

State aid control in the Western Balkans:  
Would a different institutional design improve the enforcement record?

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## *Introduction*

- SAA requirements:
  - harmonization of state aid rules with EU law
  - operationally independent state aid authority
  - credible enforcement record of state aid rules.
- Evaluation: Progress Reports

## *Legislative framework*

- Harmonization of national State Aid Acts with TFEU
- SAA (temporal exemption):  
any public aid granted to promote the economic development of certain geographic areas could be considered exempted under Art. 107(a)(1) TFEU. The entire country is considered “*an area where the standard of living was abnormally low*” and affected by “*serious unemployment*”.
- SAA protocol (temporal exemption):  
aids granted to the steel sector
- Harmonization of by-laws: ongoing

## *Institutional framework*

- 'Operationally independent' within the Government:
  - collegial body formed by the representatives of different ministries or by the Ministers
  - assisted by a state aid unit, usually within the Ministry of finance
  - members not necessarily specialized in competition law/state aid
  - certain rules aim at preventing the conflict of interests (e.g. Serbia)
  - MNE, SRB, BH, ALB, KS\*, FYR MK until 2006.

## *Institutional framework*

- State aid control entrusted to the national competition authority:
  - FYR MK since 2006
  - NCA members appointed by the National Assembly
  - Progress Report: insufficient budget and administrative capacity

## *Institutional framework*

- Comparison with the pre-accession period in CEES:
  - SLO, HU, EE, CZ - department within the Ministry of Finance;
  - LV – inter-ministerial State Aid Commission supported by a department within the Ministry of Finance;
  - PL – president of NCA
  - National State Aid Acts adopted in late 1990s

## *Institutional framework*

- What is the EU position on the institutional models the WB countries opted for?
  - PG SRB 2015: *“the operational independence of the Commission still remains to be demonstrated, notably through a track record of well-founded decisions”*
  - PG ME 2015: *“current enforcement record does not demonstrate that the Commission has the necessary credibility, powers and resources for the full application of state aid rules”*
  - PG BH 2015: *“the country still needs to set up the institutional framework required to control all state aid effectively”*

## *Institutional framework*

- EU position - comparison with NCA status:
  - Institutional and procedural autonomy
  - Reg 1/2003, Art. 35: the NCA should be designated in such a way that the provision of this Reg are effectively complied with.
- EU position – SAA:
  - State Aid Authority has to be “operationally independent” (no instructions or interference from other state bodies)
  - power to authorize state aid and to recover unlawfully granted state aid.

## *Institutional framework*

- What does the EU insist on?
  1. Independence of the State Aid Authority?  
Formally – yes.
  2. True priorities:
    - comprehensive inventory of state aid schemes;
    - state aid regional map;
    - reduction of the amount of state aid granted  
(problem: agricultural sector; non-notified aid).
    - shift from horizontal to vertical types of aids.

## *Institutional framework*

- Which model is “better” (authority linked to the Ministry of Finance or to NCA)?
- Merging of the state aid authority with NCA would have a positive financial effect?
- Authorities linked to the Government have better access to information?
- Both models are equal provided certain conditions are met (financial independence, expertise of the members of the authority)?
- Political influence?

## *Institutional framework and beyond*

- Regardless of the state aid authority model the countries opted for:
  - state aid control as a novel concept in the national legal systems;
  - absence of sanction for failure to notify a state aid;
  - EU-modelled but sometimes inadequate by-laws;
  - vague perspective of EU accession.

*State aid control in the Western Balkans*

**Thank you for your attention!**

Хвала Вам на пажњи!

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