Adjustment of Certain Relations in State Aid and *De Minimis* Aid and on Amendments and Supplements to Certain Acts, is obliged to elaborate reports on state aid provisions in the Slovak Republic. The reports provide factual and summary information on volumes of granted state aid. They include the evaluation of the contribution of state aid as well as the draft of measures for following procedures in state aid area in competence of relevant providers.

With respect to transparency, based on the given act, the central register for the registration of state aid and state aid *de minimis* was established with the Antimonopoly Office of the Slovak Republic as the state aid coordinator. The Central Register, under the cited Act on State Aid, is the information system of the public administration, including the data on provided state aid in the Slovak Republic. The Central Register includes information referring to the volume of state aid, forms, the purpose of state aid, etc. The information is published within six months from the date the state aid was granted and it is stored for at least ten years and is available to the general public without any limitations. The data on the provided state aid are kept by the state aid provider. It means that any subject in Slovakia can access the data on state aid provision. Thus, the principle of transparency is satisfied by the publication of information on state aid to the general public in a comprehensive way, with substantial information on state aid recipients and on the decisions of the relevant authorities.

In the Czech Republic, the Central Register of aid of minor scope (*de minimis*) was established on 1 January 2010. The mission of the register is to operate as the central system of evidence of aid of minor scope (*de minimis*) which is provided under EU regulations, directly applicable in Member States.

Transparency and equal treatment allow the public to better understand the state aid policy; in this way the state aid system becomes more trustworthy and effective. With respect to the institute of transparency, the allegations to the effect that the state aid is the tool of political protectionism are removed. The real effort to implement transparency requires self-discipline of the decision-making

authorities, which should be the guarantors of stability, legality and legitimacy of political decisions and justifications thereof. The possibility of public control of the state aid policy promotes the motivation of decision-making authorities to fulfil their missions as best they can, in conformity with valid legal regulations. Thanks to the establishment and operation of the Central Register, the public has obtained access to all relevant legal acts and information on state aid. At the same time, the institute of transparency creates suitable conditions for equal treatment.

In the framework of the institute of transparency, the applicants for state aid are provided with information

- On conditions of state aid provision,
- On approval policy regarding state aid provision,
- On principal legal regulations, norms and documents designating competence and accountability of authorities and individuals,
- On granted state aid.

### 3 IMPACTS OF STATE AID ON PUBLIC FINANCES

As stated above, the provided state aid impacts public finances. Table 1 provides an overview of the volume of state aid and the impacts of state aid provided to enterprises that pursue entrepreneurial activities in Slovakia.

#### **Facts on state aid provision in the Slovak Republic**

Under the Act on State Aid, formerly the Ministry of Finance of the Slovak Republic and currently the Antimonopoly Office of the Slovak Republic is obliged to elaborate annual draft reports on the state aid granted in the Slovak Republic. The document is approved by the Slovak government and put forth to the European Commission.

Based on the reports, we analysed the following data.

**Tab. 1** » The shares of state aid provided in the Slovak Republic from 2014 to 2017

Year	2014	2015	2016	2017
(in %)	0.43 %	0.56 % of GDP	0.48 % of GDP	0.53 % of GDP
Per inhabitant (in EUR)	59.42 EUR	81.21 EUR	71.38 EUR	55.41 EUR
Per employee (in EUR)	134.74 EUR	179.68 EUR	154.41%	118.73 EUR
Of state budget expenditures (in %)	2.07 %	2.40 %	2.54 %	1.73 %
Overall volume of state aid granted	322.14 mil EUR	440.65 mil EUR	387.98 mil EUR	301.57 mil EUR

Source: Report on State aid 2014, 2015, 2016, 2017. Available at: [www.statnapomoc.sk](http://www.statnapomoc.sk) [cited 10 Nov. 2018]  
<http://www.statnapomoc.sk/wp-content/uploads/2018/06/Sprava.pdf>  
<http://www.statnapomoc.sk/wp-content/uploads/2017/07/Sprava.pdf>  
<http://www.statnapomoc.sk/wp-content/uploads/2015/06/Sprava.pdf>

The above table shows that the largest share of state aid was provided in 2015, which had a positive impact on the number of created jobs and regional GDP growth.

Based on the statistical figures, it is possible to state that the state aid is connected to the national budget expenditures. Therefore, the provision of state aid is a matter of public interest. The regulations referring to the transparency principle make it possible to make public the information on the utilisation of public finances. The public awareness of the public financial sources is part of the principles which are the foundation base of the rule of law in democratic states.

The table includes volumes of state aid provided to entrepreneurs. The biggest amount of resources from the public budget was provided to entrepreneurial entities in 2015. The provision of state aid is a matter of public interest.

The Slovak Republic as an EU Member State is obliged to comply with the EU legislation, resulting from the EU treaties. The proper application of the EU legislation is monitored by the European Commission.

Based on the loyal cooperation, as anchored in Article 4, Para 3 of the Treaty on the European Union, Member States are obliged to adopt all necessary measures

of general and special character in order to assure the implementation of obligations resulting from treaties and other legal act of EU institution. According to this principle, Member States may not adopt any measures which could jeopardize the achievement of EU goals. The European Commission as an executive body is charged with the overall responsibility to ensure the effective control of state aid. The Directorate General for Competition is charged with the main accountability for the management of competition policy and state aid policy in the European Union.

## 4 CONCLUSIONS

The state aid policy, which belongs among public policies, is developing continuously; its development, however, is determined by the adoption of clear-cut regulations which facilitate transparency in the process of state aid provision and publicity. Based on factual information, we showed that the modernisation of regulation of state aid has contributed to the application of transparency in publicity and in publication of information on state aid provision to citizens.

The legal framework determined directly in the Treaty on Functioning of the European Union (Art. 107) consists of a stable set of generally valid regulations based on objective criteria applied in all EU Member States. This is the basis of accurate functioning of the EU internal market.

In Slovakia, the institutional change and the state aid policy is in competence of an independent authority – the Antimonopoly Office of the Slovak Republic. This could be considered as a step forward towards strengthening of independence and non-political treatment.

The Antimonopoly Office of the Slovak Republic puts emphasis on effective application of the EU state aid regulations. The providers of state aid are obliged to ensure compliance with the stimulation effect as well as compliance with the principle of maximum intensity of state aid. Following the establishment of the Central Register of State Aid, the databases on state aid providers and state aid recipients are publicly accessible, which can be viewed as a positive element in a transparent provision of state aid.

The Register includes basic information concerning the state aid (e.g., state aid schemes, group exemption clauses, individual state aid), aid *de minimis* (e.g., aid *de minimis* schemes, individual minimal aid), state aid providers and state aid

administrators (e.g., the list of state aid providers, including the official names and identification numbers of legal entities), the state aid recipients (the name of the recipient, the volume of state aid approved, the volume of refund).

The transparent and simple system decreases the probability of non-transparent utilisation of provided financial sources. The Antimonopoly Office of the Slovak Republic is entitled to supervise whether the state aid provision is effective, efficient and transparent.

The application of transparency and accountability principles in the provision of financial sources provided from the state budget to justified (eligible) economic legal entities lowers the risk of misuse and unauthorised treatment thereof.

## REFERENCES

Antimonopoly Office of the Slovak Republic (2018). *Report on State Aid 2014, 2015, 2016, 2017*. [Online]. Available at: <http://www.statnapomoc.sk>

BIONDI, A., & FARLEY, M (2011). The relationship between State aid and the single market. In: SZYSZCZAK, E. (Ed.), *European Handbook on State Aid Law*. Cheltenham: Elgar, 2011.

CATALÁN, M. J. S. & CLAYTON, M. (2013). *State aid modernisation: another reform?* ERA Forum Vol. 14, Issue 1, pp. 21–34, June 2013.

Commission Communication (2010). “*Europe 2020 – a strategy for smart, sustainable and inclusive growth*”. COM (2010) 2020 final, 3 Mar 2010, p. 20.

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 Text with EEA relevance. OJ L 187, 26 Jun 2014, pp. 1–78.

Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid L 352, 24 Dec 2013.

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions *EU State Aid Modernisation (SAM)*, COM/2012/0209 final.

European Commission (2017). *State aid: Commission opens investigation into proposed public financing of Jaguar Land Rover plant in Slovakia*. Press release. Available at: [http://europa.eu/rapid/press-release\\_IP-17-1450\\_en.htm](http://europa.eu/rapid/press-release_IP-17-1450_en.htm)

European Commission (2017). *Guidelines on regional State aid for 2014–2020*. OJ EU C 209, 23 Jul 2017.

European Union (2010). *The Treaty on the Functioning of the European Union*. OJ EU C 83, 30 Mar 2010.

European Commission (2016). *State aid*. ISBN 978-92-79-54736-2, ISSN: 2315-3113.

European Court EC (1993). *Case C-364/90, Italy v Commission*. ECLI:EU:C:1993:157, paragraph 20.

European Court EC (1964). *C -6/64 Flaminio Costa v E.N.E.L*. ECLI:EU:C:1964:66.

Gov. UK (2016). *Policy Paper: State aid modernisation*. [Online]. Available at: <https://www.gov.uk/government/publications/state-aid-modernisation/state-aid-modernisation>

GUBÍNIOVÁ, K. (2013). Spotrebiteľ v centre pozornosti cieľov súťažného práva. In: *Marketing Science and Inspirations*, 2013, volume VIII, issue 2, pp. 54–58. ISSN 1338-7944.

HOŠOFF, B. (2008). *The role of government in the development of competitiveness*. Working Paper. Bratislava: Slovak Academy of Sciences. ISSN 1337–5598.

National Council of the Slovak Republic (2017). *Act No. 358/2015, on State Aid*.

NOVÁČKOVÁ, D. (2016). Fundamental changes in the State aid policy in the Slovak Republic. In: *Hradec Economic Days 2016*. Published by University of Hradec Králové. ISSN 2464-6059. pp.716–727.

VÍTEK, L. (2013). Changes in state aid within the Eu and regional state aid from 2014. In: *Current Topics of Economic Theory and Practice in International Business 2013*. Bratislava: Paneurópska vysoká škola. ISBN 978 80-89453-04-07.

### **Prof. JUDr. Daniela Nováčková, PhD.**

Faculty of Management, Comenius University,

Odbojárov 10, 820 05 Bratislava

Email: Daniela.Novackova@fm.uniba.sk

### **PhDr. Silvia Matúšová, PhD.**

Vysoká škola ekonómie a manažmentu verejnej správy,

Furdekova 16, 851 04 Bratislava

Email: silvia.matusova@vsemvs.sk