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LEGAL ALERT

THE FIRST CRITERIA ON COMPATIBILITY OF STATE AID ADOPTED IN UKRAINE

1. On January 11, 2018 the Criteria on Compatibility of State Aid for Professional Training (**Criteria**) were brought into effect by the Regulation of the Cabinet of Ministers of Ukraine (**CMU**). The Criteria were adopted pursuant to Article 6(2) of the Law of Ukraine "On State Aid to Undertakings" (**Law**) to ensure the procedure for the Antimonopoly Committee of Ukraine (**AMCU**) assessing compatibility of particular categories of state aid.
2. Although the Law lists eight categories of state aid which may be found compatible (and for which compatibility criteria should be adopted), state aid for professional training turned out to be the first for which the respective criteria were adopted in Ukraine. What is interesting, the Criteria predated the anticipated General Criteria on Compatibility of State Aid as their adoption is still pending.
3. While substantively the Criteria reflect the EU Commission Regulation # 651/2014, the two instruments are implemented differently, since the latter exempts certain categories of state aid from the need of the Commission's authorization, while the Law of Ukraine still requires AMCU to assess such categories, though on the basis of the established compatibility criteria.
4. The Criteria are essentially aimed at ensuring equally favorable operational environment for the competing undertakings, as well as increasing the number of workers provided with professional training. To be considered compatible, state aid shall be aimed at compensating the undertakings for training their workers.
5. Under the Criteria, state aid may be granted to an undertaking irrespective of the field of its business activity, but shall not apply to bankrupt undertakings, those in process of winding up or bearing other significant financial constraints. No such state aid shall be provided for training carried out in compliance with the national compulsory standards.
6. The aid granted shall cover not more than 50% of the costs respectively spent by the undertaking, with the possibility of increasing the sum up to 70% of the overall costs in the following cases:
 - by 10% - if the aid is provided to vulnerable categories of workers or those with disabilities;
 - by 10% - if the aid is provided to medium-sized enterprises;

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- by 20% - if the aid is provided to small enterprises.

The aid may cover 100% of the costs allocated for training in the maritime transport sector, if the training is aimed not at active crew members, but at supernumerary ones, and provided that the relevant crew members work at the vessel which is registered under the Merchant Marine Code of Ukraine.

7. The costs covered by the aid shall include: the trainers' wages; trainers' and trainees' accommodation and travel expenses, directly related to the training; expenses on advisory services; trainees' wages for the period of the training.
8. The share of small enterprises prospectively affected by the Criteria amounts to 95.6%, while big enterprises constitute only 0.13% of the potentially affected businesses in Ukraine. We believe that the Ukrainian business environment is unlikely to be dramatically influenced by the Criteria. However, adoption of the Criteria constitutes the first step to complete the framework of all Ukrainian regulations on state aid, as required by the obligations provided by the Ukraine-EU Association Agreement and the Law.
9. Although the CMU was authorized to adopt the criteria on state aid compatibility as early as in 2014 (when the Law was published) the criteria, both general and applicable to particular fields, are reported to be still undergoing the revision with the governmental authorities and are expected to be adopted in 2018.

If you have any questions, please contact:

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