

THE LEGAL REGIME OF STATE AIDS. A HISTORICAL EVOLUTION

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Abstract

The granting of state aids (grants) is one of the most powerful economic policy instruments available to public authorities. Through these grants are protected certain economic activities. Although state aids are based on social motivations, they are actions that can have harmful effects on competition. State aids granted by the Member States through the use of public funds (funds), prolonging or threatening to distort competition.

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JEL Classification: *K23, K33*

1. Introduction

Art. 87 (ex-92), par 1 EC considers to be incompatible with the common market, any aid granted by a member state or through state resources, in any form, which distorts or threatens to distort competition, promoting some undertakings or the production of certain goods, in so far as it affects trade between member states. Giving aid to an undertaking, a State modifies the conditions of competition, artificially impairing equality of means. On the other hand, State aid is sometimes essential to the process of adapting to changing climate of competition, competitive capacity development of various economic sectors, the fight against unemployment or balanced regional development. The necessity and difficulty of reconciling these two series of demands have always been in the focus of the community authorities.

2. The prohibition of state aids

In his first report on competition policy, the Commission has shown that a system of competition requires that tackles market on the basis of their faculties and that State aid does not diminish freedom of movement and lead to the best allocation of factors of production ". At the same time, "state aid is an appropriate instrument for structural policy, without which the game market would not allow the achievement of certain development objectives and without which it would reach intolerable social tensions". After the publication of the first report, there are difficulties in bringing the community's and member states ' pressures. But the Commission considers that the strengthening of control over the granting of state aid is more than ever a priority requirement. State aid means the practice of discriminatory measures favouring national activities, having a tendency to substitute customs barriers are removed and damage forced equality of means. Such state aid shall be conferred by most often more economic than on political considerations. From the practical point of view, the protection of national activities, is ensured the granting of subsidies (and export), tax exemptions or reductions, tax burden and social security credits, low-interest loans or deferred repayment loans and loans guaranteed in processing capital malpractice with regard to the prices of goods and services at the national, regional and sectoral aid, taxes and parafiscal or disposal of land or buildings free of charge or at very advantageous conditions².

It can be concluded that the concept of "aid" can be included not only positive benefits (subsidies or subsidies), but also those forms of aid which have as a result of tasks or decrease the obligations incumbent on the enterprises and budgetary difficulties which creates, such as taxes and duties.

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² Octavian Manolache, *Regimul juridic al concurenței în dreptul comunitar*, Ed. All, Bucharest, 1997, p. 273

State aid can be defined by the existence of the following elements:

- an advantage;
- aid granted by the State or through State resources;
- favouring certain undertakings or certain products.

The aid is a concept much wider than the subsidy because it does not necessarily getting a positive advantage, but also exemption from certain tasks. There is a difficulty of interpretation in the case of acquisition or public control of capital of a company. In the case of Intermills, 1984, the Court of Justice considered that these are forms of State aid, since they aim at ensuring a beneficiary undertaking's financial support. Provision of public capital of an undertaking cannot be qualified as if conducted in the normal conditions of the market. This criterion has a relative importance, because it cannot be identified completely with a private investor. A share of public participation does not necessarily aimed at making a profit, but to achieve a purpose of public interest. In this case, need to be analysed investment characteristics (duration, conditions, etc.). The abatement or exemption of some tasks results in reduction of tax revenue budget. It can be said that it is state aid and in the practice of higher prices or tariffs paid by the state or by state-owned enterprises of the national when they finally provide products or services to the State. We can mention here of preferential tariffs for natural gas supplied to the dutch horticulture. In the same vein, the Commission held that the imposition by a member state or by an entity under its influence rates at a lower level than you might normally choose may be regarded as aid. Economic entity or State concerned do not apply preferential tariff as an economically, but uses to provide a financial advantage to undertakings by forgoing profits would normally get. A preferential tariff is not helpful if in the context of the relevant market has an objective economic reasons, such as the need to resist competition in the same market. According to the Court of Justice, article 87 (ex-92) to be interpreted as meaning that the establishment by a public authority of minimum retail prices for a product to help distributors that product only on behalf of consumers do not represent state aid created for distributors. Benefits are not actually granted through state aid (directly or indirectly)³.

The methods used by States, local communities and financial intermediaries. The prohibition contained in article 87 (ex-92), par 1 which covers all aid granted by the State or through public resources, without needing to make any difference if the aid is given directly by the State or by public or private institutions that administer the aid. It needs to be taken into account the effects of the aid on the undertakings or producers and promote the status of institutions that were not distributed and managed support. Prohibition of the Treaty of Rome do not apply in a situation where all competing undertakings in respect of the products in question receive aid without making any difference between them. The aid must not be selective. A profitable for all enterprises not covered by articles 87 (ex-92)⁴.

The State aids are promoting domestic beneficiaries and, therefore, may affect competition within the community, which must be free and undistorted video through the actions of Member States and of the direct participants. Competition is distorted to the extent that the intervention of the State or public authorities change artificial causes some elements of the production costs of an enterprise, strengthening its position in relation to the positions of the other establishments in intra-communitary trade. All about a distortion of competition we are talking when intervention leads to widening of production capacities and, ultimately, to increase the capacity of the beneficiary undertaking to keep the flow of trade, even that of member states.

In the Commission's decision will have to be established that those circumstances that there is trade between member states and distortion of competition or the danger of distortion (the relevant market situation, the enterprise on the market place, the kind of trade between the Member States with regard to the product concerned, exports, etc.). Intra-communitary trade is affected regardless of the size of the undertaking which aid or it receives almost all of the production is

³ Octavian Manolache, *op. cit.*, p. 273.

⁴ *Idem.*, p. 274.

exported. However, it is necessary that the distortion of competition must be carried out within the community. Affecting intra-communitary trade is independent of granting aid for the import or export. This damage can result from the consolidation of the competitive position of an undertaking on the national market, thanks to prevent penetration of other undertakings belonging to the other member states. As an illustration of this situation, in a case, the Dutch Government has notified the Directorate-General of Competition that is considering granting aid for increasing the production capacity of a cigarette factory. The Commission concluded that the Dutch Government not to do so, in order that the aid is incompatible with the provisions of art. 87 (ex-92) par 1 EC nor in cases falling under article 87 (ex-92) par 2 and 3. In the legal literature has outlined the view according to which articles 87 (ex-92) is an essential complement of the four fundamental freedoms⁵.

If they relate art 87 (ex-92) the other provisions of the Treaty, it is noted that the modalities of aid can be recognised as being incompatible with these provisions. For example, the prohibition and elimination of customs duties and charges having equivalent effect (in accordance with article 9 to 17 CE) would lead to unacceptable effects where the industry would be confronted within the internal market, with competition from foreign enterprises with export subsidies distorted, and on the other hand, the optimal division of labour that would promote to be a total fail where a national industry would be protected by inefficient subsidies instead of customs duties. In a concrete situation, the domestic textile production was the French applied a high tax to help finance a (basically acceptable under article 88, ex 93 par 3, letter c), but this also help the French textile industry advantaged, claiming that a balance was not acceptable, on the one hand between the burdens imposed on undertakings or producers concerned, and on the other hand the benefits resulting from the aid in question. Here it is concluded that the method of financing was acceptable as a goal, but incompatible with the common market. The imposition of discriminatory internal taxes, is subject to all the provisions of article 87 EC (ex-92) and of article 90 (ex-95) para 1 EC and the application of article 90 EC (ex-95) cannot be ruled out as it may be considered at the same time and as a way of financing of a State aid. As regards the application of article 112, and showed that it does not exclude the application of articles 92 and 94 because article 112 refers to the harmonization of national export aid, which means that such aid is likely to affect intra-communitary trade. The prohibition contained in article 87 (ex-92) par 1 that does not have a direct effect, it may only be invoked in isolation in the face of national authorities of jurisdiction, in order to determine the aid to be incompatible with Community law. All interested parties have an opportunity to challenge the compatibility of the aid with community law in the face of those authorities or to request to decide on a compatibility which may be the main problem in an action brought or which may occur as a subsidiary issue. This right of the interested parties in a situation in which the provisions of articles 87 (ex-92) that have been applied through the provisions of art. 89 (ex-94) or by specific decisions adopted on the basis of art. 87 (ex-92) the hair 2. The legal regime of State aid is, in the case of national law or community law of competition. In the first case, there are no specific provisions, and in the latter case there are specific provisions of the Treaty.

For example, in its opinion No. 99-11 of 9 June 1999 on the financial support for a departmental overhead transport from a general Council, the French Competition Council showed that "due to this that the overhead transport operational conditions different from those of private transport, but may be in competition with them, either for assigning private markets or to assign lines the application of a competition organised for the public markets or public service delegation, even though, by the way, some passenger services would have been awarded directly by the organising authority without rival. This difference of situation does not in itself constitute a threat to competition⁶.

For this purpose, as the Council has already pointed out the competition, in particular in its opinion No. 96-A-12 of 17 September 1996, concerning a request for an opinion of the Commission

⁵ *Idem*, p. 275

⁶ Alain Guedj, *Praatique du Droit de la Concurrence national et communautaire*, Litec, 2000, p. 106

of the Senate Finance, with regard to the conditions of competition prevailing in the banking and credit system, the functioning of competition in a market does not imply that all operators to meet identical operational conditions. It is assumed, however, that no operator shall not benefit from the development of its facilities that others cannot obtain and magnitude as those that allow him to violate the game competition, except for those that are justified by considerations of general interest. Such benefits may also constitute barriers to the development of competition on the market in question merits, limiting the prospects for progression to other operators on the market, whatever their level of performance⁷."

The same Council in its opinion No. 96-10 of 25 June 1996, stated that "the application of the accounting system reliable and transparent economic and generous separate accounts and mail is a necessity when needed, coexist within it two types of different activities, one of which is covered by public monopoly." In the opinion of the quote. 99-11 of 9 June 1999, the competition Council indicated that "it is therefore convenient for transport, overhead must have an analytical accounting that allows them to understand the profitability of different activities, and the subsidies distributed to each of them, giving, in particular, the activities of which were attributed directly to organizational authority, those in competition with a private firm. It would be preferable, in addition, that the subsidies paid by the organizational authorities can be granted different lines of interurban ". However, such a practice cannot be used unless it can be demonstrated that constitute an abuse of a dominant position. In that event, it must be established that the Director occupies a dominant position on one or more markets, low prices to be charged on private transport market will be possible thanks to this dominant positions and, finally, that prices are likely to impede access to competitors on the market, or to exclude⁸".

In its opinion No. 98-05 about electricity, the French Competition Council noted that "the Council recalls, in that regard, that when an undertaking holding a dominant position on the market, in turn carries general interest tasks and activities open to competition, compliance with the competition rules requires you to build a clear separation between these two types of activity, so as to prevent activities on competition cannot benefit from in the development of their own conditions for the mission of general interest, to the detriment of undertakings operating on the same markets. Competition authorities consider that, in general, separation of accounts is a prerequisite for the exercise of control of compliance with the competition rules.

Article 87 EC (ex-92) EC stipulates that "in addition to the derogation of this Treaty are incompatible with the common market, in so far as they affect trade between member states, aid granted directly or indirectly through state resources by the State, regardless of their form, which violates or threatens to violate competition by favouring certain undertakings or certain products." It is either direct or indirect aid, whether national or local, express or implicit, attributable to the State, taking into account the State of the body near the Distributor. Commercial and logistical aid, retrieved his mail, French subsidiaries carrying on an activity in the express, was considered as a resource by the Court (judgment of the Court of Justice of 11 July 1996 Sfei cause). The French procedure for granting of state aid is distinct revealed by articles 81 and 82 (85 and 86). In addition, nothing prevents The competition to be invoked when there is a procedure for State aid corresponding to the Commission

3. The admission of certain categories of aids (derogations)

Although in principle the (usually) State aid is prohibited, as an exception, some are permissible if they are designed in order to be integrated into the community. These exceptions are not or cannot be qualified as prolonging or threatening nor does not affect competition and trade

⁷ Idem, p. 107.

⁸ Idem, p. 108.

between member states. Article 87 (ex-92) EC shows us that these exceptions are mandatory and optional.

Mandatory exemptions contained in par 2 of article 87 EC (ex-92) represent three situations (hypotheses) which expressly authorized aid. Such aid may be granted by the State, without the need for authorisation from the Commission, their exam bordering on this single verification⁹.

They cover the following areas:

-the aid of a social character granted to individual beneficiaries, provided that such aids are granted non-discriminatory as regards the origin of the products in question;

-aid to cover the damage caused by natural disasters or other exceptional events (floods, earthquakes, street moves, etc.);

-aid granted by Germany some of its regions to compensate for the economic disadvantages.

This latter category has largely lost its reason for being, what does not exclude certain German regions to benefit from the optional exemptions.

These aids (representing the mandatory exemptions) are expressly determined and cannot be extended outside their purpose. Thus, the Commission will oversee their compatibility with Community law, so as to ensure meeting the conditions for admissibility. Articles 87 (ex-92) EC, par 3, letter a, b, c, (including the optional derogations) shall have regard to other categories of aid (aid authorised on a case by case basis), more important and more problems assuming. In such cases, the Commission may take a decision to rule in favour of the compatibility of the aid, depending on the circumstances.

These exceptions, left in a large measure to the Commission, are:

a) to support developing regions with an abnormally low standard of living or serious non-use of the workforce;

b) upholding the enforceability of an important project of common european interest or to remedy a serious disturbance in the economy of a Member State;

c) to facilitate the development of certain economic activities or areas, when there is a change in the conditions of trade to an extent opposite to the common interest¹⁰.

Since the entry into force of the treaties of the European Union, it is a fourth category of optional exceptions, namely those relating to ' aid to promote culture and heritage conservation where they will not affect the terms of trade and competition in the community to an extent contrary to the common interest ".

Aid must fulfil a community interest. They must be indispensable and must be limited to what is necessary. Must be justified and temporarily.

As regards the optional derogations, the Commission has created a concept over time, based on three principles¹¹.

The first principle is that of transparency. This means that aid must be very accurate in regards to the recipients, the reasons and the implementation. The principle of transparency is essential for the Commission.

The second principle is that of the Community interest. This principle was established by the Court of Justice in the case of Philip Morris. The principle means that aid cannot benefit from the derogation for the sole reason that it is intended to introduce a new technology. The derogation implies that the project is of common interest, i.e. it is a transnational programme, supported by several Member States. However the expression (result) elaboration by the Commission of a doctrine in areas or sectors, the doctrine in worthless material legal documents (memorandum, guidelines, etc.).

Finally, comes the third and most complex principle, that of subsidiarity. The benefit of the exemption is subordinated to the defence market, however, the aid must be adapted to the

⁹ Catherine Grynfolgel, *Droit communautaire de la concurrence*, LGDJ, 2000, p. 207.

¹⁰ Octavian Manolache, *Drept comunitar*, Ed. All Beck, 2004, p. 370.

¹¹ Catherine Grynfolgel, *op. cit.*, p. 208.

exigencies of the situation return to normal and for this reason can only be of limited duration. This principle is of extreme importance. State to demonstrate that positive sought (and which must be of community interest) may not be achieved by the game's free market. Finally, some are prohibited: financial aids, loans without interest, participating interests in the capital of private enterprises, capital donations, tax-aids, investment aids for exports and imports.

The control procedure under article 88 of the Treaty, "the Commission shall begin with the Member States the continued examination of existing aid schemes in those countries. It proposes the measures required by the progressive development or the functioning of the common market. If, after the presentation of the comments of the interested parties, the Commission finds that aid granted by a State or a means of State resources is not compatible with the common market pursuant to article 87 EC (ex-92), or that such aid is misused, it shall decide that the State concerned must abolish or amend within a time limit set by it. If the State concerned does not comply with this decision within the time limit set, the Commission or the Member State concerned may refer the matter directly to the Court of justice by way of derogation from articles 226 and 227 (ex. 169 and 170) EC.

Although the Commission normally has the competence to rule on the incompatibility of State aid, at the request of a Member State, the Council, acting by a qualified majority on a proposal from the Commission and after consulting the European Parliament, may adopt any regulations necessary for the purposes of art. 87 and 88 (ex-92 and 93), and in particular, to fix the conditions for the application of art. 88 (ex 93) par 3, and the categories of aid which will be exempted from the procedure¹².

The distinction between competition policy, on enterprises and that relating to the intervention of States does not create an insurmountable barrier between the two groups, barrier applicable at the time in which no Member State would know to ignore the provisions of articles 81 (ex 85) EC and 82 EC (e.g. 86) to direct the behaviour of enterprises, however. The Court of Justice referred to them by putting them in touch with the other two provisions of the Treaty, article 3 (f), which prescribes that "the establishment of a Community scheme to ensure that competition is not likely to become a common market", and article 5, paragraph 2, under which Member States ' shall be retained by any measure likely to jeopardize the realization of the aims of this Treaty ". Results from this combination that, even if the settlement agreements and prohibition of abuse of a dominant position concerning businesses, they do not prevent any Member State from taking measures which would allow firms to circumvent the appropriate constraints (Commission decision of 16 November 1977, *c/Atab Inno* case and the decision of 5 April 1984, *cause Kamka*). Member States are therefore held "not to take or maintain in force measures, even of a legislative or regulatory nature, which may eliminate the effect of available of the competition rules applicable to undertakings (Commission decision of 10 January 1985, *due to the fixed price of books in France*)¹³.

It is no wonder that the Community system in general is hostile, even hostile, to the concept of State support to establish a Caring secure arrangements that do not hamper competition in the common market, because They see here an essential factor of economic progress, require undertakings to address the market by their own means, depending on the strategy that they themselves have caused it. Public aid may not therefore troubled that logic, causing distortion of competition that will result in some operators in relation to others, to be established in the same or in another Member State and which jeopardise the allocation of factors of production within the community. There are, however, situations in which the game does not allow this market's single to get enterprises to carry out the necessary adaptations in terms acceptable to the social tensions and intolerable. They are so prone to intervene and appeal to aid as an instrument of economic policy is the more intense the increasing liberalisation of international trade and the development of

¹² Octavian Manolache, *Regimul juridic al concurenței în dreptul comunitar*, Ed. All, 1997, p. 277.

¹³ G. Druésne, G Kremlis, *La politique de concurrence de la Communauté Economique Européenne*, PUF 1990, p. 66 – 67.

community integration process diminishes the protection of classical influence. A major concern of the community in the face of this situation, is to make it so that the aid recipient to allow the State to face the rigours of the market with their own means¹⁴.

According to art. 92 of the Treaty of Rome (now Article 87 EC, following the Treaty of Amsterdam), the aid granted by the member states are incompatible with the common market, as it affects trade between member states, and kidding competition (or the threatens a cheating), by favouring certain undertakings or certain products. The concept of aid is widespread because it covered not only aid granted directly by the Member States, but also all those that appear as state resources, although the award decision is taken by a decentralized public body or even a private institution. A loan participation is a State aid when the contribution of capital is made in circumstances that would not be acceptable to a private investor operating in normal conditions of a market economy. You can also retain the hypothesis of a temporary participation of public authorities, whose duration and price of disposal (disposal) are fixed in advance, so that, for the one who bring capital, the yield to be significantly lower than that which would have been entitled to a wait for a similar duration on the capital market. When it comes about an existing aid scheme in a Member State or on a project tends to engender a new aid, article 93 of the Treaty recognize an unlimited power of appreciation. If she actually sees here an incompatibility with the common market, it begins to put interested to submit comments on the aid or project in question, in the form of a communication published in the Official Journal of the European Communities (JOCE). So, are invited to express their opinion and the other Member States whose economic operators will bear the last contentious effects analysis. How about the new project, the opening of such proceedings is all the more compelling because it is the output of a suspensive effect. State concerned is unable to put it into force so long as the final decision is taken¹⁵.

If it continues, at the exit of this consultation to consider the aid as incompatible with the common market, the Commission shall take a formal decision, ordered the State to cease or amend, within a specified period. If the State does not comply with the decision, the Commission or any other interested State may refer the matter to the Court of Justice which would condemn any State for failure to comply with the obligations incumbent on it. It may, however, call into question the legality of a decision taken by the Commission and to ask the Court of Justice to rule its cancellation. Case law has admitted that such appeal may be asked by an undertaking concerned, bearing in mind that the decision may be lodged within a period of two months from the notification (judgment of 13 March 1985, the Commission v. France case, relating to aid granted to undertakings producing fish). Although the power of granting derogation normally belongs to the Commission, the Council may also, at the request of a Member State, decide to authorize an aid which does not fulfil the conditions of compatibility with the common market, unless exceptional circumstances warrant it. The economic crisis and the total unemployment figure push Member States to the multiplication of aid to industrial enterprises. The number of projects in respect of which the Commission is called upon to rule, has grown since 1977 in considerable proportions. The Commission published in December 1988 his first report on State aid in the community, the amount of which is of the order of EUR 100 million per year for the period 1981-1986, the amount of aid was 27.7 billion Euro in Italy, Germany, 16.7 19.1 in the United Kingdom, 9.4 in France. This list is not closed. The Council, acting by a qualified majority on a proposal from the Commission, may declare the compatibility of other categories of aid. At the same time, with a unanimous vote at the request of a Member State, may decide that a particular character which do not benefit from exceptions is nevertheless compatible with the common market. The aid scheme is not defined in any text, the issue may clarify only by examination of the jurisprudence of the Court of justice. The benefit of the exemption is restricted to only transparent aid, i.e. aid to those whose characteristics and quantitative importance are defined with precision.

¹⁴ Idem, p. 66 – 67.

¹⁵ Idem, p. 72.

These aids meet a community interest. This means that a sectoral or regional aid must not be appreciated in a national context, but taking into account the differences in development between Member States, or an industrial strategy. As a result, regional aid are more easily accepted by the less developed Member States of the dacât with a higher level of development. These derogations shall be strictly temporary, and these grants make it possible to return as soon as possible to a normal situation. In the event of conflict, the aid cannot be justified. Examination of aid by the Commission shall be carried out in the context of the national community, not exclusively, taking into account the fact that aid designed to cope with a difficult economic situation in a Member State may determine the dificultăți transfer to other Member States. Derogations from article 87 (ex-92) par 3, letter a and c, which are considered the most important¹⁶.

The Commission will permit aid to primary investors only and no operating aid and arrangements for aid will be coordinated in accordance with certain aspects (the aid intensity ceilings, differentiated according to the nature and severity of the regional problems, transparency, regional sectoral specificity, the repercussions of regional aid, monitoring systems). The case-law of the Court of Justice has shown that it cannot be applied any of the derogations provided for in art. 87 (ex-92), lit, par 2 of EC aid when taking the form of infusions of capital in an enterprise and which are not even sufficient to restore profitability and neither is part of a satisfactory restructuring programme shall be used to offset losses and reduce debts. All of these have an adverse effect on competition in the community. In article 87 (ex-92), par 2, letter c EC, the Court of Justice considers that for the purpose of declaring the compatibility of aid with the letter c, the aid for firms in difficulty should have as destination a restructuring programme designed to reduce or redirect its activities. AIDS at the same time this exception and present sectoral in nature and are placed in certain schemes, according to the policy promoted by the Commission since the 1970s. Other categories of aid, such as those relating to investments in the field of protection of the environment (with application of the polluter-pays principle) were included on a temporary basis in art. 87 (ex-92), par 3, lit. b¹⁷.

Aid for research and technological development programmes for energy saving measures of crisis or serious disorders, will be reported to this legal provision. A transfer of investment to a country where the economic situation is favourable, while unemployment is low, if the investment represents an important project of common european interest and proposed aid cannot compare with the help of a serious disorder destined for disposal of the economy of a Member State cannot be regarded by the Commission as being in accordance with the requirements of art. 87 (ex-92), par 3, lit. b. So long as the aid would have allowed the transfer of investment by the Member State in which the beneficiary and not by a Member State, where the economic situation is less good. Destination of aid can be based on the overall criteria, geographical or sectoral. Where some aid does not depend on a sectoral or geographical criteria, they will present a comprehensive general, being intended for the exercise of the General objectives, such as the modernization of the economy or corporate restructuring. Having a specific purpose grants may be considered by the Community institutions as being compatible with the common market, and precisely on this basis, the community has developed and put into practice a specific policy. Derogation from the prohibition is not automatic, but may be the subject of a decision of approval from the Commission.

4. The present situation

The Treaty of Lisbon didn t change too much the situation.

Articles 107-109 of the TFEU is stipulating the general rules on State aid. According to Article 107, state aid is an aid granted by the Member State or given through state resources which distorts or threaten to distort competition by favouring certain undertakings or production of certain

¹⁶ Idem, p. 71.

¹⁷ Idem, p. 72.

goods. Certain types of state aids are compatible with internal market and others may be considered to be compatible. The state aid rules are aimed at ensuring a level playing field for companies in market so that they are able to compete on fair terms and to avoid subsidy races between Member States. The main goal of state aid regime is to avoid distortions to competition and to help create a unified single market by generally preventing Member States from engaging in protectionist behaviour and assisting national undertakings.¹⁸

The institution controlling existing and new state aid systems is the Commission.

According to Article 108 of the TFEU the member states must inform the Commission of any plans to grant or alter aid. If the Commission decides that aid granted or planned to be granted by a State or through State resources is not compatible with the internal market or that such aid is being misused, it may decide that the State concerned should abolish or alter such aid within certain period of time.

The Council has an exclusive right to unanimously give exemption to a specific aid due to exceptional circumstances.¹⁹

5. Conclusions

Community competition policy reflects fully the principles of individual liberalism which formed the basis of the Treaty of Rome, in both private and public. Public domain must conform to the ideology of the free market. In most cases, state intervention in the economy occurred when the mechanism of free competition has not been able to meet the interests and needs of economic sectors or regions. Articles 87 (ex-92) and 88 (ex-93) with regard to state aid makes the granting of such aid depends especially on social considerations. These aids are exceptions to the general rules of free competition enshrined by articles 81 EC (ex 85) and 82 (86). The Court of Justice requires a strict interpretation of these exceptions. Another issue is the disparity between community policies and national policies in the field of competition. It is difficult to apply different rules at the same time. Unfortunately, this problem cannot be resolved by an agreement between the member states to implement policies are identical with those of the community.

It is addictive and suffers excessive regulations of Community competition policy, as well as inadequate economic analyses. Some authors stress the track "poor economic analysis of the decisions of the Commission", the unpredictability of its decisions. In the future, community (european) competition law of will inevitably need to undergo radical, because of the accession of a number of countries in Central and Eastern Europe (including Romania), with a level of economic development lower than the West European States.

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¹⁹Idem, p. 88.