

Foreword

State aid is traditionally considered as an area where there is not much room for action at national level, given the Commission's almost exclusive competence. This is true as far as the assessment of the compatibility of an aid with the common market is concerned. However, as set out in the Commission's notice on cooperation between national courts and the Commission in the State aid field, published in 1995, national courts may also be called to take part in State aid control in many different situations.

First of all, national courts have an important role to play in the protection of enterprises against unlawful aid to their competitors. As a consequence of the direct effect of Art. 93 (3), if aid is granted without prior authorisation by the Commission, a competitor can address himself directly to a national court. As the Court of justice has established, the national judge is obliged to take all necessary measures against this infringement, even to the extent of ordering reimbursement of the aid.

Secondly, the implementation of Commission decisions, especially recovery decisions, often gives rise to procedures before national courts. National judges have to ensure the «effet utile» of the Commission decision. In doing so they make an essential contribution to an efficient system of State aid control.

Despite these far-reaching powers and tasks of national courts, the present study shows that these are unfortunately largely underused. The number of cases in most Member States is very low, especially if compared with the number of examples of unlawful aid, and national proceedings have rarely allowed competitors to achieve the desired outcome. This is perhaps the most surprising conclusion to draw from the study: since the instruments exist at national level, why are they not used more often? Would it not follow the spirit of subsidiarity for enterprises and judges to take action against unlawful aid at national level?

I believe that part of the explanation for the current situation is probably the lack of knowledge of the State aid rules by the people concerned (administrations, enterprises, lawyers, etc.). The adoption of a procedural regulation and the ongoing efforts of the Commission to make State aid policy more transparent will lead to improvements in this regard. This study will certainly also bring a contribution by showing possible ways of action and offering inspiration for future developments.

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