

# SLOVENIA: THE SUBSIDY POLICY EMBEDDED IN THE LEGAL ENVIRONMENT OF THE EU – THE CASE OF SLOVENIA



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### Abstract

This chapter explores the intricate relationship between state aid regulation and the sovereignty of the European Union (EU) Member States. The study is based on Art. 3 paras. (3) and (4) of the Treaty on the European Union (TEU), emphasising the EU's commitment to establishing an internal market and economic union. While the internal market aims for a highly competitive social market economy, economic and social disparities among Member States necessitate establishing coordinated economic policies. Alongside the discussion on the system governing the protection of competition in the EU's internal market, that is, EU competition law, the chapter also discusses state aid, considered a potential restraint on competition, and other actions like cartel agreements and abuse of dominance. The study argues that state aid, while generally undesirable in a market economy, may be a tool to prevent unwanted outcomes and achieve non-economic objectives. In examining EU competences, the study focuses on the exclusive competence of the EU in determining competition rules for the internal market, as outlined in Art. 3 of the Treaty on the Functioning of the European Union (TFEU). The unique supranational state aid control system significantly constrains Member States in economic, financial, environmental, and regional policy decisions. Notably, the chapter expands its scope to scrutinise Slovenian state aid law, especially in times of crisis. It explores the dynamics of state aid regulations during challenging economic periods (the COVID-19 pandemic and the war on Ukraine), shedding light on how Member States navigate the delicate balance

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between national interests and EU regulations. Using Slovenia as a case study, the chapter highlights the country's constitutional amendments before joining the EU, underscoring how the delegation of the exercise of specific rights to the EU aligns with the principles of EU law.

**Keywords:** *state aid, sovereignty, EU competition law, internal market, Slovenian state aid law*

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## 1. Introduction

Art. 3 paras. (3) and (4) of the Treaty on the European Union (TEU) are clear in stating that the European Union's (EU) fundamental economic task is to establish an internal market along with an economic and monetary union. An internal market is a precondition for the development of a highly competitive social market economy, which is what the EU wants to be. Nevertheless, the mere establishment of an internal market does not guarantee the achievement of every objective set out in Art. 3 of the TEU. The wide economic and social disparities between Member States necessitate coordinating their economic policies.<sup>1</sup>

As early as 1957, Member States committed themselves in the European Coal and Steel Community (ECSC) Treaty to establishing, first, a single market. Only toward the end of 1992 did the EU consider having an internal market, which can be defined as an area without internal frontiers in which free movement of goods, persons, services, and capital is ensured by the provisions of the Treaty on the Functioning of the European Union (TFEU).

EU competition law must function to ensure the establishment and effective functioning of the EU's internal market. EU competition law may simply be defined as the system of legal principles and rules that govern the protection of competition in the internal market of the EU.<sup>2</sup>

Alongside measures to regulate one or more sectors of the economy or markets with respect to cartel agreements, abuse of a dominant position, and the concentration of undertakings, state aid is considered as a method to restrict competition in the single market. The first three are caused by actions performed by undertakings that restrict free competition in the EU's internal market, while the last two are actions by the state or public authorities, which also require restriction or prohibition. The function of EU competition law (and prior to that of the European Economic Community) has also always been market integration (the creation first of a common market and then of

1 Ferčič, Hojnik and Tratnik, 2011, p. 121.

2 Ferčič, 2011, p. 171.

an internal market), which, in principle, is not a characteristic of national competition law systems that mostly only seek to prevent distortions of market competition.<sup>3</sup>

Since state aid necessarily interferes with market competition or, more generally, with the market and market relations, granting it is usually not simply a matter concerning the grantor and the recipient of the state aid in question, but also concerns other market players, in particular the recipient's domestic and foreign competitors. Further, state aid may also be a concern of one or more other countries due to its negative cross-border effects, and this may lead to the adoption of international agreements restricting the granting of state aid. In this respect, one may, in principle, conclude that countries with an internationally open market economy are characterised by a more consistent and restrictive state aid policy than are countries with a relatively closed administrative-plan economy.<sup>4</sup> Although state aid as a form of market intervention in a market economy is in principle not desirable, it is an appropriate means in a given circumstances to prevent unwanted market outcomes and achieve certain desirable non-economic objectives. State aid can be a 'poison or a cure',<sup>5</sup> depending on the circumstances of a case, which is in line with the existing legal framework that, on the whole, 'rejects' state aid unless well-defined conditions are met.<sup>6</sup>

The sources of EU competition law are found first in EU primary law; namely, the two Treaties TEU and TFEU along with their legal principles and rules. These rules from the main source of EU law are then concretised and elaborated in secondary EU law, represented by regulations, directives, decisions, and judgements, as well as in 'soft' EU law (*sui generis* acts).

To discuss the sovereignty of the EU Member States, first, it is necessary to analyse the provisions of Arts. 2 to 6 of the TFEU, which, regulate in greater detail the types and areas of the EU's competences. These competences can be divided into exclusive competences (Art. 3 of the TFEU), shared competences (Art. 4 of the TFEU), supporting competences (Art. 6 of the TFEU), and 'special' competences (e.g. foreign and security policy).

Art. 3 of the TFEU is clear in stating, *inter alia*, that 'the determination of the competition rules necessary for the functioning of the internal market' is an exclusive competence of the EU.

The system of state aid control established within the EU is unique.<sup>7</sup> It is a supranational system that significantly constrains EU Member States<sup>8</sup> in their decisions, especially in the areas of economic, financial, environmental, and regional policy.

3 Weitbrecht, Karenfort and Peck, 2004, p. 32; Ferčič, 2011, p. 173.

4 Ferčič, 2011, p. 9. The administrative planned economy is typically for countries with a socialist-communist legal system and thus also for the former Yugoslavia, which included the Republic of Slovenia.

5 Joaquín Almunia, former EU Competition Commissioner, distinguishes between bad and good state aid. See: European Commission, 2010, p. 4.

6 Ferčič, 2011, p. 35.

7 Ehlermann, 1994.

8 Möschel, 1995, p. 85. The author uses the very graphic term 'country on a chain'.

The direct competition rules are set out in Arts. 101 to 109 of the TFEU. The provisions of Arts. 101 to 106 are aimed at undertakings and, for this discussion, the most relevant are the provisions of Arts. 107 to 109 governing state aid.

This study is guided by three main hypotheses: (i) The definition and regulation of state aid is an exclusive competence of the EU; (ii) While fiscal policy remains the responsibility of Member States, they must respect commonly agreed rules, notably the ‘fiscal rule’; (iii) As state aid is paid out of or charged to the public purse, it is an area of shared competence. States have sovereign fiscal policy discretion, yet they must respect the commonly agreed rules (in particular, the fiscal rule) and may not pay state aid in contravention of the TFEU, secondary legislation (especially regulations issued by the EU Commission), and rulings of the Court of Justice of the EU (CJEU).

EU law goes beyond the rules of international law because the EU or its legislation can make its own rules on (i) the way EU law is passed on to Member States’ legal systems or applied; (ii) its relationship with the law of the Member States; (iii) how it works in Member States’ legal systems.<sup>9</sup>

To become a member of the EU, a country must accept these ‘rules of the game’.<sup>10</sup> This explains why Slovenia had to amend its constitution before joining the EU. The ‘European Article’ 3a was added to the Slovenian Constitution to allow the National Assembly of the Republic of Slovenia, by a two-thirds majority of all its members, to delegate the exercise of part of its sovereign rights to an international organisation (including the EU) in certain conditions.<sup>11</sup>

It should be stressed that Slovenia has not transferred part of its sovereignty, only the exercise of some of its sovereign rights. Slovenia continues to hold sovereignty as a sovereign state.<sup>12</sup> Any debate on sovereignty must be based on the fundamental principles of EU functioning and EU law as confirmed and consolidated by the EU Court of Justice in its decisions. These fundamental principles are of autonomy, primacy, direct applicability, and of direct effect.

<sup>9</sup> This follows from the ECJ’s decision in *Costa v. Enel* in 1964. CJEU, 15 July 1964, Case 6/64, *Flaminio Costa v. E.N.E.L.*, ECLI:EU:C:1964:66.

<sup>10</sup> Ferčič, Hojnik and Tratnik, 2011, p. 84.

<sup>11</sup> Art. 3a of the Constitution of the Republic of Slovenia reads as follows: ‘(1) Slovenia may, by an international treaty ratified by the National Assembly by a two-thirds majority of the votes of all its members, transfer the exercise of part of its sovereign rights to international organisations based on respect for human rights and fundamental freedoms, democracy, and the rule of law, and enter into defence alliances with countries based on respect for these values; (2) Slovenia may, by an international treaty ratified by the National Assembly by a majority of two-thirds of votes of all its members, transfer the exercise of part of its sovereign rights to international organisations based on respect for human rights and fundamental freedoms, democracy, and the rule of law. (3) Legal acts and decisions adopted within the framework of international organisations to which Slovenia has delegated the exercise of part of its sovereign rights shall be applied in Slovenia in accordance with the legal regime of those organisations’.

<sup>12</sup> Ferčič, Hojnik and Tratnik, 2011, p. 84; Commission Notice on the concept of state aid under Art. 107(1) of the TFEU, 2016/C 262/01, OJ C 262, 19.7.2016, 1–50, point 5.

## 2. State aid in Slovenian Law

### 2.1. Law of the Republic of Slovenia concerning state aid

According to the State Aid Monitoring Act<sup>13</sup> (hereinafter: ZSDrP, or State Aid Act), state aid is the expenditure and reduced receipts of the state or municipality that represents a benefit for the recipient of the aid and thereby provides it with an advantage over competitors and are intended for the financing and co-financing of programmes in organisations engaged in the market production of goods and services with the aim of ensuring a certain competitive advantage, as defined in Art. 107 of the Treaty establishing the European Community.

The State Aid Act and by-laws in the Republic of Slovenia regulate the (i) procedure for notifying state aid, (ii) obligation to report and record state aid, and (iii) assessment of compliance of state aid that need not be notified to the European Commission. The Ministry of Finance performs the following tasks according to the ZSDrP: (i) it considers, evaluates, and forwards the notification of state aid to the European Commission; (ii) it considers, evaluates, and gives its opinion on state aid that constitutes a group exemption and on aid under the *de minimis* rule; (iii) it collects, processes, and monitors data on state aid as well as aid granted under the *de minimis* rule; (iv) it keeps records of this data, prepares an annual report, and advises state aid managers.

The administrator of state aid in Slovenia, which ensures its correct implementation and reporting on its implementation, is the relevant authority that prepares its content and notifies it. All units that, in accordance with statistical regulations, are defined in the state sector and grant state aid must provide data to the Ministry of Finance.

According to the law, the government of the Republic of Slovenia determines by means of a by-law the manner and deadlines for transmission of data to the Ministry of Finance. The government also determines the more precise content and format of the records and the annual report on state aid in a secondary legal act.

By decree, the government of the Republic of Slovenia has established the criteria and conditions for the allocation of regional state aid, considering the policy provisions of this aid in the EU: (i) Regulation on the map of regional aid for the period 2014–2020;<sup>14</sup> (ii) Decree on the allocation of regional state aid and the method of coordination of regional incentives for employment and investment<sup>15</sup> and amendments.<sup>16</sup>

13 Official Gazette of the Republic of Slovenia, no. 37/04.

14 Official Gazette of the Republic of Slovenia, no. 113/13.

15 Official Gazette of the Republic of Slovenia, no. 93/14.

16 Official Gazette of the Republic of Slovenia, no. 77/16 and 14/18.

## 2.2. The concept and meaning of state aid in Slovenia

The concept and meaning of state aid in Slovenia is applied and understood as defined by EU legal sources. It is important to state at the outset that it is difficult to find an area in EU law where the sovereignty of states in economic and fiscal policy is more limited.<sup>17</sup>

To monitor state aid more effectively, Slovenia adopted a special law on state aid monitoring, the ZSDrP. According to this law, state aid is

expenditure and reduced receipts of the State or a municipality which confer a benefit on the recipient of the aid and give it an advantage over competitors and are intended to finance and co-finance programmes in institutional units engaged in the marketable production of goods and services with a view to securing a certain competitive advantage as defined in Article 107 TFEU.

In the same sense as in EU law, Art. 2 of the ZSDrP defines the notions of block exemptions and aid under the *de minimis* rule.

The ZSDrP and the by-laws in the Republic of Slovenia regulate the procedure for notifying state aid, the obligation to report and record such aid, and the assessment of the compatibility of state aid that does not have to be notified to the European Commission.

The Ministry of Finance of the Republic of Slovenia is the competent authority under the ZSDrP for: (i) considering, assessing and forwarding notifications of state aid to the European Commission; (ii) examining, assessing, and giving an opinion on state aid that constitutes a block exemption and on aid under the *de minimis* rule; (iii) collecting, processing, monitoring, and maintaining records of state aid and *de minimis* aid; (iv) preparing an annual report; (v) advising state aid administrators.

The Ministry of Finance has established a dedicated State Aid Monitoring Unit. The unit provides advice to state aid donors and checks and assists in the preparation of the legal bases on which state aid is granted. It also issues binding opinions on the compatibility of the implementation of these measures with state aid rules and, where necessary, forwards them to the European Commission for an opinion. It also works with the European Commission to verify and coordinate the compliance of the implementation of measures with EU rules. The unit is also responsible for monitoring and collecting data on state aid. In addition, it regularly provides training for donors and keeps them informed of new developments in this area.

Arts. 4 to 11 of the State Aid Act regulate the content and procedure for monitoring state aid. All institutional units defined in the government sector according to the statistical regulations and the granting of state aid are required to provide the Ministry of Finance with all data further specified in the ZSDrP.

<sup>17</sup> Ferčič, 2011, p. 9.

Based on all the information provided and collected, the Ministry of Finance regularly<sup>18</sup> prepares a State Aid Report. The latest of these reports from December 2022 contains data on state aid disbursed in Slovenia in 2019, 2020, and 2021. The State Aid Report is an analytical overview of state aid disbursed in Slovenia in the last 3 years and an important element ensuring transparency and control over the granting of state aid. The Report is based on data on state aid disbursed by state aid providers (ministries, municipalities, public agencies, funds, other public bodies). Pursuant to Art. 4 para. (2) of the State Aid Act, the government of the Republic of Slovenia has issued a Regulation on the submission of data and reporting on state aid and *de minimis* aid.<sup>19</sup> The Report is adopted by the government and submitted to the National Assembly of the Republic of Slovenia for information within 30 days of its adoption. Slovenia has introduced a Regulation on the submission of information and reporting on state aid and *de minimis* aid.

The Ministry of Finance shall forward the notification of state aid to the European Commission within 45 days of receiving it. The Ministry of Finance must examine the application on its merits and, if it considers that the notified state aid is incompatible with the state aid rules, it must ask the state aid operator to align it with state aid rules. If the operator insists on the content of the notification, it shall make a declaration that the notification with the proposed content should be forwarded to the European Commission. The Ministry then has 5 days to forward the application to the European Commission. Communication in terms of additional questions, explanations, and information regarding the notified state aid between the European Commission and the operator takes place via the Ministry of Finance.

The role of the Ministry of Finance becomes even more substantive in the case of block exemptions and the *de minimis* rule because it is the sole authority dealing with block exemptions and aid under the *de minimis* rule and gives its opinion on their compatibility with the state aid rules. In this respect, the Ministry has a deadline of 45 days for block exemptions and 15 days for the assessment of *de minimis* aid. In the event of any non-compliance, the Ministry shall invite the state aid operator to remedy the non-compliance and set a deadline by which the state aid operator must comply.<sup>20</sup> Pending a positive opinion from the Ministry, the implementation of the state aid is suspended and prohibited. The Ministry shall inform the European Commission of the granting of state aid under exemptions.

The Ministry also collects data concerning the effectiveness and efficiency of state aid spending. Based on this, the Ministry maintains a database on state aid and *de minimis* aid granted.

18 This means at least until the end of June of the current year for the previous year.

19 Official Gazette of the Republic of Slovenia, no. 61/04, 22/07 and 50/14.

20 In this area, the European Commission adopted a Commission Notice on the recovery of unlawful and incompatible state aid, 2019/C 247/01, OJ C 247, 2019.7.23, 1–23, which aims to clarify the EU's rules and procedures governing the recovery of state aid and how the European Commission cooperates with Member States.

Art. 9 of the State Aid Act requires the Ministry of Finance to maintain records to ensure transparency in the area of state aid for: (i) all notifications; (ii) notifications sent to the European Commission; (iii) state aid granted; (iv) aid under the *de minimis* rule; (v) other necessary records provided for in the Regulation.

Exceptions to the above rules are state aid to agriculture and fisheries. It is noteworthy that before 2004 the competent authority was the State Aid Control Commission and now the same role is assigned to the Ministry of Finance.

### ***2.3. State aid compatible with the internal market***

Energy production and distribution and the construction and management of energy infrastructure require and receive special attention in these topical times. This specific area is covered by sectoral internal market legislation, as reflected in the criteria that ensure the compatibility of aid in these areas with the internal market and the consistency of EU policy on environment and energy. The provisions on regional aid in the Regulation should therefore not apply to measures relating to the production and distribution of energy and energy infrastructure.

The problem of state aid in Slovenia is best illustrated by considering the 22<sup>nd</sup> State Aid Report adopted by the Slovenian government in December 2022. Under the State Aid Act, the Ministry of Finance must prepare an annual report on state aid granted, which it submits to the government for adoption by the end of June. The report covers data for the previous 3 years to allow proper comparison and analysis. An analytical overview of state aid paid in Slovenia over the preceding 3 years is therefore provided, and the report is an important element of ensuring transparency and control over the granting of state aid. The current report covers the years 2019, 2020, and 2021, which were marked first by the COVID-19 crisis and later by the energy crisis caused by the war in Ukraine.

In 2021, EUR 1.69 billion of state aid was paid in Slovenia,<sup>21</sup> of which EUR 1.13 billion was to tackle the economic situation created by the outbreak of the virus, representing a large share (66.8%) of all the aid paid that year. The remaining EUR 559.22 million, an increase of EUR 57.37 million over 2020, was allocated to other categories of aid. Aid to deal with the COVID-19 epidemic is discussed separately below.

Over the last 3 years, the structure and proportion of the biggest aid categories in Slovenia have not changed significantly. Aid for environmental protection and energy (EUR 164 million in 2021) still accounts for the largest share, followed by aid for employment (EUR 127.5 million in 2021), research, development, and innovation (EUR 63.56 million in 2021) and transport (EUR 105.3 million in 2021).

State aid was mainly paid out as subsidies, amounting to EUR 422.43 million in 2021, or 75.54% of the total aid paid. In contrast, the volume of repayable forms of

21 Below we summarise and comment on the data and figures published in the 22nd State Aid Report for 2019, 2020 and 2021.



aid (such as soft loans and guarantees) is not significant, representing just 0.35% of the total aid.

A comparison with the EU shows that Slovenia has a similar volume and structure of state aid. Excluding the COVID-19 aid, Slovenia's share of such aid in 2021 was 0.94% of its GDP, ranking Slovenia 15<sup>th</sup> in the EU.

Another interesting figure comes from the State Aid Performance Assessment Report, which is positive and comprises a summary of the reports submitted by the donors. Unfortunately, this assessment is a lump sum, and the Ministry of Finance concludes that these reports from the donors are deficient and do not follow the Guidelines to the Measurement of the Effectiveness of State Aid Granted.

If we consider the aid granted to mitigate the financial crisis in 2011–2014,<sup>22</sup> the share of state aid was highest in 2013 when state aid measures accounted for a good one-tenth of the GDP.

#### *2.4. Structure of state aid in Slovenia*

Slovenia spends most of its state aid on 'horizontal' aid<sup>23</sup> aimed at stimulating development and correcting market failures regardless of the sector of the economy. Aid for environmental protection and energy has maintained the largest share over the years. The volume of sector-specific aid, which is less desirable than horizontal aid due to its greater negative impact on competition and trade, is slightly higher in 2020. Aid to specific sectors<sup>24</sup> accounted for 18.86% of total state aid (only 13.6% in 2020) or EUR 105.51 million, while the share of aid to agriculture was 3.8%, namely, at the level of the previous 2 years.

Employment aid is the second highest, almost all of which (99.6%) is spent on employing disabled people and adapting the workplace for disabled people. In 2021, this type of aid accounted for EUR 127.56 million, or 12.56% more than that in 2020, and it accounted for over one-fifth of all aid (22.81%).

Research, development, and innovation (R&D&I) accounted for EUR 63.56 million, a significant drop (18% less) compared to the previous year, 2020. It thus represented only 11.37% of the total state aid, which is also below the 2019 level.

Within sectoral aid, most aid was paid as compensation for rail passenger transport. In 2021, EUR 104.66 million, or 18.71% of total aid, was allocated for this purpose, which is surprisingly high. At the same time, the volume of these allowances has been growing steadily over the last 3 years. In the last year, the increase was 55.77%. The Report suggests that this is due to modernisation of the means of

22 This has mainly been in the context of the rehabilitation of state-owned banks, where a commitment was therefore given to the EU Commission that the banks would be privatised at a later stage.

23 State aid by group and category in the Report shows that horizontal aid relates to environmental protection, employment, research and development and innovation, regional aid, culture, broadband development, SMEs, risk capital, training, natural disasters and emergencies, sports and multi-purpose infrastructure, and services of general economic interest.

24 Transport, both land, air and sea, and coal mining, and rescue and restructuring aid.

transport used to operate the public passenger transport service, the higher cost of user charges, and the additional compensation due to the COVID-19 pandemic.

#### *2.4.1. State aid by type of instrument*

State aid can be granted in various forms, such as subsidies, soft loans, guarantees, tax or contribution exemptions, and capital injections. The choice of instrument should depend on the objective and the market failure to be addressed and have the least possible negative impact on competition and trade. In Slovenia, the majority of state aid is granted in the form of subsidies. Hence, in 2021, subsidies amounted to EUR 442.43 million, or 75.53% of total aid.

Another option is to pay out state aid in the form of reduced government revenue. In the form of reduced social security contributions, EUR 99.86 million was granted in 2021, representing 17.8% of the total state aid. An upward trend can be noted in this aid instrument during the period under review, mainly in the form of exemptions from employers' contributions for employing disabled persons. Yet, the greatest share of this instrument of reduced public revenue is represented by aid for environmental protection, with 96.6% in 2021 for reducing environmental charges.

The instrument of repayable forms of aid in the form of soft loans was mainly targeted at measures in the field of regional development.

No aid in the form of guarantees was used in the last 3 years under review.

Capital investment accounted for EUR 3.23 million, or 0.57% of the total aid in 2021 and even less in 2020, when it amounted to just 0.4%. However, such aid was earmarked for measures in the fields of risk finance and services of economic interest.

#### *2.4.2. State aid by donor*

In Slovenia, the Ministry of Infrastructure granted the most aid (44.72%) in the period 2019–2021. The majority of this aid was allocated to environmental protection and energy saving measures (66.4%), a good one-third to transport (33.12%), 0.45% to coal mining, and only 0.02% to sports and multi-purpose recreational infrastructure.

The Ministry of Labour, Family, Social Affairs and Equal Opportunities is in second place, having granted 22.77% of all aid. The vast majority of this aid (99%) was for the employment of disabled people, with the remainder for training.

The Ministry of Economic Development and Technology granted 14.46% of aid in the period under review chiefly for regional development and for research, development, and innovation.

The Ministry of Education, Science and Sport granted 3.71% of the aid. All of this aid was to promote research, development, and innovation.

The Ministry of Agriculture, Forestry and Food granted 3.84% of the aid (either alone or through municipalities).

This was followed by the Ministry of the Environment and Spatial Planning, which granted EUR 44.77 million, or 2.92% of total aid, all for environmental protection and energy saving.

The Ministry of Culture also allocated a small share of the funds (2.6%), mostly to the audiovisual sector.

Approximately 5% of the remaining aid was granted via other eligible grantors such as ARRS (Slovenian Research and Development Agency), the Slovenian Government Office for Digital Transformation, SID banka, EKO Fund, the Ministry of Finance, the Municipality of Piran.

#### *2.4.3. State aid by type of aid and the procedure for granting it*

In Slovenia, the lion's share of aid is granted through aid schemes where the beneficiaries are not known in advance, but the legal basis defines the eligibility criteria and criteria. In the last decade, the share of this type of aid award has varied between 71% and 89%. In 2021, 81.28% of all state aid was disbursed through aid schemes, namely all horizontal aid (environmental protection, regional aid, research, development, and innovation, employment, etc.) granted under the General Block Exemption Regulation, as well as aid for agriculture and rescue and restructuring aid for small- and medium-sized enterprises.

Individual aid targeted at a specific and known beneficiary accounted for 18.72% of all aid. This type of aid received the biggest share (29%) in 2015, mainly due to the large volume of rescue and restructuring aid for specific firms in difficulty. Aid to known recipients was also granted in the transport sector (compensation to Slovenske železnice SŽ – Potniški promet, d.o.o.) and coal sector (aid to Rudnik Trbovlje-Hrastnik, d.o.o.).

Since state aid can be granted only after the compatibility of a measure with state aid rules has been established and confirmed, the Ministry of Finance (for all aid except for agriculture and fisheries) and the Ministry of Agriculture, Forestry and Food are responsible for verifying compliance in Slovenia. Since 2018, more than half (54.1% in 2021) of all state aid has been paid under schemes approved by the Ministry of Finance and the Ministry of Agriculture, Forestry and Food, respectively, without prior notification to the European Commission.

Analysis of the data in the report shows that 74% of the measures or 26 schemes out of a total of 35 schemes for which aid was reported in 2021 were implemented under the General Block Exemption Regulation, that is, without prior notification given to the European Commission. In the EU as a whole, this proportion was 80% in 2020, which implies that competent authorities in the Member States are increasingly taking responsibility for ensuring that state aid complies with EU law. The European Commission is therefore relieved of this administrative work and can therefore carry out more targeted scrutiny of selected 'controversial state aids'.

#### *2.4.4. State aid by region*

Slovenia is a small European country with no well-developed regional public authority. After the central public authority at the national level, with its seat in Ljubljana as the capital of Slovenia, the next formal level of public local authority is the municipalities. The debate on the creation of regional public authorities (the proposal envisaged up to 10 provinces) has been underway for several decades with no progress. Consequently, public authorities are subject to much centralisation. Owing to the different levels of development and as part of implementation of the European cohesion policy, Slovenia is divided into two statistical regions: the Eastern Cohesion Region and the Western Cohesion Region, which vary significantly in their economic development. The Western Cohesion Region is one of most developed regions in the EU, exceeding the EU average, while the Eastern Cohesion Region is below the EU average. The division into two regions was requested by the European Commission for a more efficient distribution and use of EU cohesion funds (generally 66.7% to 33.3% in favour of the Eastern Cohesion Region). Although the majority of cohesion and other EU funds are meant to be allocated to the Eastern Cohesion Region, the reality is different, and the majority of these funds are still received by entities from the Western Cohesion Region. The outcome of this wrong and harmful (Slovenian central) policy is that the difference in level of development between the two cohesion regions is further intensified to the detriment of the Eastern Cohesion Region.

The above is also reflected in the data on state aid granted. In 2021, EUR 240.57 million, or 43.02% of total aid, was paid to enterprises established in the Eastern Cohesion Region, which is 5.69% less than the previous year, considering the exemption of crisis measures. The Western Cohesion Region received EUR 319.65 million or 56.98% of total aid in 2021, an increase of EUR 61.23 million over the previous year.<sup>25</sup> The average for 2019–2021 is also to the detriment of the Eastern Cohesion Region, which received only 47.24% of the aid provided during the period.

A greater focus of aid on the Eastern Cohesion Region would be fully in line with the rules of the cohesion policy that allocates relatively more resources to less developed regions and, in addition, allows higher aid intensities (such as regional aid) for certain categories of state aid in these areas. However, the analysed data show that Slovenia is not acting in the most coherent way with the European cohesion policy.

#### *2.4.5. State aid in the form of tax measures*

State aid in the form of tax measures and privileges in the tax and social contributions system accounts for around 40% of all state aid, according to the EU Commission's estimates.<sup>26</sup> EU Member States have the explicit competence to independently

<sup>25</sup> It must be reiterated that the majority (66.67%) of the funds should go to the Eastern Cohesion Region.

<sup>26</sup> European Commission, State Aid Scoreboard – 2008, COM(2008) 751 final, p. 49.

design their own tax policy and tax system. Therefore, certainly not every case of (unfair) tax competition between EU Member States, which may otherwise harm the functioning of the EU internal market, can be considered as unlawful state aid within the meaning of Art. 107 para. (1) of the TFEU.<sup>27</sup> From the outset, EU practice has been dominated by the view that state aid is not only a measure that results in a certain 'inflow' in the sphere of certain undertakings, but also a measure of an 'outflow' or alleviation of normal burdens.<sup>28</sup>

For this, Slovenia has adopted a special regulation on granting of regional state aid and a method of implementing regional employment incentives and tax incentives for employment and investment.<sup>29</sup> This regulation outlines the general and specific conditions for the granting of regional state aid and the method of implementing the regional employment incentive and the tax incentives for employment and investment referred to in Arts. 27 and 28 of the Act on the Promotion of Concerted Regional Development.<sup>30</sup>

The beneficiaries of the aid provided for in this regulation are legal and natural persons engaged in an economic activity in the territory of the Republic of Slovenia, subject, of course, to the conditions laid down in the law and the regulation.

The objective of aid provided for in this regulation is to promote harmonious regional development in a competitive internal market by reducing costs for businesses, with the benefit of improving the relative position of less developed eligible areas.

Aid under the regulation is not allowed for export-related activities where aid is directly linked to the quantities exported, to the establishment and operation of a distribution network, or to other current expenditure linked to the export activity. Nor is aid allowed in cases where the use of domestic goods would be favoured over the use of imported goods.<sup>31</sup>

Aid is normally granted on the basis of a public call for tenders, an individual application, or the claiming of a tax credit.

Art. 6 of the regulation provides for more detailed rules on the reporting and monitoring of aid granted.

Aid in the form of tax advantages is only one of the forms of aid covered by this regulation.

Aid in the form of tax advantages may be granted where the measure provides for a ceiling that ensures that the applicable threshold for the grant of state aid is not exceeded.<sup>32</sup>

27 See: Ferčič, 2011, p. 78.

28 Ferčič, 2011.: For example, radically lower taxation of profits of all legal persons in one EU Member State compared to other Member States, because of the non-selectivity of the tax measure, does not constitute state aid, even if it harms market competition or the internal market. Art. 116 of the TFEU allows for approximation of laws (harmonisation) in this case.

29 Official Gazette of the Republic of Slovenia, no. 93/14, as amended, last edition 47/22.

30 Official Gazette of the Republic of Slovenia, no. 20/11 and 57/12.

31 This is laid down in Art. 4 para. (3) of the Regulation.

32 Art. 11 of the Regulation.

The regional employment incentive takes the form of a reimbursement of compulsory social security contributions paid by the employer for the recruitment of a new worker, at the rate laid down in the rules governing compulsory social security contributions. The worker who qualifies for the relief must meet the conditions laid down in Art. 22 para. (2) of this regulation. The first condition is that the person must be unemployed. The other conditions relate alternatively to the duration of unemployment (6 months), age (15 to 24 years), level of education, disability, membership of an ethnical minority, etc. This tax credit can be used for a maximum of the first 12 months of employment. The maximum amount of state aid allowed for this purpose may be 50% of the wage costs of an individual worker, calculated for the year in question.

The next tax deduction can be used to reduce the tax base by 70% of the amount invested.<sup>33</sup>

Taxpayers must repay any unjustified tax relief by increasing their tax liability by the amount of the relief.

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### **3. Impact of the COVID-19 pandemic on the granting of state aid in Slovenia and the EU**

The crisis triggered by the COVID-19 pandemic in March 2020 has had a major impact on the Slovenian, European, and global economy. In this report, government expenditure on COVID-19 relief aid is considered in aggregate for both 2020 and 2021. This allows for a more comprehensive overview and better analysis of the data. Of course, not all measures implemented under the intervention laws constituted state aid. The total direct volume of measures related to COVID-19 in 2020 and 2021 totalled EUR 4.5 billion. State aid was paid out to the tune of EUR 2.3 billion, representing just over 51% of the total expenditure for this purpose.

When the first wave of COVID-19 infections swept across Europe, the European Commission, after a rapid consultation with Member States, immediately adopted the ‘Temporary Framework’<sup>34</sup> for the granting of state aid in these exceptional circumstances. These temporary measures allowed much needed support to be provided to the economy during the pandemic while maintaining a level playing field in the EU’s single market.

The European Commission was monitoring the course of the pandemic and made adaptations and amendments to the Temporary Framework six times as the crisis evolved and persisted into 2021. The Temporary Framework expired at the end of

<sup>33</sup> Art. 23 of the Regulation.

<sup>34</sup> Commission Communication Temporary Framework for state aid measures to support the economy in the event of an outbreak of COVID-19, 2020/C 91 I/01, OJ C 91I., 2020.3.20, 1–9.

June 2022, except for two new tools to support the ongoing recovery of the European economy (investment support and solvency support). In addition to the Temporary Framework, Member States have resorted to granting aid under the rules designed to remedy the consequences of the damage, in accordance with Art. 107 para. (2) point (b) of the TFEU.

On the EU level, EU data<sup>35</sup> show that EU-27 Member States spent EUR 320.22 billion in 2020 on state aid for COVID-19 and other measures, excluding aid to railways, which is 2.39% of the EU-27 GDP. This amount is almost 2.5 times the expenditure in 2019 (+ EUR 185.13 billion compared to + EUR 135.09 billion in 2019, corresponding to a nominal rise of around 137% and an increase of 1.58 percentage points of GDP in relative terms).

As for 2020, EU-27 Member States overall increased their provision of ‘non-crisis’ state aid by 1.9% over the last year (EUR 137.59 billion in 2020).

Expenditure on COVID-19 measures (EU-27 Member States plus the UK<sup>36</sup>) amounts to EUR 227.97 billion, covering around 59% of the total spending.

Significant differences appear between EU Member States in both the volume and structure of state aid. State aid as a share of GDP was highest in Malta (4.83% of the GDP) and lowest in Ireland (only 0.6% of the GDP). Slovenia ranks fifth with 3.44% of state aid, mainly due to the large volume of COVID-19 expenditure, which accounts for 73% of all state aid provided in 2020.

Germany paid out the most state aid in absolute terms (EUR 114.94 billion), accounting for around 30% of total state aid expenditure in the EU-27 plus the UK. Germany also granted the most state aid for COVID-19 (EUR 63.66 billion or 28% of total aid).

The general trend over the last decade shows a steady increase in state aid expenditure, with a big jump in 2020 due to the COVID-19 crisis.

In Slovenia, crisis measures were adopted on the basis of 10 national intervention laws,<sup>37</sup> which previously had to be aligned with the statutory conditions of the Temporary Framework and the conditions of Art. 107 point (2) point (b) of the TFEU in order to deal with the consequences of the damage caused by the COVID-19 pandemic.

Of course, not all measures implemented under the intervention laws constituted state aid. The total direct volume of COVID-19-related measures in 2020 and 2021 amounted to EUR 4.5 billion, while state aid accounted for EUR 2.3 billion, representing just over 51% of the total expenditure for this purpose.

Measures that did not constitute state aid were mainly those aimed at all entities in Slovenia under the same conditions (non-selective measures), measures aimed

35 Aggregate information on state aid expenditure on the EU and national levels is provided by Scoreboard, an analytical database produced annually by the European Commission.

36 The agreement on the UK's withdrawal from the EU came into force on 1 February 2020.

37 The act on intervention measures to contain the COVID-19 epidemic and mitigate its consequences for citizens and the economy, Official Gazette of the Republic of Slovenia, no. 49/20, and subsequent amendments, and about 10 other laws regulating intervention measures for citizens and businesses.

at natural persons not engaged in economic activity (e.g. vouchers and social assistance) and measures aimed at public services (health and education).

Slovenia applied the following points of the Temporary Framework to implement the state aid measures: 3.1. Aid in the form of direct grants, repayable advances or tax incentives (ceiling of EUR 800,000 per company, increased to EUR 1.8 million on 28 January 2021 and to EUR 2.3 million on 8 November 2021); 3.2. Aid in the form of loan guarantees; 3.3. Aid in the form of subsidised interest rates on loans; 3.4. Aid in the form of guarantees and loans channelled through credit or other financial institutions; 3.6. Aid for research and development in the field of COVID-19; 3.8. Investment aid for the manufacture of products related to COVID-19; 3.10. Aid in the form of paid subsidies to employees to prevent redundancies during the COVID-19 outbreak (aid limited to the reimbursement of 80% of an individual worker's salary); 3.12. Aid in the form of support for non-covered fixed costs (limited to an aid amount of up to EUR 3 million per undertaking, on 28 January 2021 the aid amount was revised to EUR 10 million per undertaking, and on 18 November 2021 the limit was increased to EUR 12 million).

Most funds were allocated under Action 3.1 of the Temporary Framework as they were also the easiest to allocate. A significant part of the funding was allocated under point 3.10, which allowed for assistance to reimburse wage compensation of up to 80% of labour costs for workers on waiting time. Under this point, aid for part-time work was also granted.

Data published in the State Aid Report 2019–2021 show that the greatest amount of state aid in Slovenia was granted to companies to reimburse 100% of the wage compensation for workers put on furlough. The aid was thus granted under the first, sixth, and eighth intervention laws. These aids were granted to the tune of EUR 558.13 million and benefited 47.575 market operators. This measure has clearly been effective as Slovenia today has the lowest unemployment rate since the pandemic ended and, at the same time, many companies have been able to retain key personnel for their activities thanks to this measure, noting that economic growth in Slovenia since the end of the pandemic has also been above the EU average.

In second place in terms of the volume of aid is aid granted in the form of a monthly basic income of EUR 411.69 million, as granted to 57.235 market operators.

Among the larger and more important aid measures is one contained in the first intervention law aimed at exempting workers who were working during the pandemic from the need to pay contributions. This type of aid amounted to EUR 360.54 million as was received by 57.679 market operators.

Aid in the form of the partial reimbursement of uncovered fixed costs was granted in the amount of EUR 316.72 million to 16,073 market operators.

Further, 14,811 companies benefited from aid to reimburse wage compensation for workers put on furlough by companies, receiving up to 80% of the compensation totalling a value of EUR 108.43 million.

Other measures were granted aid of less than EUR 100 million.



In Slovenia, the most widely used aid instrument was the grant (i.e. subsidy), representing 63.5% of all aid granted. Together with the instrument for reduction in social security contributions, this accounts for 87.6% of all aid granted to remedy the effects of COVID-19.

Aid granted in the form of soft loans and guarantees accounted for just 5.2% and tax exemptions, exemptions, and reliefs for a mere 0.11% of aid, and they are mainly measures involving reducing the payment of rent for publicly owned premises.

In terms of the size of the market operators receiving aid, by far the largest share of aid was received by micro enterprises. These are enterprises employing up to 10 people. Micro enterprises received EUR 945.28 million in aid.

Small enterprises employing between 10 and 49 people received almost half as much aid (EUR 528.78 million). Medium-sized enterprises (50–249 employees) were given EUR 270.86 million in aid and large enterprises (more than 250 employees) EUR 426.32 million, which is 19.63% of all the COVID-19 aid.

Aid toward the end of the COVID-19 pandemic was scaled back and refocused on measures targeting recovery from the COVID-19 crisis and stimulating investment in green and digital transitions. The latter has become even more relevant since the energy crisis erupted in the wake of the war in Ukraine.

The European Commission is committed to updating the collection and monitoring of information on the use of COVID-19-related measures. The aim is for countries to recover as quickly as possible from the effects of the COVID-19 pandemic and accelerate the double green and digital transitions, while ensuring that crisis support measures are phased out in line with economic developments. It is important that Member States and the European Commission take the right measures to allow economic operators to recover quickly from the crisis of the COVID-19 crisis and to be prepared to face a new energy crisis, this time caused by the military invasion of Ukraine, an important country in Europe.

It is vital to actively monitor and measure the performance of state aid to ensure that public funds are used efficiently and channelled toward actions with clear and measurable results that best contribute to achieving policy objectives. In Slovenia, assessing the performance of state aid is the responsibility of line ministries and other donors that design measures and channel public funds to selected policies and projects. The regulation on data transmission and reporting on state aid and *de minimis* aid<sup>38</sup> was adopted, which requires the responsible government department to notify the aid and then submit a report assessing the performance of the state aid granted. In so doing, it must follow the specific guidelines adopted in 2004 for measuring the effectiveness of state aid granted.

The mentioned report states that the Ministry of Finance's examination of these performance reports reveals that not all donors fully comply with the provisions and deadlines of the Regulation and the Instruction. The reports are hence often deficient, with an opaque structure of objectives and indicators, making it difficult to

38 Official Gazette of the Republic of Slovenia, no. 61/04, 22/07 and 50/14.

determine whether the results are in line with the objectives of the scheme and the actual performance of the measure. The Ministry is therefore part of a cooperation project under the Structural Reform Facility being prepared and implemented by the European Commission. The goal of this project is to identify, with the help of relevant experts, a suitable set of targets and indicators for specific areas that would allow donors to monitor the performance of public spending on state aid and target resources to measures that have a positive impact.

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#### **4. Selected cases of controversial state aid and case law in the EU and Slovenia**

Since 2012, the European Commission has been implementing a roadmap to modernise the area of state aid. The legislative package has noticeably strengthened Member States' accountability and boosted cooperation between the Commission and Member States on the enforcement of state aid law. As a result, Member States are granting more aid without prior control by the European Commission. The European Commission has thus had to boost its follow-up measures to ensure that Member States correct distortions of competition by recovering aid paid in breach of the state aid rules. In order to further clarify the European Commission's rules and procedures governing the recovery of state aid and how the European Commission works with Member States to assure that they are complying with their obligations under EU law, the European Commission published a Commission Notice on the recovery of unlawful and incompatible state aid.<sup>39</sup> The Notice is addressed to the authorities in the Member States responsible for implementing the decision in which the Commission ordered the recovery of state aid (the recovery decision).

Art. 4 para. (3) of the TEU provides that Member States are to support the EU in the performance of its tasks. The EU and the Member States must, following the principle of sincere cooperation, assist each other in the performance of these tasks to achieve the EU's objectives. The European Commission and the Member States must cooperate in good faith in all stages of the state aid procedure, especially during the investigation pursuant to Art. 108 para. (2) of the TFEU. Since cooperation is smooth during the investigation, implementing the recovery decision becomes quicker and easier.

The recovery of state aid is not a penalty, but the logical consequence of a finding that the aid was unlawful. Irrespective of whether the source of the recovery obligation is a recovery order or a recovery decision, the Member State concerned must effectively and immediately implement the recovery in accordance with the

<sup>39</sup> Commission Notice on the recovery of unlawful and incompatible state aid, 2019/C 247/01, OJ C 247, 23.7.2019, 1–23.

Procedural Regulation. The measures taken by Member States must not only consider effective implementation of the recovery decision as their objective, but also achieve it in practice.

#### ***4.1. Examples of state aid litigation in Slovenia***

In Slovenia, state aid is usually granted under the rules of administrative procedures, which is why dissatisfied parties can appeal to the Administrative Court of Slovenia that provides judicial protection of the rights and legal interests of the parties against the decisions of public authorities. However, a decision of the Administrative Court can be appealed to the Supreme Court of Slovenia. A few ‘sample’ litigation cases are listed below.

Case U-3/2005 of 21.03.2008 concerned an error of substantive law in the application of state aid to post-earthquake reconstruction. The regulation governing state aid under the *de minimis* exemption does not apply to the transport sector, which is subject to special rules. National law does not distinguish between the beneficiaries of the state aid in question by virtue of the activity in which they are engaged. It is for the administrative authority to take a decision that is in harmony with EU law. In its decision, the Slovenian government’s Office for Structural Policy and Regional Development unjustifiably rejected the applicant’s application to register business damage caused by the earthquake of 12 July 2004. On 11 November 2004, the Slovenian government decided that the state aid in question should be granted under the *de minimis* rule in respect of the business damage. However, undertakings in the transport sector are ineligible for *de minimis aid* under the EU Regulation. The competent authority responsible for granting that aid therefore considered that the grant of state aid to the undertaking as infringement of the rules on the grant of state aid under the *de minimis* rule. The applicant submitted that the *de minimis* rules do not apply to the present case as the matter concerns compensation for damage caused by natural disasters, as is expressly authorised by Art. 107 para. (2) of the TFEU. The Court of First Instance annulled the order on the grounds that the competent authority had not applied the relevant rule.

The Minister of Labour, Family and Social Affairs issued a call for tenders to promote the development of social entrepreneurship II under the 4<sup>th</sup> development priority ‘Equality of Opportunities and Promotion of Social Inclusion’ and ‘Social Inclusion’ of the Operational Programme for the Development of Human Resources for the period 2007–2013 and granted the applicant funding of up to EUR 292.910. The Minister also explained in his statement that the earmarked EU funding represented 85% of the total eligible public expenditure for the eligible project costs. The dedicated funds of the Slovenian participation represented 15% of the total eligible public expenditure for the eligible costs of the project. The applications were evaluated by an expert panel. One applicant complained that it was not selected because it was ranked lower than the project selected for co-financing. The complainant stated the project selected for co-financing had already been financed from other public

sources, meaning that it was no longer eligible for new public funding. This anomaly was identified by the relevant department at the Ministry, but not considered by the expert panel, which nevertheless ranked this controversial application high on the list. As the selected project had already been financed and was unlawfully included on the list, the Appellate Body annulled the award of state aid and referred the case back to the Court of First Instance for reconsideration.

In UPRS Judgment I-U-183/2019-8, the Court ruled on the eligibility of direct payments in agriculture under Commission Regulation (EU) No. 702/2014 of 25 June 2014 declaring certain categories of aid in the agriculture, forestry, and rural areas compatible with the internal market in the application of Arts. 107 and 108 of the TFEU. This EU Regulation provides for exceptions to the general prohibition on state aid. Member States are not allowed to adopt a state aid scheme that would allow the granting of aid to an extent exceeding that allowed by the Regulation. The addressee of the Regulation is hence the Member State and the claimant could not therefore claim any rights under it. The applicant could not therefore succeed on the grounds that the scheme (adopted by Slovenia) is stricter than the Commission Regulation and that the decision to refuse state aid was thus unlawful. A Member State would infringe the Commission Regulation only if the aid scheme provided for in the programme exceeded the criteria found in the Regulation.

In the more recent case UPRS Judgment I-U-635/2022-7, on 19 October 2022, the Administrative Court of the Republic of Slovenia decided on the compatibility of the state aid for COVID-19 under the intervening Slovenian law (ZIUOPDVE)<sup>40</sup> in relation to the EU's rules (specifically Commission Regulation (EU) No. 651). The company seeking aid for COVID-19 had, as of 31 December 2019, accumulated losses owing to which more than half of its subscribed capital had disappeared, making it a 'company in difficulty' under Art. 18 para. (2) point (a) of Regulation 651/2014 and as such not eligible for the partial reimbursement of uncovered fixed costs. The company, as the claimant in the dispute, stated in its submission that when assessing the condition of the 'undertaking in difficulty' the competent authority must also consider the exceptions stated in point 3.12 of the fourth amendment to the Temporary Framework<sup>41</sup> and that it, as a micro enterprise not involved in insolvency proceedings and not subject to operating restrictions as part of the state aid received, met the conditions found in point 3.12 of the fourth amendment to the Temporary Framework. In the proceedings, the competent authority noted that the application of the Commission Communication – Temporary Framework on state aid measures to support the economy following the outbreak of COVID-19 – was not binding on

40 Law on intervention measures to mitigate the consequences of the second wave of the COVID-19 epidemic, Official Gazette of the Republic of Slovenia, no. 175/2020.

41 Fourth amendment of the Temporary Framework for state aid measures to support the economy in the event of an outbreak of COVID-19, 2020/C 91 I/01, OJ C 91I., 2020.3.20, 1–9, and amendment of the Annex to the Communication from the Commission to the Member States on the application of Art. 107 and 108 of the TFEU to short-term export-credit insurance, 2021/C 497/02, OJ C 497, 10.12.2021, 5–13.

Member States by its very content since this document merely sets out the types and amounts of aid that a Member State may apply. It also follows from Art. 288 of the TFEU that the Temporary Framework is not a binding act, but merely constitutes guidelines or an external framework within which the content of specific aid measures is defined by each Member State in its own legal order. I fully agree with and support this view of the Administrative Court. While the Temporary Framework allows for the provisions on ‘undertakings in difficulty’ not to apply to micro and small enterprises (like with the case of the specific company complaining), that exception has not been transposed into Slovenian law, and therefore micro and small enterprises requesting aid could not be ‘undertakings in difficulty’ as of 31 December 2019. The case clearly shows how the shared competence between the EU and the Member State works in practice.

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## 5. Conclusion

Finally, from the above-mentioned cases, the following conclusions regarding the validity of the three hypotheses, partially or fully, may be drawn.

Hypothesis 1 is fully supported. The definition and regulation of state aid is an exclusive competence of the EU and Member States have as much autonomy in this respect as the EU decides to leave to them. Recent events have made it clear that the EU Commission has been setting general exemptions from prohibited state aid, leaving it up to the Member States to define more precisely the criteria for granting state aid considering the framework established by the EU Commission.

Hypothesis 2 is also fully supported as the COVID-19 crisis has shown how important it has been for countries to be able to intervene independently with public funds to mitigate the adverse effects of the COVID-19 pandemic. At the same time, the EU has even temporarily waived its strict fiscal rule, although countries will certainly have to comply with it in the years to come.

Hypothesis 3 is also supported in view of the fact that this ‘shared competence’ varies in practice and depends on both the EU Commission and, in particular, the case law of the CJEU, which is the sole interpreter of EU law that overrides national law.

One may conclude that the area of state aid is a complex legal and economic domain that continues to evolve and change depending on the objectives set by the EU and actual world circumstances, presently considering two particular crises: the energy crisis and the security crisis, which were both triggered by the war in Ukraine.

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