

LAW ON STATE AID CONTROL

I. GENERAL PROVISIONS

Subject of the Law

Article 1

This Law shall regulate the conditions and the procedure for granting and controlling the proper use of state aid, for the purpose of protection of competition and fulfilling the obligations assumed under ratified international treaties.

This Law shall not apply to incentives for the development of agriculture and fisheries.

State Aid

Article 2

State aid is:

- 1) financial assistance allocated directly or indirectly from the state budget by the decision of the Government of Montenegro (hereinafter: Government), from a municipality budget by the decision of the municipality's competent body, including European Union funds and other public funds;
- 2) aid that is provided to beneficiaries carrying out economic activity, which brings them to a more favorable position in the market than other market participants
- 3) financial assistance that is not provided to all companies under the same conditions, or is provided selectively to companies based on size, place of business or place of registration and the like, or is intended for a single company ; and
- 4) Assistance, which threatens competition and affects trade between Montenegro and other countries contrary to ratified international treaties.

State Aid Grantor and Beneficiary

Article 3

The state aid grantor is the competent state administration body, competent municipality body and legal person managing and disposing of public revenue funds and state assets in accordance with the law.

The beneficiary of state aid is a natural or legal person, a company or association of companies, which use state aid in carrying out economic activities.

Economic activity is an activity that includes offering goods or services on the market, regardless of the legal status and the way in which the entity is financed.

Scheme and Individual Aid

Article 4

The scheme of State aid is an act (law, other regulation, decision, contract or program) based on which the state aid may be allocated directly to beneficiary, for the limited or unlimited period of time and as specified or unspecified amount.

Individual state aid is aid that is not based on the state aid scheme, and is assigned to a particular beneficiary for a particular project.

Control, Unlawful and Incompatible State Aid, Misuse of State Aid

Article 5

Agency for the Protection of Competition (hereinafter “Agency”), organized pursuant to the separate law, shall carry out the control of the compatibility of state aid with this Law and of proper use of the allocated state aid, and, in accordance with this Law, shall order recovery of the unlawful and incompatible state aid.

Unlawful State aid is new aid that was granted without prior notification or before the Agency decided on that aid's compatibility with this Law.

Incompatible state aid is aid that does not meet the requirements established by this Law. Improper use of state aid is use of state aid for the purpose it was not granted for.

Non-economic activities

Article 6

Non-economic activities are activities carried out on non-profit bases that provide for public interest affairs to be conducted through companies and legal persons.

Preschool, primary, secondary and higher education, organizing and performing cultural events open to the general public, development and improvement of education, culture, scientific research and dissemination of the results of scientific research conducted by the scientific research and high education organizations, as well as financing of infrastructure not intended for commercial exploitation, are particularly considered to be non-economic activities referred to in Paragraph 1 of this Article.

The provisions of this Law shall not apply to financing non-economic activities.

The Government shall prescribe more detailed list of activities referred to in Paragraphs 1 and 2 of this Article based on proposal from the state administration body in charge of finance (hereinafter: the Ministry).

Compatible State Aid

Article 7

Compatible state aid shall be considered as aid intended for:

- 1) Improvement of the economic development of Montenegro, i.e. of its certain region, where standard of living or employment level are lower than the average ones in Montenegro;
- 2) Implementation of a project jointly financed by the European Union and Montenegro or to remedy a serious disturbance in the economy of Montenegro;
- 3) Fostering the development of certain economic activities and areas, if aid does not affect the positions of other market participants;
- 4) Promoting culture and preserving cultural heritage if aid does not affect the positions of other market participants.

Apart from aid referred to in paragraph 1 of this Article, compatible aid shall also considered to be:

- 1) aid having social character, granted to individual consumers, provided that such aid is granted without discrimination related to the origin of the goods and services, and
- 2) aid to remedy damage caused by natural disasters or extraordinary circumstances

The Government shall prescribe more detailed criteria, conditions and method of granting state aid referred to in paragraphs 1 and 2 of this article, based on the Ministry's proposal.

Forms of State Aid

Article 8

State aid may be granted as:

- 1) subsidies, or interest-rate subsidies for loans,
- 2) fiscal reliefs (taxes, contributions and other public revenues);
- 3) state or municipal guarantee,
- 4) giving profit and/or dividends of the State or municipality to a state aid beneficiary;
- 5) discharge of debt owed to the State, municipality or legal person managing and disposing of public revenue funds and state assets;
- 6) sale of immovable property by the State or municipality at a price lower than the market price or purchase at a price higher than the market price;
- 7) use of state assets without compensation or with reimbursement lower than the market one; and
- 8) other aid in accordance with law.

Subsidy Equivalent and Recovery Interest Rate
Article 8

The revenue that beneficiary may gain by using state aid under the conditions more favorable than the market ones shall be calculated as subsidy equivalent, including taxes, contributions and other public revenues.

In the event of State aid recovery, a recovery interest rate shall be determined.

The Ministry shall prescribe a method of calculating subsidy equivalent and recovery interest rate.

II. NOTIFICATION PROCEDURE AND EVALUATION OF PLANNED STATE AID

Assessment of state aid compatibility
Article 10

For the purpose of determining or enacting a scheme or granting individual aid, the competent state administration body, competent municipality body and legal person managing and disposing of public revenue funds and state assets, prior to submitting a scheme proposal to the relevant body or executing an act on individual state aid, shall submit notification to the Agency with a proposed act and other necessary documentation attached (hereinafter: Notification), no later than 60 days before the planned date of determining, i.e. enacting, for the purpose of giving opinion whether state aid should be granted based on proposed act.

The Agency shall issue an opinion referred to in paragraph 1 of this Article within 15 days of receipt of the proposed act.

The proposed act referred to in paragraph 1 herewith should be considered in the course of enacting or determining the proposal only if there is the Agency's opinion.

If during opinion giving procedure the Agency should establish that proposed act referred to in paragraph 1 herewith deals with matters of granting state aid, the Agency may order the proposing body to submit the act to the Agency prior to determining or enacting, for the purpose of deciding whether it is compatible with this Law.

Notification of State Aid
Article 11

State aid is notified as state aid scheme or individual state aid on prescribed notification form, submitting the proposed act and other necessary documentation attached.

The notifying entity is liable for the accuracy of details specified in the Notification.

Should proposed aid not constitute state aid, proposing entity should state in the Notification the reasons it does not consider the act as state aid in the meaning herewith.

The manner of submitting the Notification form referred to in paragraph 1 of this Article shall be determined by the regulation enacted by the Ministry.

Standstill

Article 12

State aid notified in accordance with this Law, shall not be granted before the Agency decides on compatibility of state aid with this Law.

Withdrawal of Notification

Article 13

Notifying entity may withdraw the Notification of state aid before the decision on compatibility.

In the event referred to in paragraph 1 herewith, Agency shall suspend the examination procedure.

The Agency's Proceedings After State Aid Notification

Article 14

The Agency shall decide on the compatibility of state aid with this Law within a period not exceeding 60 days from the date of submission of the proper Notification of state aid.

Should the Agency find, after the preliminary control or conducted examination procedure, that the Notified state aid does not constitute State aid, the Agency shall decide in a form of a decision.

Should the Agency determine, after the preliminary control or conducted examination procedure, that the Notified state aid is compatible with this Law, a decision on compatibility shall be issued.

Should the Agency determine, after preliminary control, that there is a suspicion the notified state aid is not in accordance with this Law, the Agency shall initiate examination procedure ex-officio.

An administrative dispute may be initiated against the decision referred to in paragraphs 2 and 3 herewith.

Additional Data and Information

Article 15

Should it be necessary to change Notification to be compatible with this Law, the Agency shall issue a decision ordering the state aid grantor to remedy the identified irregularities and/or deficiencies and shall set the deadline for doing that.

Should the data and information provided in the Notification not be complete or accurate, the Agency shall order to the state aid grantor to amend the Notification and shall set the deadline for amendment.

Upon the request by the state aid grantor submitted before the expiration of the deadline referred to in paragraph 1 herewith, the Agency may extend the deadline if the requested data and information have not been available.

State aid notification shall be deemed withdrawn if the requested data and information is not submitted within the specified deadline, unless the data and information had already been delivered.

If the data and information referred to in paragraph 3 of this Article have been delivered, the Agency shall decide based on available data and information, within 60 days from the date of expiry of the deadline for amending Notification.

An administrative dispute may be initiated against the decision referred to in paragraph 1 of this Article.

The Decision in Examination Procedure **Article 16**

Decision on initiating the examination procedure shall particularly contain a summary of all relevant facts and legal issues, the results of preliminary control, and the reasons on which bases the Agency finds that state aid is not in accordance with this Law.

According to the decision referred to under paragraph 1 of this Article, a period shall be set which may not exceed 30 days from the receipt or publication on the website of the Agency, during which the state aid grantor may give their answers, or interested party may make remarks about the examination procedure results.

At the request of interested party, the Agency shall ensure the confidentiality of its identity.

The End of the Examination Procedure **Article 17**

The Agency shall end the examination procedure:

- 1) should it find that the Notification does not constitute state aid in accordance with this Law;
- 2) should it find that the suspicions as to the compatibility of state aid are eliminated;
- 3) should the Notification be changed during the procedure of assessment of state aid: or
- 4) should it find that the Notification is not in accordance with this Law.

Annulling of the Agency's decision **Article 18**

The Agency shall declare the decision issued on the bases on false and inaccurate data null and void, and initiate the examination procedure ex officio.

Expert Assistance **Article 19**

In deciding on issues that require specialized knowledge, the Agency may engage independent experts with respective qualifications.

III. PROCEDURE IN THE CASE OF UNLAWFUL STATE AID

Examination and Order to Submit Data

Article 20

Should the Agency have suspicions in lawfulness of state aid, it may ex officio examine the available data and information.

In the case referred to in paragraph 1 herewith, the Agency may order the state aid grantor to submit data and information necessary for the examination of state aid compatibility with this law.

Upon the Agency's order, the state aid grantor shall submit the data and information referred to in paragraph 1 of this Article within the given deadline.

In case of suspicions about the state aid compatibility, the Agency shall initiate an examination procedure and decide on the compatibility with this Law.

After conducting examination procedure, The Agency may adopt decision that the measure as subject of examination does not represent state aid in the meaning of this Law.

After conducting examination procedure, The Agency may adopt decision that the measure as subject of examination is compatible with this Law.

Notification by an Interested Party

Article 21

An interested party may inform the Agency on suspicion that unlawful or incompatible state aid has been approved.

The interested person is the state aid grantor or another person and company, whose interests may be affected by the allocation of state aid, as well as the beneficiary of state aid and competitive companies.

The Agency shall, immediately, consider the notification of an interested person, and inform the state aid grantor about the comments and status of the proceedings.

Should the Agency in the examination procedure referred to in paragraph 3 of this Article find that it is necessary to submit new information or data, they shall inform the interested person, and set a deadline for its submission, which shall not be less than 30 days from the date of the receipt of the notification.

Should the interested person fail to submit information or data referred to in paragraph 4 of this Article before the deadline, Agency shall take a decision based on available data in accordance with Article 14 herewith or shall issue a decision that the measure that was the subject-matter of examination procedure does not represent the state aid.

Providing Information

Article 22

Competent state administration bodies, competent municipality bodies, legal person managing and disposing of public revenue funds and state assets, other legal persons, companies or associations of companies, shall provide and deliver information and data requested by the Agency, necessary for decision-making in accordance with the Law, including data which may be secret, i.e. constitute a trade secret and other confidential information, within the time limit that shall not be less than 15 days from the date of the receipt of the request.

Should a company or association of companies fail to comply with the request referred to in paragraph 1 of this Article, the Agency shall issue a decision ordering the company or association of companies to provide data and information referred to in paragraph 1 of this Article.

The decision referred to in paragraph 1 of this Article shall include the legal basis, purpose, specified data and information necessary for the decision of the Agency, and the deadline for their submission.

The request referred to in paragraph 1 of this Article shall include the legal basis, purpose, and review data and information that need to be delivered, and the deadline for their submission.

The Agency shall maintain confidentiality of data it obtained in the course of conducting affairs stipulated herewith in accordance with the laws governing secrecy of data and trade secret.

Temporary Suspension of State Aid Allocation

Article 23

Should suspicion arise that unlawful state aid has been granted or that state aid is used outside of its intended purpose, the Agency shall order state aid grantor to comment within the given time limit on facts and information pointing to unlawfulness or misuse and to suspend the allocation of funds, until deciding on compliance of the state aid with this Law.

After the deadline referred to in paragraph 1 of this Article, the Agency may order the state aid grantor to temporarily recover the state aid funds, until decision on compliance with this law has been issued, if:

- 1) there is no suspicion that measure represent aid;
- 2) there is a risk of irreparable damage and
- 3) there is a serious risk of substantial and irreparable damage to a market participant.

Upon ordering temporarily recovery referred to in paragraph 2 of this Article, the Agency shall conduct examination procedure in accordance with this Law.

Failure to Comply with the Order

Article 24

Should the state aid grantor fails to comply with an order under Article 23 par. 1 and 2 herewith, the Agency may initiate the administrative dispute.

Recovery of Aid

Article 25

The state aid grantor shall take all necessary measures for the recovery of aid from the beneficiary, within the time limit set by the decision of the Agency that the allocated state aid is unlawful or incompatible.

The state aid beneficiary shall repay the unlawful or incompatible state aid.

The amount of aid that the beneficiary must repay shall be subject to interest charged for a period from the allocation of aid until the date of the decision on recovery payment and subject to interest to overdue payments in accordance to the law governing interest to overdue payments.

Decision on Recovery of Unlawful and Incompatible State Aid

Article 26

The state aid grantor shall execute the recovery of the unlawful and incompatible state aid immediately, which shall not be longer than four months from the date of issuance of the decision from Article 25 herewith.

With the aim to recover funds referred to in par. 1 of this Article, the state aid grantor shall make and deliver to the Agency plan of recovery with the measures and deadlines for its realization or notification of measures taking for the recovery within the time limit of two months from the date of the recovery decision receipt.

Recovery of aid established by the decision from Article 25 herewith shall be governed by general regulation on indemnity.

Statute of Limitations for the Recovery of State Aid

Article 27

The right to recover unlawful and incompatible state aid shall expire within ten years from the date of allocation.

The statute of limitation period of the recovery of repayment in respect of unlawful and incompatible state aid shall be interrupted by any act of the Agency or the state aid grantor taken with regard to recovery.

Upon the expiration of the period referred to in par. 1 herewith, the aid shall be considered as existing state aid.

Misuse of Aid

Article 28

In the event of improper use of state aid, the Agency shall ex officio initiate examination procedure in accordance with this Law.

In the event referred to in par. 1 herewith, the provisions of this Law governing recovery of state aid shall apply mutatis mutandis.

IV. NEPOSREDNA KONTROLA

On-Site Monitoring Article 29

In the event of suspicion as to whether state aid is compatible with the decision on allocating that state aid even after the state aid grantor had submitted its comments, the Agency shall conduct on-site monitoring visit to the state aid beneficiary.

In conducting on-site monitoring referred to in pa. 1 of this Article, the Agency's authorized official shall be empowered to:

- (a) enter and inspect any buildings, business premises, land and other spaces of the state aid beneficiary, in order to find irregularities in applying this Law;
- (b) ask for oral explanations on the spot;
- (c) examine books and other business records

Apart from persons referred to in par. 1 of this Article, the Agency may hire an independent expert as needed.

The Authorized Persons obligations Article 30

The authorized Agency official and the independent expert, authorized to carry out the on-site monitoring, shall produce to the state aid grantor an identification document, i.e. authorization to conduct control issued in accordance with a separate law, and shall state the subject-matter and purpose of the visit.

The record of results of on-site monitoring shall be made in two copies, one of which shall be delivered to the state aid beneficiary.

The Competent Body Assistance Article 31

At the request by the Agency in the events of distraction or failure to comply with the orders of authorized persons in conducting actions referred to in par 2 of Article 29 herewith, the administration body competent for police affairs shall provide assistance with carrying out certain actions of the procedure, and particularly with collecting data during on-site monitoring and temporarily impounding items pursuant to the law governing police competencies and conduct.

V. OVERSIGHT

Competent body Article 32

The Ministry shall oversee the application of this Law and regulation enacted on the bases of this Law.

VI. PENALTY PROVISIONS

Article 33

Companies and association of companies shall be fined with up to 1% of total revenue in the financial year preceding the year in which the infringement was committed, should they fail to provide and deliver to the Agency data and information referred to in par. 1 of Article 22 herewith.

Article 34

A fine ranging from 500 to 5.000 euro shall be imposed on companies and association of companies for each day of failing to comply with the decision referred to in par 2 of Article 22 of this law, but only up to 5% of total revenue in the financial year preceding the year in which the proceedings were initiated.

Article 35

A fine ranging from 60 to 3.000 euro for contravention shall be imposed on legal person managing and disposing of public revenue funds and state assets should it:

- 1) deliver false or inaccurate data in the Notification referred to in Article 11 herewith;
- 2) fail to deliver data and information referred to in par 1 Article 22 herewith.

A fine ranging from 30 to 2.000 euro for contravention referred to in par 1 herewith shall be also imposed on the responsible person in the state administration body and competent municipality body.

Article 36

The proceedings of establishing the infringement referred to in Article 22 herewith may not be initiated upon the expiration of two years from the date of violation.

The statute of limitation period of prosecution expires in any case upon expiration of four years from the day of the violation.

VII. TRANSITIONAL AND FINAL PROVISIONS

Initiated Proceedings

Article 37

Proceedings initiated prior to the entry into force of this Law shall be completed in accordance with the Law on State Aid Control ("Official Gazette of Montenegro", 74/09 and 57/11)

Making Existing State Aid Compatible

Article 38

The state aid grantor shall check and as needed make compatible the existing state aids, no later than a year from the day this Law enters into force.

The existing state aid referred to in par. 1 of this Article is:

- 1) individual state aid or state aid scheme which entered into force before the entry into force of the Law on ratification of the Interim Agreement on trade and trade-related matters between the European Community, on the one side, and Montenegro, on the other side ("Official Gazette of Montenegro" 7/07) and which is applicable;
- 2) aid scheme and individual aid, authorized by the competent body
- 3) aid to be considered existing aid after the expiry of the statute of limitation period referred to in par 1 Article 27 of this Law;
- 4) Aid that was not a state at the time of approval, but due to the development of the market was subsequently found to constitute state aid.

Measures To Make Existing State Aid Compatible

Article 39

Should the Agency consider that the existing state aid has not been made compatible within the period referred to in par 1 of Article 38 herewith, the Agency shall notify the state aid grantor and suggest measures for making aid compatible.

The state aid grantor shall, in the time limit of 60 days from the day of receipt of notification referred to in par 1 herewith, make and deliver to the Agency:

- 1) plan of measures to make existing aid compatible with this Law, or
- 2) motivated opinion on reasons due to which it considers the existing state aid is compatible with this Law.

In the event of suspicion of existing state aid referred to in par 2 all 2 herewith, Agency shall conduct examination procedure.

Passing of Regulations

Article 40

Secondary legislation referred to in par. 4 of Article 6, par. 3 of Article 9 and par. 4 of Article 11 herewith, shall be passed within six months from the date of entry into force of this Law

Until secondary legislation referred to in par 1 herewith enters into force, the secondary legislation passed on the bases of the Law on State Aid Control ("Official Gazette of Montenegro", 74/09 and 57/11) shall apply.

The Decree on detailed criteria, conditions and method of granting state aid ("Official Gazette of Montenegro", 27/10, 34/11 and 16/14) enacted on the bases of par 1 of Article 6 of the Law on State Aid Control ("Official Gazette of Montenegro", 74/09 and 57/11) and the Rulebook on the list of state aid rules ("Official Gazette of Montenegro", 35/14, 02/15, 38/15 and 20/16), shall be still applied after the entry into force of this Law.

Repealing of Law Article 41

On the effective date of this Law, the Law on State Aid Control ("Official Gazette of Montenegro", 74/09 and 57/11) shall be repealed, except for the provisions of Articles 9-15 and other provisions establishing competencies of the Commission for State Aid Control ("Official Gazette of Montenegro", 15/14), which shall be repealed on the day the Agency takes over the work of the Commission for State Aid Control.

Entry into Force Article 42

This law shall enter into force eight days after publication in the "Official Gazette of Montenegro".