

CZECH REPUBLIC: ROLE AND IMPORTANCE OF STATE AID AND SUBSIDIES



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Abstract

State aid and subsidy policy in the Czech Republic, especially the manner in which the country's subsidy policy is aligned with regulations of the EU law, form the topic of discussion in this chapter. Direct aid and indirect aid are the two categories of aid covered under the subsidy policy, which has been a subject of much debate in Czech society. The first issue deals with the very essence of state subsidies, that is, whether the benefits of state incentives outweigh their disadvantages. The second is whether the rules are appropriately established for specific incentives and, for example, whether the incentive amount is adequate. The Office for the Protection of Competition and the Ministry of Agriculture and Fisheries monitors, coordinates, and controls state aid. Several entities exploited the advantages offered by state subsidies, although the provision of some subsidies was highly controversial. During the COVID-19 crisis, 18 COVID programmes were offered as the Czech Republic required substantial recovery of the economy and societal conditions. Further, during Russia's invasion of Ukraine, the energy crisis loomed, making it necessary to resolve this largely through green and digital transitions. A separate chapter is dedicated to fiscal state aid. State aid also provides an advantage through a reduction of the company's tax burden. These advantages can be used in varied ways, depending on the specific tax. However, despite several reservations (including a certain administrative complexity), these subsidies did contribute to developing the investment environment in the Czech Republic and offered opportunities for financing a wide range of products, such as project plans of towns and municipalities, small- and medium-sized enterprises, and non-profit organisations.

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1. General remarks on the subsidy policy of the Czech Republic

Aid can be (i) direct aid based on the national state budget or foreign aid, comprising mainly funds from the EU Structural Funds through individual operational programmes, other resources from the EU budget, and resources from international, governmental, and public organisations outside the EU or (ii) indirect aid, which can take several forms, such as tax incentives and reliefs, fast-track depreciation, reduction of social security contributions, exemption from customs duties, guarantee mechanisms, preferential loans, venture capital support, and preferential leases of national and regional infrastructure.¹

The legislation in the Czech Republic is based on the legislation of the European Union. The basic rules for controlling state aid are set out in the Treaty on the Functioning of the European Union (TFEU):²

[...] aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market.³

The criteria for the above definition are described in detail in the Commission Notice on the concept of state aid in the TFEU.⁴ These are described as follows.

To understand the main characteristics of state aid, first, state aid refers to any advantage directly or indirectly granted, financed through state resources, by the state as such, or by an intermediate body with conferred powers. The term ‘enterprise’ refers to any entity that carries out an economic activity, regardless of its legal status or its financial backing. An advantage represents a situation that would not have occurred under normal market conditions. Distortion of competition is an assumption by the European Commission. Competition is distorted if the measure strengthens the position of the aid beneficiary *vis-à-vis* its competitors. Affecting trade between Member States is also an assumption by the European Commission. No threshold exists when a particular measure already affects trade

1 Czech Statistical Office, 2015.

2 Arts. 107–109 of the TFEU.

3 Art. 107 of the TFEU.

4 Art. 107 para. (1) of the TFEU.

between Member States. However, from the case law, it is clear that even a small amount or the small size of a beneficiary of public aid may affect the market between Member States.⁵ Different types of state aid may be considered compatible with the EU internal market.⁶

The legislation in the Czech Republic is set out in the Act on the Regulation of Certain Relations in the Field of State Aid⁷ and the Amendment to the Act on the Support of Research and Development.⁸ This Act defines state aid, the rights and obligations of providers and recipients of state aid, and other aspects related to state aid. It also regulates issues of interoperability of the Czech Republic with the European Commission, as well as other relations with the provision of state aid and small-scale aid (will be defined below). The law uses two terms distinguishing these definitions.⁹

The Office for the Protection of Competition (the Office, hereafter) is the authority responsible for the central coordination, advisory, consulting, and monitoring of state aid. The exemption is for agriculture and fisheries; in this case, the coordinating body is the Ministry of Agriculture. The Office plays an important role in the notification procedure as it cooperates with both the state aid providers and the Commission and sends notifications to the Commission electronically. The Office maintains a register of all granted aid in the Czech Republic and submits annual reports to the Commission on all existing aid schemes. In cases of violation of obligations, the Office is entitled to impose on the provider and the beneficiary of the state aid a fine of up to 1% of the amount of state aid provided.¹⁰

As mentioned above, the Office coordinates a number of activities that are processed by the Office. First, it cooperates with the provider before notifying the state aid to the Commission. Second, it cooperates with the Commission and with the provider in the course of the procedure before the Commission. Third, it submits annual reports to the Commission on state aid in the Czech Republic. Fourth, it exercises control over the implementation of final decisions on state aid as per the legislation in force before the new law comes into force. Fifth, it decides on matters of imposing a fine under this Act. Sixth, it informs the Commission about state aid. Seventh, it prepares opinions on the submissions of providers, both before and during the proceedings, before the Commission. Eighth, it issues opinions for providers of small-scale aid before the aid is granted (e.g. whether the aid is small scale and whether

5 *Definiční znaky veřejné podpory* [Online]. Available at: <https://www.uohs.cz/cs/verejna-podpora/definicni-znaky-verejne-podpory.html> (Accessed: 12 October 2023).

6 Art. 107 para. (3) of the TFEU.

7 Act no. 215/2004 Sb., on Regulation of Certain Relations in the Field of State Aid, as amended.

8 Act no. 130/2002 Sb., Amendment to the Act on the Support of Research and Development, as amended.

9 Neckář, 2017.

10 *The Competence of the Office for the Protection of Competition in the Area of State Aid* [Online]. Available at: <https://www.uohs.cz/en/state-aid/competence-in-the-area-of-state-aid.html> (Accessed: 25 August 2023).

it meets the conditions for granting it). Ninth, it represents the Czech Republic in negotiations related to state aid and the preparation of related EU legislation. Tenth, it is the administrator of the Central Register of small amounts of aid. A state aid provider may be anybody that determines to whom state aid will be granted. If state aid is determined by the Government of the Czech Republic, the provider is either the Ministry or another central administrative authority that submits the grant of state aid or drafts the rules of state aid.¹¹

The recipients of state aid may be a natural or legal person. However, an essential condition is that state aid has been decided in its favour.

Small-scale aid is granted under the EU legislation on *de minimis* aid. A provider may grant aid to a single entity in most areas for any purpose, provided the amount of such aid, together with other *de minimis* aid received by the entity over a period of three consecutive years, does not exceed EUR 200,000.¹² *De minimis* aid does not affect trade between Member States or distort competition.¹³ Data on small-scale aid provided to individual entities are recorded in the Register of Small-Scale Aid. This information system contains data about all small-scale aids and each granted subject. Before granting small-scale aid, the provider must verify in the Register whether the threshold for the recipients of small-scale aid would be met by providing small-scale aid. The provider registers the support in the Register of Small-Scale Subsidies within five working days at the latest.¹⁴

In 2020, the Act Regulation of State Aid Relations was amended, and in this context, a decree was issued. The decree issued the content and scope of data¹⁵ that the provider of small-scale aid is obliged to record in the Central Register of Small-Scale Aid and on the procedure for recording. Changes mainly comprise, in addition to the obligation of the provider of small-scale aid, recording in the Central Register of Small-Scale Aid (hereinafter referred to as the ‘Central Register’) new information on the type of measure, small-scale aid, from 1 September 2020 and replacement of the personal identification number with the date of birth when identifying a natural person.¹⁶

In the Czech Republic, the next legal regulation based on state aid is the Act on Certain Measures to Improve the Transparency of Financial Relations in the Field of State Aid.¹⁷ This Act regulates the selected rights and responsibilities of entities controlled by public entities and persons keeping their accounting separate. The aim of this Act is to ensure transparency of financial relations in the field of state aid.

11 Act on Regulation of Certain Relations in the Field of State Aid.

12 Regulation 1407/2013.

13 *Definiční znaky veřejné podpory* [Online]. Available at: <https://www.uohs.cz/cs/verejna-podpora/definicni-znaky-verejne-podpory.html> (Accessed: 12 October 2023).

14 Neckář, 2017.

15 Act no. 298/2020 Sb.

16 Decree no. 298/2020 Sb.

17 Act no. 319/2006 Sb., on Certain Measures to Improve the Transparency of Financial Relations in the Field of State Aid, as amended.

The Act summarises the procedures to be followed in the case of some measures for ensuring transparency in financial relations in state aid.

The state aid legislation is aimed at contributing to the functioning of the market environment within the European single market. Although legal regulation in the Czech Republic is governed by generally binding rules, it is also in accordance with the rules contained in the EU regulation. This is an essential condition for the realisation of a single internal market based on the four freedoms and for safeguarding competition. Each EU Member State has to guarantee the same implementation and supervision of state aid.¹⁸

State aid cases in the light of the CJEU's jurisprudence mainly pertain to the electricity market. A few decisions, however, are interesting. First, as per state aid relating to the support for electricity from high-efficiency co-generation,¹⁹ a total of 15 power-generating facilities with an installed capacity of more than 1 MW put into operation between 2016 and 2020 were eligible for operating aid. However, state aid to support electricity generation from small hydropower plants²⁰ could be provided only for a total of nine small hydropower plants with an installed capacity of more than 1 MW in the period from 2016 to 2020. For granting state aid, the date of submission of the application is decisive in procuring operating support for electricity generation.²¹ The European Commission introduced measures and conditions for non-overcompensation of aid. The commitment is that when providing investment support (as allowed by the current legislation of the Czech Republic), the so-called deduction formula will be applied to the support for generating electricity from renewable energy sources (or operating support for generating electricity from a combined production of electricity and heat). The amount of operating aid will be reduced by the amount of investment aid granted. Therefore, support can never be overcompensated in the context of the support setting.²² The matter of whether the application submission date should be the decisive factor for awarding state aid remains debatable.

Second, arbitrations exist in the field of renewable energy under the Energy Charter Treaty.²³ In this and a number of other cases, the Commission reiterated the argument that the EU state aid law precludes a finding that the legitimate expectations of the investor were infringed by amending or eliminating subsidies not approved by the Commission. In cases where provision of support commenced before the issuance of the European Commission's decision, for effective payment of support, the European Commission's decisions introduce commitments for a mechanism to check the adequacy of support in connection with the cumulation of several types

¹⁸ Neckář, 2017.

¹⁹ SA decision 45768.

²⁰ SA decision 43182.

²¹ *Informace k provozní podpoře elektřiny z vysokoúčinné kombinované výroby elektřiny a tepla a z malých vodních elektráren*, 2017.

²² Ministry of Industry and Trade, 2017.

²³ SA decision 40171.

of support for one power-generating facility. Since obligations to ensure non-compensation of aid are introduced in all decisions issued by the European Commission, making a distinction based on whether aid was provided before or after the European Commission's decision was issued can be considered a non-discriminatory approach. According to the European Commission, the criterion for assessing possible overcompensation for individual types of RES in the SA.40171 procedure is the value of the internal rate of return. In the case of the Czech Republic, the values of the internal rate of return were introduced in the European Commission's decision, and these values were directly incorporated into the commitment to the mechanism for reviewing the proportionality of aid.²⁴ At the same time, it was argued that any compensation toward this amount would in itself constitute state aid.²⁵ The Commission reached the same conclusion in the support scheme for the renewable energy sector also in Spain.

In the area of renewables, other cases can be cited too. The European Commission has taken a position on a number of arbitrations. In many investment arbitration cases, foreign investors have been awarded compensation for the withdrawal of subsidies or other benefits. If the European Commission considered that an original advantage was granted in contravention of the EU state aid law, it objected to the compensation. It argued that the EU law precludes a finding of legitimacy in such circumstances. Although not primarily an evaluation of state aid, the subject matter is arbitration proceedings related to state aid; the question is whether the current legal regulation of European legislation has led to the many arbitration proceedings. Potentially, any investment arbitral award could be subject to state aid control by the Commission, regardless of the type of conduct of the host state that was compensated. In view of these potentially far-reaching implications, the applicability of the EU state aid law to investment arbitral awards should be thoroughly examined.²⁶

2. State aid law (also) in times of crisis

2.1. *The national usage of RRF*

In response to the COVID-19 situation and the energy market disruption caused by Russia's invasion of Ukraine, the recovery and resilience plan of the Czech Republic is aligned to ensure a strong recovery of the economy and society. REPowerEU Plan is aimed at saving energy and diversifying energy suppliers to the EU. These

²⁴ Ministry of Industry and Trade, 2017.

²⁵ SA decision 40171.

²⁶ Fahner, 2022, pp. 672–686.

reforms and investments would help the Czech Republic become more sustainable and resilient in the context of green and digital transitions.

Key measures toward green transitions are as follows: (i) Investments in energy efficiency, which are of two types: (ia) large-scale renovation programmes to increase energy efficiency aimed at residential and public buildings and childcare and long-term care facilities, with a total budget of EUR 1.4 billion; and (iib) installation of renewable energy sources for businesses and households, with a total budget of EUR 480 million; (ii) Support for sustainable mobility, especially low-emission vehicles for business and the public sector, improvements in railway infrastructure, construction of electric charging stations, and promotion of cycling pathways. Investments in this area should increase by EUR 1.1 billion; (iii) Investments in the circular economy, a key measure, which include recycling infrastructure and supporting water savings in businesses. Expenditure for this area should increase by EUR 141 million.

Key measures toward digital transitions are as follows: (i) Investments and reforms supporting digital transition, especially digital skills, e-government, digital connectivity, and digital transformation of business; (ii) Investments in education related to digital transition, especially revamping digital curricula in education, digital equipment for schools, training for teachers, new university programmes aimed at digital fields, and upskilling and reskilling courses for citizens. The total budget is EUR 585 million; (iii) Digital transformation and cyber-security of public administration, healthcare, and the justice system. The total budget is EUR 585 million; (iv) Support for digital transformation of business, digital innovation hubs, and very high-capacity networks, as well as 5G networks. The total budget is EUR 650 million.

Key measures for economic and social resilience are as follows: (i) To improve the business environment by enhancing access to finance for business, improving and hastening construction licencing procedures, strengthening anti-corruption measures, and boosting cooperation between public and private research. The total budget is EUR 222 million; (ii) To ensure equal access to education by improving access to affordable early childhood care, supporting disadvantaged schools, and enabling tutoring for children at risk of failure. The total budget for these reforms and investments is EUR 393 million; (iii) To invest in increasing the resilience of healthcare services by building new hospitals and long-term care facilities, acquiring new medical equipment, strengthening cancer screening programmes, and promoting e-Health schemes.

Green and digital transitions are based on investments (91 projects) and reforms (33 reforms). Reforms are meant to find solutions to ensure sustained and sustainable growth. Investments are aimed at changing the economy in response to climate change, maximising the benefits of digitalisation, and improving the quality of public administration. The proposed plan also aims to strengthen social cohesion,

improve access to healthcare, tackle inequalities in education, and invest in pre-schools. All measures are to be implemented by August 2026.²⁷

2.2. Commission's state aid temporary framework and national subsidy policies

The European Union has activated support programmes aimed at mitigating the consequences and constraints caused by the fight against the COVID-19 pandemic and its negative effects on various areas of economic and social life. Within the European Union, state aid is under the control of the European Commission. In the Czech Republic, the Office for the Protection of Competition negotiates the conditions and approves support programmes. So far, 18 COVID-19 support programmes have been approved.²⁸

The following is a list of measures implemented in the Czech Republic: (i) Rent reductions – for companies finding it difficult to pay their rent or lease. These direct grants amounted to 50% of the original rent or lease due for April, May, and June 2020, with the lessee and the lessor agreeing, before the application for aid, on a 30% reduction of the original monthly rent or lease for the respective period and on the lessee having paid 50% of the original rent for the same period. In case the lessee is renting premises owned by the Czech State, the direct grants amounted to 80% of the original rent;²⁹ (ii) Operating costs of SMEs – operating costs, such as costs of extraordinary hygiene measures or personnel-related costs, restrictions on movement of goods, and additional transport costs, which ultimately lead to a negative cash flow of SMEs;³⁰ (iii) Payment of social contributions – for self-employed persons in the form of payment advantages regarding pension and state employment policy contributions, waiver of penalties related to late filing of annual statements and late payments of pension and state employment policy contributions or deferral of monthly pre-payments of pension and state employment policy contributions;³¹ (iv) Public health insurance reliefs for self-employed – for self-employed persons covered by the Czech system of public health insurance in the form of payment advantages related to monthly health insurance contributions and penalty payment;³² (v) Aid to the cultural sector – for the organisation or provision of musical, musically dramatic, and theatrical projects with the primary goal of offering cultural services and entertainment for the public. This aid includes grants for individual artists, organisers of film and music festivals, technical companies providing cultural services for the public, and for private galleries and museums as well;³³ (vi) Unemployment aid – the measure aims to provide support, especially to projects relating to employee training,

²⁷ European Commission, 2023.

²⁸ Marešová and Švanda, 2020.

²⁹ SA decision 57464.

³⁰ SA decision 57475.

³¹ SA decision 57149.

³² SA decision 57358.

³³ SA decision 58213.

childcare facilities, rent for childcare facilities and upskilling of caregivers, and wage subventions for jobs created for disadvantaged people;³⁴ (vii) Accommodation facility support – aid for micro-enterprises, SMEs, and large enterprises providing accommodation services in the Czech Republic;³⁵ (viii) Support for health spas – support for services provided by facilities with special permission to run spas, conduct medical procedures, and offer curative rehabilitation treatments;³⁶ (ix) Aid to mitigate the effects of SARS-CoV-19 on agriculture and food production – enterprises of all sizes that are food producers or agricultural undertakings in the Czech Republic;³⁷ (x) Aid for professional sports clubs – for undertakings participating in select professional sports leagues in the Czech Republic, for example, clubs for football, ice hockey, basketball, volleyball, and handball;³⁸ (xi) Support for operators of ski resorts – for companies actively operating ski resorts in the Czech Republic.³⁹ (xii) Support to tour operators – large tour operators selling package tours in the Czech Republic;⁴⁰ (xiii) Aid for the extraordinary direct costs faced by Czech terrestrial television network operators – for three digital terrestrial television network operators.⁴¹

During the pandemic, other state aids were also issued, but these were presented to the public as the most important. In the wake of the COVID-19 pandemic, state aid began to address financing of various types of aid to Ukraine during the crisis caused by the Russian aggression, the sanctions imposed on Russia. In this context, it became necessary to start addressing the energy crisis as well.

The Commission's state aid temporary framework is a special state aid legislation that allows Member States to take advantage of the flexibility of state aid rules and support the economy that was affected by Russia's invasion of Ukraine. This involved supporting severely affected businesses and sectors while maintaining a level playing field in the single market. The provider must notify the support provided under the Temporary Crisis and Transformation Framework to the European Commission through the Office for the Protection of Competition, which is much simpler than the standard notification procedure. Support can be granted only after a positive decision is issued by the European Commission.⁴²

34 SA decision 58167.

35 SA decision 58398.

36 SA decision 58018.

37 SA decision 59336.

38 SA decision 59353.

39 SA decision 61808.

40 SA decision 60280.

41 SA decision 60062.

42 Office for the Protection of Competition, 2022.

3. Fiscal state aid in tax law

State aid in the area of taxation was never a subject of research in the Czech Republic. The TFEU and other important European documents⁴³ concerning state aid are strictly followed in the Czech Republic. Fiscal state aid is generally regulated by the Investment Incentives Act,⁴⁴ Act on Regulation of Certain Relations in the Field of State Aid, Act on Certain Measures to Improve Transparency of Financial Relations in the Field of State Aid, and other related regulations, including the Income Taxes Act⁴⁵ and Tax Code.⁴⁶ A sub-statutory regulation dealing with state aid in taxation is found in the guidelines of the Tax Administration⁴⁷ and Customs Administration.⁴⁸

According to the Commission Notice, principle general measures do not constitute state aid. Principle general measures are tax measures open to all economic agents on an equal access basis that cannot be reduced in scope through discretionary powers or other factors that restrict their practical use. The most typical principle general measures are tax measures of a purely technical nature (e.g. tax rates, depreciation rules, and rules on loss carry-overs; provisions to prevent double taxation or tax avoidance) and measures pursuing general economic policy objectives for reducing the tax burden related to certain production costs (research and development, environment, training, employment). The state aid in taxation is usually in the form of an advantage, such as a reduction in the company's tax burden proposed in various ways, including a reduction in the tax base (special deductions, special or accelerated depreciation arrangements, or the entering of reserves on the balance sheet), a total or partial reduction in the amount of tax (such as an exemption or a tax credit), deferment, cancellation, or even a special rescheduling of tax debt.⁴⁹ In this context, state aid can be further divided into aid that arises in the tax law drafting (substantive tax law) and aid in the application of the tax law (procedural tax law).

In the substantive tax law, the Investment Incentives Act defines the investment incentive as state aid, that is, in the form of an income tax relief and an exemption from property tax in favoured industrial zones. The income tax relief can be applied by a taxpayer (legal person or natural person running a business) who has been promised an investment incentive on meeting general and special conditions.

43 For example, Commission Notice on the application of the state aid rules to measures relating to direct business taxation, 98/C 384/03, OJ C 384, 10.12.1998, 3–9; Commission Notice on the notion of state aid as referred to in Art. 107(1) of the Treaty on the Functioning of the European Union, 2016/C 262/01, OJ C 262, 19.7.2016, 1–50.

44 Act no. 72/2000 Sb., Investment Incentives Act, as amended.

45 Act no. 586/1992 Sb., Income Taxes Act, as amended.

46 Act no. 280/2009 Sb., Tax Code, as amended.

47 Guideline no. GFR-D-58 on waiving of tax accessories.

48 Methodological Information of the General Directorate of Customs no. 6/2022.

49 Arts. 8–16 of the Commission Notice on the application of the state aid rules to measures relating to direct business taxation, 98/C 384/03.

The general conditions are established in the Investment Incentives Act:⁵⁰ the implementation of the investment project in the territory of the Czech Republic; the environmental friendliness of the activities, construction, or equipment; and the commencement of work related to the implementation of the investment project after the date of submission of the application to obtain an investment incentive. Other general conditions are specified in the government's decree: the acquisition of tangible and intangible fixed assets at least to the value specified by the government; the creation of new jobs at least as per the number specified by the government, or investment in an activity that adds value to the activity carried out using skilled labour or advanced technology, as determined by the government. All other general conditions follow the 3-year limit set by the commitment decision. Special conditions are set in the Income Taxes Act.⁵¹ Except for the condition that the taxpayer must be the first owner of a movable property acquired as part of an investment project in the Czech Republic, all other special conditions are to avoid further tax optimisations in the following tax periods. Tax relief may be applied for ten consecutive tax periods. The first tax period for which tax credit may be applied is the tax period in which the taxpayer has fulfilled the conditions, but it must not be later than the tax period in which three years have elapsed since the decision on the promise of investment incentives was issued. Tax relief, taken together with other forms of investment incentive, must not exceed the maximum amount of state aid set by the decision to grant the investment incentive.

The exemption from property tax in favoured industrial zones can be granted fully or partially (as a percentage) by the municipality in the generally binding ordinance. The Immovable Property Tax Act⁵² states that in an ordinance, the municipality shall define the property of the favoured industrial zone by its parcel number, indicating the cadastral area in which it lies. The exemption is temporary, for a maximum period of five years. Both land and buildings in a government-approved favoured industrial zone are exempted under the Investment Incentives Act acquired for implementing an investment project. For this, a decision on the promise of an investment incentive in the form of exemption from property tax is issued. The exemption from property tax in a favoured industrial zone may not exceed the level of state aid under the Investment Incentives Act in the tax period in relation to the eligible costs actually incurred to date; simultaneously, it may not exceed the maximum amount of aid set by the decision on the promise of an investment incentive under the Investment Incentives Act in the aggregate with other forms of investment incentive.⁵³ Due to the extremely low immovable property tax in the Czech Republic, the exemption is not used in any of the almost 6.300 municipalities in the country.

50 Art. 2 of the Investment Incentives Act.

51 Arts. 35a, 35b and 38r of the Income Taxes Act.

52 Act no. 338/1992 Sb., Immovable Property Tax Act, as amended.

53 Art. 4 para. (1x), Art. 9 para. (1w), Art. 12d of the Immovable Property Tax Act.

General rules concerning state aid are included in the Act on Regulation of Certain Relations in the Field of State Aid. As per the Act, state aid is as defined in Art. 107 of the TFEU. This implies that apart from the two above-mentioned investment incentives, possibilities exist for more state aids in tax regulation. Some tools do not constitute state aid as they follow the conditions set in the Commission Notice on the application of state aid rules to measures relate to direct business taxation: they apply the rules without distinction to all firms and the production of all goods, and they are tools of the Member State to decide on the economic policy that they consider most appropriate and spread the tax burden across the different factors of production. In this group, the Commission mentions tax measures of a purely technical nature (e.g. the tax rates,⁵⁴ depreciation rules,⁵⁵ and rules on loss carry-overs;⁵⁶ provisions to prevent double taxation or tax avoidance) and measures pursuing general economic policy objectives through a reduction of the tax burden related to certain production costs (research and development,⁵⁷ environment,⁵⁸ and training and employment⁵⁹). Concerning the last exemption dealing with employment, a specific rule in the Czech Republic for income taxes is that a taxpayer has the right to deduct a tax relief of CZK 18,000 for each employee with a disability, or CZK 60,000 for each employee with a severe disability.⁶⁰ However, if it is an activity in which a non-disabled person and the disabled person have the same work performance, this could be considered an unlawful state aid. However, such a case has not yet been dealt with in the Czech Republic. Another example of potential state aid can be found in the provision that regulates VAT-exempt supplies without the right to deduction, specifically radio and television broadcasting conducted by statutory operators (Czech Television and Czech Radio).⁶¹ Thus, granting exemptions is subject to a certain amount of selectivity providing a certain advantage over private entities that broadcast under licence or registration.

State aid can be granted not only by the Parliament through acts but also by the local self-government units through their by-laws. The rights of municipalities to adopt generally binding ordinances affect property tax and local charges. Concerning the immovable property tax, exemption from property tax in favoured industrial zones has already been described earlier. Some agricultural land (arable

54 Arts. 16 and 21 of the Income Taxes Act; rates in other tax acts.

55 Arts. 26–32 of the Income Taxes Act.

56 Tax allowance for the loss: Art. 34 of the Income Taxes Act.

57 Tax allowance for research and development: Arts. 34a–34e of the Income Taxes Act.

58 For example, cost of operating one's own environmental protection equipment: Art. 24 para. (2g) of the Income Taxes Act, road tax relief for combined transportation: Art. 12 of the Act no. 16/1993 Sb., Road Tax Act, as amended.

59 For example, tax allowance for payments for examinations verifying the results of further education: Art. 15 para. (8); tax allowance for vocational education consisting of a deduction to support the acquisition of property for vocational education and a deduction to support expenses incurred per pupil or student in vocational education: Arts. 34f–34h of the Income Taxes Act.

60 Art. 35 of the Income Taxes Act.

61 Art. 54 para. (1b) and Art. 53 of the Act no. 235/2004 Sb., VAT Act, as amended.

land, hop fields, vineyards, orchards, and permanent grassland) can be exempted as subsidy for the agricultural industry. Although the exemption applies to all the above-mentioned types of agricultural land, it can be considered as state aid when other municipalities do not grant such exemptions. The additional exemption at the disposal of the municipality is in dealing with the consequences of an extraordinary, especially natural, disaster. The exemption may be full or partial, extending for a maximum period of 5 years. A municipality may exempt not only property affected by the event but also all immovable property throughout the municipality. Such a solution could be considered state aid; however, according to EU law, it is allowed only if it occurs due to environmental reasons.

The other group of local by-laws about immovable property deals with multiplying coefficients. The basic coefficient called location rent is set in the Immovable Property Tax Act as a multiplier applied to the standard tax rate for immovable property used for permanent living and for the development land. It follows the number of inhabitants in the municipality on seven levels. Municipalities have the right to increase or reduce the basic coefficient for the whole municipality or its individual parts. In the case of development land used for business purposes, a decrease in the location rent can be considered state aid regardless of whether it is applied to a part of the territory of the municipality or the entire territory. From a fiscal point of view, the most important right of municipalities is the opportunity to increase the immovable property tax by the local coefficient. This coefficient increases the tax liability for every immovable property (except agricultural land) in the whole municipality or in its individual parts by a factor of 1.1–5.0. However, if the coefficient is applied only in the individual part or parts of the municipality, the rest of the property where tax has not been increased can be considered to receive state aid. In this respect, the findings of the Constitutional Court must be mentioned. When investigating the ordinance of the municipality of Řepov, the Court stated that even individual property can be seen as an individual part of the municipality.⁶² Thus, when the municipality of Řepov increased the property tax for individual properties, it granted state aid to all other properties without adding the local coefficient.

Czech municipalities can adopt local by-laws to establish local charges. In other words, the municipality has the right to decide the local charges to be collected. The generally binding ordinance may not exceed the conditions defined by the Local Charges Act.⁶³ Czech municipalities can levy a dog charge, a tourist charge, a charge for using public places, a charge on entrance, a charge on communal waste, a charge for permission to enter selected places by motor vehicle, and a charge on evaluation of building land. Charges can be collected in the whole territory of the municipality or in select parts. The rates can differ between municipalities and even in different parts of the same municipality, as the statutory maximal rate is the only condition to be followed. The municipality can also grant exemptions other than statutory ones

62 Constitutional Court, Pl. ÚS 24/23, 18.7.2023.

63 Act no. 565/1990 Sb., Local Charges Act, as amended.

and tax credits. All these conditions may result in state aid. For illustrative purposes, only some cases are listed below: (i) One municipality may collect charge, while the other may not. For example, a tourist charge levied can increase the final price for a guest, which becomes a favourable condition for hotels in the neighbouring municipality where the charge is not collected; (ii) One part of a municipality could charge a lower rate than another part. For example, a tourist charge or charge collected for using public places; (iii) One municipality or a part of a municipality could grant an exemption. For example, charge for using public places is may be exempted for land owned by the municipality. If a touring circus is pitched on land owned by the municipality, it is cheaper for the circus, and in such a case, state aid is granted to the municipality itself.

In procedural tax law (during the application of the tax law), state aid can be identified in several ways. Most of these are mentioned in the Tax Code. At the request of the tax subject or ex officio, the tax administrator may authorise the postponement of tax payment or permit staggering tax payment.⁶⁴ Several conditions are already set in the Tax Code, with scope for adding others. A taxpayer has to pay the interest on the overdue amount, which is half the interest on late payment. Lower interest can be considered state aid. The taxpayer can also ask for a waiver of the interest. If the request is granted, it can be classified as state aid as well.

The Tax Code⁶⁵ further lists several tools connected with waivers. Generally, tax or accessories to tax can be waived in whole or in part, both at the request of the taxpayer or ex officio. Further, the Act on Certain Measures to Improve Transparency of Financial Relations in the Field of State Aid⁶⁶ considers tax (and tax accessories) waiver as public funds provided, that is, state aid. A taxpayer can request for the waiver of: (i) Tax if the tax act gives the public authority the power to do so (in this case, also ex officio). Such a waiver can be applied for local charges in the event of extraordinary circumstances, particularly natural disasters. A decision implies that the charge is waived for all taxpayers affected for the same reason.⁶⁷ According to the EU law, such a waiver is an allowed state aid; (ii) Charge for the municipal waste management system or its accessories if this can be justified, considering the circumstances of the case;⁶⁸ (iii) Penalties (20% of the amount of additionally assessed tax) up to 75% of the penalty if the tax has been paid; (iv) Fine for late tax return if the tax return was filed; (v) Late payment interest if the tax has been paid; (vi) Postponement of interest if the tax has been paid (in this case, also ex officio); (vii) Penalty for failure to report exempt income when failure to report exempt income is due to a reason that can be justified considering the circumstances of the case;⁶⁹ (viii)

64 Arts. 156–157a of the Tax Code

65 Arts. 259–260 of the Tax Code.

66 Art. 3 para. (2f) of the Act on Certain Measures to Improve Transparency of Financial Relations in the Field of State Aid.

67 Art 16b of the Local Charges Act.

68 Art 16a of the Local Charges Act.

69 Art. 38w para. (6) of the Income Taxes Act.

Fine for failure to file an audit report if the failure to file was for a justifiable reason considering the circumstances of the case.⁷⁰

The Minister of Finance can decide on mass waiver of tax or accessories to tax stemming from irregularities in the application of the tax laws or in exceptional circumstances, particularly natural disasters.⁷¹ Mass waiver was applied several times in the Czech Republic, especially during floods, the COVID-19 pandemic, and the Russian aggression on Ukraine.

A specific waiver is the tax grace summer. Natural persons who pay their tax debts incurred up to 30 September 2022 till the end of November 2023 can get rid of related arrears in tax accessories (interest, penalties, or fines). Additionally, debtors, both natural and legal persons, can be legally extinguished of minor tax arrears and tax accessories if they do not exceed CZK 1,000 in total with one tax office.⁷² The second instrument may be classified as state aid.

4. Conclusions and recommendations

The question of use of state aid and subsidies is highly debatable. While state aid can help develop the market, it can also hinder the development of the market. Further, individual Member States do not always try to use state aid and subsidies in accordance with the objectives and principles established by the European Union. An example of this can be the latest conclusion of the Supreme Audit Office, which was published in 2023. The Supreme Audit Office audited how the Ministry of Agriculture and the State Agricultural Intervention Fund handled state and European Union funds intended to support the processing of agricultural products during the years 2018 and 2021. Auditors found that although support should have been directed primarily toward micro-, small-, and medium-sized enterprises as per the strategy of the Ministry of Agriculture and the European subsidy programme, the Ministry had not prepared any national subsidy programme for them in those years. On the contrary, it had announced a programme to increase competitiveness intended only for large manufacturing companies. In this period, the Ministry of Agriculture paid CZK 1.7 billion to large enterprises. In the case of European subsidies, the Ministry of Agriculture established such conditions for drawing on aid that small- and medium-sized enterprises were interested in only one out of four investment operations. Every year, support from the Czech Republic and the EU was drawn mainly by large companies with profits of tens to hundreds of millions. The Ministry of Agriculture did not monitor and evaluate the economy, effectiveness, or benefits of spending

⁷⁰ Art. 101k of the VAT Act.

⁷¹ Art. 260 of the Tax Code.

⁷² Act no. 182/2023 Sb., on Extraordinary Waivers and Extinction of Certain Tax Debts.

national subsidies. When providing European funds, the Ministry of Agriculture did not verify whether the supported projects brought the required innovations or whether they merely replaced machines, equipment, and technologies. The Ministry of Agriculture thus enabled large enterprises to obtain another source of investment support.⁷³

Next, the Supreme Audit Office audited how the Ministry of Regional Development, the Ministry of Labour and Social Affairs, and the Centre for Regional Development distributed money to support social enterprises between 2015 and 2021. Funds amounting to almost CZK 2 billion were drawn from two operational programmes. According to the SAO's conclusions, the drawdown was accompanied by deficiencies. 'Support was also given to ineffective and inefficient projects. The subsidies often helped their recipients rather than socially endangered people', said Hana Kadečková, spokesperson for the SAO.⁷⁴

An interesting case in the media related to European subsidies is the case involving the ex-prime minister of the Czech Republic, Andrej Babiš, and other persons. The case concerns the legitimacy of a subsidy amounting to CZK 50 million for the construction of buildings by Čapí hnízdo, a company that received the subsidy in 2008. Until the end of 2007, this company was part of the Agrofert holding, owned by Andrej Babiš. The subsidy was intended only for small- and medium-sized enterprises. In the end, Imoba, the successor to Čapí hnízdo, returned the subsidy to the Regional Operational Programme, Central Bohemia, in 2018 after it was excluded from European funding.⁷⁵ Such cases of obtaining subsidies highlights the negative view of subsidies and subsidy policy.

In October 2023, the Government of the Czech Republic approved a recovery package to help reduce public finance deficit in the years to come. In addition to a number of often controversial measures, this package also includes a reduction in the deductible for European subsidies. The Minister of Finance of the Czech Republic said that it is the state's mistake if it subsidises profitable companies.⁷⁶ However, subsequent competitiveness of Czech companies continues to be questionable. If other countries pay subsidies at the current level, which in many cases are significantly higher than the subsidies paid to Czech companies, then it is not possible to talk about same and equal conditions for doing business in the European Union.

73 *Podpora zpracování zemědělských produktů: stát dotoval především velké firmy s až stamilionovými zisky*, 2023.

74 *Miliarda na sociální podniky: nejasná pravidla, selhání kontroly a někdy prospěch spíše pro příjemce než sociálně ohrožené skupiny osob*, 2022.

75 *Babiš podle obžaloby využil svůj vliv k zajištění dotací pro Čapí hnízdo, o propojení s Agrofertem věděl*, 2022.

76 *Perkenierová*, 2023.

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