

***THE IMPACT OF THE GLOBAL FINANCIAL AND ECONOMY CRISIS ON RULES  
OF STATE AID IN THE EU WITH SPECIAL FOCUS ON THE SLOVAK REPUBLIC***

By

Lydia Baluchova

Submitted to

Central European University

Department of Legal Studies

Short thesis in partial fulfillment of the requirements for the LL.M degree

Supervisor: Professor Jules Stuyck

Budapest, Hungary

2012

## EXECUTIVE SUMMARY

The rules of State Aid have been an integral and unchanging part of the EU competition law from the beginning of the European integration. Due to the global financial and economic crisis, the State Aid temporary rules were established. The aim of this thesis was legal examination and assessment of the State Aid rules with special focus on their implementation in the Slovak Republic. It can be concluded that importance of the State Aid significantly increased, and it became one of the main tools which helped to maintain an economic stability of the EU. The European Commission introduced variety of measures to avert the adverse effect of the crisis with the help of State Aid both, in financial sector and real economy. Although Slovakia implemented several of them, and the total amount of the granted State Aid increased during the crisis, it was not utilized effectively, and Slovakia did not use its chance for improvement. In fact, the State intervention during the crisis rather harm than improved competition in this Member State.

## ACKNOWLEDGEMENTS

*I would like to thank the Central European University Foundation for providing me an opportunity to conduct my short research in the Library of European University Institute, Italy.*

*The work is dedicated to my parents, who provided me with encouragement and enabled me to study at CEU, to my dearest sister for her support, and especially to my nephews Michal and David, who are my everyday inspiration.*

# TABLE OF CONTENTS

<b>INTRODUCTION .....</b>	<b>1</b>
<b>1. State Aid in the EU .....</b>	<b>4</b>
1.1. STATE AID AND EU OBJECTIVES .....	4
1.2. CONCEPT OF THE STATE AID .....	5
1.3. BASIC FEATURES OF THE STATE AID.....	7
1.4. COMPATIBILITY WITH THE COMMON MARKET .....	10
1.5. STATE AID IN THE SLOVAK REPUBLIC .....	13
<b>2. The Global Financial and Economic Crisis .....</b>	<b>19</b>
2.1. ORIGIN.....	19
2.2. EUROPEAN ECONOMY RECOVERY PLAN .....	21
2.3. IMPACT OF THE GLOBAL FINANCIAL CRISIS ON THE SLOVAK REPUBLIC.....	22
<b>3. State Aid temporary rules established in response to the economic and financial crisis...27</b>	
3.1. FINANCIAL SECTOR .....	28
3.1.1. <i>Protection of the financial sector in the Slovak Republic.....</i>	<i>34</i>
3.2. AUTOMOTIVE INDUSTRY .....	37
3.2.1. <i>Scrapping scheme in the Slovak Republic.....</i>	<i>37</i>
3.3. HORIZONTAL RULES .....	39
3.3.1. <i>Implementation of the measures introduced by Temporary Framework in the Slovak Republic</i>	<i>43</i>
3.4. ASSESSMENT OF THE TEMPORARY STATE AID RULES .....	46
3.4.1. <i>Efficiency in the Slovak Republic.....</i>	<i>50</i>
<b>4. Case Study .....</b>	<b>54</b>
4.1. PUBLIC LOAN GRANTED TO ŽELEZNIČNÁ SPOLOČNOSŤ CARGO SLOVAKIA, A.S.....	55
4.1.1. <i>Existence of the State Aid.....</i>	<i>56</i>
4.1.2. <i>Compatibility with the Common Market.....</i>	<i>59</i>

4.1.3. Conclusion .....	61
<b>CONCLUSION.....</b>	<b>62</b>
<b>BIBLIOGRAPHY .....</b>	<b>65</b>

## LIST OF ABBREVIATIONS

CJEU	=	The Court of Justice of the European Union
EU	=	European Union
GDP	=	Gross Domestic Product
R&D	=	Research and Development
SME	=	small and medium – sized enterprises
SR	=	Slovak Republic
TFEU	=	Treaty on the Functioning of the European Union
TEU	=	Treaty on the European Union

## LIST OF GRAPHS

**Graph 1:** Real GDP growth rate in EU (27) and the Slovak Republic

**Graph 2:** Total State Aid (as a % from GDP) from 1992 to 2010 in EU (27)

**Graph 3:** Concentration of aid on individual financial institutions and within each Members State

**Graph 4:** Total volume of State Aid in Slovak Republic during 2002 – 2010

## INTRODUCTION

The rules of State Aid have been part of the competition law in the European Union for several decades. Combination of legal, economic and public policy issues, made it sometimes less esteemed, and often neglected by professionals, and by public as well.<sup>1</sup> However, the situation changed and State Aid never had to face such strong pressure, as it happened during the past few years.

The cause of the increased attention to State Aid was, and partly still remains, the global economic and financial crisis<sup>2</sup>, which affected the EU as a whole, but also each of the Member States individually. In the fight against its adverse effects, the EU used various weapons, among which, the State Aid belonged to the most important. Thus, as Nicola Pesaresi and Marc van Hoof aptly point out, the overlooked, ugly duckling changed into a beautiful swan.<sup>3</sup>

But the route was not easy, and without obstacles. The European Commission, which undeniably played the most important role in this process, had to react promptly, and therefore adopted temporary rules to protect EU before systemic crisis. But on the other hand, it had to be careful not to cause undue distortions of competition and trade among Member States.

The Slovak Republic became a member of the EU in 2004, and member of the European Monetary Union in 2009. Immediately after its entry, it was ranked among the countries with the fastest growing GDP, and became the biggest automotive producer in Europe. Unfortunately, Slovakia was hit by the crisis on its

---

<sup>1</sup> Tosato et al. *EU Competition Law*. Vol. 4. Leuven: Claey's & Casteels, 2006, p.1

<sup>2</sup> For recent crisis I will use term global financial and economic crisis as it is used in all EU documents.

<sup>3</sup> Tosato, op.cit.



way to success. In order to overcome this unpleasant situation, also this country used opportunities, which were introduced by the temporary State Aid rules. The issue of State Aid in Slovakia was often controversial even before crisis, so it had a chance to improve perception of this tool and its proper use.

This thesis will provide an overview of legislative changes in the area of State Aid in EU caused by the global financial and economic crisis. I will examine, which of the temporary instruments were implemented in the Slovak Republic, and I will try to assess their impact and efficiency for the competition, and economic situation of this country.

The problematic issue is explained in four main chapters, developing a picture of what was the role of State Aid in the EU, and especially in the Slovak Republic during the financial crisis. The first chapter deals with the legal basis of the State Aid established by TFEU, and the State Aid legal framework in Slovakia. These rules have been valid before, and remain as the legal basis also during the crisis, thus represent starting point of my research. It is important to know evolution of the crisis, and economic consequences to assess and understand the role of the State Aid in it. Therefore, the second chapter monitors the impact of the crisis on the EU as a whole, and also on the Slovak Republic. The third chapter examines temporary State Aid rules, both sectoral (only financial and automotive sector) and horizontal, and the way they were implemented in the Slovak Republic. At the end of this chapter, I will try to assess their efficiency and impact. Last chapter contains one Slovak controversial case, where I want to apply knowledge gained by this research, and prove my previous statements. In Cargo case, decision has not been delivered yet, so I will try to estimate possible result.

Even when I used several economic indicators, my aim was to assess the problem from a legal point of view, thus I drew mainly from original sources. It means Treaty, Communications, Frameworks and Slovakian Acts, which I complemented with available literature from the field of the EU competition law. I had to cope with lack of publications about the Slovak Republic, as well as absence of actual and detailed statistics at national level. I found only very few Slovakian authors, who dealt with the impact of the crisis on State Aid especially in Slovakia, therefore I believe this thesis will be my contribution to the field.

Already in the beginning, it should be pointed out, that there were three factors that significantly influenced the creation of this work. Topic of this thesis is extremely current and constantly developing. Secondly, crisis itself or its consequences, still affects the European economy, and therefore it is very difficult to evaluate its impact on State Aid. Some of them will be visible only after certain time. Finally, the topic for its legal, economical, and political nature goes beyond the limits of this thesis, and I hope this research will stimulate further investigation in this field.

# 1. State Aid in the EU

*State aid rules are part of the solution, not part of the problem.*<sup>4</sup>

Neelie Kroes

The concept of the State Aid form an integral part of the EU competition law and as a motto indicates, it became a major weapon in fight against the Global financial and economic crisis. Hence, for the further assessment of the crisis impact, it is important to know the basic rules and their application. In this chapter, I will characterize nature of the State Aid, its legislation and features in EU context. These rules are effective also in the Slovak Republic, which became a part of EU in 2004. Thus, in the end of the chapter I will describe particular treatment of State Aid in this Member State, which my whole thesis is focused on.

## 1.1. State Aid and EU objectives

The establishment of internal market with highly competitive social market economy is among core aims of European Union defined in Article 3 of the TEU. Moreover, it is within an exclusive competence of the Union to establish rules of the competition necessary for the functioning of the internal market.<sup>5</sup> Issue of the State Aid is directly connected to realization of the free and undistorted competition and market integration, so it should be seen and interpreted in the reflection of these objectives.

---

<sup>4</sup> Europa Press Releases, European Commission, *State aid: Commissioner Kroes briefs Economics and Finance Ministers on financial crisis measures*, available at: <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/08/757&format=HTML&aged=1&language=EN&guiLanguage=en> (last visited Feb.27, 2012)

<sup>5</sup> Article 3 TFEU

Competition is a fundamental principle of the market economy, and therefore it is necessary to protect it in all areas and sectors. As Bishop and Walker correctly point out, competition is desirable, because it is able to result in innovation, low prices, cost efficiency, and also level of the consumer welfare is provably higher in the competitive markets.<sup>6</sup> But on the other hand, the Single Market of EU, which ensures free movement of goods, services, capital, and persons, can be endangered by excessive state interference into the competition between various European players. According to Nicola Pesaresi and Marc Van Hoof, the rules governing State Aid are therefore „first and foremost essential for the functioning and the protection of internal market”.<sup>7</sup> This regulation forms an integral pillar of the Rules on Competition in Title VII of TFEU and therefore I will summarize its basic features in the following paragraphs.

### **1.2. Concept of the State Aid**

Issue of the State Aid has been part of Community Law since establishment of European Economic Community,<sup>8</sup> and by closer comparison of Treaties I found out, that principles of granting and controlling of this tool have been in basic features the same from the beginning. So it means that there was no need to change or replace them, because they were useful in any situation. These basic rules, established in primary law, are supplemented by other Community legal instruments. Especially documents from Commission such as regulations, communications or guidelines are playing very important role in this area, even though some of them are

---

<sup>6</sup> Bishop, Simon. *The Economics of EC Competition Law: Concepts, Application and Measurement*. University ed. London: Sweet & Maxwell, 2010, p.15

<sup>7</sup> Mederer, Wolfgang, and B. Allibert. *EU Competition Law. Vol. 4. State Aid*. Leuven: Claey's & Casteels, 2006, 4

<sup>8</sup> Historical regulatory basis we can find in Article 92, 93 and 94 of Treaty establishing EEC which came to force on 1. January 1958

not legally binding.<sup>9</sup> I think that just thanks to them, Commission can quickly respond to the current issues or problems, such as the economic crisis. I will use in my work also decisions of the CJEU, because they can clarify many disputes, which may arise in practice by applying State Aid rules.

Currently, three Articles of TFEU are dealing directly with the State Aid.

Article 107 (1) defines basic features of the State Aid as

*any 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.*

This provision states four criteria which have to be cumulatively fulfilled in order to include some measure under the concept of State Aid:

- i. Aid must be regarded as a benefit or advantage for undertaking
- ii. It is imputable to the State
- iii. It must favour certain undertakings or sectors
- iv. It is able to distort competition and must have effect on trade between Member States.<sup>10</sup>

These requirements seem to be straightforward, but in practice their evaluation can cause several problems. Since I will use these basic criteria in fourth chapter by determination of the State Aid existence in concrete case, I consider it necessary to comment briefly on each of them.

---

<sup>9</sup> Communications are acts sui generis and they are listed in Article 288 TFEU Europa:Glossary. *Community legal instruments*. Available at: [http://europa.eu/legislation\\_summaries/glossary/community\\_legal\\_instruments\\_en.htm](http://europa.eu/legislation_summaries/glossary/community_legal_instruments_en.htm) (accessed Feb.27, 2012)

<sup>10</sup> Bacon, Kelyn. *European Community law of state aid*. Oxford: Oxford University Press, 2009, p.24

### 1.3. Basic features of the State Aid

#### i. Benefit or advantage

The CJEU has developed through its judicature several tests to qualify relevant advantage. In case SFEI v La Poste, Court stated that important is „whether the recipient undertaking receives an economic advantage which it would not have obtained under normal market conditions.“<sup>11</sup> This so-called **market economy investor principle** was defined by the Court as „.....to what extent the undertaking would be able to obtain the sums in question on the private capital markets.“<sup>12</sup> Also the Commission itself acknowledged this principle in its decision concerning the advantages granted to Ryanair by Brussels South Charleroi Airport, the airport's managing body, and the Walloon Region (Belgium) in 2001. It stated, that in order to assess, if granted advantage was in line with what a private undertaking would expect, there is a need to take into account „....the risk associated with the market concerned, the cost of the capital, the information which the undertaking possessed when it took its decision and risks inherent in the operation.“<sup>13</sup> These factors are not exhaustive, and I think they will differ from the case to case. But it demonstrates that by analyzing of the advantage, it is necessary to compare various economic parameters. If these are similar as standard parameters for particular sector and particular transaction, aid can not be considered as an advantage, because also other market players can obtain this benefit under the same conditions.

---

<sup>11</sup> Case C39/94 SFEI v La Poste [1996] ECR I-3547, para 60

<sup>12</sup> Case C- 234/84 Kingdom of Belgium v Commission [1986], ECR 2263, p.2345, para. 14

<sup>13</sup> Europa Press Release. *The Commission's decision on Charleroi airport promotes the activities of low-cost airlines and regional development (decision of No. 2004/393/EC)*. Available at: <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/04/157&format=HTML&aged=1&language=EN&guiLanguage=en> (accessed Feb 27, 2012)

The similar case, where the Commission investigated agreement between Bratislava Airport and Ryanair – here by using private investor test found out that Ryanair did not obtain advantage because airport operator behaved as a market economy investor  
European Commission decision C 12/2008, JOCE L/27/2011

## ii. State imputability and resources

The answer to the questions around this characteristic feature of State Aid was given in landmark case of *Preussen Elektra*, where CJEU held that only advantage which State granted, either directly or indirectly, through its resources can be seen as an aid in the meaning of the Article 107 (1) TFEU. So it includes kind of aid granted by the State, but also by public or private body, which the State established or designated.<sup>14</sup> Court thereby excluded possibility of hidden state financing through budgets of different bodies than itself. Also this decision demonstrates, that imputability and financing through the state resources have to be interpreted as cumulative conditions, and it is necessary to prove that both of them are fulfilled.

However, as it was stated in *Stardust Marine* case, it is not enough that State is able to control and influence public undertaking. State must actually exercise these rights over the undertaking paying out the funds.<sup>15</sup> It denotes that only possibility authority of the State is not sufficient, it must be really utilized. The issue of imputability and the issue of granting aid from State resources are,.....separate and cumulative conditions”<sup>16</sup> It means that each of these elements should be assessed individually, but both of them must be fulfilled in order to satisfy this condition.

## iii. Selectivity

The advantage in the meaning of article 107 (1) can not benefit all; it must be given to particular undertakings or sectors. In order to detect this situation, CJEU

---

<sup>14</sup> Case C-379/98 *Preussen Elektra AG v Schleswag AG*, [2001] ECR I-2099, para 58

<sup>15</sup> Case C 482/99 *France v Commission* (*Stardust Marine*), [2002] ECR I-14397, para 24, 52

<sup>16</sup> Case T-351/02 *Deutsche Bahn v Commission*, [2006] ECR II-1047, para. 103

stated that undertakings, which are in “a legal and factual situation that is comparable in the light of the objective pursued by the measure in question”,<sup>17</sup> shall be compared. This association must be made among undertakings in the same Member State, and it can’t be defended, because its main purpose was to reach equality with situation in other Member States.<sup>18</sup> It means that State Aid cannot be used as a tool for diminishing the disparities and narrowing gaps among States, which has not been achieved yet, even with the economical and political approximation.

iv. Distortion of competition and effect on trade

Although I put these two requirements together, because they are closely connected, a distinction between them has to be made, and separate evaluation is needed. The reason is simple. Even when aid distorts competition, it doesn’t automatically mean, that it has negative effect on trade between Member States, and vice versa.

It is clear from wording of Article 107 (1) that aid must not actually distort competition, a threat is enough. So in practice, there is no need to prove its real effect, but only liability to distort competition and to affect trade.<sup>19</sup> CJEU indicates basic test for determining distortion – it will examine whether this aid strengthens position of an undertaking in relation to its competitors.<sup>20</sup> It requires that beneficiary is able to gain better rank, which he would not have without State support.

Also there is no need to demonstrate the real effect on trade between Member States. What has to be shown, that there is a tendency to do it – it has to be

---

<sup>17</sup> Case C-143/99 *Adria – Wien Pipeline* [2001] ECR I-8365, para 41

<sup>18</sup> Joined cases 6 and 11/69 *Commission v France* [1969] ECR 523, para 21

<sup>19</sup> Case C-372/97 *Italy v Commission* [2004] ECRI-3679, para 44

<sup>20</sup> Case C-730/79 *Philip Morris v Commission* [1980] ECR 2671 para 11



„reasonably foreseeable” that aid would affect the trade.<sup>21</sup> As Richard Plender states, it is not only hypothetical guess or speculation, but the prospect of this effect must be really foreseeable.<sup>22</sup> To evaluate what is foreseeable, I would apply the test and ask what rational person in this situation would be able to expect. So trade between Member States does not need to be de facto affected, but the effect must be at least anticipated.

#### **1.4. Compatibility with the Common market**

Aid which fulfills all the above mentioned requirements is generally incompatible with the Common Market and therefore is in principle prohibited. But as Vestendorf and Nielsen highlight, this is not an absolute prohibition.<sup>23</sup> In certain cases State Aid is able to be compatible with Common Market and thus permissible. After careful examination of the text of TFEU, only three possibilities to reach this situation can be found. First, particular aid is consistent with Article 107 (2) TFEU. Secondly, Commission determines compatibility of the aid pursuant to Article 107 (3) TFEU. Thirdly, Council is able to decide on proposal of Commission about other permitted categories by virtue of Article 107 (3)(e) TFEU. The Council can also use its power granted in Article 108 (2) TFEU to unanimously decide that aid, which Member State is granting or intends to grant in derogation of normal rules is, in exceptional circumstances, compatible.

If any of these three possibilities are not feasible, aid is prohibited. Also aid cannot be permitted, if it contravenes with other Treaty provisions, as CJEU decided

---

<sup>21</sup> Case C-142/87 *Belgium v Commission* [1990] ECR I-959, para 35

<sup>22</sup> Biondi, Andrea, Piet Eeckhout, and James Flynn. *The Law of State Aid in the European Union*. Oxford: Oxford University Press, 2004, p.32

<sup>23</sup> Vestendorf and Nielsen, op.cit, p.9

in several cases.<sup>24</sup> Limitation on the nationality or the establishment of the recipient in the region granting the aid like it was in the case of *Du Pont de Nemours*<sup>25</sup> can be example of such contravention. Thus, the mere fact that the advantage is considered to be State Aid doesn't excuse the infringement of other rules enshrined in the Treaty.

#### I. State Aid that is compatible with the Common Market

Article 107 (2) TFEU states the categories of the State Aid, which are automatically considered to be compatible with Common Market. These exceptions must be interpreted narrowly<sup>26</sup> and they have to be notified to Commission as well, but once they were declared as compatible, Commission cannot withhold its authorization.<sup>27</sup> Since they are more or less clear and none of them was used as a basis in connection with the financial crisis, I will not characterize each of them.

#### II. State Aid that may be compatible with the Common Market

On the basis of the Article 107 (3) TFEU, State Aid may be compatible with the Common Market in case of:

- a) seriously underdeveloped areas
- b) projects of common European interest or to remedy serious disturbance in the Member State's economy

<sup>24</sup> Nicolaides, Phedon, and European Institute of Public Administration. 2008. *State Aid Policy in the European Community: Principles and Practice*. 2nd ed. International Competition Law Series v. 16. Alphen aan den Rijn: Kluwer Law International, 43

<sup>25</sup> Case C 21/88, *Du Pont de Nemours Italiana SpA v Unità sanitaria locale N° 2 di Carrara* [1990] ECR I-0889 (Du Pont de Nemours challenged a decision of local health authority, on the ground that it had been excluded from the tendering procedure for supply of radiological films and liquids because it did not have an establishment in Southern Italy what was a prerequisite set out in annex of the decision in accordance with the Italian legislation. Court held that fact that national legislation can be regarded as a State Aid it's not a justification for exemption from prohibition stated in Article 30 of Treaty)

<sup>26</sup> Case C-156/98, *Germany v Commission* [1999] ECR 2671, para 49

<sup>27</sup> Case C-730/79 *Philip Morris v Commission* [1980] ECR 2671 para 17

- c) development of certain economic activities or areas
- d) culture and heritage conservation
- e) and other categories of aid specified by the Council.<sup>28</sup>

It is exclusively up to discretion of the Commission to determine its compatibility. There have been implemented regulations to provide detailed rules of this procedure which were several times amended to increase transparency and ensure legal certainty.<sup>29</sup>

The Commission has the power to reject, authorize or ask for changes in notified aid schemes. If Member State does not agree with this decision, it can challenge it before CJEU or apply to the Council pursuant Article 108 (2) TFEU, if the procedure before Commission has not been finished yet. As Phedon Nicolaides explains, the Commission can authorize only those kinds of measures, where can be proved that it was necessary, that beneficiary did something 'extra' with received advantage, and this incentive could not be attained by market forces alone. This criterion (with two others: proportionality and compliance with policy of common interest) are integral parts of so-called "balancing test", which is used during compatibility assessment of particular measure by Commission and was established in State Aid Action Plan in 2005.<sup>30</sup> By this useful tool, the Commission can appraise the possible disturbance of competition, which has to be outweighed by the positive

<sup>28</sup> Quigley, Conor. *European State Aid Law and Policy*. 2nd ed. Oxford; Portland, Or: Hart Pub, 2009, p.133-143

<sup>29</sup> Council Regulation (EC) 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty OJ L83/1 as amended [2006] OJ L363/1; Commission Regulation (EC) 794/2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty [2004] OJ L140/1, as amended [2009] L81/15

<sup>30</sup> Phedon, op.cit., p.47 - 48

consequences of the granted State Aid. I will apply this test also in third chapter to detect compatibility of potential State Aid in Cargo case.

### III. Aid that Council determines as compatible with the Common Market

Article 108 (2) of TFEU states that Member States may apply to Council and it can decide about compatibility of State Aid, if its well – grounded by exceptional circumstances. It means that correction in Member State is necessary, because there has been change from normal conditions of some sector or even of the whole economy to some extraordinary, abnormal or outstanding event.<sup>31</sup> It is in exclusive discretion of the Council to decide whether this situation exists or not. For example in year 2002 Council authorized the grant of aid by the Netherlands, Italy and France in favour of road transport undertaking even against of Commission's disagreement.<sup>32</sup>

#### **1.5. State Aid in the Slovak Republic**

The Slovak Republic became a member of EU on 1<sup>st</sup> of May 2004 and during its development it has developed into a state “with the most dynamic economics among Central and Eastern European Countries.”<sup>33</sup> According to the Constitution of the Slovak Republic market economy shall be built on social and ecological fundamentals<sup>34</sup>. Article 7(2) of Slovak Constitution states legal binding and precedence of the community law over national. It means that with access of Slovak Republic to EU, all national legal acts that are in conflict with generally binding legal acts of EU and EC, can't be used and applied. Certainly it covers also the issue of State Aid.

<sup>31</sup> Case C-122/94, *Commission v Council* [1996] ECR I-881, p.909

<sup>32</sup> Council Decisions of 3 May No.2002/361 – 363/EC, OJ 2002 L131/12-14

<sup>33</sup> Oršulová, Andrea. *Competition Law in the Slovak Republic*. Alphen aan den Rijn, The Netherlands: Frederick, MD: Kluwer Law International; Sold and distributed in North, Central, and South America by Aspen Publishers, 2011, para.3

<sup>34</sup> The Slovak Constitution, adopted in 1992 by Constitutional Act No.460/1992 Coll, Article 55(1)

## **The legal framework of the State Aid in the Slovak Republic**

The Slovak Constitution is a legal basis, which ensures and sustains competition in the country. After division of the Czechoslovak Republic into two sovereign states in 1993, competition environment in Slovakia was largely monopolized and concentrated.<sup>35</sup> But with trade liberalization, privatization and tax reforms, Slovakia has become attractive also for foreign investors and this caused legislative changes and adjustments. Moreover Slovakia had to meet standards set by EU to become a member and adjust its legislation to be in compliance with the Community law.<sup>36</sup> So today competition is legally protected, and supported mainly by Commercial Code, Competition Act No.136/2001 Coll. As amended, Act No.276/2001 Coll. on Regulation of Network Industries , Electronic Communications Act No. 610/2001 Coll.as amended and finally also by State Aid Act No.231/1999 Coll. as amended.

The State Aid Act is divided into four parts and includes basic and mainly procedural rules. In first, there is a definition of State Aid, its prohibition as well as exemptions – articles are identical with TFEU, but over and above it appoints also granting authorities, which are according to my opinion enumerated very widely. According to the first paragraph, the Act is applicable on entrepreneurs and their associations, state organs, municipalities, regions and other legal entities providing State Aid under a special law.

---

<sup>35</sup> Ojala, Marjo. *The Competition Law of Central and Eastern Europe*. London: Sweet & Maxwell, Ltd, 1999, p.16

<sup>36</sup> Candidate country has to meet so-called Copenhagen criteria, one of them is “the existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union”

European Commission. Enlargement, Accession criteria. available at [http://ec.europa.eu/enlargement/enlargement\\_process/accession\\_process/criteria/index\\_en.htm](http://ec.europa.eu/enlargement/enlargement_process/accession_process/criteria/index_en.htm) (accessed March 10,2012)

Second part defines scope of the State Aid and presents examples of the allowed forms. Since they are only illustrative, their number is not exhaustive. It means that there exist also other forms which are permitted, besides these which are listed in the State Aid Act. In virtue of the paragraph five, the State Aid can be awarded under the approved scheme or in individual, *ad hoc* cases.

National administration of State Aid is specified in third section of the State Aid Act. Pursuant to paragraph twenty one, the Ministry of Finance coordinates matters concerning State Aid in relation to granting authorities, but also in relation to the institutions of the EU. It acts as an intermediary in notification procedure, because granting authority has to send an application for approval of granting aid to Ministry first, and only after its review it can be send to Commission. But Act introduces one exemption to this general rule, when notification is done by Ministry of Economy not Finance, and it refers to cases of investment aid contained in the Investment Aid Act No.561/2007 Coll. as amended. Fourth part of State Aid Act comprises transitional and final provisions.<sup>37</sup>

The State Aid Act in Article twenty six imposes obligation upon beneficiary to repay granted aid with the interest in case when Commission decided that the aid was given unlawfully. This Commission's decision is directly enforceable against recipient from the day of its delivery. This paragraph was added to Act by Amendment No.102/2011 Coll. after CJEU decision in case initiated by Commission against Slovakia for failure to recover unlawful state aid in Frucona case.<sup>38</sup> Before amendment, Act imposed general obligation to start recovery proceedings in case of

---

<sup>37</sup> State Aid Act No.231/1999 Coll. as amended. Available at: [http://jaspi.justice.gov.sk/jaspiw1/htm\\_zak/jaspiw\\_mini\\_zak\\_zobraz\\_clanok1.asp?kotva=k1&skupina=1](http://jaspi.justice.gov.sk/jaspiw1/htm_zak/jaspiw_mini_zak_zobraz_clanok1.asp?kotva=k1&skupina=1) (accessed March 10, 2012)

<sup>38</sup> Case C-507/08 *Commission v Slovak Republic* [2010] ECR 2010 p.0000

unlawful state aid on the granting authority only, and it didn't state direct enforceability. Since this is a landmark and still highly discussed case, I will describe its details for better understanding of the problem.

Frucona was a milestone case in 2004, where Tax Authority Kosice wrote-off a debt in amount of 13, 8 million EUR in favour of major producer of alcoholic and non-alcoholic beverages, Frucona Košice, a.s. However, the Commission in its decision No.2007/254 qualified this State Aid as not compatible with the Common Market, and Slovak Republic was required to recover it from beneficiary. But District Court of Košice II dismissed action brought by Tax Authority, because in its opinion it lacked legal standing. According to judge, there was no direct duty imposed upon Frucona by Commission decision, only on the Slovak Republic. The same conclusion reached also Regional Court and on appeal upheld the District Court's decision, so the action of Tax Authority was dismissed. There was no legal basis for recovery so Slovakia found itself in breach of its obligation. The immediate reaction of the Slovak Government was so-called 'lex Frucona' – above mentioned amendment to the State Aid Act and also to the Code of Enforcement no.233/1995 Coll.<sup>39</sup>

Frucona case drew attention of lawyers as well as public to EU rules on State Aid. Although major amendments to the Act were made, there is still space for improvement. I agree with Csekes, Orsulova and Corba that only duplication of Treaty articles in national legislation is not enough, because it may cause narrowing the range of its application. State Aid Law has a case-bound character and it should

---

<sup>39</sup> Hodonova, Zuzana. *"Lex Frucona: an end to the story? (Amendment to Act No. 231/1999 Coll. on state aid and to Act No. 233/1995 Coll. Code of Enforcement) - Kinstellar."* Available at: <http://www.kinstellar.com/publications/article/view/lex-frucona-an-end-to-the-story-amendment-to-act-no-2311999-coll-on-state-aid-and-to-act-no/756/> (accessed March 10, 2012).

be constantly reviewed and adjusted.<sup>40</sup> It should respond also to actual situation and changes of competition environment such as the financial crisis, what I will describe in next chapters.

### Investment Incentives as a form of the State Aid

Since State Aid Act sets only framework for granting State Aid, there shall be specific legislation regulating different forms of State Aid. Nonetheless, Slovakia is missing such kinds of law. Only one exception is Act on Investment Incentives No.561/2007 Coll.as amended, which defines the conditions for granting investment aid for regional development. Every incentive pursuant to this Act is considered to be the State Aid. In virtue of paragraph two, investment aid in Slovakia may have the form of

- grants for acquisition of tangible and intangible assets,
- income tax allowances,
- contribution to the creation of new jobs,
- transfer or exchange of real property at a price lower than the general value of property.

Conditions for the providing of the various forms of investment aid are regulated differently for particular industry and region. The Act governs specific requirements for investment aid in manufacturing, for the technology centers, for tourism and strategic services. The authority responsible for this form of state Aid is Ministry of Economy. It drafts the investment plan in close cooperation

---

<sup>40</sup> Derenne, Jacques, Alix Müller-Rappard, and Cédric Kaczmarek, eds. *Enforcement of EU State Aid Law at National Level 2010: Reports from the 27 Member States*. Berlin: Lexxion, 2010,p.308



with the applicant. If Government approves the plan, then Ministry can release the final decision. Since the Act is an approved scheme under the Commission Regulation to national regional investment aid,<sup>41</sup> in certain cases defined in provisions of this Regulation, the Ministry of Economy needs also authorization from the Commission.

Also according to the Act on the Investment Incentives, Slovakia has become more attractive for foreign and domestic investors. World producers such as Kia Motors, Samsung Electronics or Volkswagen are only several examples, when this Act was applied, and State Aid in this form was awarded. I think that with its fixed rules it turned out to be useful measure, which significantly contributed to the development of the country. But due to the Global Financial Crisis, the economic environment changed and hit Slovakia on its way to success. I will describe the consequences of this phenomenon in next chapters.

---

<sup>41</sup> Commission Regulation (EC) No 1628/2006 of 24 October 2006 on the application of Articles 87 and 88 of the Treaty to national regional investment aid. OJ L 302, 1.11.2006, p. 29–40

## 2. The Global Financial and Economic Crisis

*When Wall Street sneezes, the rest of the world catches pneumonia.*<sup>42</sup>

The Global Financial and Economic Crisis, which already started in the beginning of 2007, is considered to be worst in eighty years since the Great Depression.<sup>43</sup> As motto of this chapter says, it started in the USA, but quickly spread worldwide. In this chapter I will first briefly describe causes, and afterwards consequences of this phenomenon. Also Europe was not able to avoid its devastating effects. EU reacted quickly, launched European Economic Recovery Plan and adopted new policies in different sectors to mitigate losses, and prevent further damages. The crisis hit all Member States, but its impact on each of them was different. Therefore, one subchapter will be devoted to summarizing crisis' influence in the Slovak Republic and tools which government implemented in fight against its unwanted consequences, and on the way to recovery.

### 2.1. Origin

The Global Financial and Economic Crisis has been essentially the same as previous episodic crises that resulted in decline of GDP, unemployment increase, state debts and inflation. However, there is one key difference in recent incident - its global scope. Period prior the crisis outbreak was marked by "...*rapid credit growth, low risk premiums, abundant availability of liquidity, strong leveraging, soaring asset*

---

<sup>42</sup> Common saying, the origin is unknown but can be found for example in: Peter Ferdinand Drucker: *America's Next Twenty Years*. New York, NY: Harper, 1957, p.73

<sup>43</sup> Lybeck, Johan A. *A Global History of the Financial Crash of 2007-2010*. Cambridge: Cambridge University Press, 2011, p.14

*prices and the development of bubbles in the real estate sector.*"<sup>44</sup> Exactly this era of surplus of cheap money in developed countries caused, that banks practiced risky loans. It resulted in a situation where a number of U.S. households cannot longer pay their loans, and banks were getting into serious financial problems. Due to difficulties of mortgage institutions, U.S. stocks started to fall down significantly. This of course caused chain reaction and problems intervened also other sectors of the economy. World markets responded to this situation, and it gradually began to influence the economies of other countries. In September 2008 the U.S. government announced that it takes control over government-sponsored mortgage agencies Fannie Mae and FreddieMac, which were playing a central role in the mortgage market, and whose losses climbed up to \$ 14 billion. Subsequently, on 15 September 2008 U.S. investment bank Lehman Brothers filed for bankruptcy.

These events triggered the crisis on a global scale. Its development was initially hardly to assess, and it was very difficult to predict to what extent, and whether the crisis of the U.S. economy is going to hit each country. Finally, the worst expectations were fulfilled, and crisis reached the European continent. In August 2007, France's largest publicly traded bank BNP Paribas froze withdrawals from three of its bond funds. It indicated the crisis in the subprime mortgage sector in the U.S. as a sector. In September, main mortgage bank of Great Britain, Northern Rock, was put under public legal control and later taken over by state. The crisis spilled over into Europe and it was followed by wave of bankruptcies, nationalisations of financial institutions and shares slumps in the markets. Many countries also reported a significant decline in economic growth and rise of unemployment. The painful crisis

---

<sup>44</sup> European Commission. *European Economy - 7/2009 — Economic Crisis in Europe: Causes, Consequences and Responses*. Luxembourg: Office for Official Publications of the European Communities. 2008, p.20

intervened into more and more sectors of industry. Some states had to ask the International Monetary Fund (IMF) for aid in form of loans, and some even found themselves on the verge of the national bankruptcy. There was no other choice than to start working on the rescue plans to mitigate crisis consequences.<sup>45</sup>

## **2.2. European Economy Recovery Plan**

Also at EU level it was inevitable to take the necessary steps to help Member States face the crisis, and after some time, also successfully overcome this unpleasant situation. EU leaders were forced to agree to the transitional rules that will apply to periods of crisis. The Commission appealed to Member States for a uniform process and cooperation in restoring of the economic situation in the Common Market. In November 2008 Commission launched a European Economy Recovery Plan<sup>46</sup>, which was founded on two basic pillars. First was „...a major injection of purchasing power into the economy, to boost demand and stimulate confidence.”<sup>47</sup> It implied short-term measures, which could comprise the fiscal stimulus up to €200 billion or 1.5% of EU GDP. To achieve long-term prosperity of EU, second pillar appoints „comprehensive programme to direct action to 'smart' investment”.<sup>48</sup> In addition to this financial injection, the Plan included also steps to strengthen employment, improving the situation of SMEs, promotion of investment into R & D and infrastructure.

---

<sup>45</sup> Lybeck, op.cit., p.1-28

<sup>46</sup> Communication from the Commission to the European Council of 26 November 2008 – ‘A European Economic Recovery Plan’ [COM(2008)- 0800 final – Not published in the Official Journal] (further in the text only Recovery Plan)

<sup>47</sup> Ibid., p.2

<sup>48</sup> Ibid.

### **2.3. Impact of the Global Financial Crisis on the Slovak Republic**

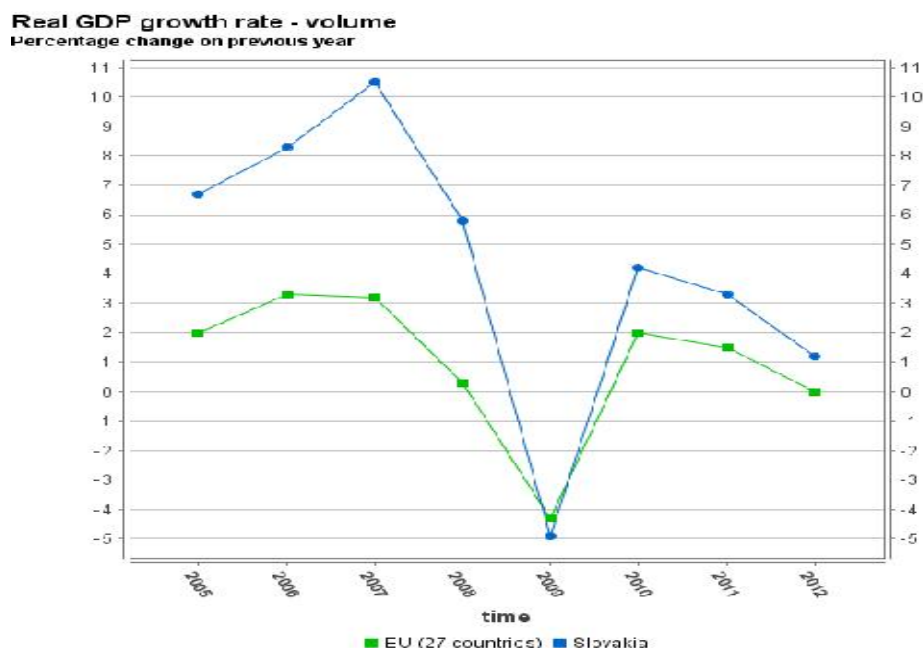
The truth is that the Global Financial Crisis influenced the Member States in varying degrees. Some were affected significantly (eg. Hungary, Greece, Baltic States), others less (Czech Republic, Slovakia), and some not at all (Poland). It is therefore logical that each of the Member States used support measures in different intensity and for different purposes. The choice was dependant on overall economic environment, financial policy, and I assume, that also on political situation. For that reason, I will start with a brief characteristic of the Slovak economy situation before crisis. Only then, crisis' consequences and applied measures can be fully understood.

After dissolution of the Czechoslovak Republic both republics moved from centrally planned to free market economy. The transformation process wasn't easy and in Slovakia it was slowed – down during period of 1994 – 1998. But after variety of reforms (tax, labour, pension...) and privatization of several state-owned enterprises, Slovakia became country with the big potential and leader among V4 countries. As New York Times marked it, the 'Tatra Tiger'<sup>49</sup> became in 2004 member of European Union and from 1 January 2009 also of European Monetary Union. Before crisis, it had the highest growth of GDP in OECD and also among new EU Member States. Inflation and unemployment were being reduced, and this rapidly expanding environment, suitable location and low labour costs started to be attractive for foreign investors. Slovakia became the largest automobile producer in Europe and this sector expanded mainly because of three biggest investors: Kia, Volkswagen and Peugeot – Citroen, which opened their plants here and started car production.<sup>50</sup>

---

<sup>49</sup> Reynolds, Matthew. *Slovakia's awakening: 'Tatra Tiger' is born*", New York Times, December 29, 2004

<sup>50</sup> Department of State. *Background Note: Slovakia*. available at: <http://www.state.gov/r/pa/ei/bgn/3430.htm#econ> (accessed March 12, 2012)



Graph 1.

Source: Eurostat

As the graph indicates, Slovakia was hit by the crisis on its way to success and expansion. In the most critical year 2009, the real GDP fell by minus 5 % in the Slovak Republic. Like Ebru Terazi and Secil Senet assert, crisis affected economy of the central and eastern European countries in two ways. It decreased domestic investment, as well as demand of consumers and moreover, it negatively influenced inquiry for export. Advantage of Slovakia was its creditworthiness because of having euro as a currency. But from the export point of view, this can be also unprofitable, if euro is too expensive.<sup>51</sup> And it's true, that financial crisis in Slovakia didn't damage financial sector as much as it did in other countries, because of sufficient liquidity of banks, which enabled to avoid problems with refinancing. Banks were cautious and applied conservative business models. Slovak National Bank in order to avoid possible outflow of funds even tighten rules on liquidity.

<sup>51</sup> Terazi, Ebru, and Seçil Senel. "The Effects of the Global Financial Crisis on the Central and Eastern European Union Countries." *International Journal of Business & Social Science* 2, no. 17 (2011): 186–192.

Since Slovakia is a small, and open, export oriented country (87% of GDP comes from export), the crisis showed itself through decline of product demand. Consequently, production suffered, which was linked with the growth of unemployment. The worst situation occurred in key sectors, such as engineering and automotive industry. In 2008 the reduction of the production in the industry was by 19%, compared to previous year. This increased the unemployment rate, which exceeded the limit of 12% by the end of 2009. Subsequently, it reduced an income to the state budget. On 1 of April 2009 Eurostat notified that the public deficit reached level of 2.3% in 2008.<sup>52</sup>

The Slovak government tried to fight against negative economy development through various measures that started to adopt by the end of 2008. Early in 2009, it established the special Board for the Economic Crisis, members of which were representatives of the National Bank of Slovakia, trade unions, employers, governments, banks, and of course ministers representing various sectors. Purpose of the Board was to propose ways to avoid, or at least minimize, the consequences of the economic crisis that was Board then obliged to submit to the Government for approval. In the second half of 2009, the Board was canceled and the mission was moved to the Economic and Social Council of the Slovak republic. Even the main ministries set up anti-crisis committees, and a pivotal role was played by Committee Monitoring the Impact of the Global Crisis on Entrepreneurs, established by the Ministry of Economy. Representation in it was almost identical with the representation in the government's anti-crisis Board. Some anti-crisis measures were formulated directly by consultation with eg. Automotive Industry Association, the Slovak Banking Association.

---

<sup>52</sup> Ministry of Finance. Annual financial report for year 2009. Available at: <http://www.finance.gov.sk/Default.aspx?CatID=3411> (accessed March 12, 2012)

### The Slovak rescue packages

Following the conclusions of the EU and Recovery Plan, Slovak Government approved in November so called 'rescue package' for helping country to overcome the impact of the Global financial and economic crisis. It contained twenty six broadly defined reforms. Since it was too general, it was improved and extended by Government Resolution No. 969/2008 form 17 December 2008. Original package was supplied by twelve new measures related to fiscal, tax, labour policy and business environment. Evident is close link to The Lisbon Strategy. Slovak Government authorized the third set of anti-crisis instruments by its Resolution No. 125/2009 on 9 February 2009. Total number of reforms was increased to sixty two. In addition to this three rescue packages, Government adopted by its Resolution no. 100/2009 on 2 February 2009 seven measures relating solely to the employment.<sup>53</sup>

Government was according to its own words focusing mainly on four areas:

- I. To stimulate demand (scrapping schemes, thermal insulation of buildings, construction of highways)
- II. To maintain employment (benefits for employees, social enterprises, measures of active labor market policy)
- III. To protect the financial sector (recapitalization and guarantee scheme)
- IV. To improve the business climate for SMEs (reduction of administrative burdens, new concept for incubator care for innovative SMEs)

---

<sup>53</sup>Government SR. Analysis of the anti-crisis measures. Available at: [https://lt.justice.gov.sk/Attachment/vlastn%C3%BD%20materi%C3%A1l\\_doc.pdf?instEID=1&attEID=14687&docEID=78332&matEID=1926&langEID=1&tStamp=20090911133642280](https://lt.justice.gov.sk/Attachment/vlastn%C3%BD%20materi%C3%A1l_doc.pdf?instEID=1&attEID=14687&docEID=78332&matEID=1926&langEID=1&tStamp=20090911133642280) (accessed 14 March, 2012)



In 2009, total costs expended for anti - crisis measures in Slovakia reached €1,462 million (2.3% of GDP of SR) and in 2010 Slovak Government spent € 579 million (0.9% of GDP of SR). Since these measures couldn't be adopted without change of legislation, hence the National Council amended eight acts to enable government's decision.

The change of the government in 2010 meant the end of the anti – crisis measures, and the focus is on consolidation of public finances. Political representation took the crisis either as an unpleasant event requiring economic, social or budgetary solution, or as a good opportunity to enforce (or speed up or increase) already planned measures. Effectiveness of rescue measures was not proven and therefore majority of them was cancelled or their validity expired without renewal.<sup>54</sup>

---

<sup>54</sup> Epi. Financial crisis and and set of measures to mitigate its impact. available at: <http://translate.google.com/#sk|en|bola%20zrusena%20alebo%20uplynula%20ich%20platnost> (accessed March 2, 2012)

### 3. State Aid temporary rules established in response to the economic and financial crisis

*Exceptional times call for exceptional measures*<sup>55</sup>

José Manuel Durao Barroso

As it can be seen on the example of the Slovak Republic, most of the Member States started with the preparation of the plans and crisis instruments, aimed at restoring of the economic balance in their territory. This safety networks naturally included various forms of State Aid, primarily directed to help banks and companies with serious financial problems. But apparently existing EU rules for State Aid were not sufficient for the crisis period, and Member States could with their national instruments distort the competition and flow of resources between Member States. This situation called for adoption of the set of the temporary rules, under which States could have, comparing to existing legislation, greater possibilities to provide support for selected businesses.<sup>56</sup>

Therefore, immediately after approval of the Recovery Plan, the Commission started to work on releasing of the rules for granting State Aid to help Member States to overcome the crisis more smoothly. Due to the serious problems in the banking sector, from which problems of the other economic sectors were spread, it was necessary to develop special rules to help stabilize the situation in financial markets first. Afterwards, the Commission had to promptly solve the situation also in other sectors ("real economy"), which were hit by crisis, and were often existentially

---

<sup>55</sup> José Manuel Durao Barroso, President of the European Commission, Creating a European Response to a Global Crisis, Speech to the European Parliament of Enterprises 2 (Oct.14, 2008)

<sup>56</sup> Nicolaidis, Phedon, and Ioana Eleonora Rusu. "The Financial Crisis and State Aid." *Antitrust Bulletin* 55, no. 4 (Winter 2010): 759–782.

dependent on the support from the State. On the following pages I will try to make systematic structured overview of all emergency rules adopted by the Commission in response to the crisis, including a brief description. Some of them were implemented in Slovakia, so I will characterize them to illustrate the Slovak response to the crisis in area of the State Aid.

### **3.1. Financial sector**

The financial sector has, compared to the other sectors of economy, very specific character, and therefore it was most gripped in the crisis. Financial institutions are entities that dispose of the large quantity of money. The extensive work of the Centre for Economic Policy Research about state support for financial institutions indicates that they differ from non-bank entities in several features. A bankruptcy of the bank negatively influences not only bank itself, but the entire banking sector, competitors, and also reputation of the financial institutions. Assets of the bank are not obvious, and banks are responding to the lack of liquidity by selling them. Since their access to the market is necessary, they can use it for risky transfers.<sup>57</sup> Their crash always causes a huge economic problem for the home country. That is why finance market deserved special rules that correspond to importance of this sector in the economy.

Representatives of the EU also realized that the financial crisis can cause devastating problems in the banking sector. In October 2008 the The Economic and Financial Affairs Council (ECOFIN) agreed that there is a need for extensive restructuring of the banking institutions to ensure its liquidity. It committed itself to take all necessary measures needed to restore health and stability of the banking

---

<sup>57</sup>Centre for Economic Policy Research: Bailing out the Banks:Reconciling Stability and Competition available at: [http://www.cepr.org/pubs/other/Bailing\\_out\\_the\\_banks.pdf](http://www.cepr.org/pubs/other/Bailing_out_the_banks.pdf) (accessed March 10, 2012)

system. Subsequently, the Commission decided to formulate general principles to achieve a uniform procedure of restructuring banks in all Member States.

### Banking Communication

Therefore, already in October 2008, it adopted the Banking Communication<sup>58</sup> which applied to the financial sector only. It made from the very beginning the difference between 'fundamentally sound banks' that became illiquid due to crisis and 'free riders' that find themselves in difficulties „...from inefficiencies, poor asset-liability management or risky strategies“<sup>59</sup>. Latter could ask for help under normal rescuing and restructuring framework.<sup>60</sup> Former could use as a basis for granting the state support Article 87 (3) (b) Treaty (now 107 (3) (b) TFEU) – crisis could be considered as a 'serious disturbance' in the State economy. However, this option could be used only in case of really serious circumstances, where the danger affecting overall functioning of the financial markets exists, and only for the period while crisis situation justified its use. The Member State had to constantly review the fulfillment of these requirements and report to the Commission the results of this review. In line with these principles, the Commission identified specific possibilities which Member States could use to boost the banking sector. The rules for determining whether to provide guarantees covering liabilities of financial institutions, but also make the process of recapitalization or controlled liquidation of financial institutions, and other forms of liquidity assistance could be found here.

---

<sup>58</sup> Communication from the Commission — The application of State aid rules to measures taken in relation to financial institutions in the context of the current global financial crisis. OJ C 270, 25.10.2008, p. 8–14

<sup>59</sup> Ibid. para 14

<sup>60</sup> It means that State Aid for individual undertaking is usually provided on the basis of Article 87(3)(c) of the Treaty and the Community Guidelines on State aid for rescuing and restructuring firms in difficulty

## Recapitalization

Further assistance on recapitalization was given in Communication adopted in December 2008<sup>61</sup>. The purpose of this communication was not only more precise specification of the conditions, but also *"to ensure lending to the real economy"*<sup>62</sup> This role of banks in the economy - the allocation of free funds to other entities in the economy through indirect financing, was the reason why Commission and Member States had to resort to this instrument. The Commission was aware of the risks arising from recapitalization. Primarily, that it could provide unjustified competitive advantage to economically inefficient entities, or it could weaken the competitiveness of banks, which will be seeking additional capital resources in the open market.<sup>63</sup> For these reasons, Communication distinguishes recipients to financially healthy and unhealthy providing the stricter conditions for unhealthy beneficiaries. These stringent conditions were expressed by the Commission in Article 13 *"... banks with higher risk in their portfolios should pay more."* I think that such approach is not revolutionary, because in decision - making of the rational investor, higher risk always leads to a demand for higher returns (so-called risk premium). Nevertheless, this seems to be lucid and suitable tactic. The Commission emphasized two main principles that should be used in providing State aid, while minimizing the impact on the competition: determination of market price (or at prices close to market price) for providing financial support, and temporary nature of aid that will stimulate the recipient to return to the standard method of financing.<sup>64</sup>

---

<sup>61</sup> Communication from the Commission — The recapitalisation of financial institutions in the current financial crisis: limitation of aid to the minimum necessary and safeguards against undue distortions of competition. OJ C 10, 15.1.2009, p. 2–10

<sup>62</sup> Ibid., para 5

<sup>63</sup> Ibid., para 7

<sup>64</sup> Ibid., para. 21

In Article 24 a relaxation of the market investor principle, which I defined in first Chapter, can be observed. Here the Commission made clear, that it would accept a lower compensation from recipient than it would be accepted by the market investor due to the fact that there are not 'normal market conditions'. I believe that this example demonstrates the greater benevolence of Commission by authorizing of the State aid. Specifically because of the nonstandard market conditions, private investor would request consideration which fully reflects these unusual circumstances. But it is necessary to take into account the role of the Commission in the fight against crisis and temporary character of this tool.

Both above mentioned Communications helped to mitigate the impact of the crisis on financial institutions. On the other hand, there was still a basic problem which the crisis spread worldwide. It was a problematic portfolio of banking institutions, particularly the ownership of assets, which fair market value was at least questionable. Uncertainty stemming primarily from allocation and evaluation of these assets prevented, or at least slowed down, the return to normal functioning of these financial institutions.<sup>65</sup>

#### Treatment of the impaired assets

The Commission responded to this problem on 25 February 2009 by adoption of the Communication on the treatment of impaired assets in the banking sector. The objectives of the measures taken pursuant to this Communication were ensuring financial stability, bank lending and restore long-term viability and budgetary sustainability of the banking sector.<sup>66</sup> Commission left to the Member States which

---

<sup>65</sup> Communication from the Commission on the treatment of impaired assets in the Community banking sector. OJ C 72, 26.3.2009, p. 1–22

<sup>66</sup> Ibid., para 5-12

forms of State Aid they will choose in order to achieve the above mentioned objectives. However, Commission stated conditions that must be met, in order to limit the impact on the competition, to accelerate recovery of the financial sector and to delimitate costs of the Member States. These are mainly ex-ante transparency, cost sharing by the State, shareholders and creditors, compliance with public policy goals, proper evaluation of assets and adequate consideration for State.<sup>67</sup> Approaches, how can be asset relief achieved, were set out in Annex II.<sup>68</sup> First, segregation of risky assets into separate companies with own legal personality, either separately for each bank or one for all banks seems to be possibility, which is able to calm markets. For example Czech Republic used this possibility and created so-called 'bad bank' (consolidation bank - Konsolidační banka), where all bad loans were transferred. Second option allowed banks to own impaired assets, but the State will compensate for their losses. This insurance scheme is more motivating for banks to behave responsibly. If there were no other means to achieve viability, Commission admitted in Article 23 also nationalization as an option. It was used for example in Sweden (Gota Banken) or Austria (Hypo Group Alpe Adria). Slovakia didn't use this possibility during crisis, because I think it would meet with great public disapproval. In the context of all post-socialist countries, this option can be seen more as the *ultima ratio*.

#### Return to viability and restructuring measures

On 19 August 2009, the Commission issued a Communication on the return to viability assessment and restructuring measures in the financial sector in the

---

<sup>67</sup> Ibid. Para 19 - 46

<sup>68</sup> Ibid. Anex II, para 1-2

current crisis<sup>69</sup>, which builds on three previous communications, which I mentioned. Basis for restoring of financial sectors' liability was the restructuring plan submitted by Member State, which contains details how bank will be able to survive without State Aid.<sup>70</sup> As an exit strategy from emergency rules can be seen burden sharing introduced in Article 22. Also banks have to take responsibility for their past conduct, so they should provide the appropriate contribution from their own resources to restructuring costs. Implementation and application of the restructuring plan was constantly reviewed by the Commission, and it required also providing so- called stress-tests.

These four Communications created basic framework that was aimed to help financial institutions in combat against the Global Financial Crisis. The frame was updated twice during 2010. Change in July<sup>71</sup> related to guarantee fees and their increase. Commission made this decision, because financial institutions were becoming dependent on this measure, which was not very safe for public finance. Since rules had temporary nature, in December 2010<sup>72</sup> validity was extended for one year. Currently, to calm down tensions in sovereign debt markets and retrieve trust in sector the Commission once again updated and prolonged these set of rules from the 1 of January 2012. Repeatedly methodology of guarantee fees was upgraded and obligation to submit restructuring plan was imposed to 'heavy users' only (banks

---

<sup>69</sup> Commission communication on the return to viability and the assessment of restructuring measures in the financial sector in the current crisis under the State aid rules. OJ C 195, 19.8.2009, p. 9–20

<sup>70</sup> Ibid. para 9-11

<sup>71</sup> Europa Press release. State aid: Commission extends crisis rules for banks available at: <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/11/1488&format=HTML&aged=0&language=EN&guiLanguage=en> (accessed March 10, 2012)

<sup>72</sup> Communication from the Commission on the application of State aid rules to support measures in favour of banks in the context of the financial crisis. OJ C 329, 7.12.2010, p. 7–10



which used recapitalization and impaired assets measures).<sup>73</sup> So the relaxation of the conditions valid during crisis, and return back normal state is recognizable.

### **3.1.1. Protection of the financial sector in the Slovak Republic**

When analyzing the impact of the crisis on the Slovak financial sector, it is important to remember that banks in Slovakia by granting the loans were not dependent on sources from fluctuating financial markets, but they had enough domestic resources for its clients. Compared to other countries, there has been a low ratio of loans to the volume of deposits (loan-to-deposit ratio), which oscillated around 80% in Slovakia in 2009. The reason was that the credit boom occurred in Slovakia later than in other countries (in Slovakia it started in 2004), and then was stopped by the crisis. But also because of the fact, that during the restructuring of banks in 1999 - 2001, poor-quality bank loans to enterprises were exchanged for government bonds (loss of these loans from banks' balance sheets obviously decreased value of the indicator LDR). Since Slovakia was more saving than borrowing before crisis, and banks were able from traditional activities (accepting deposits, providing loans, investing in bonds) generate high profits, they did not invest to too risky (and later toxic) financial operations.<sup>74</sup>

But the crisis influenced the Slovak banking sector indirectly. Due to the decline of foreign demand, many companies became insolvent. They also began to dismiss their employees, thus solvency of the households was lowered as well. These both facts decreased demand for loans. Also banks responded to the reduced

---

<sup>73</sup> Communication from the Commission on the application, from 1 January 2012, of State aid rules to support measures in favour of banks in the context of the financial crisis, OJ C 356, 6.12.2011, p. 7–10

<sup>74</sup> Government SR. National Reform Programme. Available at: [https://lt.justice.gov.sk/Attachment/vlastn%C3%BD%20materi%C3%A1l\\_doc.pdf?instEID=1&attEID=14687&docEID=78332&matEID=1926&langEID=1&tStamp=20090911133642280](https://lt.justice.gov.sk/Attachment/vlastn%C3%BD%20materi%C3%A1l_doc.pdf?instEID=1&attEID=14687&docEID=78332&matEID=1926&langEID=1&tStamp=20090911133642280) (accessed 17 March, 2012)

ability to repay loans by undertakings and households. They reduced the offer of loans. In 2009, banks started to offer new loans only in the approximate amount of repayments of already existing loans during the particular month.

The global financial crisis led to expansionary fiscal policy of Slovakia. Country increased the capital of two financial institutions – Eximbanka and Slovenska zarucna a rozvojova banka (state financial institutions), to enable granting of loans for SMEs and support export. By the amendment of Act No.118/1996 Coll. on Bank Guarantees, Slovak government temporarily introduced full protection of existing deposits. Expansionary monetary policy contributed to the reduction of the basic interest rate to 1%. In June 2009 the Slovak National Council adopted an Act on measures to mitigate the effects of the global financial crisis on banking sector (Act No. 276/2009 Coll), where it introduced Slovak recapitalization and guarantee scheme in compliance with the Commission's Banking Communication and Recapitalisation Communication.

The Slovak scheme for maintaining stability in the banking sector allowed extraordinary measures on the basis of Article 107 (3) (b) TFEU. It offered two basic instruments:

- capital injections (recapitalization) and
- guarantees

for the Slovak banks and foreign subsidiaries, for distressed and for healthy banks as well. The recapitalization scheme offered the capital injection up to 50 % of the requirements for the bank's own funds. The second instrument provided special guarantees for new bonds and loans issued by the beneficiary bank. Beneficiaries

were obliged to pay remuneration according to calculation of the National Bank of Slovakia. The remuneration was increased after certain time, which served as an inducement for banks to rapid repayment of the aid. The banking scheme introduced several protection tools against their misuse for example dividend bans, advertising ban and reductions of management's rewards.<sup>75</sup>

The Slovak banking scheme was notified to the Commission on 1 July 2009. The Commission stated that it meets the criteria, which I described in first chapter and therefore constitutes State aid. Although it gives economic advantage to the recipient and distorts competition, the Commission approved its compatibility with the Common Market under Article 107 (3) (b) TFEU. By assessment of permissibility, the Commission applied criteria set by the above mentioned Banking Communication, and it stated that the scheme is necessary, appropriate and proportional.<sup>76</sup> I agree with Commission's opinion, especially because the scheme was limited in terms of time and also it set financial ceiling for the introduced measures. Slovakia could use modified banking rules only during six months after the Commission's approval and the Ministry of Finance could grant guarantees in the total amount of € 2,8 billion and capital injection in the total amount of € 664 million only. The remuneration and safeguards against the misuse of aid can be seen as tools assuring proportionality. I think that also providing of the restructuring and viability plans according to the Recapitalisation Communication could ensure that aid will be used properly and only for the licit purposes.

---

<sup>75</sup> Europa Press release. *State aid: Commission approves Slovak bank support scheme*. available at: <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/09/1889> (accessed March 17, 2012)

<sup>76</sup> Decision of the European Commission N 392/2009

### **3.2. Automotive industry**

The automotive industry is in the majority of the Member States one of the most important economy sectors. The outbreak of the economic crisis, however, interfered also in this branch of industry. The already mentioned reduction in number of consumer loans logically led to a decline in sales of manufactured cars. For the car producers it meant reduction, and often even a complete cessation of production, which resulted in employees' dismissals and thus increased unemployment. The crisis in the automotive industry did not affect only the car manufacturers themselves, but also companies that have been linked to the manufacturing process. Again, also here it led to the production limitation and redundancies. The negative consequences could be enormous, so the Commission decided that it has to intervene and in February 2009 issued a Communication for the automotive industry,<sup>77</sup> by which called for concerted action and effective cooperation of Member States in this area. The Commission wanted to avoid the tendencies toward protectionism, and attempts to support the only domestic car producers as well. The Communication urged Member States to undertake more measures with long-term profitability, not only those, which would be able to help the automotive industry for the short period of time. The main goal should be to increase demand for new vehicles by using traditional State Aid instruments (R&R Guidelines, de minimis rule) but also new tools, for example recycling and recovery schemes, so - called scrapping schemes.<sup>78</sup>

#### **3.2.1. Scrapping scheme in the Slovak Republic**

Following the successful example of Germany, also other Member States started to implement the scrapping schemes (together 13 Member States eg. France,

<sup>77</sup> Communication from the Commission of 25 February 2009 - Responding to the crisis in the European automotive industry [COM(2009) 104 final – Not published in the Official Journal]

<sup>78</sup> Ibid., p.6-8

Italy, Great Britain, Romania, Austria). Among them was also Slovakia, which even paid scrapping money in two waves. The first wave started in early March 2009, and it was established by Decree of Ministry of Economy No.2/2009. The Slovak Government released for this purpose about € 33 million, however the amount of any payment was depend on the sellers' approach. If they were willing to give discount in amount of € 500 per car, the state contribution was € 1500. In the case, where the buyer didn't get a discount, he was only entitled to an allowance of € 1000.

Mentioned contributions provided in a form of discount for a car, seller then had to require from the State. But the main condition was that the customer had to buy a new car with a price of € 25,000 in exchange for the handing over more than 10 years old automobile. Already in late March 2009, ie after less than a month, the funds released for payment were utilized, and so the scrappage process was stopped. More than 22,000 of cars were scrapped. In early April 2009, the Slovak Government decided to release more financial resources from the state budget and the payment of scrappage was restarted with a slight modification of conditions.<sup>79</sup> Since the interest was enourmous, the second wave lasted only a few days and in mid-April the support from the State was definitely terminated.

In my opinion, I don't see the scrapping schemes as the best solution in the fight against economic crisis. I think that this measure is able to help the automotive industry, but only with short-term effects, and this is exactly the way, which the Commission suggested no to go. In the long run, scrapping scheme basically solves nothing. The problems caused by the crisis are only postponed to a later date. This statement can be proved by the situation in Slovakia immediately after the second

---

<sup>79</sup> Výnos MH SR 3/2009 ktorý upravuje poskytovanie dotácie na kúpu nového motorového vozidla (tzv.šrotovné) účinný od 6.apríla 2009

wave of scrapping schemes was finished. According to the analysts, scrap subsidy was used, and new cars were bought mainly by people, who in the next few years planned a similar investment. In the months following the termination of scrapping scheme, car sales experienced dramatic decline, and some of the automotive companies eventually had to accede to limit their production. Also the Commission admits adverse effects of the scrapping schemes, and denotes that the main consequences are higher prices of cars, which would have occurred without state support, and price differences between Member States that implemented scrapping schemes, and these that did not.<sup>80</sup> In scrapping schemes, it was mainly the substitution of vehicle from higher price categories for cars from lower price categories, which could have damaged a manufacturer specializing in production of cars from particular price category. For the above reasons, I think that there was a significant interference of the State to the functioning of the market environment, and the competition. I consider it as a selective advantage to the only one industrial sector of the Member State, which favors only some of the competitors. Also competitors from Member States, which did not apply scrapping scheme, found themselves in a worse position.

### ***3.3. Horizontal rules***

By horizontal rules the Commission can regulate certain types of aid applicable across all industries in all Member States. Frameworks, guidelines and block exemption regulations were adopted in these categories so far: small and medium-sized enterprises, research and development and innovation, environmental protection, risk capital, services of general economic interest, rescue and

---

<sup>80</sup>European Commission. Car price report. available at: [http://ec.europa.eu/competition/sectors/motor\\_vehicles/prices/highlights\\_2009.pdf](http://ec.europa.eu/competition/sectors/motor_vehicles/prices/highlights_2009.pdf) (accessed 20 March, 2012)

restructuring of firms in difficulty, employment and training.<sup>81</sup> Accordingly, these rules had to be adjusted in order to eliminate the negative consequences of the crisis. In December 2008, the Commission drafted Temporary Framework<sup>82</sup>, which was valid for the period from 17 December 2008 until 31 December 2010. Right at the beginning of this document, the Commission summarized the reasons that led to its adoption, and also called for coherent approach of Member States in combating the crisis. The Commission emphasized that the States already have variety of options, how they can legally provide support which is not considered as the State Aid. On the other hand, it also encouraged Member States to use allowed exemptions of State Aid established by General block exemption Regulation and de minimis Regulation.<sup>83</sup> These instruments were, according to the Commission, designed very broad and can provide States with quite good possibilities to quickly support businesses in crisis. As well as in Banking Communication, it enabled usage of the 107 (3) (b) TFEU in relation to crisis. Based on this, it came up with new measure, and temporarily permitted aid, which exceeds de minimis limits under certain fixed conditions, defined in this Communication.<sup>84</sup> The new limit was set to € 500,000 per undertaking, and had to be granted in the form of the scheme to the undertaking which found itself in difficulties prior 1 of July 2008. Firms from the fisheries sector, and primary producers of agricultural products were excluded.

---

<sup>81</sup> European Commission. Competition.State Aid Control.Legislation.available at:

[http://ec.europa.eu/competition/state\\_aid/legislation/horizontal.html](http://ec.europa.eu/competition/state_aid/legislation/horizontal.html) (accessed on March 13, 2012)

<sup>82</sup> Communication from the Commission — Temporary Community framework for State aid measures to support access to finance in the current financial and economic crisis OJ C 16, 22.1.2009, p. 1–9 (further only Temporary Framework)

<sup>83</sup> Commission Regulation (EC) No 800/2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty. OJ L 214, 9.8.2008, p. 3. and Commission Regulation (EC) No 1998/2006 on the application of Articles 87 and 88 of the Treaty to de minimis aid. OJ L 379, 28.12.2006, p. 5.

<sup>84</sup> Temporary Framework, Section 4.2.2.

Other tools set by a Temporary Framework were related to guarantees on loans, subsidised interest rate and investment for green products. For each of them the Commission precisely defined the conditions under which, it was possible to use them – all of temporary measures could be cumulated with other, provided that established thresholds are not exceeded.

In the end Commission granted itself a possibility to revise this Communication, or possibly clarify some issues if such step is necessary. In fact, this situation really happened. Already in February 2009 Commission issued a Communication,<sup>85</sup> in which tried to explain in detail applicability of Article 107(3) (b) TFEU in relation to anti-crisis measures. Also a few minor amendments were specified, but they didn't change fundamentally the nature of the Temporary Framework. Another modification came in October 2009,<sup>86</sup> and it was associated with a complicated situation of the market with milk. As I stated, the allowed aid of €500,000 per undertaking was not applicable to agricultural producers. Consequently, their situation deteriorated so badly during the crisis that some of them were not able to continue with their production. Therefore, the Commission came up with a solution that could stabilize their situation, at least partially, in the form of the separate compatible limited amount of aid only for farmers. With effect from 28 October 2009 Member States could provide support for agricultural producers in the amount up to a total of € 15,000 per undertaking. The last

---

<sup>85</sup> Communication from the Commission - Amendment of the Temporary framework for State aid measures to support access to finance in the current financial and economic crisis - adopted on 25 February 2009

<sup>86</sup> Communication from the Commission amending the Temporary Community Framework for State aid measures to support access to finance in the current financial and economic crisis. Adopted on 28 October 2009. OJ C 261, 31.10.2009.



modification of Temporary Framework<sup>87</sup> before its expiration was adopted in December 2009, and it was focusing mainly on providing support in the form of guarantees for investment loans, especially in Member States where cost of labour is small. Change lied in the relaxation of the conditions under which loans may be extended, so that businesses have the option to raise funds for further revival of the economy.

As it was stated in the Commission's assessment, based on surveys in the Member States carried out by means of questionnaires, Temporary Framework, including modifications had actually contributed to a significant improvement of economic situation. These transitional rules applied only to the end of 2010, when it had been assumed that the economic situation in Europe could be stabilized. But the situation in some Member States was still fragile and recovery uncertain, therefore Commission decided to replace Temporary Framework with new one<sup>88</sup> providing some significant changes.

The New Temporary Framework was in force only from 1 January till 31 December 2011. Measure introduced in 2008, which extended permitted aid to €500,000, was abolished. According to public consultation and filled questionnaires submitted by Member States during application of the Temporary Framework it was used by 23 Member States, but actually paid out only in the amount of 7 % and majority of this aid (78 %) was provided by Germany.<sup>89</sup> Therefore Commission decided to give up on this short-term measure and returned to less-distortive € 200,000 de minimis rule. It set also stricter requirements for large companies in

<sup>87</sup> Communication from the Commission amending the Temporary Community Framework for State aid measures to support access to finance in the current financial and economic crisis. OJ C 303, 15.12.2009, p. 6–6

<sup>88</sup> Communication of the Commission — Temporary Union framework for State aid measures to support access to finance in the current financial and economic crisis. OJ C 6, 11.1.2011, p. 5–15

<sup>89</sup> Ibid, Section 1.2. (Slovakia, Portugal and France didn't submit the survey )

comparison to SMEs in almost all covered areas (guarantees, subsidized bank loans, green product). I think that these changes justify, that new measures introduced by original Temporary Framework were effective only in short – term context, and their further usage wouldn't be helpful, but quite contrary, it would be harmful and cause distortion of competition.

### **3.3.1. Implementation of the measures introduced by Temporary Framework in the Slovak Republic**

Since the Global Financial Crisis began to affect also the Slovak real economy at national, regional, and local level, the Slovak Republic decided to use measure introduced by Temporary Framework. On 9 April 2009 notified a Temporary aid scheme for granting limited amounts of compatible aid. The Commission concluded that this scheme satisfied conditions, and can be considered as the State Aid.<sup>90</sup> Consequently, assessed its compatibility with the Common Market on the basis of the Article 107 (3)(b) TFEU, which usage in connection with the crisis was specifically acknowledged in Temporary Framework. The Commission denoted, that the scheme fulfilled every requirement of the additional category of aid, which I described in previous section,<sup>91</sup> and that it can be reasonably expected that it will be effective across all sectors of the Slovak economy.

The scheme was valid until the end of 2010, and the Slovak Republic committed itself that the total amount of the granted aid will not exceed € 400 million during its application. The scheme was administered by Ministry of Finance and it was applicable to SMEs as well as to large firms. Authorities could award aid in

---

<sup>90</sup> European Commission decision N 222/09, JOCE 146/2009

<sup>91</sup> It means that aid will not exceed amount of 500,000 per undertaking, aid will be awarded through the scheme till 31.10.2010, undertakings from fisheries sector, primary producers from agricultural sector and undertakings which were in difficulties on 1 July 2008 are excluded, export aid is excluded, reporting rules for beneficiary and reporting and monitoring rules of granting authority will be repeated.

various forms in line with General Block Exemption Regulation (mainly remission of taxes penalties, direct grants, non refundable grants).

The form of aid was the subject of the Amendment to this scheme notified by the Slovak Republic on 21 December of 2009.<sup>92</sup> Slovakia asked for authorization of the remission of debts as a form of additional aid under approved scheme. It covered only debts, which creditors (indicated in State Aid Act No.231/1999 Coll as amended – see first Chapter) awarded to undertakings, which entered into difficulties after July 2008 because of the global financial and economic crisis. The Commission decided that amended scheme is compatible with the Common Market as well.<sup>93</sup>

Since the crisis negatively influenced also agricultural sector in Slovakia, and caused over 40 % decline in market prices of agricultural products in 2009, the Slovak government decided to provide help also for this area. Because producers could not apply for the support from already mentioned scheme, the Slovak Republic notified on 21 December 2009 new measure applicable only to this sector. The Commission decided not to raise objections and approved this scheme on the basis of the Article 107 (3)(b) too.<sup>94</sup>

In order to prevent the outflow of investors and attract new ones, who will help the Slovak economy to overcome the crisis and decrease of GDP, the Slovak government amended the Act on Investment Incentives. Under the second rescue package, it reduced the minimum amount of investment for the acquisition of tangible and intangible assets in industrial production and for projects to support tourist development, from € 9,96 million to € 4,98 million. It means that potential recipient, in

---

<sup>92</sup> European Commission decision N711/2009, JOCE C/55/2010

<sup>93</sup> Ibid, para 2.4.

<sup>94</sup> European Commission decision N 707/2009, JOCE C/228/2010

order to be eligible for the aid, could invest only half of the amount than before. Also according to the amendment, recipient could ask for additional aid before the end of investment plan and depletion of already provided resources.

The State Aid in Slovakia was mainly granted to increase employment and help SMEs during the crisis. The most significant was the project of social enterprises. It is an enterprise, which employs at least 30 % of disadvantaged job seekers, or provides help and assistance to them.<sup>95</sup> Theoretically, it could have the desired effect on long-term employment. However, I think it was rather typical anti-crisis deformer, and it infringed the State Aid rules. They were established as non-profit organization, so they were supposed not to be subject of State Aid rules. But reality was different and, in fact they provably carried out business activities. Therefore, social enterprises gain, in comparison with their not subsidized competitors, privileged position at the market and State Aid rules were infringed. Effectivity of incurred expenditures is also controversial, especially when we looking at the costs necessary to create and maintain a job. Eight pilot project of social enterprises requested € 23,5 million (95 % should be endowed from EU funds). By their establishing, suspicion of party clientelism emerged, and they were subsequently found to be ineligible for funding and they were obliged to return it. The State could reimburse their expenditures for employment of disadvantaged jobseekers only up to 50 %. However, in reality also other expenses, such as the

---

<sup>95</sup> Act No 5/2004 Coll. as amended on Employment Services. available at [http://www.upsvar.sk/sluzby-zamestnanosti/zakladne-informacie-o-sluzbach-zamestnanosti/zakon-o-sluzbach-zamestnanosti.html?page\\_id=12823](http://www.upsvar.sk/sluzby-zamestnanosti/zakladne-informacie-o-sluzbach-zamestnanosti/zakon-o-sluzbach-zamestnanosti.html?page_id=12823) (accessed on March 15, 2012)

salaries of managers, were subsidized.<sup>96</sup> Consequently, the core anti – crisis project ended up as a fiasco, where even criminal proceedings were opened.

I would like to mention also Act on Strategic Enterprises, which was enacted in November 2009 and was valid until December 2010.<sup>97</sup> The Act allowed the State to get a pre-emptive right to purchase the assets of enterprises that found themselves in bankruptcy, if the government declares them to be strategic. The state was able to sell it back to private hands, after the consolidation of the company. The Act itself did not contain elements of illegal State Aid, but I think problem could arise by determining of the price for strategic undertaking. If the State bought it at a higher than market price, it could be considered as illegal State Aid. This Act undoubtedly reduced certainty of investors and hurt the business environment. It deserved also strong criticism from the opposition, which alleged that the State wanted to get under control Novácke chemické závody, which in fact also did. The company with more than 3,500 became bankrupt, after it was fined by the Commission for a cartel.<sup>98</sup> I think this is a good example, how the State can purposely use its superior position to favour one competitor and by this behavior distort the competition.

### ***3.4. Assessment of the temporary State Aid rules***

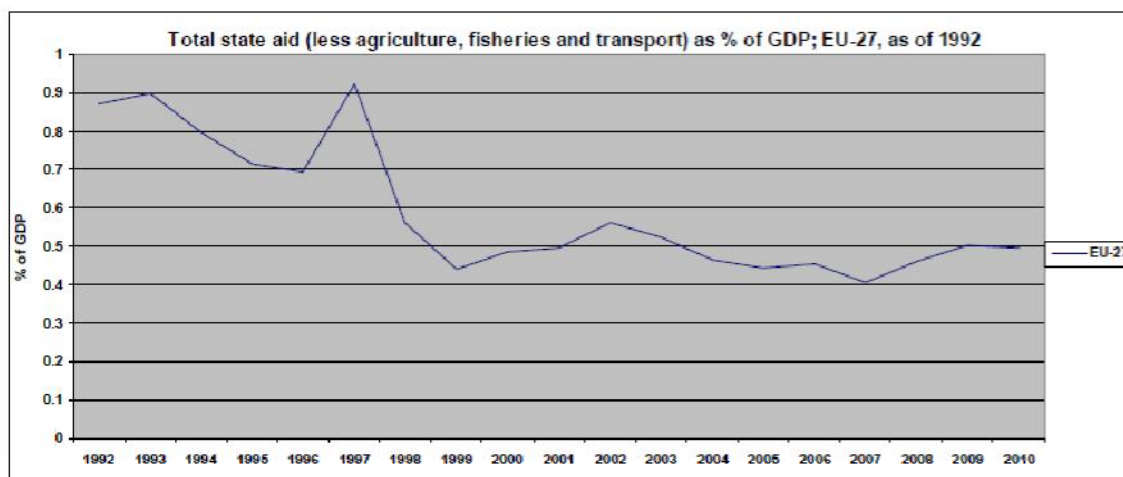
As it can be seen, the global financial and economic crisis hit the whole world, and caused extensive problems not only to the financial sector, which was damaged the most, but also to the real economy. The European Union hadn't been

<sup>96</sup> Sme. Brusel: Pomoc pre socialne podniky je nezakonna, mali by vratit peniaze. Available at: <http://ekonomika.sme.sk/c/5292970/brusel-pomoc-pre-socialne-podniky-je-nezakonna-mali-by-vratit-peniaze.html> (accessed March 15, 2012)

<sup>97</sup> Zákon o strategických podnikoch zo dňa 5. Novembra 2009. Available at: <http://ekonomika.sme.sk/c/5098542/zakon-o-strategickych-podnikoch.html> (accessed on March 15, 2012)

<sup>98</sup> Pravda. Brusel sa bližšie pozrie na zákon o strategických podnikoch. Available at: [http://spravy.pravda.sk/brusel-sa-blizsie-pozrie-na-zakon-o-strategickych-podnikoch-plg-sk-ekonomika.asp?c=A091114\\_074716\\_sk\\_ekonomika\\_p01](http://spravy.pravda.sk/brusel-sa-blizsie-pozrie-na-zakon-o-strategickych-podnikoch-plg-sk-ekonomika.asp?c=A091114_074716_sk_ekonomika_p01) (accessed on March 15, 2012)

saved and its economic growth was distorted. It can be proved by the fact that in the most critical year 2009, its GDP fell by - 4,2 %.<sup>99</sup> EU tried to turn away this adverse impact by various measures and one of the key instruments was a State Aid. As the graph indicates, the overall amount of granted State Aid significantly increased during crisis years, but it was still lower than in period before year 2003.



Graph No.2

Source:Eurostat

The Global Financial Crisis meant a big challenge and hard role for State Aid. The Commission reacted promptly, and decided not to completely abandon existing State Aid rules, but rather to agree on special ones with temporary validity. I think exceptional rules based on already existing was the better choice than adopting completely new rules, which would certainly take more time to issue, and also it would be lengthy process for Member States to become familiar with them.

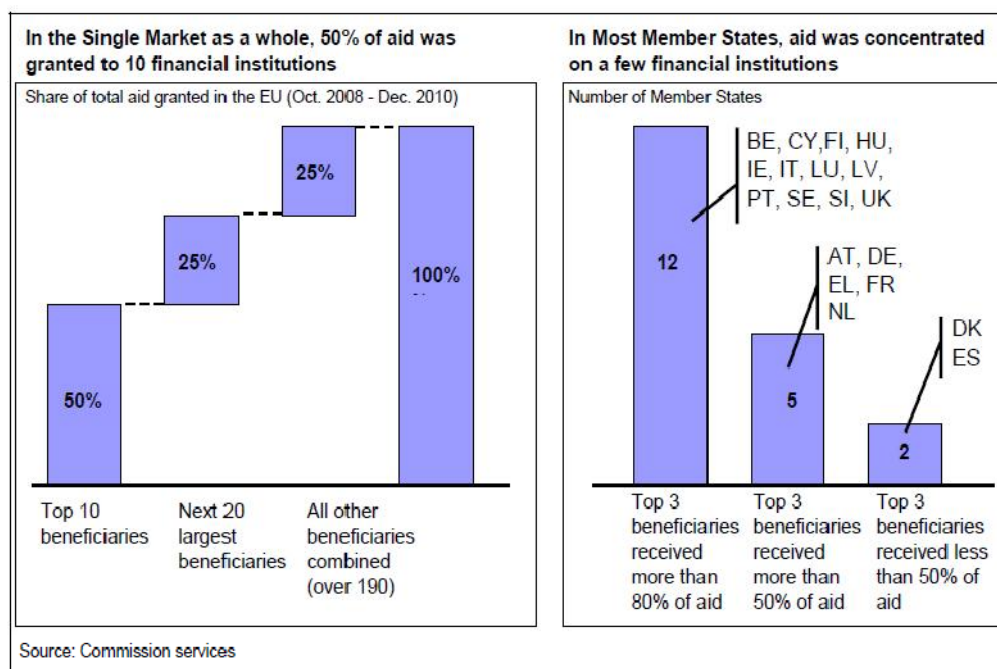
With the increased value of the State Aid, also the role of the Commission gained in importance, and its power has expanded. This fact can be proved by the number of the legal instruments issued, national schemes authorized and individual cases decided by this EU institution. From the legal point of view, it's interesting for

<sup>99</sup> See the Graph No.1

me to see, how effective Commission's Communications are. As I stated in the first chapter in their nature, they are not legally binding but nevertheless laying down rules for Member States, and recipients of State Aid, the breach of which can be sanctioned. De facto they are becoming a legal norm and part of the soft law of EU.

Temporary rules were accepted and widely used by Member States. In financial sector, aid in amount of more than 10 % of EU GDP was actually used to help to preserve solvency of banks and others financial institutions in the period from mid 2008 till 2010. But as we can see in graph below this aid was aimed only to certain number of beneficiaries – only ten largest financial institutions obtained more than 50 % of granted support, and among Member States banking sector of France, UK and Germany gained 60 % of total granted aid.<sup>100</sup>

*Concentration of aid on individual financial institutions and within each Member State*



Graph No.3

Source: European Commission Scoreboard

<sup>100</sup> European Commission. State Aid Scoreboard Report on State Aid granted by the EU Member States: Autumn 2011 Update: Report from the Commission. EDC Collection. Luxembourg: Publications Office of the European Union, 2011, p.8 - 10

The concentration of aid in certain Member States and particular financial institutions can be observed. Although it is not fair, the Commission defends itself by necessity to rescue financial institutions of systemic importance, which are „too big to fail”.<sup>101</sup> I think, it was logical step from the Commission, because these financial institutions are crucial not only for their national economy, but also for EU economy as a whole. Their crash would have influenced all the Member States, so it was necessary first and foremost to protect them.

In the real economy, the Member States used the Temporary Framework as a safety net. Till the end of 2010, they spent € 81 billion to help mostly SMEs to overcome unsuccessful period. It comprises less than 1% of EU GDP. However, only 26 % of this amount was in fact utilized.<sup>102</sup> I think the main reason could be that undertakings were still using non-crisis possibilities, and because of the strict granting conditions introduced in Temporary Framework, they preferred traditional tools.

Another fact, which I would like to point out by assessment, is the application of the Article 107 (3) (b) TFEU. Firstly, the use of this provision was rejected in case of crisis, but in 2008 the Commission changed its approach. This modification enabled to swiftly grant the well targeted aid, thus I see it as a positive action. It established the uniform legal ground for coordinated decisions of the Commission.

So it can be said, that the Commission succeeded to restore financial stability and functioning of the market with help by State Aid. But on the other hand, it had to

---

<sup>101</sup> European Commission. The effects of temporary State aid rules adopted in the context of the financial and economic crisis. Brussels, 5.10.2011 SEC(2011) 1126 final, p.12

<sup>102</sup> Ibid., p.65



eliminate also the distortion of the competition, caused by special measures introduced for the time of the crisis. For example, in financial sector, it used commitment decisions, burden sharing and specific behavioural and structural restrictions for this purpose. It means that institutions got the help, but not unlimited and certainly not for free.

Clearly, the competition was affected, but according to my opinion, any possible distortion was extremely minimized. As Phedon Nicolaides and Ioana Rusu states, new rules were maybe less strict<sup>103</sup>, but in my opinion these solutions were forced by extraordinary situation, and therefore greater benevolence is justified. It is important that they had only temporary character, and nowadays phasing out and return to normal mode can be observed. Since some of the consequences will show up only in the future, it is hard to make overall assessment, but even though I think that the Commission and State Aid handled their role in fight against crisis bravely. It was also upon the Member States, how they will use the offered possibilities.

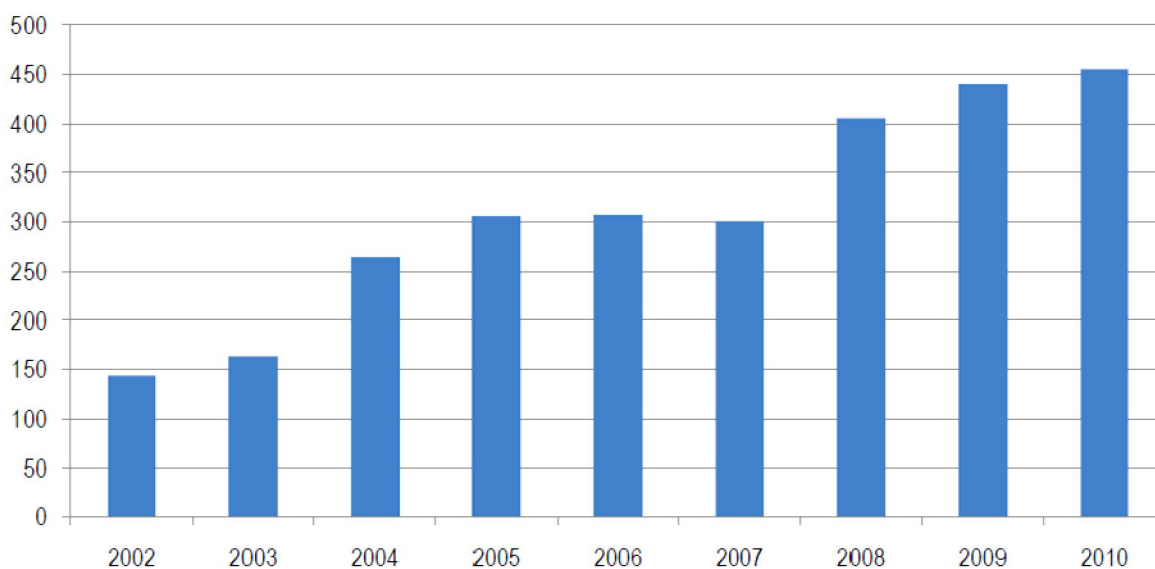
#### **3.4.1. Efficiency in the Slovak Republic**

The total amount of State Aid granted in Slovakia increased radically from year 2007. By comparison with the previous year, the overall increase of 18,78 % can be observed in year 2008, increase of 8,4 % in 2009 and of 3,44 % in 2010.

---

<sup>103</sup> Phedon and Rusu, op.cit., p.759–782.

These figures and graph indicates that the Global Financial Crisis undeniably influenced the State Aid in Slovakia, which reflected in growth of the amount of the granted aid.



Graph No.4

Source:Ministry of Finance SR

Taken into account the condition of the Slovak financial sector, the government did not need to use emergency measures to help financial institutions, which were common in other Member States affected by financial crisis. It means that despite Slovakia adopted banking scheme, and issued Act on Bank Guarantees and Act on Stabilization Aid to Banks, in fact it did not use possibilities given by these instruments.<sup>104</sup> Moreover, the Slovak Republic was the only from all Member States, which introduced the guarantee scheme, where also unhealthy banks were eligible for aid.<sup>105</sup> But none of the Slovak banks was endangered by crisis to such extent, that it would need help of the State. I see this fact as positive signal that demonstrates viability of the Slovak financial sector mainly due to the adoption of Euro and avoidance of the risky businesses with toxic banks.

<sup>104</sup> The same situation happened in 2 other Member States – Poland, Lithuania

<sup>105</sup> Ibid Commission Staff Working Paper, p.47

The situation in the real economy was slightly different. The State Aid under the Temporary aid scheme for granting limited amounts of compatible aid was provided only for 575 recipients in the total amount of about €2,49 million in 2009. Only two authorities granted State Aid under this scheme – Ministry of Labour to support and maintain employment, and Tax Directorate in the form of remission of tax sanctions.<sup>106</sup> The measures were aimed to help SMEs, but they in fact they did not use them. Low utilization of possibilities suggests that the adopted support schemes were not attractive for SMEs, and did not bring pro-growth incentives, which are needed at the time of the deterioration of the economic conditions. The main reason, which Government presented in its analysis of anti-crisis measures,<sup>107</sup> is the administrative complexity and difficulty. So it appears to me, that these measures were designed to give an impression of some activity in this area, rather than provide real help for SMEs.

Positively can be assessed the amendment to the Act on Investment Incentives, which increased group of undertakings, who can ask for investment aid. Lowering the minimal amount of investment enabled also smaller undertakings to gain resources under this scheme. It means that Slovak competitors used rather traditional, non-crisis tools and already approved schemes of State Aid.

It can be said, that the Slovak Republic implemented several tools offered by the Commission, but it did not use all of them. The Slovak Republic had a chance to change its business environment, and with help of the State Aid better resist the crisis' adverse effects. But it did not use this opportunity. The crisis was used as an

<sup>106</sup> Ministry of Finance of the Slovak Republic. Report about granted State Aid in SR in 2009. Available at: <http://www.finance.gov.sk/Default.aspx?CatID=3827> (accessed March 19, 2012) Reports from the subsequent years did not specify the aid granted under Temporary aid scheme, only overall amount of the State Aid.

<sup>107</sup> Ministry of Finance SR. National Programme of Reforms, Implementation report 2009. Available at: <http://www.finance.gov.sk/Default.aspx?CatID=5197> (accessed March 25, 2012)

excuse for State interventionism and political protectionism, which rather destroyed competition and favoured certain competitors as it can be seen on the case of social enterprises or also Cargo case, which I will describe in the next chapter.

## 4. Case Study

*State Aid rules ... give national governments the freedom to take aim at the root causes of the crisis, but stop them from shooting themselves in the foot, or their neighbours in the back.*<sup>108</sup>

Neelie Kroes

So far I was writing about the State Aid in EU and the Slovak Republic rather in the theoretical level. Therefore, I decided that I will include also a practical part in this chapter, where I would like to draw attention to some cases associated with topic of my thesis. It must be noted that the Slovak Republic is not as controversial as some other Member States regarding the issue of State Aid. The number of cases, that the Commission had to investigate, is not very high. The most interesting was the case of Frucona, and the case of the Bratislava airport and Ryanair, which I mentioned in previous chapters.

In year 2007 Commission approved the State Aid in form of tax relief for company INA Kysuce with headquarters in Germany<sup>109</sup>, which was therefore able to open two new facilities of existing plant for production of ball bearings. The Commission stated that this investment will help to increase employment, and it will contribute to the development of Kysuce region (Central Slovakia), so the positive effect outweighed the distortion of competition. But at the same time, the Commission started investigation into the public aid of € 1,15 million for an investment project by Glunz&Jensen in eastern Slovakia.<sup>110</sup> As well as in previous case, it was given in a form of tax exemption on the basis of Article 107 (3) (a) TFEU

---

<sup>108</sup> Commissioner Neelie Kroes. *The role of State Aid in tackling the financial & economic crisis*, Speech/08/863 on 8 December 2008

<sup>109</sup> European Commission decision C 651/2005, JOCE C 205/2007

<sup>110</sup> European Commission decision C 12/2007 (ex N 799/2006),

to promote development of Presov region, which is an area with the highest unemployment in the country. The aim of the investment project was the complete relocation of production from the Danish headquarters and Great Britain to Slovakia. Since beneficiary in this case is dominant in the market for the production of the graphic equipment, and investment project has already started, the Commission believes that this investment would have been provided by beneficiary even without this incentive. It could have had negative impact on the trade in favour of the one major competitor in the relevant market, therefore tax exemption was prohibited.<sup>111</sup> But in all of these cases, the State Aid had been granted before the crisis adversely affected the Slovak economy. Therefore my goal was to find a case that relates not only to the issue of illegal aid, but also where I can demonstrate crisis' impact. As an example I chose the latest case which is currently the subject of decision making in Brussels.

#### **4.1. Public loan granted to *Železničná spoločnosť Cargo Slovakia, a.s.***<sup>112</sup>

On 4 of March 2009 the Slovak Government issued a decree No.173 by which approved the use of state financial assets to provide repayable financial assistance to the Cargo Slovakia Railway Company (the Cargo) in the amount of €165.970 million and to Slovak Railways (ZSR) of € 69.906 million. The Cargo received a loan of €33 milion higher than it proposed.

The government wanted by its decision to mitigate the impact of the global financial crisis on the economy of the two railway companies due to a significant reduction in the volume of freight and revenues. The Slovak Republic didn't consider

<sup>111</sup> Europa Press Release. *State aid: Commission prohibits tax exemption to Slovak subsidiary of Glunz&Jensen*. available at: <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/07/1909> (accessed March 19, 2012)

<sup>112</sup> European Commission decision C 5/ 2010 (ex NN 48/09 and ex N 485/09), JOCE 177/2010

this loan as a State Aid, because it was provided at market conditions, nevertheless notified this instrument to Commission for legal certainty. It became highly discussed topic in Slovakia because this loan was given to Cargo, even despite the disapproval of the political opposition. On 21 April 2009 the third party file a complaint to the Commission pointing out this governmental measure. The Commission started procedure pursuant the Article 108(2) TFEU because it had doubts, whether this measure does not constitute a State Aid and whether it is compatible with the Common Market.

Even when the Commission has not decided yet, it explained the reasons for its concerns, and invited involved parties to submit their comments. I will try to clarify and assess individual criteria that might be important for the decision in this case.

#### **4.1.1. Existence of the State Aid**

As I mentioned in first chapter, there are four cumulative conditions, which must be met to consider advantage as the State Aid, which is in general prohibited.

##### **i. Existence of economic advantage**

In order to verify that the company benefited from the economic advantage in the form of loan on preferential terms, the Commission and the CJEU apply the private investor test, which I explained in first chapter. The private investor criterion embodies the principle of equal treatment of owners from public and private sectors. According to this principle it must be considered, whether Cargo received a selective economic advantage on the basis of the terms of loan provided by the Slovak republic – this kind of terms, which Cargo would never obtain under the normal market conditions. I think that the best way to find out, the Commission must assess

the financial situation of the Cargo at the time of the loan, and the nature of the loan terms imposed by the State.

The Cargo was established in year 2005 and during first three years recorded a loss. Year 2008 was the first year when the Cargo gained a net profit in amount of € 83 million. But due to the financial crisis the situation changed, and in 2009 the company's revenues derived primarily from transportation activities fell by 38% compared to the same period of 2008. Profit of the company fell also, from net profit of € 22 million in the first half of 2008 to the net loss of € 47 million (- 311%) in the first half of 2009. So the exacerbated financial situation of Cargo justified the provided loan, but I consider the terms of this loan as more alarming and problematic.

The advantage in this case was in the form of loan with maturity of ten years, which recipient shall start to repay after two years. The interest rate of the loan was according to the Commission's preliminary calculation wrongly established – it was at least about 2% lower than the reference rate of the Commission. Another striking fact is that such a big loan was provided without any guarantee. For these reasons, I think that the private investor in a market economy would never provide a loan in such amount and under such conditions, and thus that Cargo in this case obtained an economic advantage from the Slovak republic.

ii. Imputability and state resources

The loan in this case was granted directly by the Slovak Republic. The measure is based on the Government Decree No. 173 of 4 March 2009, which was implemented by the Ministry of Finance pursuant to a contract between the Ministry



and the recipient. It is therefore possible to conclude, that this measure is without any doubts imputable to the Slovak Republic.

iii. Selectivity

It is significant, that the potential advantage gained by the loan in the total amount of about € 166 milion, went to a single enterprise, the Cargo. For this reason, it was a selective approach by the State and also the requirement of selectivity is fulfilled.

iv. Distortion of the competition and effect on the trade

The competition in the rail freight transport in the Slovak Republic began on 1 January 2007 and currently fifteen freight transport companies operate on the Slovak market. The Cargo carries out freight and commercial activities in connection with rail freight transport. In addition it provides also services directly related transportation, such as renting, maintenaning and repairing the vehicle fleet. In 2008, the Cargo transported 44.5 million tons of goods, what represents a share on the Slovak market for rail freight in the amount of 93.7%. In the first half of 2009, the Cargo transported 15.3 million tons, which represents a market share of 93%. During my research for this case, the Slovak Supreme Court upheld the decision of the Antimonopoly Office, by which Cargo was found liable for abuse of dominant position contrary to the Act on protection of competition, and is obliged to pay fine in the amount of € 2,489 milion.<sup>113</sup> Also this fact proves its major role in the Slovak rail freight market, which was only strengthened by the loan from the Slovak Republic. Since real effect and distortion is no needed and by applying basic test introduced in first chapter, it can be

---

113 Topky.sk:Najvyšší Súd Potvrdil Pokutu Pre Cargo: Zaplatí Takmer 2,5 Milióna. available at: <http://www.topky.sk/cl/7/1304214/Najvyssi-sud-potvrdil-pokutu-pre-Cargo--Zaplati-takmer-2-5-miliona> (accessed March 25, 2012)

said that this loan most probably affected the competition and trade between Member States.

In my opinion the loan provided for the Cargo by the Slovak Republic constitutes a State Aid according to Article 107 (1) TFEU, because it meets all the criteria stated in this article. Therefore it should have been notified *ex ante* to the Commission. The Loan Agreement was signed on 31 March 2009 and the loan was paid on 6 of April 2009. Although the Slovak Republic notified this measure, she did it only after providing of this measure, on 10 August 2009. It means, that if the loan contained elements of the State Aid, the Slovak Republic would be a violation of Article 108 (3) TFEU and she granted illegal aid.

#### **4.1.2. Compatibility with the Common Market**

If loan constitutes the State Aid, the Commission must asses this measure to determine, whether it is compatible with the internal market under Article 107 (2) and (3) TFEU, which provide exceptions to the general principle of incompatibility laid down in Article 107 (1) TFEU. In the current case, Article 107 (3) (b) or (c) might be applicable.

##### Compatibility under Article 107 (3) (b)

Due to the financial crisis the Temporary Framework introduced possibility that certain types of State Aid for a limited time only, may be declared compatible with the Common Market under Article 107 (3) (b) TFEU. But Member States must demonstrate that the aid measures are necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State, and that will comply with all conditions set out in Temporary Framework. Aid may be granted only

to companies, that were not in difficulty before the 1 July 2008, but that got into difficulty thereafter as a result of the global financial and economic crisis. As I mentioned above, the year 2008 was for Cargo profitable, so this condition is met. But several others are arguable.

In this case, the Section 4.2 of the Temporary Framework about compatible limited amount of aid seems to be relevant. However, assistance under this section must be provided in the form of the scheme. The Commission by its Decision of 29 April 2009<sup>114</sup> approved the Slovak temporary aid scheme to grant compatible aid of a limited volume. Under this scheme the State can provide up to € 500 000 to SMEs and large firms, in the form of direct grants and remission of penalties for tax evasion and other charges. The beneficiaries could be undertakings from all sectors. But the approved scheme explicitly does not provide assistance in the form of loans. Furthermore, it appears that the gross equivalent of loan would largely exceed the sum of € 500 000. Therefore, I think that exception on the basis of Article 107 (3) (b) is not applicable in the current case.

#### Compatibility under Article 107 (3) (c)

The Commission assesses the compatibility of State aid provided on the basis of the Article 107 (3) (c) of TFEU under the R&R Guidelines. Therefore, is crucial to determine, if the Cargo meets the definition of firm in difficulty. However, even if the company is considered as being in difficulty, the loan can not be considered as rescue aid. In this regard, the Commission notes that the Slovak authorities are obliged within six months after approval of rescue aid measure submit a restructuring or liquidation plan to Commission. Also Slovakia did not provide proof

---

<sup>114</sup> European Commission decision N 222/09, JOCE 146/2009

of full repayment of the loan. In any case, the duration of the loan greatly exceeds the time authorized for aid provided according to the R&R Guidelines. Therefore, I doubt about applicability of Article 107 (3) (c) of TFEU either.

#### **4.1.3. Conclusion**

Also the Commission is suspicious about the legality of potential State Aid in current case, therefore started in-depth investigation and invited involved parties to submit their comments.<sup>115</sup> I can not prejudge the decision of the Commission but according to the above mentioned conclusions, it is at least questionable, whether the loan for Cargo in amount of about € 166 million provided by the Slovak Republic, did not constitute illegal aid. According to the published facts that I mentioned above, I think that all characteristic of the State Aid are present. Not only the economic advantage was provided by the State, but it favours the dominant competitor on the Slovak freight transport market, which may have resulted in disruption of competition and may have influenced the trade. I suspect that the adverse impact of the crisis was used only as an excuse for 'pouring money into this company' by the State. The Cargo was in very difficult financial situation, and the Slovak government wanted to prevent its possible collapse. However, the present situation indicates that plan was not successful, and the loan will not be repaid because of the Cargo's financial inability – it has already asked Ministry of Finance for grace of the first installment. The Commission has not decided yet, and its opinion may be of course different. Though, the result is highly anticipated because if the Cargo is obliged to return illegal aid it will have devastating effects on the further existence of this company, which reminds me recent situation of Hungarian Malév Airlines.

---

<sup>115</sup> European Commission. State aid C 5/10 (ex NN 48/09 and ex N 485/09) — Public loan granted to Železničná spoločnosť Cargo Slovakia, a.s. (ZSSK Cargo) Invitation to submit comments pursuant to Article 108(2) of the TFEU (2010/C 117/04)

## CONCLUSION

The aim of this thesis was to examine the impact of the financial crisis on rules of State Aid in EU, and especially to focus on one Member State, the Slovak Republic. State intervention into market economy, even when it is justified by crisis conditions, has always controversial character. Extraordinary anti – crisis policy with the extended State Aid possibilities, softening the limits constraints, and reduced transparency, is able to provide support for undertakings, which they will not give up easily.

Starting point for my research was the legal basis established in Articles 107 – 109 TFEU, and State Aid legal framework in Slovakia. Although general clause in Article 107 (1) TFEU states that State Aid is *prima facie* prohibited, EU with its regional, horizontal, and sectoral aid policy introduced exemptions according to which this advantage can be considered compatible with the Common Market. The Commission's role is to monitor and „.....ensure that government support does not interfere with the smooth functioning of the internal market or harm the competitiveness of EU undertakings.”<sup>116</sup> Legal framework in Slovakia comprises Act on State Aid and Act on Investment Incentives, which I found insufficient. They require adjustment and completion.

Further, the work showed how EU reacted to crisis, and in order to achieve a uniform and effective response adopted set of temporary State Aid rules. These, besides advantages brought also bigger risk of the State interference into the functioning of the Common Market and the competition between undertakings.

---

<sup>116</sup> European Commission. XXXII Report on Competition Policy, Luxembourg: Office for Official Publications of the European Communities, 2003, p.93

Therefore, the Commission, as a creator and 'watchdog' of compliance with this rules had a very difficult position.

After examining the temporary rules in financial sector, which was threatened the most, automotive sector, which is for the most Member States the major industry, and Temporary Framework, I think that the Commission handled its role fearlessly. It established an anticrisis regime with an appropriate mix of legal certainty and flexibility, speedy decision making and plurality of tools for crisis management. The result is restarted financial stability and escalating economic growth of the EU.

Nevertheless, I am sure that the distortions of competition occurred. Especially, because some of the Member States used the anticrisis tools more, and therefore Aid was concentrated to particular Member States, and also sectors. But in extreme situation, such as the biggest financial crisis since Great Depression, the distortion of the competition is unavoidable. But it can be said, that even if the rules were softer, the Commission did not enable unlimited amounts of the State Aid, still authorized granted aid and developed tools against its misuse. Important is temporary character of these rules. Now their gradual phasing out is feasible.

Despite the fact, that the Slovak economy has been affected by the global crisis mainly by sharp reduction in foreign demand, and asset of banks have remained clean, the impact on the real economy was feasible and perceptible. While in 2007 and 2008, Slovakia's economy was among the fastest growing in EU and OECD, in 2009 suffered decline in the GDP by – 5 %. I found out that this happened due to the high openness of its economy, and extreme dependence on export. Slovak Government adopted three rescue packages of more than sixty reforms aimed to mitigate impact of the crisis, which involved also elements of State Aid.

The Slovak Republic used several measures offered from temporary State Aid rules established in response to crisis. The Commission approved Slovak banking scheme, as well as Temporary aid scheme for granting limited amounts of compatible aid, and scheme for primary agricultural producers. But they were utilized only in very small quantities. The undertakings used more traditional instruments and already approved State Aid schemes on the primary basis of the Article 107 (3) (a) and (c). Positive effects had an amendment to Act on Investment Incentives, and enlargement of the capital of Eximbanka and Slovenska Zarucna a Rozvojova Banka. I see introduction of scrapping schemes, social enterprises and Act on Strategic Enterprises as a negative response to the financial crisis in the context of State Aid.

So it can be concluded, that amount and significance of the State Aid increased due to the crisis both on EU, and also national, Slovak level. But in Slovakia it was used uneffectively and rather favoured certain competitors, which eventually harm competition and effect trade. Slovakia did not use the chance to improve its situation with help of the State Aid, and now the Commission has to deal with indicated infringements, such as the Cargo case.

## BIBLIOGRAPHY

### **Books:**

- Nicolaides, Phedon, and European Institute of Public Administration. *State Aid Policy in the European Community: Principles and Practice*. 2nd ed. International Competition Law Series v. 16. Alphen aan den Rijn: Kluwer Law International, 2008.
- Bacon, Kelyn. *European Community Law of State Aid*. Oxford□; New York: Oxford University Press, 2009.
- Biondi, Andrea, Piet Eeckhout, and James Flynn. *The Law of State Aid in the European Union*. Oxford [England]: Oxford University Press, 2004.
- Bishop, Simon. *The Economics of EC Competition Law: Concepts, Application and Measurement*. University ed. London: Sweet & Maxwell, 2010.
- Derenne, Jacques, Alix Müller-Rappard, and Cédric Kaczmarek, eds. *Enforcement of EU State Aid Law at National Level 2010: Reports from the 27 Member States*. Berlin: Lexxion, 2010.
- Lybeck, Johan A. *A Global History of the Financial Crash of 2007-2010*. Cambridge: Cambridge University Press, 2011.
- Mederer, Wolfgang, and B. Allibert. *EU Competition Law. Vol. 4. State Aid*. Leuven: Claeys & Casteels, 2006.
- Ojala, Marjo. *The Competition Law of Central and Eastern Europe*. London: Sweet & Maxwell, Ltd, 1999.
- Oršulová, Andrea. *Competition Law in the Slovak Republic*. Alphen aan den Rijn, The Netherlands□: Frederick, MD: Kluwer Law International□; Sold and distributed in North, Central, and South America by Aspen Publishers, 2011.
- Quigley, Conor. *European State Aid Law and Policy*. 2nd ed. Oxford□; Portland, Or: Hart Pub, 2009.
- *Research Handbook on European State Aid Law*. Elgar Original Reference. Northampton, MA: Edward Elgar, 2011.
- Tosato et al. *EU Competition Law*. Vol. 4. Leuven: Claeys & Casteels, 2006.
- Vesterdorf, Peter. *State Aid Law of the European Union*. 1st ed. London: Sweet & Maxwell, 2008.

### **Journal Articles**

- Nicolaides, Phedon, and Ioana Eleonora Rusu. "The Financial Crisis and State Aid." *Antitrust Bulletin* 55, no. 4 (Winter 2010): 759–782.
- Terazi, Ebru, and Seçil Senel. "The Effects of the Global Financial Crisis on the Central and Eastern European Union Countries." *International Journal of Business & Social Science* 2, no. 17 (2011): 186–192.





- Sme. Brusel: Pomoc pre socialne podniky je nezakonna, mali by vratit peniaze. Available at: <http://ekonomika.sme.sk/c/5292970/brusel-pomoc-pre-socialne-podniky-je-nezakonna-mali-by-vratit-peniaze.html>
- Topky.sk:Najvyšší Súd Potvrdil Pokutu Pre Cargo: Zaplatí Takmer 2,5 Milióna. available at: <http://www.topky.sk/cl/7/1304214/Najvyssi-sud-potvrdil-pokutu-pre-Cargo--Zaplati-takmer-2-5-miliona>

### **Legislation, Reports, Notes:**

- Consolidated version of Treaty on the Functioning of the European Union
- The Slovak Constitution, adopted in 1992 by Constitutional Act No.460/1992 Coll
- Council Regulation (EC) 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty OJ L83/1 as amended [2006] OJ L363/1;
- Commission Regulation (EC) 794/2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty [2004] OJ L140/1, as amended [2009] L81/15
- Commission Regulation (EC) No 1628/2006 of 24 October 2006 on the application of Articles 87 and 88 of the Treaty to national regional investment aid. OJ L 302, 1.11.2006, p. 29–40
- European Commission. *European Economy - 7/2009 — Economic Crisis in Europe: Causes, Consequences and Responses*. Luxembourg: Office for Official Publications of the European Communities. 2008,
- Communication from the Commission to the European Council of 26 November 2008 – 'A European Economic Recovery Plan' [COM(2008)- 0800 final – Not published in the Official Journal]
- Ministry of Finance. Annual financial report for year 2009. Available at: <http://www.finance.gov.sk/Default.aspx?CatID=3411>
- Government SR. Analysis of the anti-crisis measures. Available at: [https://lt.justice.gov.sk/Attachment/vlastn%C3%BD%20materi%C3%A1l\\_doc.pdf?instEID=1&attEID=14687&docEID=78332&matEID=1926&langEID=1&Stamp=20090911133642280](https://lt.justice.gov.sk/Attachment/vlastn%C3%BD%20materi%C3%A1l_doc.pdf?instEID=1&attEID=14687&docEID=78332&matEID=1926&langEID=1&Stamp=20090911133642280)
- Communication from the Commission — The application of State aid rules to measures taken in relation to financial institutions in the context of the current global financial crisis. OJ C 270, 25.10.2008, p. 8–14
- Communication from the Commission — The recapitalisation of financial institutions in the current financial crisis: limitation of aid to the minimum necessary and safeguards against undue distortions of competition. OJ C 10, 15.1.2009, p. 2–10
- Communication from the Commission on the treatment of impaired assets in the Community banking sector. OJ C 72, 26.3.2009, p. 1–22
- Commission communication on the return to viability and the assessment of restructuring measures in the financial sector in the current crisis under the State aid rules. OJ C 195, 19.8.2009, p. 9–20
- Communication from the Commission on the application, from 1 January 2012, of State aid rules to support measures in favour of banks in the context of the financial crisis , OJ C 356, 6.12.2011, p. 7–10

- Government SR. National Reform Programme. Available at: [https://lt.justice.gov.sk/Attachment/vlastn%C3%BD%20materi%C3%A1l\\_doc.pdf?instEID=1&attEID=14687&docEID=78332&matEID=1926&langEID=1&Stamp=20090911133642280](https://lt.justice.gov.sk/Attachment/vlastn%C3%BD%20materi%C3%A1l_doc.pdf?instEID=1&attEID=14687&docEID=78332&matEID=1926&langEID=1&Stamp=20090911133642280)
- Communication from the Commission of 25 February 2009 - Responding to the crisis in the European automotive industry [COM(2009) 104 final – Not published in the Official Journal]
- Výnos MH SR 3/2009 ktorý upravuje poskytovanie dotácie na kúpu nového motorového vozidla (tzv.šrotovné) účinný od 6.apríla 2009
- Communication from the Commission — Temporary Community framework for State aid measures to support access to finance in the current financial and economic crisis OJ C 16, 22.1.2009, p. 1–9 (further only Temporary Framework)
- Commission Regulation (EC) No 800/2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty. OJ L 214, 9.8.2008, p. 3.
- Commission Regulation (EC) No 1998/2006 on the application of Articles 87 and 88 of the Treaty to de minimis aid. OJ L 379, 28.12.2006, p. 5.
- Communication from the Commission - Amendment of the Temporary framework for State aid measures to support access to finance in the current financial and economic crisis - adopted on 25 February 2009
- Communication from the Commission amending the Temporary Community Framework for State aid measures to support access to finance in the current financial and economic crisis. Adopted on 28 October 2009. OJ C 261, 31.10.2009.
- Communication from the Commission amending the Temporary Community Framework for State aid measures to support access to finance in the current financial and economic crisis. OJ C 303, 15.12.2009, p. 6–6
- Communication of the Commission — Temporary Union framework for State aid measures to support access to finance in the current financial and economic crisis. OJ C 6, 11.1.2011, p. 5–15
- European Commission. State Aid Scoreboard Report on State Aid granted by the EU Member States: Autumn 2011 Update: Report from the Commission. EDC Collection. Luxembourg: Publications Office of the European Union, 2011, p.8 – 10
- European Commission. The effects of temporary State aid rules adopted in the context of the financial and economic crisis. Brussels, 5.10.2011 SEC(2011) 1126 final, p.12
- Ministry of Finance of the Slovak Republic. Report about granted State Aid in SR in 2009. Available at: <http://www.finance.gov.sk/Default.aspx?CatID=3827>
- Ministry of Finance SR. National Programme of Reforms, Implementation report 2009. Available at: <http://www.finance.gov.sk/Default.aspx?CatID=5197>
- State Aid Act No.231/1999 Coll. as amended. Available at: [http://jaspi.justice.gov.sk/jaspiw1/htm\\_zak/jaspiw\\_mini\\_zak\\_zobraz\\_clanok1.asp?kotva=k1&skupina=1](http://jaspi.justice.gov.sk/jaspiw1/htm_zak/jaspiw_mini_zak_zobraz_clanok1.asp?kotva=k1&skupina=1)
- European Commission. XXXII Report on Competition Policy, Luxembourg: Office for Official Publications of the European Communities, 2003

### **Cases, decisions:**

- Case C39/94 SFEI v La Poste [1996] ECR I-3547
- Case C- 234/84 Kingdom of Belgium v Commission [1986], ECR 2263
- Case C-379/98 Preussen Elektra AG v Schleswig AG, [2001] ECR I-2099
- Case C 482/99 *France v Commission* (Stardust Marine), [2002] ECR I-14397
- Case T-351/02 *Deutsche Bahn v Commission*, [2006] ECR II-1047
- Case C-143/99 *Adria – Wien Pipeline* [2001] ECR I-8365
- Joined cases 6 and 11/69 *Commission v France* [1969] ECR 523
- Case C-372/97 *Italy v Commission* [2004] ECR I-3679
- Case C-730/79 *Philip Morris v Commission* [1980] ECR 2671
- Case C-142/87 *Belgium v Commission* [1990] ECR I-959
- Case C 21/88, *Du Pont de Nemours Italiana SpA v Unità sanitaria locale N° 2 di Carrara* [1990] ECR I-0889
- Case C-156/98, *Germany v Commission* [1999] ECR 2671, para 49
- Case C-730/79 *Philip Morris v Commission* [1980] ECR 2671 para 17
- Case C-122/94, *Commission v Council* [1996] ECR I-881, p.909
- Case C-507/08 *Commission v Slovak Republic* [2010] ECR 2010 p.0000
- European Commission decision N 392/2009, JOCE C/40/2010
- European Commission decision N711/2009, JOCE C/55/2010
- European Commission decision N 707/2009, JOCE C/228/2010
- European Commission decision C 12/2007 (ex N 799/2006), JOCE L 178/2008
- European Commission decision C 5/10 (ex NN 48/09 and ex N 485/09), JOCE 177/2010
- European Commission decision N 222/09, JOCE 146/2009
- European Commission decision C 651/2005, JOCE C 205/2007
- European Commission decision C 12/2008, JOCE L/27/2011