

August 2, 2017

LEGAL ALERT

STATE AID REGULATIONS IN UKRAINE BECOME EFFECTIVE TODAY

1. State aid legislation adopted pursuant to Ukraine`s obligations under the EU-Ukraine Association Agreement finally becomes effective today, August 2, 2017.
2. The Law on State Aid to Undertakings (Law) that is the basic document in terms of state aid in Ukraine was adopted back in 2014. Since then, Ukrainian government and the Antimonopoly Committee of Ukraine (AMCU), which is the supervisory body in the sphere of state aid in Ukraine, have been developing subsidiary legislation, monitoring measures that possibly constitute state aid and training governmental officials.
3. Several subsidiary regulations that govern related issues have already been adopted in Ukraine. Those are regulations on:
 - state aid monitoring;
 - state aid register;
 - notification of current state aid;
 - notification of new state aid and changes to the current state aid;
 - hearing of state aid cases;
 - cancellation of decisions on state aid;
 - recovery of illegal state aid.
4. The Law defines that state aid is a measure which:
 - involves public resources;
 - distorts or threatens to distort competition;
 - creates a selective advantage to one or more business undertakings.
5. Consequently, direct budget subsidies, state guarantees, tax exemptions and deferrals, writing-off debts and penalties and many other similar selective benefits provided with help of public resources will now constitute state aid in Ukraine.

6. Starting from today, relevant Ukrainian public authorities will have to:
 - notify AMCU of new state aid and receive clearance from AMCU for providing such state aid (AMCU will decide whether such aid is permissible);
 - provide AMCU with information on the existing state aid (AMCU will decide whether such aid is permissible; if such aid is recognized as not permissible, AMCU will order the authority to bring it in compliance with the Law, otherwise such state aid will have to be paid back).

7. Still, the system of Ukrainian state aid control is not yet ready to be fully launched. Despite all efforts of AMCU, there are still issues and formalities to be solved to make the state aid control system efficient and entirely functioning:
 - AMCU must additionally hire competent officers into the state aid control department (in progress now);
 - governmental authorities must establish state aid control departments (alternatively, due to lack of state budget resources, already existing departments may exercise the state aid related functions);
 - the Government of Ukraine must adopt subsidiary acts that will establish criteria for evaluation of specific categories of state aid (e.g. aid for SME, R&D activities, environment protection);
 - AMCU must implement special software for state aid monitoring;
 - multiple Ukrainian laws and regulations must be brought in compliance with state aid legislation.

8. Considering that AMCU will now be arranging a registry of state aid and evaluation of the existing state aid, it is a right time for companies to review their possible involvement with any measures that might constitute state aid.

9. While the primary responsibility for compliance with the state aid regulations is on state aid providers, involvement of beneficiaries into notification and investigation procedures will be unavoidable. So, it is in the best interest of state aid beneficiaries (e.g. in transport, energy, agriculture sphere as those with historically high level of state support in Ukraine) to make sure that the state aid which they already received or are going to receive will not be recognized illegal and they won't have to fully pay it back (including the accrued interest).

If you have any questions, please contact:

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