

Subsidies to investors - meaningful state aid or a political promotion?

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Main findings of the research and recommendations

Subject research

Transparency Serbia conducted the research "Subsidies to Investors -the purpose of the state's duty or prosperity "in 2016/2017, within which It has analyzed the state aid system, the system of subsidies (in accordance with the Law on Investment), the practice of the State Aid Control Commission, and some twenty concrete state aid cases, **from the perspective of transparency, fulfillment of goals and purposes of subsidies, reporting and control**. Within the framework of this analysis, a review of the current regulations is given, as well as the media reporting on state aid.

Starting points

It is a matter of a kind of continuation of the research conducted by the "State of Honor - Proclaimed Investment or hidden corruption "¹ from 2014/2015, which has attracted great interest in this area. At that time we have found that there is no **adequate mechanism of control, accountability and sanctioning** the granting of State aid beyond the law, nor a **mechanism for determining the usefulness** of the state aid. The analysis indicated that the money is often wasted unintentional.

Changing the legal framework and the environment

In the meantime, it was announced that **the practice of granting enormous state aid to state-owned enterprises** (which were were largely the samples in the first survey) **is put to an end**, the Law on Investments was adopted and **the regulation** that regulates the allocation of incentives for direct investments **was amended several times**. It was therefore necessary to reopen some of the the issues that were in the focus of the first research. On the other hand, with the fact that **the new factories, jobs, investors**, are for several election cycles **one of the main trump cards of all governing sets**, the additional questions have been raised - not only the purposefulness of individual decisions on the allocation of state aid, but **the economic justification of the whole system of subsidizing investors** and the political ab(use) of the subsidies.

Main conclusions on points

1. The data on subsidies and reports are not transparent. Transparency is further reduced by the extremely controversial decision of the State Aid Control Commission that there is no need to declare subsidies granted under the Regulation on the conditions and method of attracting direct investment, even in the case of subsidies that are given without a public call.

¹ State Aid – a deliberate investment or a hidden corruption, Transparency Serbia, 2015
http://www.transparentnost.org.rs/images/dokumenti_uz_vesti/Drzavna_pomoc_izvestaj_februar_2015.doc

2. There are **significant cases** of granting enormous amounts of state aid, especially in the period from 2010 to 2013, **which are not notified to the State Aid Control Commission**. Some of these cases, the SACC subsequently considered and approved state aid. There are also cases in which this controlling body has not been the subject of any subsequent consideration of state aid, or at least has not made a decision on it.

3. In some cases, **the Law** has been violated by the fact that state aid **has been undeniably granted in an amount exceeding the allowed limit**. **No one was found responsible for this** (neither the regulations foresee the possibility of a responsibility of any of the state officials), **and the Commission did not make a decision on the repayment of funds**.

4. **The Commission** (as indicated in the report of 2015) **made certain controversial decisions** or decisions that contained **errors and contradictions** (for example: it has refused to consider granting of a subsidy on the basis of a proposal for a treaty, and considered it on the basis of a memorandum; it has proclaimed itself unsurpassed in one case, although it was obliged to act; in the solutions of SACC the wrong amounts of subsidies or number of employees were cited). **The legal position of the Commission** (unchanged in relation to the previous survey) **is undefined** and represents a strange hybrid between the working body of the Government and an independent body.

5. **A sub-legal document** (whose adoption was announced in 2013), which would regulate **the procedure for determining the usefulness of state aid, was not adopted**.

6. The procedure for determining **the achievement of the objectives** of granting state aid to investors, in accordance with the Law on Investments and the Regulation on the conditions and manner of attracting direct investments, is precisely determined. If it is judged according to the documents in which TS had an insight (although it did not receive all the requested documents) the procedure is being implemented. This **area has been significantly improved**. Namely, the aim and the purpose of the subsidies are now **very easily set up** - support the user to invest a certain amount in order to realize an investment project and open a certain number of jobs.

7. **There remains a controversial pervasiveness of the whole system of subsidizing** the opening of the new jobs, or the investment investments. In addition to **the economic justification**, for which neither supporters nor opponents of subsidies have presented a comprehensive and detailed analysis, the question of **political ab(use) of subsidies** is raised in order to gain voters in the environments in which the investors are brought in and possible additional (invisible) conditions that are they set up to investors.

Findings of the research

Although **the most pressing issues of the state aid have not been resolved, the system has been upgraded in relation to 2015**. It is undoubtedly that, regardless of the important issues of increasing economic justification or the disadvantage of granting subsidies and the political background of the entire system of subsidies, the present system represents progress. Now, the recipients of state aid require **a concrete investment and a precise**

number of newly employed people, with the provision of credible evidence (an auditing house prepares a report, the Central Registry of the bond payer reports on the number of employees). We remind that in the system described in the TS report from 2015, the money is divided for fluid and insurmountable goals, whose realization was not even followed. This, however, **is not sufficient to conclude that the progress has been made in the area of state aid.**

Since February 2017, **SACC does not announce the granting of subsidies to investors. Excerpts from the contract can no longer be found on the SACC website** (where they were previously quoted in the permissions decision). **There are no mechanisms for controlling the achievement of state aid allocation targets** for those cases that are not covered by the regulations on direct investment.

Failure to clarify the SACC on subsidies to investors is a consequence of a February 2017 decision stating that the Commission has determined that **the Government Regulation on the conditions and method of attracting direct investments** is in line with the **Decree on rules for the granting of state subsidies** and that the draft contracts will not be submitted to the SACC in the future.

The first **consequence of this decision** will be that **the Government, or the Ministry of Economy**, together with the Council for Economic Development and Development Agency, choose **who they will grant a subsidy, or the state aid, without a call for competition, and then will themselves control** whether the contract is concluded in accordance with the rules on state aid control. There will be no obligation to publish any document (before publishing the annual report on the work of the Economic Development Council).

And the other consequence directly affects **the lower transparency**. The Commission's decisions provided an opportunity for the public to find that certain contracts (which were otherwise unknown) were concluded. On the basis of this information, citizens, NGOs and the media could ask the Ministry of Economy (or the State Aid Control Commission) for the copies of the contract, in order to determine not only what subsidies were given to investors, but also the possible acceptance of other obligations by the Republic of Serbia. Considering that the Ministry concludes that it concludes the contract, and that there is no obligation to publish the Government's conclusions, **the public will be left at the will of the Government representatives- whether it will announce or not that the contract is concluded**. Another possibility will be the "random" and periodic submission of requests for the submission of all contracts concluded in a previous period.

Observations on the individual cases

The "Belgrade on Water" project had its controversy in the practice of the Commission for State Aid Control. In its decision of 22nd July 2015, the Commission concluded that the contract of the Republic of Serbia, Belgrade on Water LLC, the "Belgrade Waterfront Capital Investment" LLC from UAE and "Al Maabar Investment International" LLC from the UAE does not apply to state aid . Nevertheless, It has analyzed the contract and ultimately concluded that " the Republic of Serbia was, at the time of the inclusion of the contract, acting as a

private investor, realistic and rational, and the compensation to the Republic of Serbia for the transfer of land rights was determined in accordance with market principles". The issue, however, is with regard to the account that has been applied (more details in the chapter "Analysis of the Commission's practice of controlling state aid").

For the analysis within this project, 27 companies, ie (potential) cases of state aid were selected based on the solution we found on the website of the Commission for State Aid Control and media reports (news about investors who received subsidies or investors who "come" to Serbia "with" support from the Government of Serbia ").

After the cases in which no subsidies were granted were removed from the sample, **a total of 21 cases were analyzed**. The subsidies were granted to the following companies: NCR LLC Belgrade; Mei Ta; Johnson Electric; Lear Corporation; Delphi Packard LLC Novi Sad; Aunude; Leoni Wiring Systems Southeast doo Prokuplje; Kontitek fluid Serbia Subotica; Yura Racha; Yura Nish; Yura Leskovac; Technic development LLC (Geox) Vranje; Tibet fashion; Tigar Tires; Falke Serbia ; SR Technics Services ; Streit Nova; Teklas Automotive; Truck Lite Europe; PKC Wiiring System; Mitros.

In most of the cases analyzed, specificities or irregularities were identified. The details are presented in the chapter "Analysis of Mechanisms for Determining the Purpose of State Aid", and here are a few examples:

1. What is specific to the state aid of **NCR doo Belgrade**(which illustrates the way in which subsidies were shared during the time of Mladjan Dinkic's ministry) is that during the review of the state aid contract from 2015, the SACC has established (based on the statement of the user about whether he was or is a beneficiary of state aid) that the **assignment of assistance was in 2011 and 2013, and that the Commission did not consider the permissibility**, so that in February 2016, it initiated the procedure of ex-post control.
2. The specificity of the subsidy for **Mei Ta** companies in the amount of EUR 22.71 million is that the Ministry of Economy has signed the contract by referring to **the SACC solution that has not yet been issued**.
3. For the subsidy of the companies **Johnson Electric**, it is specific that from the report submitted by the Ministry of Economy, TS sees that there was **at least one more subsidy** for Johnson Electric, which the **SACC had not considered** and was not informed of it in the request for a declaration of a subsidy from 2016.
4. When considering the permissibility of the aid to **Leoni Wiring Systems Southeast doo Prokuplje**, the SACC found that **there was a previously granted subsidy**, which was subsequently considered in the subsequent proceedings.
5. TS has considered subsidies for **Yura factories in Racha, Leskovac and Nish**. It turned out that there is **only one SACC solution** that pertains to the permissibility of state aid granted to the company Yura Raca for opening a plant in Leskovac. Correspondence with SACC on this occasion was presented in the "SACC Practice Analysis". Data on these investments granted during the time of Minister Mlađan Dinkic can be found in media outlets, and the TS obtained information on the realization and data on the state of the number of employees from the Ministry of Economy.
6. SACC has not considered (or at least not issued and / or announced a decision) on the

grant of a subsidy for **Technic development LLC (Geox) Vranje**. TS determined on the basis of the collected data that the Commission **had to consider the admissibility of this subsidy, had to make a negative decision and request the return of the subsidy**, because the limit was exceeded, ie the intensity of the state aid was higher than the allowed one.

7. With the subsidy or investment of **Tiger Tyres**, we found that the user invested in construction objects the amount that is rarely met-81, 46 million euros (not controversial with the application of the Law)!

8. The agreement with **Teklas**, which opened the plant in Vladichin Han, was concluded at the time of the regulation that allowed the salaries of workers at the minimum wage level in Serbia to be paid in the poorest municipalities, instead of 20% higher than the "minimal". Thus, the smallest net salary paid for Teklace workers in 2016 amounted to **RSD 20,328**.

9. In the case of a subsidy for **Mitros Fleishwaren**, if the exclusion of the justification of the change in the investment project (and the Government's decision to give consent to the amendment), which **delayed the employment** and reduced investment in equipment in favor of construction works, did not find any irregularities in terms of the issue the dynamics of the realization of investments and employment after the change of the plan and dynamics and the amount of the payment of subsidies. It is controversial, however, why the SACC did **not consider the granting of this subsidy**. In the contract TS did not notice the elements that could affect the fact that this subsidy is derived from any framework laid down by the regulations in force in this area. However, the SACC made **the controversial decision that it was an investment in the field of agriculture, and that it was not responsible for it**. Particularly disputable is the order of action on the relations between the Ministry of Economy - State Aid Control Commission - Transparency Serbia, which is described in detail in the chapter "Analysis of mechanisms for determining the usefulness of state aid"

Main recommendations

1. **Consideration of the need for the further existence** of the State Aid Control Commission, taking into account the number of exceptional cases of State aid granting in the existing legal framework and the practice of approval; alternatively: taking over its affairs by the Commission for the Protection of Competition or amending the legal framework;
2. Clearly **defining the legal position of the State Aid Control Commission** in accordance with the principles of the Public Administration Reform Strategy, in order to know whether it is a state body, the working body or, a third form of organization;
3. Introduction of **a legal mechanism for the collection of data** on regulations, business acts and transactions that may constitute state aid, so that the control would not depend on the good will of the donor, with the opening of data and the crossing of data from the bodies of the authorities
4. **Publication of data on granting subsidies** - contracts and reports of independent auditors on the fulfillment of set conditions for payment of tranche;
5. Determination of **the obligation to recover funds** in case of a non-purposeful use or ban on the allocation of funds to that user, as well as penalties for responsible persons;

6. Determining **whether the obligations related to the payment of salaries have been fulfilled** (based on the collected data, it is not clear which will be the minimum wage costs within two years after reaching the full employment volume, which is used as a basis for determining the subsidy allowance)
7. Setting up a system for **fulfilling the purpose** of state aid in cases that are not subject to the control of the State Aid Control Commission
8. Prescribing **penalties for non-reporting of state aid**, illegal allocation and other offenses that are not currently covered
9. Start **proceedings due to the observed cases of non-compliance with the rules**
10. Establish **precise rules for the method of promoting** the granting of state aid by the representatives of the authorities and completely **prohibit the organization of such promotional activities during the election campaign period.**
11. Present to the public **all the arguments** in support of the current system of state aid allocation and **confront them with the arguments of the critics** at the public hearing in the National Assembly.

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