

APPROVED

**Order of the Antimonopoly Committee of
Ukraine**

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2022 ANNUAL REPORT

on providing state aid to undertakings in Ukraine

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Introduction

The annual report on the provision of state aid to undertakings (hereinafter - state aid) has been prepared by the Antimonopoly Committee of Ukraine (hereinafter - the Committee), which is the Authorized Body for State Aid (hereinafter - the Authorized Body) in accordance with the part one of Article 8 of the Law of Ukraine "On State Aid to Undertakings" (hereinafter - the Law).

One of the obligations of Ukraine in accordance with Article 263 of the Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their member states, on the other hand (hereinafter - the Association Agreement), is to ensure transparency in in the field of state aid. For this purpose, each Party to the Association Agreement annually sends the other Party a notification on the total amount, types and sectoral distribution of state aid that may affect trade between the Parties.

In fulfillment of this obligation, the Committee, in its annual reports¹ on the provision of state aid, displays relevant information. The reports for 2017-2021 were sent to the European Commission through the contact point of the Ukrainian party for the exchange of information.

This report contains information on the decisions on state aid adopted by the Committee in 2022, after which consideration of reports and cases on state aid was suspended in accordance with item 6 of the Committee's order dated 03 March 2022 No. 1-rp "On Certain Issues of Organizing Activities of the Antimonopoly Committee of Ukraine During Martial Law" and in connection with the adoption of the Law of Ukraine dated 15 March 2022 No. 2134-IX "On Amendments to Section VI "Final and Transitional Provisions" of the Budget Code of Ukraine and other legislative acts of Ukraine".

Taking into account the suspension of certain provisions of the Law, the Committee during 2022 focused its efforts on development of normative legal acts, the inventory of state aid that existed on the date of entry into force of the Law, advocacy and explanatory work on state aid.

¹ In accordance with part seven of Article 16 of the Law of Ukraine "On State Aid to Undertakings", every year, by September 1st of the following year, the authorized body prepares an annual report on the provision of state aid in Ukraine for the previous financial year and submits it to the Cabinet of Ministers of Ukraine.

1. System for monitoring state aid to undertakings, control over compatibility of such aid with competition

1.1. Implementation of provisions of the Law of Ukraine "On State Aid to Undertakings"

The Law establishes the legal basis for monitoring over state aid, control of compatibility of such aid with competition, establishes the obligation of state aid providers to submit notifications about new and existing state aid, and determines the procedure for recovery of state aid incompatible with competition. The Law is aimed at ensuring protection and development of competition, increasing transparency of operation of the state aid system, and compliance with Ukraine's international obligations in the field of state aid.

In order to ensure the effective implementation of the powers entrusted to the Committee as the Authorized Body for the fulfillment of Ukraine's international obligations, defined by the Association Agreement, in August 2017, the Committee created a structural unit - the State Aid Monitoring and Control Department (hereinafter - the Department).




The staff strength of the Department at the end of 2022 stood at 30. The Department worked as five units with distributed industry specialization, which, implementing the powers of the Committee in accordance with the requirements of the Law, in particular, monitor state aid granted to undertakings and implement control over compatibility of such aid with competition, make proposals to effective legal acts and develop draft normative legal acts on issues of state aid, etc.

1.2. Activities of the Committee as the Authorized Body for State Aid

In 2022, bodies of the Committee adopted **16** decisions in the field of state aid.

**Number of conclusions set out in the decisions²,
adopted in 2022:**

² Part of the decisions adopted by the Committee in the resolution part contains several conclusions.

	10	support to undertakings recognized <u>as not being state aid</u>
	7	<u>state aid compatible</u> with competition
	1	<u>state aid not compatible</u> with competition

In 2022, as in previous years, the number of decisions made by the Committee on individual state aid significantly outweighs the number of decisions on aid under state aid programs, and only one Committee decision out of 15 decisions concerned a state aid program.

In 2022, almost all decisions of the Committee were made based on the results of consideration of notifications from local self-government bodies.

15 out of 16 decisions of the Committee related to the support of utility enterprises. One decision regarding a state aid program provided for funding to both utility and private enterprises.

Table 1 provides information on the number of adopted decisions of the Committee in 2022 according to the classifiers of types of economic activity.

Table 1

Number of decisions adopted by the Committee by sections of types of economic activity

<i>Name of the section of economic activities</i>	<i>Number of decisions</i>
Maintenance of buildings and territories	6
Ground and pipeline transport	4
Activities in the field of sports, organization of rest and entertainment	2
Health care	1
Activities in the field of radio broadcasting and television broadcasting	1

<i>Name of the section of economic activities</i>	<i>Number of decisions</i>
Collection, processing and disposal of waste; recovery of materials	1
Production of food products	1

The largest number of decisions in 2022 (6 out of 16), as well as in 2021 (66 out of 178), was made regarding activities in the field of administrative and auxiliary services, which is provided for in the section "Maintenance of buildings and territories".

Table 2 shows the number of adopted decisions of the Committee in 2022, according to which support was recognized as state aid, by forms of state aid.

Table 2

Number of decisions made by the Committee by forms of state aid

<i>Form of state aid</i>	<i>Number of decisions</i>
Current and/or capital transfers	5
Subsidy	1
Guarantee	1
Increase in the size of the authorized capital	1

The Committee's decisions related to support and state aid in the total amount of **UAH 4,039,900,892** (excluding guarantees in euros), including:

decisions of the Committee on compatibility of state aid with competition concerned the amount of **UAH 341,537,420**;

Committee's decisions recognizing state aid as incompatible with competition concerned the amount of **UAH 5,140,000**;

decisions of the Committee regarding recognition of the support to undertakings as non-state aid concerned the amount of **UAH 3,693,223,472**.

In 2022, one decision was made to provide state aid in the form of a guarantee for a loan from the European Bank for Reconstruction and Development for a total amount of **EUR 14,500,000**.

Decisions of the Committee regarding compatibility of state aid with competition (the list is given in Appendix 1 to the Report)

The Committee adopted 7 decisions on compatibility of state aid with competition. Some of the decisions contain conclusions on compatibility in the event that the provider of state aid makes changes to the conditions of its provision or subject to fulfillment of obligations.

Decision of the Committee on incompatibility of state aid with competition

The Committee adopted one decision on incompatibility of state aid with competition (No. 55 dated 27.01.2022), according to which the recipient must return illegal state aid, recognized as incompatible with competition, in the amount of UAH 5,140,000 (see Appendix 2 to the Report).

The Committee's decisions on recognition of support to undertakings as not being state aid

The Committee adopted 10 decisions, which recognized the support undertakings as not being state aid. The decisions concerned the amount of state support in the amount of **UAH 3,693,223,472**.

1.3. Amendments to the Law of Ukraine "On State Aid to Undertakings" in connection with the introduction of martial law

In order to implement the Decree of the President of Ukraine dated 24.02.2022 No. 64/2022 "On the introduction of martial law in Ukraine" (approved by the Law of Ukraine dated 24.02.2022 No. 2102-IX (with amendments), amendments were introduced to the Law of Ukraine "On State Aid to Undertakings" in connection with the introduction of martial law.

On 21 March 2022, the Law of Ukraine of 15 March 2022 No. 2134-IX "On Amendments to Chapter VI "Final and Transitional Provisions" of the Budget Code of Ukraine and other legislative acts of Ukraine" entered into force, which amended the Law and established that during the period of martial law and within one year after its termination or cancellation, the provisions of this Law and other legislation arising from this Law will not be applied, all state aid provided during such period will be considered compatible, state aid providers will be exempted from the obligation to submit notification on new state aid and reports on existing state aid.

On 13 April 2022, the Law of Ukraine dated 01 April 2022 No. 2175-XX "On Amending Clause 5² of Section 9 "Final and Transitional Provisions" of the Law of Ukraine "On State Aid to Undertakings" regarding the application of its provisions during the period of validity of the of the martial law regime", came into effect, simplifying the mechanism of providing state aid to undertakings during the period of martial law and within a year after its termination or cancellation, namely:

- during the period of martial law, the provisions of Articles 6, 7, 9, 10, 11, 12, 13, 14, 15, 16 of the Law and other legal norms arising from the specified Articles of this Law will not be applied;
- state aid provided during martial law is compatible;
- providers of state aid are exempted from the obligation to notify new state aid and proposals to amend the conditions of existing state aid, if such state aid is provided during martial law and within one year after its termination or cancellation, as well as to submit information on existing state aid provided during martial law and within one year after its termination or cancellation.

At the same time, non-application of the relevant provisions of the Law does not ensure the full implementation of the Committee's powers as the Authorized Body on State Aid.

Carrying out a comprehensive, complete and objective assessment of measures to support undertakings at the expense of state or local resources regarding compliance with the legislation on state aid to undertakings is possible subject to consideration by the Committee as the Authorized Body of notifications about new state aid, whose submission by providers of state aid is provided for in Article 9 of the Law of Ukraine "On State Aid to Undertakings".

In view of the above, the provision of state aid in Ukraine must be carried out in compliance with Ukraine's international obligations stipulated in the Association Agreement regarding state aid. To this end, in order to ensure the functioning of the national state aid control system and the implementation of the powers of the Committee as the Authorized Body on State Aid, it is currently expedient to restore the functioning of the system of monitoring of state aid and control over compatibility of its provision to undertakings by making appropriate changes to the Law of Ukraine "On State Aid to Undertakings".

2. Legislative work in the field of state aid

While implementing its powers, as provided by the Law, the Committee has identified opportunities to improve the legal regulation and procedural aspects of its work, which will contribute to better performance of the functions of monitoring state aid and controlling compatibility of its provision.

In order to bring the national legislation on state aid to undertakings in line with the EU acquis, the draft Law on Amendments to the Law of Ukraine "On State Aid to Undertakings" and other legislative acts of Ukraine on state aid to undertakings was registered in the Verkhovna Rada of Ukraine under No. 5648 dated 10.06.2021 (hereinafter referred to as the Draft Law).

Adoption of the Draft Law will ensure:

- fulfillment of international obligations stipulated in the Association Agreement;
- improvement of the established legal regulation for the purpose of effective functioning of the system of control and monitoring of state aid;
- approximation of national legislation in the field of state aid to EU legislation;
- the organization of effective distribution of powers to perform the functions of control and monitoring of state aid.

In particular, in the Draft Law, the definition of "state aid to undertakings" envisages an important component - the impact on international trade between Ukraine and EU countries, which is an integral feature of the recognition of state support as state aid in accordance with provisions of the Association Agreement and relevant secondary legislation of the EU.

The Draft Law also proposes to introduce a new definition of "undertaking" and to define the concepts of "economic activity", "advantage", "date of provision of state aid", "date of receipt of state aid into disposal", to detail provisions on de minimis state aid, services, which are of general economic interest, which will ensure the principle of legal certainty in the application of state aid rules in Ukraine and their compliance with rules applied in the EU.

The provision that the Authorized Body, in addition to national legislation, is governed by provisions of international treaties, framework provisions, guidelines and other EU acts when making relevant decisions, ensures compliance with the obligations established in the Association Agreement, and also allows thorough and effective consideration of notifications and state aid cases.

Along with this, the Draft Law details the provisions regarding the expiration of the statute of limitations for recovery of state aid, taking into account provisions of the Council Regulation (EU) of 13 July 2015 No. 2015/1589 on establishing detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (codification) (hereinafter - Council Regulation (EU) No. 2015/1589).

In addition, in order to effectively and quickly consider state aid notifications and cases, the Draft Law proposes the distribution of powers between the Authorized Body and bodies of the Authorized Body (administrative board(s), state commissioners of the Committee); procedures for consideration of notifications, cases, reviewing decisions, consideration of applications on illegal state aid, as well as setting a fine for undertakings in the event of failure to submit information at the request of the Authorized Body / body of the Authorized Body or submission of inaccurate or incomplete information in the amount of one percent of income are improved.

The above-mentioned changes will have a positive effect on the functioning of the system of monitoring of state aid and control over compatibility of its provision in Ukraine.

During 2022, the Committee, together with the EU Technical Assistance Project "Support to the Antimonopoly Committee in the Implementation of State Aid Rules" (hereinafter - the SESAR Project), worked out the Draft Law and sent proposals to the Committee of the Verkhovna Rada of Ukraine on Economic Development.

Representatives of the Committee participated in the meetings of the Committee on Economic Development of the Verkhovna Rada of Ukraine during the consideration of the draft law to provide comments, suggestions, additional justifications and explanations, which took place on 14.11.2022 and 20.12.2022.

After being returned by the Verkhovna Rada of Ukraine for repeated first reading, the draft law was revised in accordance with the procedure established in the Regulations of the Verkhovna Rada of Ukraine. Based on the results of the processing by subjects of the legislative initiative, a significant number of proposals and amendments were made to the Draft Law. However, several fundamental, conceptually significant and those that change enforcement in this area require special attention, in particular, provisions have been added regarding:

- the possibility to establish by a separate law the specifics of the application of state aid in certain spheres of economic activity (part five of Article 3 of the Draft Law);

- postponement of the norms of certain Articles of the Law for 5 years from the day martial law ends and/or until the day Ukraine acquires full membership in the European Union (Clause 2 of Section X "Final and Transitional Provisions" of the Draft Law).

According to the conclusion of the Committee of the Verkhovna Rada of Ukraine on Economic Development dated 28 November 2022 No. 04-16/03-2022/202830, the main purpose of the Draft Law is to bring the provisions of the current Law of Ukraine "On State Aid to Undertakings" into compliance with rules for monitoring the state aid and control over compatibility of its provision, established by the Association Agreement and, accordingly, the EU acquis, as well as improving the established legal regulation for the purpose of effective functioning of the system of control and monitoring of state aid.

At the same time, the Committee believes that all features of the application of state aid rules, exceptions, etc., have to be established by the Law of Ukraine "On State Aid to Undertakings" and other normative legal acts adopted in accordance with this Law.

Therefore, the establishment by a separate law of the "features of the application of state aid in certain spheres of economic activity" is such that it can complicate enforcement and give way to legal conflicts.

The proposal to postpone the effect of the Law for 5 years from the day of the end of martial law and/or until the day Ukraine acquires full membership in the EU is unfounded and will lead to Ukraine not fulfilling its international obligations stipulated in the Association Agreement, since Article 267 regulates the terms of adoption national legislation, namely: within three years from the date of entry into force of the Association Agreement.

Taking into account the above, the adoption of the Draft Law and restoration of the pre-war state of functioning of the system of state aid to undertakings is a necessary step for further work on preparing Ukraine for EU membership and restoration of the country after the war.

In view of the above, the Committee supports the Draft Law, taking into account the proposals set forth in the draft expert opinion to the Draft Law, sent to the Cabinet of Ministers of Ukraine and the Committee of the Verkhovna Rada of Ukraine on Economic Development, in particular, regarding the exclusion of provisions on the establishment by a separate law of the specifics of the application of state aid in certain spheres of economic activity and on postponing the effect of the Law for 5 years from the date of the end of martial law and/or until the date of Ukraine's acquisition of full membership in the EU, which was sent at the request of the Committee of the

3. Separate areas of activity of the Committee as an Authorized Body in the context of implementation of the Association Agreement

3.1. Inventory of existing state aid

For the implementation of the Association Agreement during 2022, the Committee continued to carry out the inventory of state aid existing on the date of entry into force of the Law.

In 2022, the Committee held a number of meetings within the framework of the thematic subgroup of the Sectoral Working Group on State Aid (hereinafter referred to as SWG), which carries out its activities with the aim of implementing state aid measures provided for by the norms of the Tax and Customs Codes of Ukraine (hereinafter referred to as TCU and CCU), in accordance with the Law and the Association Agreement, with interested executive authorities, namely with representatives of:

- the Ministry of Development of Communities, Territories and Infrastructure of Ukraine, the Government Office for the Coordination of European and Euro-Atlantic Integration of the Secretariat of the Cabinet of Ministers of Ukraine and the SESAR

Project. 11 measures provided for by the TCU and CCU were worked through as to the presence of signs of state aid, and it was established that 5 norms of the TCU contain signs of state aid and require notification to the Committee for the appropriate assessment;

- the Ministry of Economy of Ukraine, the Government Office for the Coordination of European and Euro-Atlantic Integration of the Secretariat of the Cabinet of Ministers of Ukraine, the SESAR Project - representatives of the Ministry of Finance and the State Tax Service participated in the last meeting. 21 measures provided for by the TCU and CCU were analyzed for the presence of signs of state aid. According to the results of the meetings, it was established that 16 norms of the TCU and CCU contain signs of state aid and require notification to the Committee for the appropriate assessment;

- the Ministry of Culture and Information Policy of Ukraine, within which 13 measures were worked through;

- the Ministry of Energy of Ukraine, within the framework of which 10 measures were worked through;

- the Ministry of Health of Ukraine, within the framework of which 3 measures were worked through;

- the Ministry of Defense of Ukraine, within which one measure was worked through.

Based on the results of the mentioned meetings, the participants agreed on further cooperation with central bodies of executive power (hereinafter referred to as CEBs) in terms of bringing state aid schemes into compliance with legislation in the field of state aid.

At the same time, in order to determine the measures aimed at speeding up the fulfillment of Ukraine's international obligations under the Association Agreement, the Cabinet of Ministers of Ukraine Order No. 476-r of 14 June 2022 approved the action plan to improve the mechanism of state aid to undertakings (hereinafter - the Action Plan).

In order to implement the state aid inventory measures, in December 2022, the Committee sent a letter to the CEBs, responsible for the implementation of the Action Plan, with a developed template for providing relevant information.

Based on the result of summarizing information on the implementation of the Action Plan, the Committee sent a report on the implementation of the Action Plan to the Cabinet of Ministers of Ukraine by letter No. 500-29.1/01-4380 dated 23 February 2023.

3.2. Register of existing state aid

Pursuant to Article 267 of the Association Agreement, in February 2022, a test register of existing state aid, available until August 2, 2017 and evaluated by the Committee, was published on the website of the Committee (uploaded at <https://amcu.gov.ua/napryami/derzhavna-dopomoga/rishennya-komitetu-shchodo-chinnoyi-derzhavnoyi-dopomogi>).

In March 2022, the test register of existing state aid, which contained more than 60 decisions of the Committee on evaluation of programs of existing state aid, was transferred to the EU party through the contact point of the Ukrainian party for the exchange of information within the framework of the implementation of the Association Agreement. Information was also provided for the EU party regarding the transparency of state aid in accordance with Article 263 of the Association Agreement, stating in particular that Ukraine ensured reporting by state-owned enterprises in accordance with part three of Article 263 of the Agreement and Directive 2006/111/EC by way of submitting annual reports.

At the seventh meeting of the Ukraine-EU Association Committee, the trade section discussed, in particular, the issue of finalizing the test register of existing state aid and ensuring the transparency of state aid.

3.3. Bringing existing state aid schemes in line with the Association Agreement

The Committee carried out work on bringing state aid schemes into compliance with the criteria defined in Articles 262 and 264 of the Association Agreement.

Today, 18 state aid schemes, which are included in the test register of existing state aid, are compatible state aid, in particular due to fulfillment of obligations established in the decisions of the Committee.

In addition, with the aim of aligning the state aid schemes contained in the test register of existing state aid, in 2022 the Committee provided recommendations to three ministries-providers of state aid, namely:

- No. 1-rk dated 14.07.2022 to the Ministry of Strategic Industries of Ukraine regarding normative and legal regulation of conditions for providing state aid to aircraft manufacturing entities;
- No. 2-rk dated 08.09.2022 to the Ministry of Youth and Sports of Ukraine regarding normative and legal regulation of conditions for providing state aid to Olympic, Paralympic and Deaflympic training bases;

- No. 3-rk dated 29.09.2022 to the Ministry of Social Policy of Ukraine regarding regulation at the normative and legal level of conditions for providing state aid to employers who employ persons with disabilities, as well as to enterprises founded by CSO's of persons with disabilities.

At the same time, the work on bringing certain schemes of state aid into compliance is complicated by recipients/providers of state aid being located in areas of active military (combat) operations or in temporary occupation, encirclement (blockade).

3.4. Other European integration activities

In order to protect national interests, ensure economic independence of the state, the rights, freedoms and legitimate interests of citizens of Ukraine, society and the state as a whole, in order to obtain the status of a candidate for EU membership, further work on the integration of Ukraine into the EU, organization of stability and security of the European continent Ukraine, adhering to values enshrined in Article 2 of the Treaty on the European Union and in accordance with Article 49 of this Treaty, on 28 February 2022, Ukraine submitted an application for membership in the EU, signed by the President of Ukraine.

In accordance with the special procedure for accession to the EU, Ukraine received and filled out a questionnaire for obtaining the status of a candidate for EU membership, which, in particular, contained questions regarding:

- ✓ the state of implementation of provisions of the EU legislation into the national legislation on state aid to undertakings;
- ✓ inventory of existing state aid measures;
- ✓ powers of the Committee as an authorized body on state aid issues;
- ✓ procedure for recovery of illegal state aid deemed incompatible with competition;
- ✓ ensuring transparency in the field of state aid;
- ✓ state aid by: types of economic activity, sources of financing, in terms of the purpose(s) of providing state aid;
- ✓ register of state aid;
- ✓ compliance of the state aid legislation with the provisions of Articles 107 and 108 of the Treaty on the Functioning of the European Union;
- ✓ terms of decision-making by the Authorized Body on State Aid;
- ✓ support of economic activities related to provision of services of general economic interest;
- ✓ conformity of legislation on state aid with provisions of the EU acquis.

On 23 2022, Ukraine was granted the status of a candidate for EU membership, therefore, further preparation for membership involves, in particular, completion of the implementation of provisions of EU legislation into national legislation on state aid to undertakings.

4. Rule-making activity

The Committee is constantly taking measures to improve the necessary legal framework in the field of state aid.

In 2022, the Committee actively worked on development, approval, and submission of draft normative legal acts listed in Table 3 to the Cabinet of Ministers of Ukraine.

Table 3

<i>N^o</i>	<i>Name</i>	<i>Description</i>
1	Draft Resolution of the Cabinet of Ministers of Ukraine "On Amendments to the Procedure for Recovery of Illegal State Aid Incompatible with Competition" ³	<p>The document improves the procedure for recovery of illegal state aid incompatible with competition, which is in line with Ukraine's international legal obligations established by the Association Agreement in the field of state aid, namely:</p> <ul style="list-style-type: none"> • specifies the circle of recipients of aid for subsequent recovery in the event that a different undertaking was financed at its expense;

³ On 07 September 2022, the Government adopted Resolution No. 1001 "On Amendments to the Procedure for Recovery of Illegal State Aid Incompatible with Competition".

		<ul style="list-style-type: none"> • establishes the procedure for recovery of illegal state aid, incompatible with competition, if it was provided in the form of tangible assets; • regulates the procedure for the Committee to stop expiration periods for recovery of illegal state aid incompatible with competition, if there are grounds that make it impossible to implement the Committee's decision.
2	Draft Resolution of the Cabinet of Ministers of Ukraine "On approval of criteria for assessing compatibility of state aid to undertakings to ensure development of regions and support medium and small entrepreneurship" ⁴	The draft resolution was developed in connection with changes in European legislation, in order to improve the established legal regulation and to replace Resolution of the Cabinet of Ministers of Ukraine dated 07.02.2018 No. 57 "On approval of criteria for assessing compatibility of state aid to undertakings to ensure development of regions and support support medium and small business"
3	Draft Resolution of the Cabinet of Ministers of Ukraine "On approval of criteria for assessing compatibility of state aid to undertakings in the field of civil aviation"	The criteria will be used to assess compatibility of state aid provided to undertakings for purposes of promoting aviation activities pertaining to services provided at the airport to ensure operation of airports, for opening of new air routes, for provision of services of general economic interest, and as well as state aid, which is of a social nature, to ensure the transportation of passengers by air transport. The project is currently being finalized with interested CEBs.
4	Draft Resolution of the Cabinet of Ministers of Ukraine "On approval of criteria for assessing compatibility of state aid to undertakings for the support of culture and preservation of cultural heritage" ⁵	The criteria will be applied by the Committee assessing the state aid provided to support activities of cultural institutions, measures aimed at preserving objects and monuments of cultural heritage, ensuring viability of elements of intangible cultural heritage, cultural and artistic activities, etc.

4 On 18 April 2023, the Government adopted Resolution No. 348 "On approval of criteria for assessing compatibility of state aid to undertakings to ensure development of regions and support medium and small entrepreneurship".

5 On 20 January 2023, the Government adopted Resolution No. 52 "On approval of criteria for assessing compatibility of state aid to undertakings for the support of culture and preservation of cultural heritage"

5	Draft Resolution of the Cabinet of Ministers of Ukraine "On approval of criteria for assessing compatibility of state aid to undertakings for provision of services of creation and/or selection, organization and distribution of mass information, which are services of general economic interest" ⁶	The criteria will be used to assess compatibility of state aid to undertakings, which is provided with the purpose of promoting certain types of economic activity, namely, provision of services for creation and/or selection, organization and dissemination of mass information aimed at satisfying democratic, informational, social and cultural needs of the Ukrainian society, and services for creation and/or selection, organization and distribution of mass information of foreign audiovisual media aimed at meeting democratic, informational, social and cultural needs of the Ukrainian society and objectively informing foreign audiences about events in Ukraine and the world, which are services of general economic interest
6.	Draft Resolution of the Cabinet of Ministers of Ukraine "On approval of criteria for assessing compatibility of state aid to undertakings for provision of services of general economic interest"	The criteria will be used to assess compatibility of state aid to undertakings, which is provided with the purpose of promoting certain types of economic activity, namely, provision of services related to satisfaction of particularly important general needs of citizens, which cannot be provided on a commercial basis without state support, that is, services of general economic interest. The draft is currently being elaborated in collaboration with interested CEBs.

⁶ On 11 July 2023, the Government adopted Resolution No. 704 "On approval of criteria for assessing compatibility of state aid to undertakings for provision of services of creation and/or selection, organization and distribution of mass information, which are services of general economic interest"

5. Raising awareness in the field of state aid

The national system of control over state aid in Ukraine is steadily developing.

In order to further develop an effective state aid control system, dissemination of information about state aid remains one of the priority areas of the Committee's work, just as it has been in previous years.

In 2022, the following events took place:

- more than 700 telephone consultations with providers of state aid;
- 18 speaking events on issues of state aid (conferences, seminars and meetings).

In 2022, the Committee provided more than 60 written individual clarifications on the application of legislation on state aid to undertakings.

Also, in view of numerous requests from providers and recipients of state aid, the Committee, having summarized the questions received, prepared clarifications

- on the application of legislation in the field of state aid during martial law (Clarification of the Committee dated 15 April 2022 No. 1-rr/ DD).

In connection with the entry into force of the Law of Ukraine dated 01 April 2022 No. 2175-IX "On Amendments to Clause 5² of Section 9 "Final and Transitional Provisions" of the Law of Ukraine "On State Aid to Undertakings" regarding the application of its provisions during the period of martial law", the Committee provided, in particular, the following clarifications:

- from 25.02.2022, separate provisions of Articles of the Law and other provisions of the legislation arising from the specified articles of this Law are not to be applied;
- from February 25, 2022, providers of state aid do not submit notifications about new state aid, changes to the conditions of existing state aid;
- in case of approval of a normative legal act, on the basis of which state aid is provided or may be provided, by the state aid provider during martial law, such state aid is compatible with competition;
- providers of state aid must submit information on existing state aid by April 1st of the year following the year in which martial law is terminated or abolished;
- from the moment martial law comes into effect, all time limits for consideration of notifications about new state aid, cases about state aid that were under consideration by the Committee and on which relevant decisions had not been made by 25 February, 2022, are suspended, and their effective duration will continue after cancellation of martial law;

- within a year after the termination or abolition of martial law, providers are exempted from the obligation to notify new state aid and proposals to amend conditions of existing state aid;
- regarding undertakings that are heat-generating organizations (Clarification of the Committee dated 16 June 2022 No. 2-rr/dd).

The clarification states that conditions of compatibility of state aid, which is provided to heat-generating organizations to ensure the efficient operation of centralized heat supply systems. The Clarification interprets a number of concepts given in the Criteria for assessing compatibility of state aid to undertakings for environmental protection, approved by Resolution of the Cabinet of Ministers of Ukraine dated 11.10.2021 No. 1060, regarding state aid to ensure the effective operation of centralized heat supply systems, namely defined the following concepts:

- capital investments in the system of efficient centralized heat supply;
- an energy-efficient system of centralized heat supply in comparison with a traditional installation;
- investment programs, their types and approval procedure;

- during consideration of notifications about new state aid for providing support undertakings in the field of water and maritime transport (Clarification of the Committee dated 14.07.2022 No. 3-rr/dd).

The Clarification notes that in accordance with Ukrainian legislation and the practice of the European Union, state support to undertakings in the field of water and maritime transport has all the characteristics of state aid.

Depending on the goals and specifics of the provision, the assessment of state aid can be carried out taking into account the following factors:

- support for investment in port infrastructure requires notification. The assessment of such state aid is carried out in accordance with Article 56b of Commission Regulation No. 2017/1084 of 14 June 2017 on port infrastructure;
- compensation for socially important transportation with ships can be considered compensation for services of general economic interest in the case of establishing an economically unjustified tariff, as well as on the condition that these services are available to all sections of the population. The assessment of such compensation is carried out in accordance with the Altmark Decision, Commission Decision 2012/21/EU and Framework Communication of the EU Commission (2011) 2012/C 8/03;
- state support for specialized services provided on inland waterways as well as in seaports by entities with natural monopolies does not constitute state aid under certain conditions.

For a deeper understanding of approaches to assessment of state aid in the spheres of water and maritime transport, the Clarification provides an example of the Committee's decision;

- in the field of health care (Clarification of the Committee dated 31.08.2022 No. 4-rr/dd).

The Clarification lays down the conditions, under which support in the field of health care is not state aid and does not require approval by the Committee:

- state support of health care institutions, which is directed exclusively to provision of free-of-charge care, and the amount of paid medical services of an institution does not exceed 20% of the total amount;

- state support to health care institutions, the share of paid activity of which is more than 20%, with a caveat that such funding is compensation to these institutions for performance of their public duties. We are talking about such expense items as employee wages, utility bills, purchase of consumables and equipment, repairs, etc.

In this case, it is mandatory to conform with the conditions specified in decision of the European Court No. 280/00 *Altmark Trans GmbH, Regierungspräsidium Magdeburg v Nahverkehrsgesellschaft Altmark GmbH* (the Altmark criteria).

At the same time, state support to health care institutions, whose annual share of paid activity is more than 20% and for which the Altmark criteria are not met, contains signs of state aid and notified to be reported to the Committee.

After receiving such notification, the Committee will assess compatibility in accordance with the decision of the EU Commission on the application of part two of Article 106 of the Treaty on the Functioning of the European Union (2012/21/EU) and the Framework Communication of the EU Commission on state aid in the form of compensation for the provision of public services (2011) 2012/ C 8/03);

- regarding undertakings that provide services in the field of heat supply (Clarification of the Committee dated 06 October 2022 No. 5-rr/dd).

The Clarification relates to highlighting the main conditions that must be reflected in the method of calculating compensation, control over and review of compensation, measures to avoid and return excessive compensation;

- regarding support provided by local self-government bodies to undertakings in the form of tax measures (Clarification of the Committee dated 17.11.2022 No. 6-rr/dd).

The document deals with the legislative regulation of local taxes in Ukraine, since the legislation on state aid to undertakings in the form of tax incentives is applied

in the EU, and approaches to establishing the signs of state aid in the mentioned measures.

The Clarification demonstrates that not all measures aimed at promoting undertakings are considered state aid, but only those that selectively favor certain sectors of the economy, undertakings or their categories.

For example, selective provision of support to individual undertakings can be carried out in the form of:

- establishment of reduced tax rates within one group of tax payers;
- establishment of differentiated tax rates within one group of property or land used in certain types of economic activity;
- tax exemption for taxpayers in certain types of economic activity.

These measures exempt certain undertakings from part of their normal tax costs. While other companies operating in the same legal and factual circumstances within the same settlement continue to incur the above costs.

Provision of such selective advantages entails a distortion or threat of distortion of economic competition (in the sense of the Law of Ukraine "On State Aid to Undertakings") and contains signs of state aid, and therefore requires notification to the Committee and obtaining its assessment.

For a deeper understanding of approaches to the assessment of state aid in the form of tax incentives, the Clarification provides an example of the Committee's decision;

- to support individual activities in the field of physical culture and sports (Clarification of the Committee dated 24 November 2022 No. 7-rr/dd).

The Clarifications states that the following support is not state aid:

- one, which is provided to ensure free access to the sports infrastructure or for the sports infrastructure used for the activity of offering and/or selling goods (works, services) on the market, which is necessary for operation of the sports infrastructure or is an integral part of its main purpose, and the share of such use in the total capacity of the sports infrastructure (in particular by area or time of use) does not exceed 20 percent (i.e. for auxiliary activities);
- if the provider of support for development and construction of sports infrastructure operates under the same conditions as a market economy operator in a similar situation, and also if the sports infrastructure is put into operation by an undertaking to provide services to end users for a fee that corresponds to the market one;
- for measures to ensure educational activities of young people, the development and popularization of physical culture and sports, increasing their importance in

the life of society, etc., which are not carried out for the supply and/or sale of goods (works, services) on the market.

Accordingly, the support provided to an understanding to ensure the operation of sports infrastructure, which is used for the supply and/or sale of goods (works, services) on the market, contains signs of state aid.

The assessment of compatibility of such state aid with competition is carried out taking into account Article 55 of Commission Regulation (EU) No. 651/2014 of 17.06.2014 regarding declaration of certain categories of aid compatible with the internal market during application of Articles 107 and 108 of the Treaty on the Functioning of the European Union (as amended).

In order for the state aid to be compatible, in particular, it is necessary that the respective sports infrastructure:

- was not used exclusively by one professional sports user;
- access to the sports infrastructure must be provided for several users and on a transparent and non-discriminatory basis;
- pricing conditions for the use of the sports infrastructure should be available to the public, etc.

With regard to operational aid for sports infrastructure, eligible costs are the costs of providing services using this infrastructure, while the amount of such aid should not exceed operating losses for the relevant period.

Regarding investment aid for sports and recreational infrastructure, investment costs for tangible and intangible assets are permissible, and the amount of such aid should not exceed the difference between the amount of permissible costs and the operating profit from the investment.

For a deeper understanding of approaches to assessment of state aid in the field of physical culture and sports, the Clarification provides an example of the Committee's decisions;

- in the field of public transport fares (Clarification dated 22 December 2022 No. 8-rr/dd).

The document clarifies that public transport fare payment services using the automated fare payment accounting system (AFPAS) are directly related to meeting particularly important general needs of citizens, which cannot be provided on a commercial basis without state support. Therefore, they fall under the definition of services of general economic interest (SGEI).

At the same time, the Law of Ukraine "On State Aid to Undertakings" does not apply to SGEI in terms of compensation for reasonable costs covering providing such services. Support will not be considered state aid if it meets the four Altmark criteria.

And, on the contrary, if the criteria are not met, the support is not considered to be compensation of reasonable costs for providing SGEI and an assessment must be made regarding its recognition as state aid.

Regulation (EC) No. 1370/2007 of the European Parliament and the Council of 23 October 2007 on railroad and road public passenger transport services is used to assess compatibility of such state aid.

The Clarification includes a list of documents that providers must send to the Committee for the appropriate assessment.

In addition, the Committee analyzed the materials of 24 working groups of the National Council for the Recovery of Ukraine from the Consequences of the War, which was established under the Decree of the President of Ukraine dated 21 April 2022 No. 266/2022, for the presence of measures containing signs of state aid. The measures that were analyzed include proposals for priority reforms and strategic initiatives, lists of legal acts, the adoption and implementation of which are necessary for the effective work and recovery of Ukraine in the war-time and post-war periods. Explanatory letters were sent to the main responsible performers (CEBs) regarding the legislation on state aid to undertakings.

In order to advocate for the system of state aid monitoring and control of over compatibility of such aid with competition, Department specialists held a series of webinars for key potential providers of state aid, who are also responsible for implementation of state policy in relevant areas, namely:

- Ministry of Culture and Information Policy of Ukraine;
- State Committee of Television and Radio Broadcasting of Ukraine;
- Ministry of Development of Communities and Territories of Ukraine;
- Ministry of Development of Communities, Territories and Infrastructure of Ukraine;
- Ministry of Economy of Ukraine;
- Ministry of Environmental Protection and Natural Resources of Ukraine;
- Ministry of Social Policy of Ukraine;
- Ministry of Energy of Ukraine;
- Ministry of Youth and Sports of Ukraine;
- Ministry of Strategic Industries of Ukraine;
- Ministry of Education and Science of Ukraine;
- Ministry of Finance of Ukraine.

Throughout 2022, the Committee continued cooperation with the SESAR Project. SESAR experts were involved in conducting the above-mentioned webinars.

In its work, the Committee encountered a number of initiatives to exclude local resources from the scope of the Law, and repeatedly denied and rejected such initiatives, as they do not comply with the Association Agreement and EU acquis.

According to para 48 of the Commission's Notice on the concept of state aid, in accordance with Article 107(1) of the Treaty on the Functioning of the European Union, public resources include resources of the public sector, in particular of intrastate units (decentralized, federal, regional and other), as well as under certain conditions – resources of private organizations. So, according to the above, state resources, according to the EU legislation in the field of state aid, is a broad concept, which, in turn, includes local resources as well.

In connection with the above, an event was held to discuss such legislative initiatives with the participation of the Committee, representatives of the Government Office for the Coordination of European and Euro-Atlantic Integration of the Secretariat of the Cabinet of Ministers of Ukraine, the Committee of the Verkhovna Rada of Ukraine on Economic Development, SESAR Project, the Association of Cities of Ukraine and local authorities.

In 2022, specialists of the Department participated in 7 webinars and seminars organized by the SESAR Project, in particular, on the following topics:

- "Economic analysis of state aid cases";
 - "Services of general economic interest. Examples of compensation";
 - "IT tools for monitoring and controlling state aid";
 - "Financial transparency. Provisions of Commission Directive 2006/111/EC of November 16, 2006 on the transparency of financial relations between Member States and public undertakings";
 - "Control and monitoring of fulfillment of obligations of providers of state aid according to the decisions of the AMCU by means of the State Aid Portal";
 - "Existing state aid / inventory";
 - "Changes in EU rules on regional investment aid."
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Conclusions and areas of further work of the Committee in 2023

Conclusions

1. In the reporting year, the Committee made 16 decisions in the field of state aid, after which consideration of notifications and cases on state aid was suspended in connection with the introduction of amendments to the Law of Ukraine "On State Aid to Undertakings" regarding the application of its provisions during the period of martial law.

The decision to suspend certain articles of the Law of Ukraine "On State Aid to Undertakings" was made at the beginning of the large-scale invasion of the Russian Federation to accelerate the financing of important projects. For this purpose, state aid providers were released from the obligation to notify the Antimonopoly Committee of Ukraine about new or existing state aid, and all state aid provided during martial law was recognized as compatible for competition.

At the same time, even in view of the changes introduced by the Law of Ukraine "On Amending Clause 5² of Chapter 9 "Final and Transitional Provisions" of the Law of Ukraine "On State Aid to Business Undertakings" Regarding the Application of Its Provisions During Martial Law", providers must take into account the terms of the Association Agreement when providing state aid.

In view of the above, the provision of state aid in Ukraine must be carried out in compliance with Ukraine's international obligations stipulated in the Association Agreement regarding state aid. To this end, in order to ensure the functioning of the national state aid control system and the implementation of the powers of the Committee as an Authorized Body for state aid, it is expedient to restore the functioning of the specified system of monitoring and control of state aid to undertakings by making appropriate amendments to the Law of Ukraine "On State Aid to Undertakings".

2. Taking into account the suspension of certain provisions of the Law of Ukraine "On State Aid to Undertakings", the Committee focused its efforts on the implementation of the Association Agreement in terms of other obligations of Ukraine regarding state aid.

During 2022, the Committee continued to carry out the inventory of state aid available on the date of entry into force of the Law, in cooperation with the CEBs, and

continued work on bringing state aid schemes into compliance with the criteria defined in Articles 262 and 264 of the Association Agreement. The test register of existing state aid, which contained more than 60 decisions of the Committee on assessment of existing state aid programs, was transferred to the EU side through the contact point of the Ukrainian side for the exchange of information within the framework of the implementation of the Association Agreement.

In 2022, the Committee actively developed normative legal acts, accompanied them during coordination with interested executive authorities and during consideration by the Government. In order to harmonize the national legislation on state aid to undertakings with EU acquis, further improvement of the legal framework is necessary.

It is extremely important to improve existing gaps regarding the practical application of European norms and rules of provision, monitoring of state aid to undertakings and control over compatibility of state aid with competition in Ukraine. Further preparation for Ukraine's membership in the EU involves, in particular, completion of implementation of provisions of EU legislation into national legislation on state aid to undertakings.

3. In order to further develop an effective system of state aid, one of the priority areas of the Committee's work, as in previous years, remains the dissemination of information about state aid. Based on written requests from providers and recipients of state support, more than 60 written individual clarifications were provided regarding the application of legislation on state support to undertakings. Also, taking into account the unique appeals of providers and recipients of state support, the Committee provided and continues to provide generalized clarifications on the application of the aforementioned legislation in the most relevant sectors.

Areas

Taking into account the analysis carried out and the practical work of the Committee in 2022, it is possible to **highlight following priority areas for further work of the Committee** in 2023:

- ensuring operation of the national state aid control system;
- improvement of normative and legal regulation in the field of state aid;
- providing clarifications on application of legislation on state aid to undertakings;

- advocacy of the state aid system pertaining to development of state aid programs by providers;
- bringing state aid programs to undertakings into compliance with requirements of the Law;
- providing information to the European Commission regarding provision of state aid in Ukraine pursuant to requirements of the Association Agreement.

List of Appendices

Appendix 1. Decisions of the Committee on compatibility of state aid with competition, adopted in 2022.

Appendix 2. Decisions of the Committee on non-compatibility of state aid with competition, adopted in 2022.

Appendix 1
to the 2022 Annual report
on providing state aid to
undertakings in Ukraine (section
1.2)

Decisions of the Committee on compatibility of state aid with competition, adopted in 2022

Provider	Recipient	Oblast	Start date	Completion date	Committee decision number	Date of the Committee's decision	Allocated funds (UAH)	Forms of provision
Office of Communal Property of the Enerhodar City Council	Municipal enterprise "City Dairy Kitchen" of the Enerhodar City Council	Zaporizhzhia	01.01.2022	31.12.2024	4-r/tk	21.01.2022	17,826,524	Subsidy, current and capital transfers
Mariupol City Council	Municipal enterprise "Polihon TPV"	Donetsk	01.11.2022	20.11.2034	5-r/tk	21.01.2022		Guarantee
Department of Transport and Telecommunications of the Executive Committee of the Kryvyi Rih City Council	Municipal enterprise "Electronic Payment Center" of the Kryvyi Rih City Council	Dnipropetrovsk	01.01.2022	31.12.2023	7-r/tk	09.02.2022	120,790,000	Current and capital transfers
Executive Committee of the Pavlohrad City Council	Municipal enterprise "Pavlohrad TV and Radio Company" of the Pavlohrad City Council	Dnipropetrovsk	01.01.2022	31.12.2026	19-r	13.01.2022	33,308,800	Subsidy and current transfers

Department of Education and Humanitarian Policy of Cherkasy City Council	Municipal enterprise "Dnipro Municipal Sports Club of Cherkasy City Council"	Cherkasy	01.01.2021	31.12.2026	86-r	10.02.2022	83 392 289	Current and capital transfers
Department of Education and Humanitarian Policy of Cherkasy City Council	Municipal enterprise "Sports complex "Budivelnik" of the Cherkasy City Council"	Cherkasy	01.01.2021	31.12.2026	87-r	10.02.2022	40,512,807	Current and capital transfers
Department of Housing and Communal Economy of Chernivtsi City Council	Municipal enterprise "Chernivtsi Trolleybus Management"	Chernivtsi	01.01.2022	31.12.2023	92-r	24.02.2022	107,301,000	Replenishment of authorized capital, capital transfers

Appendix 2
to the 2022 Annual report
on providing state aid to
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1.2)

Decisions of the Committee on non-compatibility of state aid with competition, adopted in 2022

Provider	Recipient	Oblast	Start date	Completion date	Committee decision number	Date of the Committee's decision	Allocated funds (UAH)	Forms of provision
Department of Housing and Communal Services of the Yuzhne City Council	Yuzhne municipal utility company "YUZHTRANS"	Odesa	01.01.2022	31.12.2022 2	55-r/tk	27.01.2022	5,140,000	Capital transfers to enterprises