

APPROVED

**Order of the Antimonopoly Committee of
Ukraine**

of 22 August 2024 № 18-rp

2023 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 2017-2022 were sent to the European Commission through the contact point of the Ukrainian party for the exchange of information.

Taking into account the continued suspension of the effect of certain provisions of the Law in connection with the introduction of martial law in Ukraine, the Committee for 2023 implemented the planned priority measures in terms of improving the regulatory and legal framework, advocating for the state aid system and fulfilling Ukraine's international obligations in the field of 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 Department's staff at the end of 2023 stood at 30 units. The Department worked as part of five departments with distributed sectoral specialization, which ensure the implementation of the powers of the Committee as the Authorized Body on State Aid in accordance with requirements of the Law.

1.2. 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, 9-16 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.

Nevertheless, 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".

Understanding the importance and relevance of the de-suspension of the provisions of the Law, taking into account the current situation that has arisen in connection with the changes made to the Law during the martial law and post-war reconstruction of the state, the Committee appealed to the Prime Minister of Ukraine with a request to consider the possibility of restoring the suspended Law, which, among other things, will allow to:

- ensure protection and development of competition;
- increase transparency and efficiency of administration of resources of the state and local resources;

- increase Ukraine's investment attractiveness, which, accordingly, will have a positive effect on the business environment, job creation and improve macroeconomic indicators, relevant for GDP as well;

- simplify, for undertakings, the procedure to obtain compensation for losses caused by emergency situations, in particular military actions, at the expense of state and local resources.

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" in order to de-suspend it.

1.3. Action plan to improve the state aid mechanism

Edict of the Cabinet of Ministers of Ukraine dated 14.06.2022 No. 476-r approved the Action Plan to improve the mechanism of state aid to undertakings. Responsible executors must ensure the implementation of the Action Plan and send the Committee information on the status of implementation of the Action Plan by February 1st every year for its summation and submission to the Cabinet of Ministers of Ukraine by March 1st.

The specified Action Plan, in particular, envisages:

1. Designation of the Committee responsible for development and submission to the Cabinet of Ministers of Ukraine of draft resolutions of the Cabinet of Ministers of Ukraine on criteria for assessing the compatibility of certain categories of state aid.

2. That state aid providers bring regulations regarding provision of the state aid to undertakings, which, according to the Committee's decision, is recognized as incompatible competition, into compliance with the Law.

3. Development and implementation by providers of state aid of measures to provide support at the expense of state and local budgets or any other support at the expense of state or local resources to undertakings, taking into account the requirements of the Law.

4. Ensuring the maintenance of a register of state aid and access to such a resource.

5. Ensuring preparation of an annual report on provision of state aid to undertakings for the previous fiscal year, submission of the report on provision of state aid to undertakings to the Cabinet of Ministers of Ukraine for publication in the newspaper "Uriadovyi Kuryer" and posting on the government's website.

The Committee reported to the Cabinet of Ministers of Ukraine on implementation of the Action Plan for 2023 with letter No. 500-29.1/01-1932e dated February 23, 2024. In particular, relevant central bodies of the executive power, National Electricity and Utilities Regulator, National Electronic Communications Regulator, oblast state administrations, the Kyiv municipal state administration provided the Committee with information on development and implementation of measures they took to provide support at the expense of state and local budgets or any other support at the expense of state or local resources to undertakings taking into account the requirements of the Law or on the absence of such measures.

Information received from providers is processed and used by the Committee to monitor state aid provided during martial law, and will be taken into account during preparation of relevant drafts of Government's resolutions on approval of criteria for assessing compatibility of certain categories of state aid, clarifications on application of the legislation in the field state aid, etc.

2. Legislative work in the field of state aid

The Committee keeps taking measures to improve the legal framework in the field of state aid. In 2023, the Cabinet of Ministers of Ukraine adopted **5 resolutions**, which were drafted primarily by the Committee. In addition, **4 drafts of normative legal acts** in the field of state aid were approved at the meetings of the Committee.

The Committee constantly works on drafts of normative legal acts, which are submitted for clearance by relevant central bodies of executive power, regarding the presence of signs of state aid measures. Despite the suspension of certain provisions of the Law during martial law, the Committee always emphasizes the need to comply with Ukraine's international obligations in the field of state aid in accordance with the Association Agreement. In 2023, during the processing of drafts of regulatory and legal acts submitted to the Committee for clearance, signs of state aid were found in more than 30 drafts of regulatory and legal acts, which the Committee noted in the relevant letters to the main drafters of such acts.

2.1. Draft law № 5648 of 10 June 2021

In 2023, the Committee lent its support behind consideration of the draft Law of Ukraine "On Amendments to the Law of Ukraine "On State Aid to Undertakings" and other legislative acts of Ukraine on state aid to undertakings", in the Verkhovna Rada of Ukraine registration No. 5648 dated 10 June 2021 (hereinafter – draft law No. 5648).

The purpose of the aforementioned draft law No. 5648 is to improve the established legal regulation for the purpose of effective operation of the system of control and monitoring of state aid, as well as to bring national legislation into compliance with the rules of monitoring and control of state aid established in the Association Agreement and, accordingly, the EU acquis.

Currently, the Verkhovna Rada of Ukraine is considering the revised draft law No. 5648 as of December 26, 2022. After finalization of the said draft law, a certain number of proposals and amendments were made.

At the same time, the finalized draft law No. 5648 contains some fundamental, conceptually significant norms and those that change the law enforcement of the sphere of state aid (the Committee noted this in its letter of 02 January 2023 No. 500-29.1/01-75e to the committee of the Verkhovna Rada of Ukraine on integration of Ukraine into the European Union and in the corresponding draft of the expert opinion

sent to the Cabinet of Ministers of Ukraine and the committee of the Verkhovna Rada of Ukraine on economic development in letter dated 19 January 2023 No. 500-/09-2087e), namely regarding:

1. 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).

The establishment by a separate law of "features of the application of state aid in certain spheres of economic activity" can complicate law enforcement and lead to the emergence of legal conflicts.

2. 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).

The proposal to postpone 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 is unfounded and does not comply with the international obligations provided for in the Association Agreement, since Article 267 thereof regulates the deadlines for the adoption of national legislation, namely: within three years from the date of entry into force of the Association Agreement.

In the draft expert opinion, it was noted that the Committee generally supports draft law No. 5648, but the above-mentioned norms of draft law No. 5648 require special attention.

In addition, representatives of the Committee participated in meetings of the committees of the Verkhovna Rada of Ukraine, at which draft law No. 5648 was considered: on 04 May 2023 – at the committee of the Verkhovna Rada of Ukraine on environmental policy and natural resource management, on 12 September 2023 – at the committee of the Verkhovna Rada of Ukraine on integration of Ukraine into the European Union.

Based on results of consideration of draft law No. 5648, the committee of the Verkhovna Rada of Ukraine on integration of Ukraine into the European Union in its opinion dated 14 September 2023 No. 04-20/10-203/200639 noted that the provisions of the draft law are aimed at implementing international legal obligations in the field of European integration, at the same time the postponement of the effect of some of its norms, in particular, exemption from responsibility and from the obligation to notify about receiving state aid do not comply with the Association Agreement.

2.2. Adopted resolutions of the Cabinet of Ministers of Ukraine

Within the reporting year, the Cabinet of Ministers of Ukraine adopted the following **5 resolutions** approving the criteria for assessing compatibility of certain categories of state aid, which were primarily prepared by the Committee:

1. Resolution No. 52 of the Cabinet of Ministers of Ukraine dated 20 January 2023 "On adoption of criteria for assessing state aid to undertakings **for the support of culture and preservation of cultural heritage**" (hereinafter – Resolution No. 52).

The criteria will be used to assess the compatibility of state aid provided to undertakings for the purpose of supporting culture and preserving cultural heritage, establishing the conditions under which it is compatible for competition.

Recipients of state aid, in accordance with these criteria, are undertakings that are not in a difficult financial situation and carry out activities aimed at supporting culture and preserving cultural heritage, in particular those belonging to creative industries in the specified area (except for the production and distribution of audiovisual works), the income from which (without taking into account support from state or local resources) covers more than 50 percent of the costs for carrying out such activities.

The criteria define that state aid can be provided as investment and (or) operational aid.

So, for example, for investment aid, eligible costs are costs for new construction, reconstruction, capital repairs of infrastructure facilities, creation and/or improvement of their accessibility, etc.; for operational aid – for financing ongoing activities of cultural institutions, for operational costs directly related to the organization and implementation of cultural and artistic events (projects), etc.

In addition, Resolution No. 1225 of the Cabinet of Ministers of Ukraine dated 21 November 2023 amended the criteria for assessing compatibility of state aid to undertakings for the support of culture and preservation of cultural heritage, adopted with Resolution No. 52.

The introduction of the specified changes is connected with the updating of the act of European legislation, with due account of which the criteria had been developed. Therefore, the changes to them implement relevant provisions of Commission Regulation (EU) No. 2023/1315 dated 23.06.2023, which, in particular, amended Regulation (EU) No. 651/2014 dated 17.06.2014 on the recognition of certain categories of aid as compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the EU.

The resolution made the following changes to the criteria:

- value added tax, which is reimbursed in accordance with the law, will not be taken into account when determining the maximum amount of state aid. Accordingly, the specified change will help to optimize the use of state or local resources;

- the amount of state aid, for which an alternative method of calculating the maximum amount of state aid is applied (at the level of 80% of allowable costs), is increased from 2 million euros to 2.2 million euros. Accordingly, the specified change provides an opportunity to determine a larger amount of compatible state aid under a simplified mechanism.

2. Resolution No. 348 of the Cabinet of Ministers of Ukraine dated 18 April 2023 "On adoption of criteria for assessing compatibility of state aid to undertakings **to ensure development of regions and support medium and small businesses**" (hereinafter – Resolution No. 348).

Resolution No. 348 approved the Criteria for assessing compatibility of state aid to undertakings to ensure development of regions and the Criteria for assessing compatibility of state aid to undertakings to support medium and small entrepreneurship.

Re Criteria for assessing compatibility of state aid to undertakings to ensure development of regions

The criteria are used to assess compatibility of state aid, which is provided for the purpose of providing assistance to socio-economic development of regions, stimulate investment activity of undertakings and promote activities related to production of goods by undertakings (performance of works, provision of services).

Undertakings conducting economic activity in any field may become recipients of this particular kind of state aid.

State aid may be provided in any form established in the Law.

State aid must have a stimulating effect and be aimed at reimbursing undertakings for eligible costs associated with investments in intangible assets and fixed assets (tangible assets), as well as for payment of wages arising in the event of creation of new jobs resulting from attraction of investments, calculated within two years. The maximum amount of state aid is:

for large enterprises – up to 50 percent of the total amount of eligible costs;

for medium-sized enterprises – up to 60 percent of the total eligible costs;

for small businesses – up to 70 percent of the total eligible costs.

The maximum amount of state aid for the implementation of an investment project for which the eligible costs exceed the amount equivalent to 50 million euros, the amount of which is determined according to the official exchange rate of the

National Bank established on the date of granting such aid, is additionally calculated according to the formula provided for in these criteria.

Re Criteria for assessing compatibility of state aid to undertakings to support medium and small entrepreneurship

The criteria are used to assess compatibility of state aid, which is provided for the purpose of creating favorable conditions to development of medium and small businesses and promotion of their economic activities in production of goods (performance of works, provision of services).

Recipients of state aid in accordance with provisions of these criteria are medium and small businesses conducting economic activity in any field.

State aid is provided in any form specified in the Law, except for state aid to support start-ups, which is provided in the form of loans on preferential terms, guarantees, grants.

State aid is compatible if it is aimed at reimbursing undertakings for eligible costs associated with:

1) consulting services provided by external consultants (except for services related to ordinary operational costs of undertaking, such as tax consulting services, regular legal services, and consulting services related to advertising);

2) participation in fairs, namely: costs for renting, installing and operating a stand for participation in any specific fair or exhibition, travel and accommodation expenses for employees participating in the fair, transportation and insurance expenses;

3) by supporting startups.

The maximum amount of state aid is:

to cover the costs of consulting services – up to 50 percent of such costs;

to cover costs related to participation in fairs, up to 50 percent of such costs.

The maximum amount of state aid to support startups:

1) in the form of loans on preferential terms:

for a period of ten years, EUR 2 million of the amount of the loan at the official exchange rate of the National Bank, established on the date of the provision of state aid;

for a term of five to ten years, defined as the product of the given value of the maximum amount of state aid and the ratio of ten years to the actual term of the loan;

for a period of up to five years, determined at the level of the maximum value of the amount of state aid in the form of loans for a period of five years;

2) in the form of guarantees: for a period of ten years, 3 million euros of the guaranteed amount at the official exchange rate of the National Bank, established on the date of provision of the state aid;

for a term of five to ten years, defined as the product of the given value of the maximum amount of state aid and the ratio of ten years to the actual term of the guarantee;

for a term of up to five years, determined at the level of the maximum amount of the guaranteed amount for guarantees for a term of five years.

The amount of the guarantee, excluding the guaranteed amount for loan servicing, must not exceed 80 percent of the amount of the loan.

3) in the form of grants, up to 800,000 euros at the official exchange rate of the National Bank, established on the date of provision of the state aid.

For start-ups from among small businesses and innovative enterprises, the specified maximum amount of state aid can be doubled.

3. Resolution of the Cabinet of Ministers of Ukraine dated 11 July 2023 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**" (further – Resolution No. 704).

Resolution No. 704 adopted the 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.

The criteria are used to assess compatibility of state aid to undertakings, which is provided for the purpose of promoting certain types of economic activity, namely, the provision of services of 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 (hereinafter referred to as SGEI in the field of audiovisual media).

The category of recipients of state aid according to these criteria includes:

entities in the field of audiovisual media;

entities in the field of online media;

undertakings that create mass information for the purpose of its dissemination.

The criteria provide that state aid for the provision of SGEI in the field of audiovisual media is provided in case of fulfillment of the following conditions:

the implementation of SGEI in the field of audiovisual media ensures the satisfaction of democratic, informational, social and cultural needs of the Ukrainian

society, and also ensures that foreign audiences are objectively informed about events in Ukraine and the world;

respective services are defined as SGEI in the field of audiovisual media in the contract and/or regulatory and/or regulatory act;

obligations to provide SGEI in the field of audiovisual media are assigned to the undertaking in accordance with the contract and/or regulatory and/or administrative act;

the provider of state aid ensures control over compliance with obligations to provide SGEI in the field of audiovisual media;

the amount of state aid does not exceed the maximum amount of state aid;

the separation of income and cost accounting for various types of activities is ensured, namely for the provision of SGEI in the field of audiovisual media and for the provision of other services of the undertaking. All costs and income of the undertaking are determined and allocated using the principles of accounting of income and costs determined by law.

Resolution No. 704 also amended the list of services of general economic interest, approved by Resolution No. 420 of the Cabinet of Ministers of Ukraine dated 23 May 2018 (hereinafter – the List), according to which such services also include services in the field of audiovisual media, which are services general economic interest.

4. Resolution No. 1087 of the Cabinet of Ministers of Ukraine dated 13 October 2023 "On approval of criteria for assessing compatibility of state aid to undertakings **for local infrastructure**" (hereinafter – Resolution No. 1087).

Resolution No. 1087 adopted the Criteria for assessing compatibility of state aid to undertakings for local infrastructure, which are used to assess compatibility of state aid provided to undertakings for the purpose of promoting economic activity pertaining to construction or modernization of local infrastructure and establish the conditions under which such state aid aid is eligible for competition.

According to these criteria, recipients of this state aid should be undertakings that are not in a difficult situation and conduct activities related to the infrastructure used for the supply and/or sale of goods (works, services) on the market.

The criteria establish that the provision of state aid must have a stimulating effect and can be aimed at reimbursing undertakings for eligible costs associated with investments in intangible assets and fixed assets (tangible assets).

The criteria also establish that:

- access to the infrastructure must be open to persons interested in using the infrastructure and provided on a transparent and non-discriminatory basis;

- the fee for the use or sale of infrastructure must correspond to market conditions;

- operation of the infrastructure is carried out by undertakings on an open, transparent and non-discriminatory basis, which ensures correspondence of the cost or fee for such operation to market conditions, taking into account requirements of the law.

The maximum amount of state aid must not exceed the difference between the amount of eligible costs and the operating profit from the investment. This amount is determined through:

- establishing the amount of state aid in advance, after deduction of the operating profit from the amount of eligible costs, determined beforehand on the basis of reasonable forecasts; or

- return by the recipient of state aid of the amount of state aid that exceeds the difference between the amount of eligible costs and the operating profit from the investment.

5. Resolution No. 1175 of the Cabinet of Ministers of Ukraine dated 10 November 2023 "On adoption of criteria for assessing compatibility of state aid to undertakings **for recreational infrastructure**" (hereinafter – Resolution No. 1175).

Resolution No. 1175 adopted the Criteria for assessing compatibility of state aid to undertakings for recreational infrastructure, which are used to assess compatibility of state aid provided to undertakings for the purpose of promoting economic activity carried out with the use of recreational infrastructure and establish conditions that make state aid compatible with competition.

Recipients of state aid in accordance with the provisions of these criteria include undertakings that are not in a difficult situation and claim to receive it for recreational infrastructure, which consists of facilities of multi-functional nature, offering, in particular, cultural and recreational services, except for entertainment parks and hotel facilities. The criteria establish that the provision of state aid should have a stimulating effect and may be aimed at reimbursing undertaking for eligible costs associated with investments in intangible assets and fixed assets (tangible assets).

The criteria also establish that:

- access to the infrastructure must be open to several users and provided on a transparent and non-discriminatory basis;

- undertakings that have financed at least 30 percent of the total amount of infrastructure investment costs may be given priority in access with more favorable conditions, if such conditions are made public in a publicly accessible manner;

- construction, modernization and/or operation of infrastructure is carried out by undertakings on an open, transparent and non-discriminatory basis, which will ensure that the cost or fee corresponds to market conditions, taking into account requirements of the law.

The maximum amount of state aid must not exceed the difference between the amount of eligible expenses and the operating profit from the investment. This amount is determined by:

setting the amount of state aid in advance, after deducting the operating profit from the amount of eligible costs, determined in beforehand on the basis of reasonable forecasts; or

return by the recipient of state aid of the amount of the state aid that exceeds the difference between the amount of eligible costs and the operating profit from investments.

2.3. Other drafts of normative legal acts developed and approved at the meetings of the Committee

During the reporting year, the following **4 normative legal acts** in the field of state aid were developed and approved at the meetings of the Committee:

1. Draft resolution of the Cabinet of Ministers of Ukraine "On adoption of criteria for assessing compatibility of state aid to undertakings **for the provision of passenger transportation services, which are services of general economic interest.**"

The specified criteria are used to assess compatibility of state aid to undertakings, which is provided for the purpose of promoting certain types of economic activity, namely for the provision of passenger transportation services by urban electric, road, rail and inland water transport, which are services of general economic interest, except for transportation carried out for the purpose of tourism.

The draft act defines conditions under which state aid providers, in case of establishing special obligations to provide services of general economic interest, or in case of ordering such services, will compensate the costs of undertakings (carriers) for provision of passenger services transportation, which are services of general economic interest. In particular, the draft resolution establishes requirements and conditions for: the content and term of validity of the contract on provision of services of general economic interest; calculation of the maximum amount of state aid that can be provided; method of calculating the total amount of state aid; a list of costs that can be reimbursed to the recipient of state aid.

2. Draft resolution of the Cabinet of Ministers of Ukraine "On adoption of criteria for assessing compatibility of state aid to undertakings for **port infrastructure facilities**".

These criteria are used to assess compatibility of state aid provided to undertakings with the purpose of promoting economic activity carried out using port infrastructure facilities, and establish the conditions under which such state aid is compatible with competition.

According to the approved draft, recipients of state aid will include undertakings that simultaneously meet the following characteristics:

- is not in a financially difficult situation;
- carries out business activities using port infrastructure facilities.

At the same time, state aid must have a stimulating effect and be directed by the recipient into a clearly defined list of costs. In particular:

- investments for new construction, reconstruction, overhaul and technical re-equipment of the port infrastructure;
- investments for new construction, reconstruction, capital repair and technical re-equipment of access infrastructure to the port infrastructure;
- operational dredging.

The draft act establishes a list of costs that are inadmissible.

The draft criteria also determine the maximum amount of state aid that can be provided and the method of calculating the total amount of state aid.

In addition, the draft establishes the following requirements:

new construction, reconstruction, overhaul, technical re-equipment, operation and/or lease of the port infrastructure is carried out by undertakings determined on a competitive, transparent and non-discriminatory basis;

access to the port infrastructure must be open to all undertakings that carry out or plan to carry out their economic activities in the port and be provided on a transparent and non-discriminatory basis.

3. Draft resolution of the Cabinet of Ministers of Ukraine "On adoption of criteria for assessing compatibility of state aid to undertakings for **the support of sports infrastructure**".

According to the approved draft, recipients of this state aid will include undertakings that simultaneously meet the following characteristics:

- are undertakings that are not in a difficult situation;
- are undertakings carrying out activities using infrastructure for the supply and/or sale of goods (works, services) on the market (economic activity).

At the same time, if the infrastructure is used for auxiliary activities (which are necessary for the operation of the infrastructure or are an integral part of its main

non-economic purpose, and the share of such use in the total capacity of the infrastructure does not exceed 20%), the activity as a whole is non-economic.

State aid must have a stimulating effect and be directed by the recipient at a clearly defined list of costs. In particular, state aid for sports infrastructure can be provided not only as investment aid, but also as operational aid.

The draft Criteria for assessing compatibility of state aid to undertakings for sports infrastructure stipulates that:

- it must not be used only by one entity in the field of physical culture and sports;
- if used by several users, the time shares of the use of the corresponding infrastructure by each entity in the field of physical culture and sports must be calculated at the same time.

The specified draft resolutions were sent for clearance to relevant bodies in accordance with requirements of the Regulation of the Cabinet of Ministers of Ukraine, adopted with Resolution No. 950 of the Cabinet of Ministers of Ukraine dated 18 July 2007 (as amended).

4. Draft order of the Antimonopoly Committee of Ukraine "On Adoption of Amendments to Order of the Antimonopoly Committee of Ukraine dated 28 December 2015 No. 43-rp".

On 03 August 2023, the Committee approved draft amendments to its own order of 28 December 2015 No. 43-rp "Certain issues of implementation of the Law of Ukraine "On State Aid to Undertakings".

With this order the following regulations have been adopted:

- Procedure for monitoring state aid to undertakings, which establishes the basic principles of collecting and analyzing information on state aid to undertakings at the expense of state resources or local resources, including restricted access information, necessary for making decisions provided for by the Law;
- Procedure, forms and requirements for submission to the Committee of information on existing state aid to undertakings, which determines the mechanism of submission of information on existing state aid to undertakings by providers of state aid to the Committee.

The changes proposed by the Committee will improve the mechanisms for collecting and analyzing information on state aid to undertakings and submitting information to the Committee on existing state aid.

In addition, in 2023, the Committee carried out active work related to approval and holding of consultations in accordance with the Regulation of the Cabinet of Ministers of Ukraine of the following draft CoMU resolutions:

- "On adoption of criteria for assessing compatibility of state aid to undertakings in the field of **civil aviation**";
 - "On adoption of criteria for assessing compatibility of state aid to undertakings for the **provision of services of general economic interest**".
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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

Pursuant to Article 267 of the Association Agreement, in February 2023 the Committee sent the register of existing state aid to the Ministry of Economy of Ukraine for transfer to the EU and reported that the Committee, together with experts of the EU technical assistance project "Support to the Antimonopoly Committee of Ukraine in the Implementation of State Aid Rules" (hereinafter - The SESAR project) finalized and created an updated register of existing state aid.

On 13 February 2023, the official website of the Committee published the register of existing state aid that existed until 02 August 2017 and had been assessed by the Committee. The updated register of existing state aid was provided to the EU on 07 March 2023 through the secretariat of the Ukraine-EU trade association committee.

The European Commission's Report on Ukraine's progress within the EU Enlargement Package stated that Ukraine should, inter alia, prepare a reliable and complete inventory of state aid schemes introduced before the establishment of the body responsible for the control of state aid in Ukraine.

In order to finalize the register of existing state aid and collect relevant information about programs to support undertakings at the expense of state or local resources, the Committee in December 2023 sent a request to providers of state aid (ministries, central executive bodies and military administrations) to submit information about the programs of existing state aid. In the future, the received information will be used to finalize the register of existing state aid.

3.2. Conformity of the national legislation on state aid with EU acquis

By signing the Association Agreement, Ukraine undertook, in accordance with Article 264 of the said Agreement, to apply the rules for the operation of state aid, defined in Articles 262, 263 (3) or 264 (4) of this Agreement, and use the relevant case law of the Court of Justice of the European Union, as well as secondary legislation, framework provisions, guidelines and other effective administrative acts of the Union.

To fulfill these obligations, the Law was adopted and entered into force in its entirety on 02 August 2017. The law, in particular, defines the Committee as the authorized body for state aid and establishes the obligation of providers to notify the Committee about state aid.

In 2023, an initial assessment of the state of implementation of the EU acquis in the field of state aid was carried out. In total, more than 1,000 acts of the EU

acquis regarding state aid were analyzed. In particular, 5 EU regulations, which are subject to implementation, have been identified. Of these, 1 regulation currently has a significant level of implementation, 2 regulations have a good level of implementation, 1 regulation has a certain level of implementation, and 1 regulation has not been implemented.

The Analytical Report of the European Commission on Ukraine's progress within the framework of the 2023 European Union Enlargement Package stated: "The current law transposes Articles 107 and 108 of the Treaty on the Functioning of the European Union and includes obligations to notify and suspend the provision of state aid. After the start of Russia's war against Ukraine, this Law was suspended under martial law. As a result, while the Law is suspended, state aid-granting bodies are not required to notify the Committee of new state aid and make proposals for amending the conditions of already granted state aid. In addition, state aid provided during the period of suspension of the Law is considered compatible."

At the same time, the European Commission emphasized that "despite the fact that the Law remains suspended due to martial law, this should not stand in the way of reforms in this area."

The European Commission noted that in 2024, Ukraine should, in particular:

- continue harmonizing the legislative framework in the field of state aid with EU legislation, including by amending the law on state aid in order to include services of general economic interest (SGEI) within its scope;
- prepare a reliable and complete inventory of state aid schemes introduced before the establishment of the body responsible for the control of state aid in Ukraine.

4. Raising awareness in the field of state aid

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 knowledge about state aid.

In 2023, AMCU representatives:

- ✓ participated in **6 round tables** and other events;
- ✓ delivered **12 speeches** on issues of state aid at conferences, seminars and meetings.

Namely, on 22-26 May 2023, a training was held in Chisinau (Moldova), where experts from the State Aid Monitoring and Control Department of the Committee delivered presentations on ways to harmonize relevant Ukrainian legislation with EU practice, improve control over state aid and methods of its advocacy among potential providers to the participants in three panels.

The event was organized by the Polish competition agency (UOKiK) with the aim of exchanging experience between specialized agencies of different countries. Specialists from Ukraine, Moldova, the Czech Republic, Romania and other countries took part in the training.

In 2023, the Committee, based on written requests from providers and recipients of state support, provided more than 40 written clarifications on the application of legislation in the field of state aid.

Also, taking into account numerous requests from providers and recipients of state support, the Committee, summarizing the questions received and the law enforcement practice, provided **7 clarifications** regarding:

- Application of the legislation on state aid **in the field of household waste management** (clarification of the Committee No. 1-rr/dd of 26 January 2023).

The practice of the Committee in the field of consideration of cases on state aid shows that tariffs for household waste removal services may not compensate for all the costs associated with their provision.

As a result, anumber of undertakings working in the field of household waste management need financial support from the state.

The clarifications provided by the Committee set out the conditions under which such support will not be considered state aid. In addition, there are approaches for developing a methodology for calculating compensation, its control and review,

measures to avoid and return overcompensation for the provision of services in the field of household waste management, i.e. the conditions for compatibility of such state aid.

Having analyzed the decisions made by the Committee regarding the provision of support to service providers in the field of household waste management, it is possible to single out a number of decisions regarding the recognition of such support as incompatible state aid, which was caused by non-compliance with requirements of national legislation, namely, the selection of a service provider without holding a competition.

It is also noted in the clarifications that state aid provided to undertakings for environmental protection, in the field of household waste management, must meet the conditions of compatibility specified in Resolution No. 1060 adopted by the Cabinet of Ministers of Ukraine in 2021 "On adoption of criteria for assessing compatibility of state aid to undertakings for environmental protection".

- Application of legislation in the field of state aid to undertakings that provide **passenger transportation services by road transport** (clarification of the Committee No. 2-rr/dd of 16 February 2023).

Rules of application of the legislation on state aid to undertakings that provide passenger transportation services by road have been clarified.

The clarification emphasizes the obligation to determine the recipient of state aid on a competitive basis in accordance with requirements of legislation on road transport. If a carrier was determined without a competition or in violation of the requirements of the law, this creates grounds for declaring the state aid incompatible with competition, as well as its termination and return in accordance with the Law.

The conditions under which the support will not be considered state aid have been defined, the specifics of the application of Regulation (EC) No. 1370/2007 for assessing the compatibility of state aid have also been explained.

In addition, the clarification provides examples of assessing compatibility of state aid in cases of the lack of compensation calculation and control mechanisms, violation of procedures for the competitive selection of carriers, and also takes into account the established court practice regarding appeals of the Committee's decisions.

- Application of legislation in the field of state aid to **activities in the field of culture and cultural heritage** (clarification of the Committee No. 3-rr/dd dated 02 March 2023).

The mechanism for determining whether support measures implemented in the specified area are to be regarded as state aid and for assessing compatibility of the corresponding state aid has been clarified. It is noted that these clarifications do not apply to the field of production and distribution of audiovisual works.

In the clarifications, it is noted that support for activities in the field of culture and protection of cultural heritage that are unpaid for end consumers or if the income from such activities covers up to

50 percent of the costs for its implementation is aimed at the realization of a socio-cultural goal and at the implementation of non-economic activities and, therefore, is not state aid according to the Law.

The document also explains the main provisions of the Criteria for assessing compatibility of state aid to undertakings for the support of culture and preservation of cultural heritage, approved by Resolution No. 52.

Also, the explanations provide an example of the Committee's classification of a support measure as state aid, assessment of the compatibility of such aid based on the results of consideration of a state aid case.

- Regarding the **calculation of the monetary equivalent of state aid in the form of a guarantee** (clarification of the Committee No. 4-rr/dd of 13 April 2023).

The document clarifies that loans and guarantees provided by public authorities may be considered state aid if they do not meet market conditions. The calculation of the monetary equivalent of state aid is important for establishing the fact whether the guarantee provided by the state is state aid, as well as whether the amount of such state aid corresponds to the maximum amount of state aid established by the criteria for assessing the compatibility of such state aid.

The document provides a list of conditions under which support of undertakings in the form of a guarantee is state aid, as well as methodological recommendations for calculating the reference rate and the monetary equivalent of state aid.

For better understanding and application of such calculations in practice, the clarification provide typical examples of calculating the monetary equivalent of state aid in the form of a guarantee.

- Regarding the **calculation mechanism for compensations in the field of passenger transportation** (clarification of the Committee No. 5-rr/dd of 25 May 2023).

The document contains explanation of the conditions for compatibility of state aid to undertakings that provide services in the field of passenger transportation, in particular with regard to the development of a methodology for calculating compensation for the provision of services that are services of general economic interest (hereinafter - SGEI), control over and review of such compensation. The clarification establishes conditions that must be reflected in the methodology for calculating compensation, in particular:

- the total amount of compensation for the provision of passenger transport services, which are SGEI, must not exceed the amount necessary to cover the net costs (net financial difference) between the costs incurred during the provision of SGEI and the undertaking's income from the provision of SGEI, taking into account the level of reasonable profit;

- to calculate the amount of compensation for the provision of passenger transportation services, which are SGEI, the provider of state aid must be guided by a specified formula;

- the methodology must provide for a list of cost to which compensation can be directed;

- the calculation of costs and income must be carried out in accordance with effective provisions of legislation in the field of accounting and requirements of tax legislation and ensure the correct reflection of the results of financial and economic activity on separate record-keeping accounts;

- in case of compensation, control measures are applied in accordance with the legislation;

- in case of detection of overcompensation, its return is carried out in accordance with the procedure established by law.

The provided clarifications will help providers of state aid to calculate the specified compensation correctly, in accordance with EU requirements.

- Application of legislation in the field of state aid to **support undertakings engaged in social services** (clarification of the Committee No. 6-rr/dd of 07 September 2023).

The clarification, in particular, gives examples of categories of recipients of support in the field of social services and describe the specifics of the application of EU legislation and judicial practice in the field of state aid.

In addition, the document explains in detail in which cases a measure to support undertakings engaged in activities in the field of providing social services will be considered state aid, and the conditions under which such a measure will not be considered state aid are given. Thus, in case of providing support at the expense of state resources or local resources to undertakings within the framework of implementing social security programs, which in particular are based on the principle of solidarity and are aimed at the implementation of non-economic activities, the support will not be considered state aid in accordance with the Law and will not require submission of a notification on state aid to the Committee.

At the same time, provision of support at the expense of state resources or local resources to undertakings within the framework of implementation of economic programs of social security will contain signs of state aid in accordance with the Law

and will require a notification to be submitted to the Committee for its appropriate assessment.

Also, the clarification provides an example that contains approaches to classifying a support measure as state aid as a result of the Committee's consideration of the relevant notification on state aid.

- Application of legislation in the field of state aid to undertakings for the **provision of services of general economic interest in the field of audiovisual media** (explanation of the Committee No. 7-rr/dd of 14 December 2023).

The document provides explanations regarding the mechanism for determining the eligibility for state aid of support measures implemented in the specified area and assessing the compatibility of providing SGEI in the field of audiovisual media.

Thus, when providing support for rendering of SGEI in the field of audiovisual media, there is no advantage and, accordingly, such support is not state aid according to the Law if the relevant conditions are met.

In case of non-fulfillment of the conditions under which the provision of advantage is excluded, the support of SGEI in the field of audiovisual media may contain signs of state aid and requires submission of a notification to the Committee.

The clarification also sets out conditions under which state aid for the provision of SGEI in the field of audiovisual media is compatible.

The clarification contains an example of the application of legislation on state aid to undertakings for the provision of SGEI in the field of audiovisual media.

5. International cooperation in the field of state aid

In 2023, the Committee cooperated with the SESAR Project in the field of development of the state aid control system.

The work of the Committee with experts of the SESAR Project was focused on the following areas:

- 1) Advocacy of the state aid control system, namely:
provision of consultations and expert opinions on legislative work;
participation in consultations, working groups, parliamentary and public discussions, in particular, in the thematic subgroup of the Sectoral Working Group on State Aid with the aim of bringing potential state aid measures into compliance with the Law and the Association Agreement;
- 2) development of individual amendments to the Law;
- 3) development of 11 draft resolutions of the Cabinet of Ministers of Ukraine on adoption of criteria for assessing compatibility of certain categories of state aid to undertakings;
- 4) conducting 10 explanatory webinars for potential providers of state aid and 7 educational webinars for Committee employees;
- 5) analysis of the test register of existing state aid that existed before 02 August 2017. In particular, the SESAR Project prepared an expert opinion with recommendations on the content of the register.

On 08 September 2023, the Committee started work for a period of 3 years with the new project "Competition and State aid Rules and Practices Alignment with the EU Acquis" (hereinafter - the COMPASA Project), which is financed by the EU and is aimed at strengthening the regulation of competition and state aid in Ukraine. It is expected that this three-year initiative will help the Committee to bring the legal framework and relevant law enforcement in Ukraine into compliance with EU standards.

In addition, it is envisaged that the COMPASA Project will play a key role in assisting Ukraine to meet the requirements necessary for EU membership.

One of the main areas of the Committee's cooperation with the COMPASA Project is the review and improvement of the legal framework in the field of state aid in Ukraine in accordance with EU legislation and practice. This direction involves the development of new legislative proposals, providing the Committee with expert opinions on state aid issues, as well as holding seminars and webinars on improving the law enforcement methodology in accordance with the needs of the Committee.

Conclusions and directions of further work of the Committee in 2024

Conclusions

1. Despite the continued suspension of certain Articles of the Law of Ukraine "On State Aid to Undertakings" during martial law, the reform and improvement of the system of monitoring and control of state aid should continue, in particular through further improvement of the legal framework.

At the same time, provision of state aid in Ukraine must be carried out in compliance with Ukraine's international obligations concerning state aid stipulated in the Association Agreement.

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 issues, it is expedient to restore the operation of the 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. Another priority is the implementation of the recommendations of the European Commission presented in the Analytical Report of the European Commission on the progress of Ukraine within the framework of the 2023 European Union Enlargement Package.

The European Commission noted that in 2024, Ukraine should, in particular, to:

- continue harmonizing the legislative framework in the field of state aid with EU legislation, including by amending the law on state aid in order to include services of general economic interest (SGEI) within its scope;
- prepare a reliable and complete inventory of state aid schemes introduced before the establishment of the body responsible for the control of state aid in Ukraine.

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. Also, taking into account numerous requests of providers and recipients of state support, the Committee provided and

continues to provide generalized clarifications on the application of the specified legislation in the most relevant areas.

Areas

Taking into account the analysis carried out and the practical work of the Committee in 2023, the following **priority areas of further work** of the Committee in 2024 can be identified:

- ensuring the operation of the national state aid control system, in particular, by taking measures aimed at restoring the effect of certain provisions of the Law of Ukraine "On State Aid to Undertakings";
 - improvement of legal regulations in the field of state aid;
 - carrying out an inventory of support programs for undertakings that existed on the date of entry into force of the Law of Ukraine "On State Aid to Undertakings";
 - providing clarifications on the application of legislation on state aid to undertakings;
 - advocacy of the state aid system pertaining to development of state aid programs by providers;
 - providing information to the European Commission regarding provision of state aid in Ukraine in accordance with requirements of the Association Agreement.