

**APPROVED**  
**Ordinance**  
**of the Antimonopoly**  
**Committee of Ukraine**  
**No. 15-пн dated 29.08.2019**

**ANNUAL REPORT**  
**on granting of state aid to undertakings in Ukraine**  
**for 2018**

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## Introduction

Annual report on granting of state aid to undertakings is prepared by the Antimonopoly Committee of Ukraine (hereinafter the Committee) being the Authorized Body in the field of state aid<sup>1</sup>, in pursuance of part seven of Article 16 of the Law of Ukraine “On State Aid to Undertakings”<sup>2</sup>, according to which the Authorized Body shall on annual basis, by September 01 of the following year, prepare the annual report on granting of state aid in Ukraine for the previous financial year and shall submit it to the Cabinet of Ministers of Ukraine.

The Law of Ukraine “On State Aid to Undertakings” (hereinafter the Law), effective as of 02.08.2017, was adopted by the Verkhovna Rada of Ukraine on 01.07.2014 in pursuance of the international obligations of Ukraine arising out, in particular, of signing of the Association Agreement between Ukraine, on the one part, and the European Union, European Atomic Energy Community and their member-states (hereinafter the Association Agreement)<sup>3</sup>, on the other part, and the Treaty Establishing the Energy Community<sup>4</sup>.

The Law established the legal framework of the monitoring of state aid to undertakings, the exercise of control over the compatibility of such with competition, established the obligation of state aid providers to provide information on the new and existing state aid and set out the mechanism of return of any state aid incompatible with competition. The Law is intended to ensure the protection and development of competition, improvement of the transparency of functioning of the state aid system and compliance with the international obligations of Ukraine in the field of state aid.

The Report presents information on the state support to undertakings in 2018, obtained by the Committee from state aid providers.

This Report is the first report for the full year of application of the Law<sup>5</sup>. The Report provides information on state aid to undertakings in 2018 based only on the information supplied by state aid providers.

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<sup>1</sup> Pursuant to part one of Article 8 of the Law, the Antimonopoly Committee of Ukraine is the Authorized Body.

<sup>2</sup> <https://zakon.rada.gov.ua/laws/show/1555-18>

<sup>3</sup> [https://zakon.rada.gov.ua/laws/show/984\\_011](https://zakon.rada.gov.ua/laws/show/984_011)

<sup>4</sup> [https://zakon.rada.gov.ua/laws/show/994\\_926](https://zakon.rada.gov.ua/laws/show/994_926)

<sup>5</sup> Annual Report on State Aid to Undertakings in Ukraine for 2017 has been covering the period of application of the Law for August - December 2017.

## **1. System of Monitoring and Control over State Aid to Undertakings in Ukraine**

### **1.1. Notion of state aid to undertakings**

According to part one of Article 3 of the Law, this Law is applicable to any support granted to undertakings by state aid providers at the expense of public funds or local funds for the production of goods or conduct of certain types of economic activity, except to the extent set forth by part two of Article 3 of the Law<sup>6</sup>.

According to the definition provided in paragraph 1 of part one of Article 1 of the Law, state aid to undertakings (hereinafter state aid) shall mean any form of support to undertakings at the expense of the state budget or local budgets, that distorts or threatens to distort economic competition by creating advantages for the production of certain types of goods or conduct of certain types of economic activity.

Therefore, state support shall be considered state aid, if all of the following conditions are satisfied:

- support is provided to an undertaking;
- state support is funded at the expense of the state budget or local budgets;
- support creates advantages for the production of certain goods or conduct of certain types of economic activity;
- support distorts or threatens to distort economic competition.

Hence, the measure of support shall only constitute state aid, if the above 4 cumulative criteria is met, as set forth by the definition of state aid (see Fig. 1).

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<sup>6</sup> Pursuant to part two of Article 3 of the Law, it is not applicable to support:

1) in the field of agricultural production and fishing, production of weapons and military equipment for the needs of the Armed Forces of Ukraine, other military formations established in accordance with the laws of Ukraine, as well as special-purpose law enforcement bodies, State Special Transport Service, State Service for Special Communication and Information Protection of Ukraine;

2) of economic activity related to:

investments in infrastructure using the public procurement procedures;

provision of services of general economic interest, in terms of compensation of reasonable costs of the provision of such services. The List of Services of General Economic Interest shall be established by the Cabinet of Ministers of Ukraine;

3) projects that are implemented by the Ukrainian Cultural Fund in the manner prescribed by Law of Ukraine "On the Ukrainian Cultural Fund".

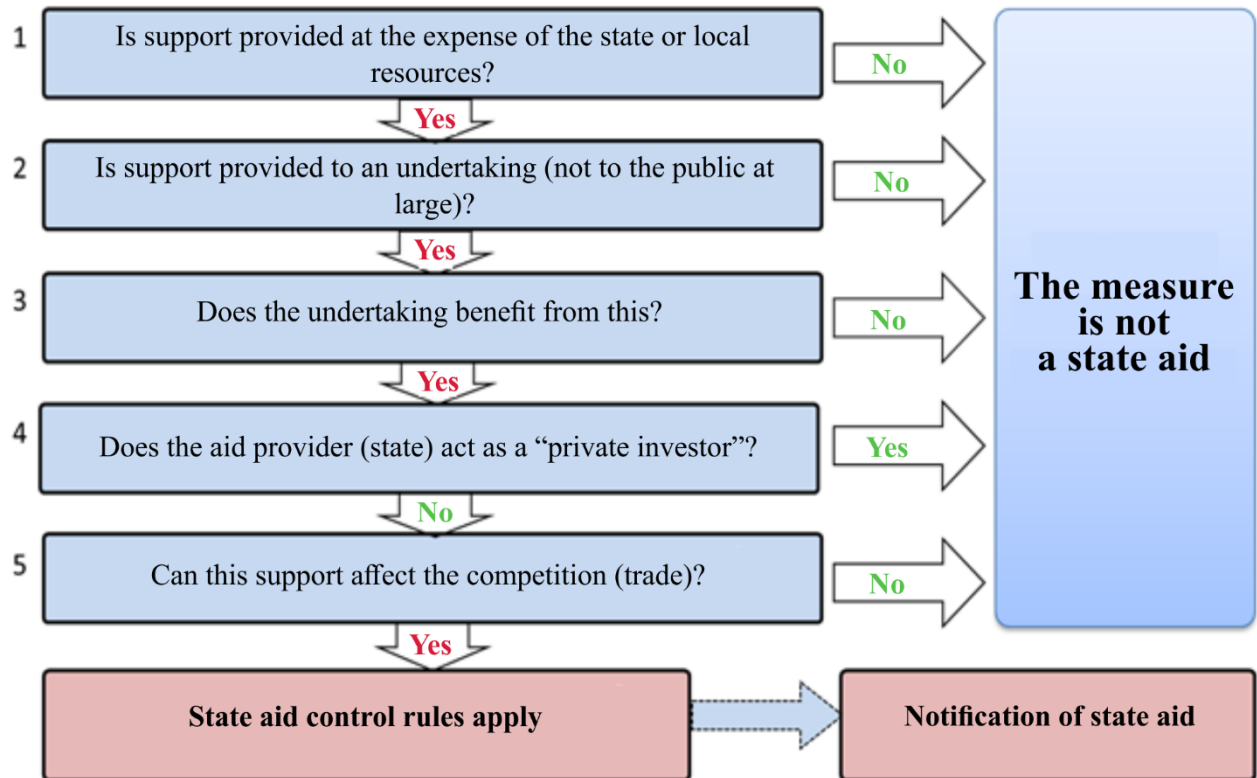


Fig. 1. The diagram for defining a measure of support as a state aid

## 1.2. International obligations of Ukraine. Law-drafting and rule-making activity

According to the Association Agreement and the Treaty Establishing the Energy Community, Ukraine must do the following:

- |         |   |
|---------|---|
| by 2019 | to adopt the national legislation on state aid and ensure the functioning of the Authorized Body;   |
| by 2021 | to create the complete register of state aid schemes;   |
| by 2021 | any state aid granted by Ukraine must be assessed according to the rules identical to the EU rules for the countries with the difficult socio-economic situation; |
| by 2023 | to align state aid schemes with the criteria set out in the Association Agreement.  |

In 2018 the Cabinet of Minister of Ukraine has approved:

- 1) Decree of the Cabinet of Ministers of Ukraine “On Approval of the Criteria for Assessing the Compatibility of State Aid to Undertakings for Research, Development and Innovations” No. 118 dated 07.02.2018<sup>7</sup>;

<sup>7</sup> <https://zakon.rada.gov.ua/laws/show/118-2018-%D0%BF>

2) Decree of the Cabinet of Ministers of Ukraine “On Approval of the Criteria for Assessing the Compatibility of State Aid to Undertakings for Employment of Certain Categories of Employees and Job Creation” No. 33 dated 31.01.2018<sup>8</sup>;

3) Decree of the Cabinet of Ministers of Ukraine “On Approval of the Criteria for Assessing the Compatibility of State Aid to Undertakings for Professional Training of Employees” No. 11 dated 11.01.2018<sup>9</sup>;

4) Decree of the Cabinet of Ministers of Ukraine “On Approval of the Criteria for Assessing the Compatibility of State Aid for Restoring Solvency and Restructuring of Undertakings” No. 36 dated 31.01.2018<sup>10</sup>;

5) Decree of the Cabinet of Ministers of Ukraine “On Approval of the Criteria for Assessing the Compatibility of State Aid to Undertakings to Ensure Regional Development and Support Small and Medium-Sized Enterprises” No. 57 dated 07.02.2018<sup>11</sup>;

6) Decree of the Cabinet of Ministers of Ukraine “On approval of the list of services of general economic interest” No. 420 dated 23.05.2018<sup>12</sup>;

7) Decree of the Cabinet of Ministers of Ukraine “On amendments to the list of services of general economic interest” No. 1141 dated 27.12.2018<sup>13</sup>.

Also during 2018 the work continued on obtaining of approval and further elaboration of the Draft Decree of the Cabinet of Ministers of Ukraine “On Approval of the Criteria for Assessing the Compatibility of State Aid to Undertakings for Environmental Protection”. Currently the work continues.

In 2018 the Committee has developed Draft Decrees of the Cabinet of Ministers of Ukraine on the Criteria for Assessing the Compatibility of Certain Categories of State Aid that have been elaborated since 2019, namely:

1) Draft Decree of the Cabinet of Ministers of Ukraine “On Approval of the Criteria for Assessing the Compatibility of State Aid to Undertakings in Coal Industry”<sup>14</sup> was approved at the meeting of the Committee on 20.12.2018;

2) Draft Decree of the Cabinet of Ministers of Ukraine “On Approval of the Criteria for Assessing the Compatibility of State Aid to Undertakings Engaged in Banking Activity”<sup>15</sup> was approved at the meeting of the Committee on 27.12.2018<sup>16</sup>.

<sup>8</sup> <https://zakon.rada.gov.ua/laws/show/33-2018-%D0%BF>

<sup>9</sup> <https://zakon.rada.gov.ua/laws/show/11-2018-%D0%BF>

<sup>10</sup> <https://zakon.rada.gov.ua/laws/show/36-2018-%D0%BF>

<sup>11</sup> <https://zakon.rada.gov.ua/laws/show/57-2018-%D0%BF>

<sup>12</sup> <https://zakon.rada.gov.ua/laws/show/420-2018-%D0%BF>

<sup>13</sup> <https://zakon.rada.gov.ua/laws/show/1141-2018-%D0%BF#n2>

<sup>14</sup> <http://www.amc.gov.ua/amku/control/main/uk/publish/article/146891>

<sup>15</sup> <http://www.amc.gov.ua/amku/control/main/uk/publish/article/146928>

<sup>16</sup> It is planned to continue the work on this project in 2020-2021.

The Draft Law of Ukraine “On Amending Certain Laws of Ukraine in Order to Align them with the Legislation on State Aid to Undertakings” developed by the Committee was approved at the meeting of the Cabinet of Ministers of Ukraine on 21.03.2018, registered with the Verkhovna Rada of Ukraine on 23.03.2018 under No. 8191<sup>17</sup>, but was not considered at the sessions of the Verkhovna Rada of Ukraine in 2018.

In 2018 the Committee has developed three draft laws, the work on which continued in 2019, namely:

1) Draft Law of Ukraine “On Amending the Customs Code of Ukraine in Order to Align it with the Law of Ukraine “On State Aid to Undertakings”<sup>18</sup> was approved at the meeting of the Committee on 20.09.2018;

2) Draft Law of Ukraine “On Amending the Tax Code of Ukraine in Order to Align it with the Law of Ukraine “On State Aid to Undertakings”<sup>19</sup> was approved at the meeting of the Committee on 20.09.2018;

3) Draft Law of Ukraine “On Amending the Law of Ukraine “On State Aid to Undertakings”<sup>20</sup> is further elaborated based on the results of public consultation, approved at the meeting of the Committee on 13.12.2018<sup>21</sup>. This Draft Law is intended to regulate, in particular, the following issues (see Annex 3 to the Report):

- limitation of the current definition of “state aid to undertakings” under the Law due to the absence in it of the criterion of influence on Ukraine's trade with the EU, which is an attribute for the recognition of state support as a state aid under the Association Agreement;

- inconsistency of the definition of an "undertaking" provided in the Law of Ukraine "On the Protection of Economic Competition" and used for the purposes of the Law, with the similar definition provided in the EU acquis;

- inconsistency of application of the definition of the “state aid to undertakings” under the Law with its application in accordance with the EU acquis, since the Law provides no definition of “economic activity”;

- inconsistency of the rules of Law in terms of the provision of services of general economic interest with the EU acquis;

- absence of a possibility under the Law to assess measures that do not fall within any of the objectives set out in Article 6 of the Law, which makes it impossible to establish general criteria for assessing the compatibility of State aid for competition;

<sup>17</sup> [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=63731](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=63731)

<sup>18</sup> <http://www.amc.gov.ua/amku/control/main/uk/publish/article/150010>

<sup>19</sup> <http://www.amc.gov.ua/amku/control/main/uk/publish/article/145120>

<sup>20</sup> <http://www.amc.gov.ua/amku/control/main/uk/publish/article/146530>

<sup>21</sup> The need for further elaboration of the Law is connected with its imperfection and gaps, in particular, the incomplete compliance with the EU acquis, which were found in the practical application of its provisions by the Committee.

- absence of a statutory possibility of charging an interest rate on the use of state aid, which was declared incompatible and subject to refund, which is not in compliance with the EU acquis;
- imperfect procedural order for consideration by the Committee of notification of State aid, in particular, the absence of a possibility to consider issues in the field of state aid by the administrative panels of the Committee;
- absence of the state aid institute in the system of national competitive law.

At the same time, the Law of Ukraine “On Amending Certain Legal Acts of Ukraine to Regulate the Activity of the Ukrainian Cultural Fund”<sup>22</sup> No. 2481-VIII dated 03.07.2018 amended the Law establishing that the Law shall not apply to support of projects implemented by the Ukrainian Cultural Fund in the manner prescribed by the Law of Ukraine “On the Ukrainian Cultural Fund”<sup>23</sup>.

In 2018, the Committee has approved two procedural legal acts and regulations in the field of state aid, which significantly simplified for state aid providers the procedure of notifying about a new state aid and providing information on the granted state aid in the electronic format, namely:

1) Ordinance of the Committee No. 15-rp dated 19.07.2018<sup>24</sup> (registered with the Ministry of Justice of Ukraine on 16.08.2018 under No. 942/32394) amending the Ordinance of the Committee No. 43-rp dated 28.12.2015, in particular, as regards the provision of information on the granted state aid in the electronic format;

2) Ordinance of the Committee No. 18-rp dated 13.09.2018<sup>25</sup> (registered with the Ministry of Justice of Ukraine on 27.11.2018 under No. 1337/32789) amending the Ordinance of the Committee No. 2-rp dated 04.03.2016, in particular, as regards the notification of a new state aid in the electronic format.

These ordinances introduced the transition to modern electronic communication of the Committee with state aid providers as regards the provision to the Committee of notifications and information required by Law to the State aid providers with the use of personal user accounts and digital signatures, as well as simplified and improved the forms of provision of such notifications and information.

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<sup>22</sup> <https://zakon.rada.gov.ua/laws/show/2481-19>

<sup>23</sup> The Draft Law was approved by the Committee, whereof the Committee informed the Cabinet of Ministers of Ukraine by letter No. 500-29/01-13710 dated 17.10.2019, and the Prime Minister obliged ministers, heads of the other central executive authorities by letter No. 41836/1/1-18 dated 31.10.2018 to ensure the approval by the Committee of the legal acts and regulations on granting of state aid to undertakings.

<sup>24</sup> <https://zakon.rada.gov.ua/laws/show/z0942-18>

<sup>25</sup> <https://zakon.rada.gov.ua/laws/show/z1337-18>



### 1.3. Activity of the Committee as an Authorized Body in the field of state aid

Powers of the Antimonopoly Committee of Ukraine as an Authorized Body include, without limitation:

- receipt and consideration of notifications on a new state aid from providers of such aid in the manner prescribed by this Law;
- establishment, whether state aid includes measures to support undertakings at the expense of state or local funds, assessment of compatibility of state aid with competition, adoption of resolutions provided for by this Law;
- collection and analysis of information on measures to support undertakings at the expense of the state budget or local budgets;
- issue of clarification on the issues of application of laws in the field of state aid;
- adoption of resolutions on suspension of granting of illegal state aid pursuant to the Law and on termination and return of illegal state aid declared incompatible with competition;
- monitoring of state aid;
- establishment of the procedure for keeping of and access to the register of state aid;
- development and submission to the Cabinet of Ministers of Ukraine, in accordance with the established procedure, of proposals regarding the adoption of legal acts and regulations on state aid.

In order to ensure the effective exercise of powers conferred to the Committee as an Authorized Body, the Department of Monitoring and Control of State Aid (hereinafter the Department) operates at the Committee. Staff size of the Department at the end of 2018 was 30 persons. The Department consists of four units with their industry specialization and working towards the exercise of powers of the Committee in the field of monitoring and control of state aid, and the analytical sector.

Activities of the Committee for introducing monitoring and control of state aid is covered in the Report of the Antimonopoly Committee of Ukraine for 2018<sup>26</sup>, approved by Ordinance of the Committee No. 2-пн dated 12.03.2019.

In 2018 the Committee has adopted **185** decisions on the merits in the field of state aid (see Fig. 2). In 2017 the Committee did not adopt such decisions.

<sup>26</sup> <http://www.amc.gov.ua/amku/doccatalog/document?id=148160&schema=main>

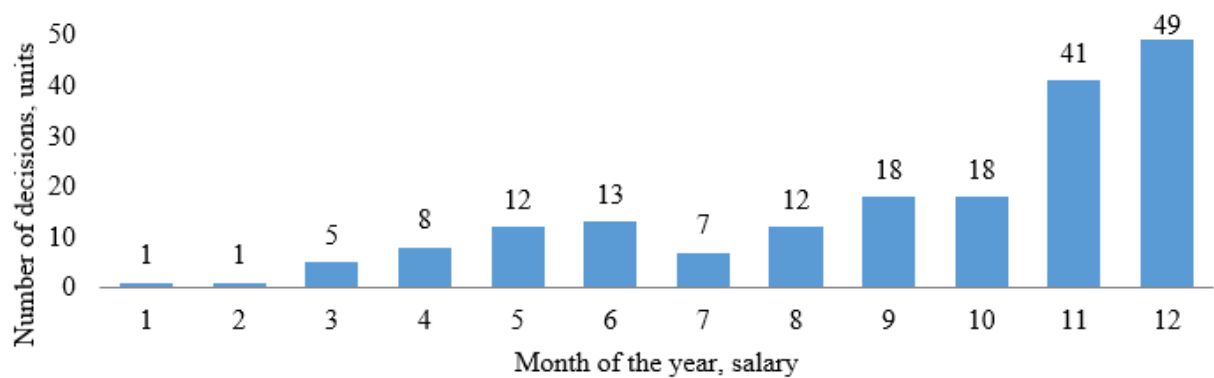


Fig. 2. The number of the AMCU's Decisions in the field of state aid for 2018 (by months)

In 2018 the number of the Committee's Decisions has been gradually increasing.

**The number of the Committee's decisions in the field of state aid adopted in 2018**

<b>174</b>	Decisions declaring the support of undertakings as not being state aid.
<b>8</b>	Decisions on compatibility of state aid with competition. And one decision of the Committee was adopted on compatibility of state aid with competition subject to performance of obligations
<b>1</b>	The decision containing in its operative part: a declaration of the support of undertakings as not being state aid, and compatibility of state aid with competition
<b>2</b>	Decision declaring state aid incompatible with competition, termination and return of illegal state aid declared incompatible with competition

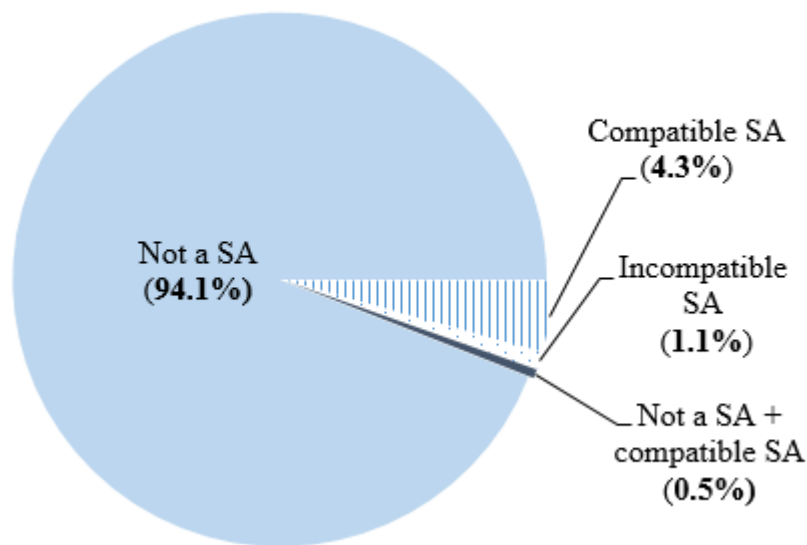


Fig. 3 Structure of the Committee's decisions in 2018

Of 185 Committee's decisions based on the results of consideration of cases in 2018 the Committee has adopted **10** decisions, including:

- 2** decisions on incompatibility of state aid with competition;
- 1** decision on compatibility of state aid with competition;
- 7** decisions declaring the support of undertakings as not being state aid.

The Committee's decisions concerned the notifications of state aid (SA) to local self-government bodies (LSB), executive authorities (EA) and the State Management of Affairs (SMA) (see Table below).

Table

Number of the Committee's decisions by SA providers in 2018

Support / state aid providers	Number of decisions, units	Number of decisions, %
<b>LSB</b>	<b>170</b>	<b>91.9%</b>
<b>EA, including:</b>	<b>10</b>	<b>5.4%</b>
- ministries, agencies	5	2.7%
- state administrations	5	2.7%
<b>SMA</b>	<b>5</b>	<b>2.7%</b>

Number of the Committee's decisions by regions is provided in Fig. 4.

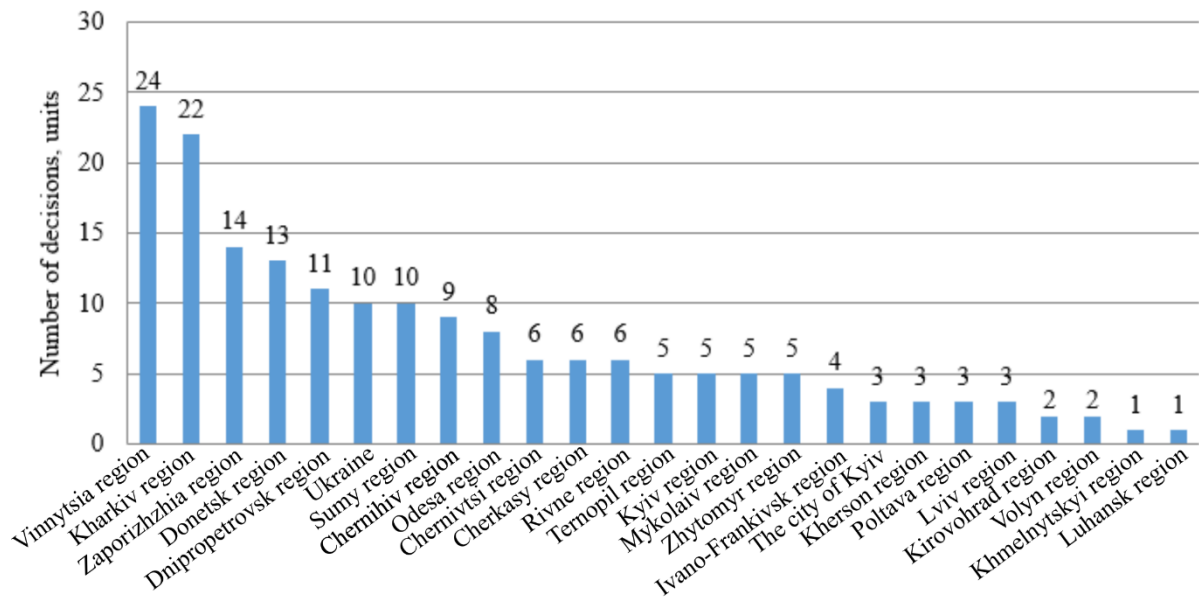


Fig. 4. Number of the Committee's decisions by regions in 2018

**5.4 %** decisions concerned the entire territory of Ukraine;

**25 %** decisions concerned Vinnytsia and Kharkiv regions;

**26.1 %** decisions concerned Zaporizhzhia, Donetsk, Dnipropetrovsk and Sumy regions;

**43.5 %** decisions concerned the other regions and the city of Kyiv<sup>27</sup>.

The number of decisions by regions is in direct proportion to the activity of the relevant regions in the matters of state aid and notifications of state aid sent to the Committee.

The Committee's decisions concerned the support / state aid totalling **32,335,614.20 thousand Hryvnias**, including:

- the Committee's decisions on compatibility of state aid with competition concerned the amount of **2,695,722.01 thousand Hryvnias**;
- the Committee's decisions declaring state aid incompatible with competition concerned the amount of **426,762.20 thousand Hryvnias**;
- the Committee's decisions declaring the support of undertakings as not being state aid concerned the amount of **29,213,130.00 thousand Hryvnias**.

<sup>27</sup> Data does not include the temporary occupied territory of the Autonomous Republic of Crimea, city of Sevastopol and the temporary occupied territories of Donetsk and Luhansk regions.

The most of **185 decisions** of the Committee, namely **150 decisions (81.05 %)** in the amount of **27,884,088.04 thousand Hryvnias**, concerned:

- 1) **landscaping;**
- 2) **passenger transportation; public transport services;**
- 3) **water supply, water disposal;**
- 4) **culture, sports;**
- 5) **health care;**
- 6) **solid domestic waste management;**
- 7) **granting of tax privileges.**

The overwhelming number of decisions of the Antimonopoly Committee of Ukraine (about 60% worth over 22 billion Hryvnias) concerned the support of communal enterprises.

The Budget Code of Ukraine provides for the possibility of granting certain preferences to communal enterprises. In particular, Article 17 of this Code provides for the possibility of granting local guarantees (which are a form of state aid under Article 6 of the Law) to secure the performance of obligations of undertakings in the public utility sector of economy. And Article 89 of the Budget Code of Ukraine provides for the allocation to the expenditures from the budgets of cities of republican subordination of the Autonomous Republic of Crimea and regional subordination, district budgets, budgets of the united territorial communities, the expenditures, in particular, for higher and vocational education in communal educational institutions, payment for utilities and energy by communal primary health care providers, co-financing of the payment for medical services provided under the schemes of state guarantee of public health services, to cover the cost of utilities and energy of communal health care institutions, local programs for the development and support of public health care institutions, state cultural, educational and theatrical entertainment programs (rural, town and city palaces and houses culture, clubs, leisure centres, other club facilities and libraries; theatres, district (city) libraries or central libraries of a district (city) centralized library system, museums, exhibitions, palaces and houses of culture, schools of aesthetic education of children, including schools and institutions of communal property, which were assigned the status of academic, national, communal zoos).

It can be seen from the notifications of state aid received by the Committee from local self-government bodies that communal enterprises are established and further funded for the purpose determined by such bodies at their sole discretion.

While as of 01.01.2016 the number of communal enterprises was **11,438** units, as of 01.01.2019 their number was **12,842** units, and as of 01.08.2019 – **13,377** units.

Given the number of communal enterprises and the pace of their growth, as well as the corresponding increase in local budget expenditures for communal enterprises, the issue of legislative regulation of the procedure and grounds for the establishment of communal enterprises by local self-government bodies, as well as the conditions for financing communal enterprises at the expense of local budgets, becomes acute.

The Committee's decisions on incompatibility of state aid with competition  
(see Annex 1 to the Report)

The Committee adopted **8 decisions** on the compatibility of state aid with competition and **one decision**, which contains in the operative part, along with the decision declaring a part of the support of undertakings as not being state aid, as well as the decision on the compatibility of state aid with competition.

Decisions on compatibility of state aid concerned primarily **the sphere of culture (7 decisions)**.

Decisions concerned the amount of **state aid** being **2,695,722.01 thousand Hryvnias**, including the aid in:

- 2018 in the amount of **31,327.46 thousand Hryvnias**;
- 2019 in the amount of **193,755.67 thousand Hryvnias**;
- 2020 in the amount of **23,750.12 thousand Hryvnias**;
- 2021 in the amount of **29,378.21 thousand Hryvnias**;
- as well as of the aid for the periods:
- 2018 - 2019 (without a breakdown by years) in the amount of **300,000.00 thousand Hryvnias**;
- 2019 - 2022 (without a breakdown by years) in the amount of **2,117,510.54 thousand Hryvnias**.

Decisions concerned the notifications: to local self-government bodies (**78 %**), Ministry of Economic Development and Trade of Ukraine (**11 %**), State Management of Affairs (**11 %**).

**In terms of regions** the decisions concerned:

- the entire territory of Ukraine (**22 %**);
- Chernihiv region (**34 %**);
- Zaporizhzhia, Dnipropetrovsk, Kharkiv, Donetsk regions (each **11 %**, respectively).

The majority of the decisions (**7 decisions (78 %)**) concerned **the sphere of culture** with the amount of state aid being **2,395,722.01 thousand Hryvnias**  
**7 decisions (78 %)** concerned individual SA.  
**2 decisions (22 %)** concerned SA schemes (including **1 (11 %) – existing SA schemes**).

The Committee's decisions on incompatibility of state aid with competition  
 (see Annex 2 to the Report)

The Committee has adopted **2 decisions** on incompatibility of state aid with competition, which concerned **transportation of passengers by public road transport** (Vinnytsia region)<sup>28</sup> and **the field of domestic waste management** (Zhytomyr region). Decisions concerned the amount **426,762.20 thousand Hryvnias**.

Hence, in 2018 the Committee has found the fact of granting incompatible state aid in the above amount.

The Committee's decisions declaring the support of undertakings as not being state aid<sup>29</sup>

The Committee adopted **174 decisions** declaring the support of undertakings as not being state aid and **one decision**, which contains in the operative part the declaring of the support of undertakings as not being state aid. Decisions concerned the state support in the amount of **29,213,130.00 thousand Hryvnias**.

Support in the spheres of settlement landscaping, health care, tourism, dispatching of elevators, informatization, civil defence of the population, rescue services at coal-mining enterprises was declared by the Committee as not being state aid, given that the services of recipients are provided on a free of charge basis for the population, not sold on the market, in the meaning of the Law of Ukraine "On Protection of Economic Competition", and do not participate in the economic turnover. Therefore, such support does not distort economic competition.

Support for telecommunication services, public service broadcasting, heat supply and passenger transportation by urban electric transport in 2018 was not declared by the Committee as state aid, pursuant to part two of Article 3 of the Law

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<sup>28</sup> The Committee's decision was appealed against by the Department of Energy, Transport and Communications of Vinnytsia City Council with District Administrative Court of Kyiv city, which dismissed the claim in full by its Judgement No. 640/65/19 dated 27.05.2019(<http://reyestr.court.gov.ua/Review/82045511>).

<sup>29</sup> Decisions are posted on the State Aid Portal (<http://pdd.amc.gov.ua/>).

of Ukraine “On State Aid to Undertakings”. The above services were classified as services of general economic interest (SGEI)<sup>30</sup>.

Support of undertakings engaged in the fields of water supply and centralized water disposal, landfilling of solid domestic waste was declared as not being state aid, as it is a natural monopoly. The sphere of natural monopoly implies the lack of competition in the relevant market due to the technological peculiarities of production. One of the conditions under which state support will constitute state aid is that support distorts or threatens to distort economic competition. In the market of water supply and water disposal, landfilling of solid domestic waste services the entities engaged in such activities have no competitors.

Support for activities related to the construction and reconstruction of subway facilities, investments in infrastructure was declared by the Committee as not being state aid, based on part two of Article 3 of the Law of Ukraine "On State Aid to Undertakings". This activity was classified as economic activities related to investing in infrastructure using public procurement procedures.

Support to undertakings in the form of local taxes and levies was also declared as not being state aid, since the imposition of such taxes is provided for by the Tax Code of Ukraine, does not favour undertakings and is not selective.

**175** decisions that were adopted by the Committee provide substantiation of decisions declaring the support of undertakings as not being state aid. Breakdown of the decisions in percentage:

- **lack of competition** (lack of participation in economic turnover; non-economic activity) – **53 %**;
- **SGEI (in terms of the compensation of eligible costs)** – **16 %**;
- **natural monopolies** – **10 %**;
- **investments in infrastructure** - **1.7%**;
- **other** (taxes; non-undertakings) – **19.3 %**.

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<sup>30</sup> Services of general economic interest mean services related to satisfaction of particularly important general needs of citizens, which may not be provided on commercial basis without state support. According to part three of paragraph 2 of part two of Article 3 of the Law, it does not apply to a support of economic activity related to the provision of services of general economic interest, to the extent related to compensation of reasonable costs for the provision of such services.



#### 1.4. Raising awareness in the field of state aid

One of the main tasks of the Department was to raise awareness in the field of state aid among the providers and recipients of state aid.

In 2018:

✓ **379** clarifications were issued on the application of laws in the field of state aid, including **9** summary clarifications on the most common issues the state aid providers face, including but not limited to the clarifications on:

- compensation of costs related to the production of agricultural products, No. 1-pp/ДД dated 04.01.2018<sup>31</sup>;
- definition of the term “infrastructure” No. 2-pp/ДД dated 28.02.2018<sup>32</sup>;
- state support of the subjects of natural monopolies No. 3-pp/ДД dated 20.03.2018<sup>33</sup>;
- services of general economic interest No. 4-pp/ДД dated 20.03.2018<sup>34</sup>;
- giving of notifications on the existing individual state aid No. 5-pp/ДД dated 17.04.2018<sup>35</sup>;
- activity in the field of culture and cultural heritage No. 6-pp/ДД dated 18.05.2018<sup>36</sup>;
- setting of tax rates by local self-government bodies No. 10-pp/ДД dated 16.08.2018<sup>37</sup>;
- guarantees granted using the funds of international financial organizations No. 11-pp/ДД dated 06.09.2018<sup>38</sup>;
- activity in the field of education No. 12-pp/ДД dated 13.09.2018<sup>39</sup>;
- ✓ received notifications on:
  - new state aid - **860**;
  - programs of support to undertakings at the expense of the state budget or local budget that existed as of the date of entry of the Law into force - **56**;
- ✓ held more than **6,650** consultations with state aid providers;

<sup>31</sup> <http://www.amc.gov.ua/amku/doccatalog/document?id=138961&schema=main>

<sup>32</sup> <http://www.amc.gov.ua/amku/doccatalog/document?id=140558>

<sup>33</sup> <http://www.amc.gov.ua/amku/doccatalog/document?id=140736&schema=main>

<sup>34</sup> <http://www.amc.gov.ua/amku/doccatalog/document?id=140886&schema=main>

<sup>35</sup> <http://www.amc.gov.ua/amku/doccatalog/document?id=141182&schema=main>

<sup>36</sup> <http://www.amc.gov.ua/amku/doccatalog/document?id=141915&schema=main>

<sup>37</sup> <http://www.amc.gov.ua/amku/doccatalog/document?id=143697&schema=main>

<sup>38</sup> <http://www.amc.gov.ua/amku/doccatalog/document?id=144156&schema=main>

<sup>39</sup> <http://www.amc.gov.ua/amku/doccatalog/document?id=144320&schema=main>

✓ made more than **49** speeches at events devoted to state aid with participation of central and local authorities, European experts, civil society, etc.

In order to improve the cooperation with government authorities and local self-government bodies and to raise their awareness of state aid in 2018, **2** regional seminars on state aid were held by the Committee with the assistance of the EU-funded Project “Support to the Antimonopoly Committee of Ukraine for Enforcing State Aid Rules” (hereinafter - the EU Project) (in November in Kyiv and in December in Chernivtsi), as well as **2** specialized seminars on “Institutional Effectiveness of the State Aid Control Authority, State Aid Assessment Procedures and Requirements to the Preparation of State Aid Decisions” (in September) and on “State Aid in the Form of Tax Measures” (in November). EU Project experts have created a new E-Learning section on the State Aid Portal, which contains information that employees of the state aid providers can use for self-education.

Also in 2018, the following measures were taken:

On February 28, the Committee hosted a **roundtable with the participation of state aid providers**, which considered the main issues related to the peculiarities of formation of budget requests for state aid, in accordance with paragraph 4 of Article 35 of the Budget Code of Ukraine, as well as the registration of state aid, including reporting according to paragraph 3 of Article 16 of the Law of Ukraine “On State Aid to Undertakings”;

On March 15, employees of the Committee participated in the **VII Annual International Competition Policy Forum**, organized jointly by the Committee and the Competition Development Fund, during which the Committee's work on developing an effective state aid control system was highlighted.

On March 22, employees of the Committee **held a training seminar** for employees of the structural units of the Kyiv City State Administration and the capital district administrations, during which information was provided on the application of state aid laws;

On April 03, **a working meeting was held** with representatives of the Nordic Environment Finance Corporation and the EBRD;

The **training seminar on state aid was held** on April 26 at the Ternopil City Council;

On May 10 - 11 in Kremenchuk, the employees of the Committee **participated as speakers on state aid in the International Business Forum** “International Cooperation: Building the Future Together”;

On June 20, **a round table** on state aid in the form of guarantees was held with the participation of experts of the EU Project, the Ministry of Finance of Ukraine, the Ministry of Economic Development and Trade of Ukraine;

On July 06, the Committee **held a meeting of the inter-departmental working group** on the implementation of the state aid monitoring and control system;

On August 16, **a working meeting was held** with representatives of the State Mortgage Institution on the peculiarities of application of the Law of Ukraine “On State Aid to Undertakings” when providing state support in the form of a state guarantee;

On August 28 the Ministry of Energy and Coal Industry of Ukraine **sent the letter of the Energy Community on the assessment of state aid measures in the field of electricity in Ukraine**;

On September 03, **a meeting was held** at the Ministry of Finance of Ukraine on the budget process with the participation of representatives of the Committee and the EU Project;

On September 24-25, representatives of the Committee and the EU Project **participated as speakers in the annual traditional Day of the Dialogue with Authorities** in Ternopil, with the participation of **350** representatives of city, settlement and village mayors, representatives of the Verkhovna Rada of Ukraine, the Government and central executive authorities, non-governmental organizations, as well as foreign partners.

### **1.5. Function of the monitoring of state aid**

The Law assigned to the Committee the function of monitoring of state aid. Paragraph 5 of part one of Article 1 of the Law provides that state aid monitoring means collection and analysis of information on state aid in order to monitor compliance with the requirements of this Law and resolutions of the Authorized Body on State Aid, as defined by this Law, as well as preparation and submission of reports on state aid.

As part of its functions of state aid monitoring, the Committee considers draft legal acts and regulations (hereinafter the LAR) submitted to it for approval. Thus, in 2018 the Committee has:

approved **234** LARs without objections;

approved **38** LARs with objections;

approved **4** LARs with objections at the meetings of the Government and Governmental Committees.

The provisions of the Law prescribe the obligation of all state aid providers to submit, within one year from the effective date of this Law (by 02.08.2018), to the

Authorized Body a notification of the scheme of support of undertakings at the expense of public funds or local funds, that existed as of the effective date of this Law; **56** of such notifications were received by the Committee in 2018.

Therefore, the Law provides for the obligation of state aid providers to notify the Committee, within one year (by 02.08.2018), of the schemes of support of undertakings at the expense of state or local budgets, that existed as of the effective date of this Law, to enable the Committee to take an inventory of state aid that existed at the effective date of the Law. However, the small (56) number of notifications of the support schemes that existed at the effective date of the Law is assessed as insufficient for the inventory of such schemes could be considered completed. This work should be continued in the coming years.

The Committee has proactively<sup>40</sup> obtained information from executive authorities and local self-government bodies on both the existing and new state aid / support schemes, which provided for the submission of information by the state aid providers on legal grounds for granting the same, name of the scheme, purposes, for which the support is granted, forms<sup>41</sup>, type, duration, sector, region, sources of financing, etc.

This initiative resulted in the increase of the number of notifications of state aid provided to the Committee in 2018.

In December 2018 the Committee **has sent 13** requests to the central executive authorities and local self-government bodies for giving notifications required by Law. In reply **6** notifications were received and information on **3** notifications that were already given, as well as responses that the support specified in requests is not considered state aid.

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<sup>40</sup> Letter of the Committee No. 500-29/05-2074 dated 20.02.2018 with an invitation to the main spending units to give notifications on state aid, as required by Law.

<sup>41</sup> According to Article 4 of the Law, state aid can be implemented, in particular, in the following forms:

- 1) granting of subsidies and grants;
- 2) granting of donations;
- 3) granting of tax benefits, deferral or a permit to pay taxes, levies or other statutory charges by instalments;
- 4) write-off of debts, including the indebtedness for the rendered public services, write-off of penalties, compensation of damages incurred by undertakings;
- 5) provision of guarantees, concessionary loans, servicing of loans at preferential rates;
- 6) reduction of financial liabilities of undertakings to funds of obligatory state social insurance;
- 7) provision, directly or indirectly, to undertakings of goods or services at below-market prices or purchase of goods or services of undertakings at above-market prices;
- 8) sale of state property at below-market prices;
- 9) increase of the state share in the authorized capital of undertakings or increase of the value of the state share on conditions unacceptable for private investors.

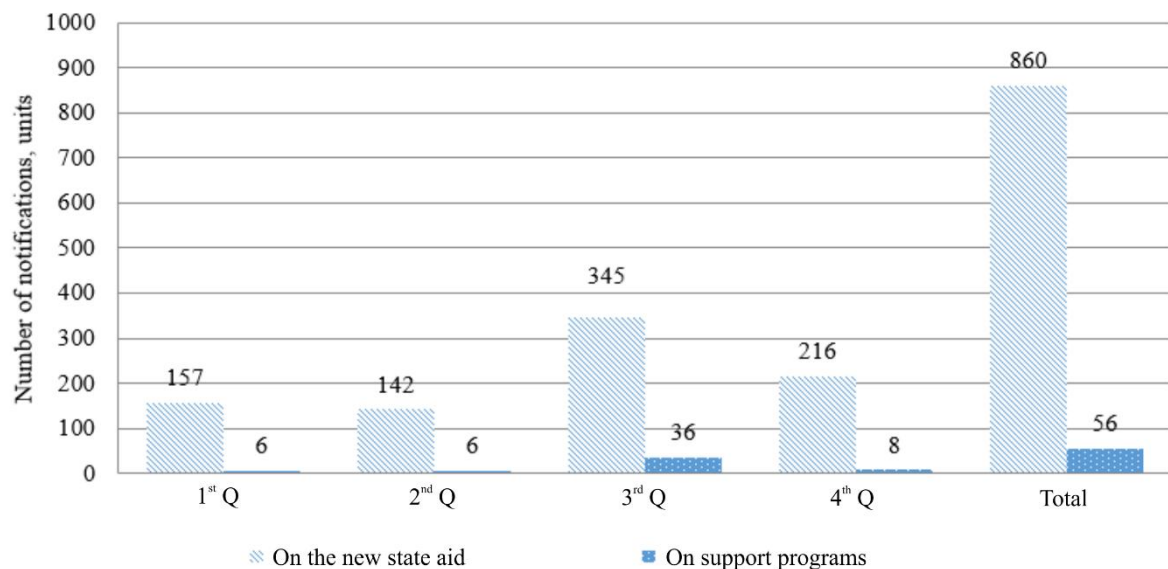


Fig. 5. The number of notifications of a new state aid and of support schemes that existed at the effective date of the Law that were received by the Committee in 2018 (by quarters).

The most of the notifications was received from local self-government bodies (**94%** of all notifications received by the Committee). **6%** of notifications were received from executive authorities and the State Management of Affairs.

As a result of consideration of the notifications by the Committee, **185** decisions were adopted on the merits (based on the consideration of **263** notifications); **401** notifications were dismissed. Consideration of **252** notifications continued in 2019. The large number of refusals to consider messages is due to the fact that these messages relate to support that does not contain signs of state aid.

Also in 2018, the Committee received 4 applications for illegal state aid. As a result of the verification of the information provided in respect of one application, no grounds were found for the initiation of the case. Following the verification of the information provided on the basis of other applications from the same applicant and the notifications of new state aid in 2019, an ordinance was made to initiate the state aid case, which is pending in 2019.

Also, based on the analysis of the information received in 2018, which is set out in Annexes 1 and 2 to the Annual Report on State Aid to Undertakings in Ukraine for 2017<sup>42</sup>, approved by Ordinance of the Committee No. 17-rp dated 31.08.2018, it was found that **311** of these support measures<sup>43</sup> expired in 2017, so they did not require further analysis by the Committee in 2018. Based on the notifications of state aid further given by state aid providers, the Committee made **13** decisions on the

<sup>42</sup> <http://www.amc.gov.ua/amku/doccatalog/document?id=143931&schema=main>

<sup>43</sup> A total of 106 support measures expired in 2018.

compatibility of state aid with competition<sup>44</sup> and **16** decisions declaring that the support in question is not state aid<sup>45</sup>.

Not all state aid providers who submitted information on the support further provided the Committee with notifications of state aid regarding this support, as they already took into account both the clarifications of the Committee on state aid and the published Committee's decisions on the merits, most of which were about declaring the support as not being state aid. Other state aid providers have withdrawn the notifications of state aid already given to the Committee in the process of analysing them at the Committee and providing clarifications to these providers that the notified support measures have no signs of State aid or dismissal of the relevant notifications by the Committee due to the absence of a response to requests for additional information with a clarification on the lack of signs of state aid. In 2018, the EU Project, jointly with the Committee, began work on analysing the rules of the Tax and Customs Codes of Ukraine for the presence of potential state aid schemes. This work continued in 2019. In particular, the experts analysed over 400 measures contained in these Codes and made their preliminary assessment.

Pursuant to the Procedure, Forms and Requirements for Submitting to the Antimonopoly Committee of Ukraine Information on the Existing State Aid to Undertakings approved by the Committee's Ordinance No. 43-rp dated 28.12.2015 (as amended by the Committee's Ordinance No. 15-rp dated 19.07.2018), information was received from state aid providers about state aid they have granted to undertakings in 2018. According to the information received, in 2018 state aid (taking into account the Committee's decisions declaring the notified support as state aid compatible with the competition) amounted to **31,635.28 thousand Hryvnias**. Also the state aid providers submitted information on de minimis state aid granted in 2018<sup>46</sup> in the amount of **616,614.92 thousand Hryvnias**.

The peculiarity of the de minimis state aid is that the provisions of the Law do not provide for the notification of de minimis state aid to the Committee, unless it directly relates to the support of export operations or the predominant use of domestic products in comparison with the imported products<sup>47</sup>, and, accordingly, do not provide for the Committee's decision on its compatibility / incompatibility with competition. Pursuant to sections nine and ten of Article 9 of the Law, an undertaking intending to obtain de minimis state aid is obliged to submit to its provider information on economic activity and all de minimis state aid received during the last three years, its form and purpose, and the requirements for the information on the

<sup>44</sup> One decision was made in 2018 and 12 decisions in 2019.

<sup>45</sup> 15 decisions were made in 2018 and one decision in 2019.

<sup>46</sup> Pursuant to paragraph 9 of part one of Article 1 of the Law, de minimis state aid means state aid to one undertaking, the aggregate amount of which, regardless of its form and sources, does not exceed, in any three-year period, an amount equivalent to 200 thousand Euro, determined at the official exchange rate established by the National Bank of Ukraine prevailing as of the last day of the fiscal year.

<sup>47</sup> Paragraph 2 of part three of Article 9 of the Law.

economic activity of an undertaking that intends to obtain state aid are determined by the relevant state aid provider, subject to the requirements for giving and formulating notifications of the new state aid established by the Committee. The Committee's decision declaring the relevant state aid as de minimis state aid is not provided for by laws. The State aid provider shall at its sole discretion decide whether such state aid is de minimis state aid.

According to Section 8 "Monitoring of State Aid" of the Law, the Committee maintains a register of state aid, which is available on the Committee's official website, Section "State Aid Portal"<sup>48</sup>. This section also provides information on decisions made by the Committee on the merits in the field of state aid and in respect of state aid cases. During 2018, the Department of Monitoring and Control of State Aid provided technical support to the State Aid Portal and filled in the following sections with information:

- "Register of State Aid";
- "Decisions on State Aid";
- "Cases concerning State Aid".

Information analysis system "Register" includes the function of the register of state aid and the function of electronic document flow between the state aid providers and the Committee.

Forms for submitting information through the State Aid Portal that have been developed and introduced are as follows:

- Form for submitting information on state aid granted in 20\_\_;
- Form for submitting information on state aid granted in 20\_\_, whose provider is released from the duty to notify the Authorized Body;
- Form for submitting information on de minimis state aid granted in 20\_\_;"
- Notification of a new individual state aid;
- Notification of a new state aid scheme;
- Notification of amendments to the conditions of the existing state aid.

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<sup>48</sup> <http://pdd.amc.gov.ua/>

In view of the need for the information support of undertakings by state aid providers, as well as comprehensive informing of the general public on the activities of the Committee, the Section "State Aid to Undertakings" was created on the official web-portal of the Antimonopoly Committee of Ukraine at <http://www.amc.gov.ua>, with the following sub-sections: "Clarification on the application of the state aid laws", "Decisions of the Authorized Body in charge of state aid", "Annual reports", "Decisions to initiate state aid cases", "State Aid Portal", "Hotline", "Legislation", "Discussion of legal acts and regulations", "Information and analytical materials", "Contacts", "Answers to common questions".



## 2. State aid for 2018

### 2.1. General indicators of state aid

It should be taken into account that the Law shall not apply to a support<sup>49</sup>:

1) in the field of agricultural production and fishing, production of weapons and military equipment for the needs of the Armed Forces of Ukraine, other military formations established in accordance with the laws of Ukraine, as well as special-purpose law enforcement bodies, State Special Transport Service, State Service for Special Communication and Information Protection of Ukraine;

2) of economic activity related to:

investments in infrastructure using the public procurement procedures;

provision of services of general economic interest, in terms of compensation of reasonable costs of the provision of such services. The List of Services of General Economic Interest shall be established by the Cabinet of Ministers of Ukraine<sup>50</sup>;

3) projects that are implemented by the Ukrainian Cultural Fund in the manner prescribed by Law of Ukraine “On the Ukrainian Cultural Fund”<sup>51</sup>.

In 2018 the Committee has adopted **185** decisions (on the merits) regarding state aid, as provided for by Articles 10 and 11 of the Law. In 2017 such decisions were not adopted due to the entry of the Law into force with effect from 02.08.2017 and the procedural terms for making such decisions prescribed by the Law.

Subject to the Committee’s decisions adopted in 2018 regarding the compatibility of state aid with competition, the granted state aid amounted to **31,635.28 thousand Hryvnias**. According to the information supplied by the state aid providers, de minimis state aid granted in 2018 amounted to **616,614.92 thousand Hryvnias**<sup>52</sup>.

State aid granted in 2018 in Ukraine, according to the central executive authorities, local executive authorities and local self-government bodies, amounted to **648.25 million Hryvnias**, which is equivalent to **20.17 million Euro** according to the average rate of the National Bank of Ukraine for the year 2018 (**EUR 1.00 = UAH 32.14**<sup>53</sup>).

<sup>49</sup> Pursuant to Article 3 of the Law.

<sup>50</sup> See Decree of the Cabinet of Ministers of Ukraine No. 420 dated 23.05.2018 “On approval of the list of services of general economic interest”, as amended by Decree of the Cabinet of Ministers of Ukraine No. 1141 dated 27.12.2018.

<sup>51</sup> Part two of Article 3 is supplemented by paragraph 3 according to the Law No. 2481-VIII dated 03.07.2018.

<sup>52</sup> The Committee’s decision declaring the relevant state aid as de minimis state aid is not provided for by laws. The State aid provider shall at its sole discretion decide whether such state aid is de minimis state aid.

<sup>53</sup> [https://bank.gov.ua/files/Exchange\\_r.xls](https://bank.gov.ua/files/Exchange_r.xls)

GDP of Ukraine (nominal)<sup>54</sup> in 2018 was **3,558.71 billion Hryvnias<sup>55</sup>, or 110.72 billion Euro.**

State aid in 2018, according to the data supplied by the providers, can be evaluated as **0.018 %** of the GDP.

The number of employed working-age population of Ukraine<sup>56</sup> for the year 2018 was **15,718,600 persons<sup>57</sup>**.

According to data of the state aid providers, the estimated state aid per employed working-age person in 2018 amounted to **UAH 41.24/person** or **EUR 1.28/person.**

The average population of Ukraine in 2018 was **42,269,802 persons<sup>58</sup>**.

According to the provided data, the estimated state aid per citizen of Ukraine in 2018 amounted to **UAH 15.34/person** or **EUR 0.48/person.**

The low levels of state aid are due to the small number of decisions made by the Committee in 2018 that declared the support of undertakings as state aid compatible with competition. These levels of state aid are the primary point of reference for assessing state aid in Ukraine<sup>59</sup>.

## **2.2. Indicators of state aid by aid types (according to the information supplied by providers)**

Information from the state aid providers on state aid granted in 2018 by aid types is provided in Fig. 6.

<sup>54</sup> Excluding the temporary occupied territory of the Autonomous Republic of Crimea, city of Sevastopol and the temporary occupied territories of Donetsk and Luhansk regions.

<sup>55</sup> The official web-site of the State Statistics Service of Ukraine [http://www.ukrstat.gov.ua/operativ/operativ2018/vvp/vvp\\_kv/vvp\\_kv\\_u/vvpf\\_kv2018u.htm](http://www.ukrstat.gov.ua/operativ/operativ2018/vvp/vvp_kv/vvp_kv_u/vvpf_kv2018u.htm)

<sup>56</sup> The lower limit of working age (16 years old) was established according to paragraph 13 of part one of Article 1 of the Law of Ukraine “On Employment of Population” (<http://zakon3.rada.gov.ua/laws/show/5067-17>). The upper limit is established pursuant to Article 26 of the Law of Ukraine “On Obligatory State Pension Insurance” (<http://zakon5.rada.gov.ua/laws/show/1058-15/page3>)

<sup>57</sup> Official web-site of the State Statistics Service of Ukraine (Key indicators of the labour market (annual data)) [http://www.ukrstat.gov.ua/operativ/operativ2007/rp/ean/ean\\_u/arh\\_osp\\_rik\\_u.htm](http://www.ukrstat.gov.ua/operativ/operativ2007/rp/ean/ean_u/arh_osp_rik_u.htm)

<sup>58</sup> Official web-site of the State Statistics Service of Ukraine ((Estimated) population as of January 01, 2019 and the average population in 2018) [http://www.ukrstat.gov.ua/operativ/operativ2018/ds/kn/kn\\_u/kn1218\\_u.html](http://www.ukrstat.gov.ua/operativ/operativ2018/ds/kn/kn_u/kn1218_u.html)

<sup>59</sup> In 2017, the Committee assessed the information on the **support** granted to undertakings in Ukraine.

Individual state aid<sup>60</sup> means a measure of state aid that is effected outside the state aid scheme, as well as certain state aid measures effected within the framework of the state aid scheme, but are subject to notification in accordance with the terms of such scheme and this Law.

State aid scheme<sup>61</sup> means a legal act or regulation or a set of acts, on the basis of which state aid shall be granted to certain categories of undertakings during the defined or indefinite period of time in the fixed or undefined amount.

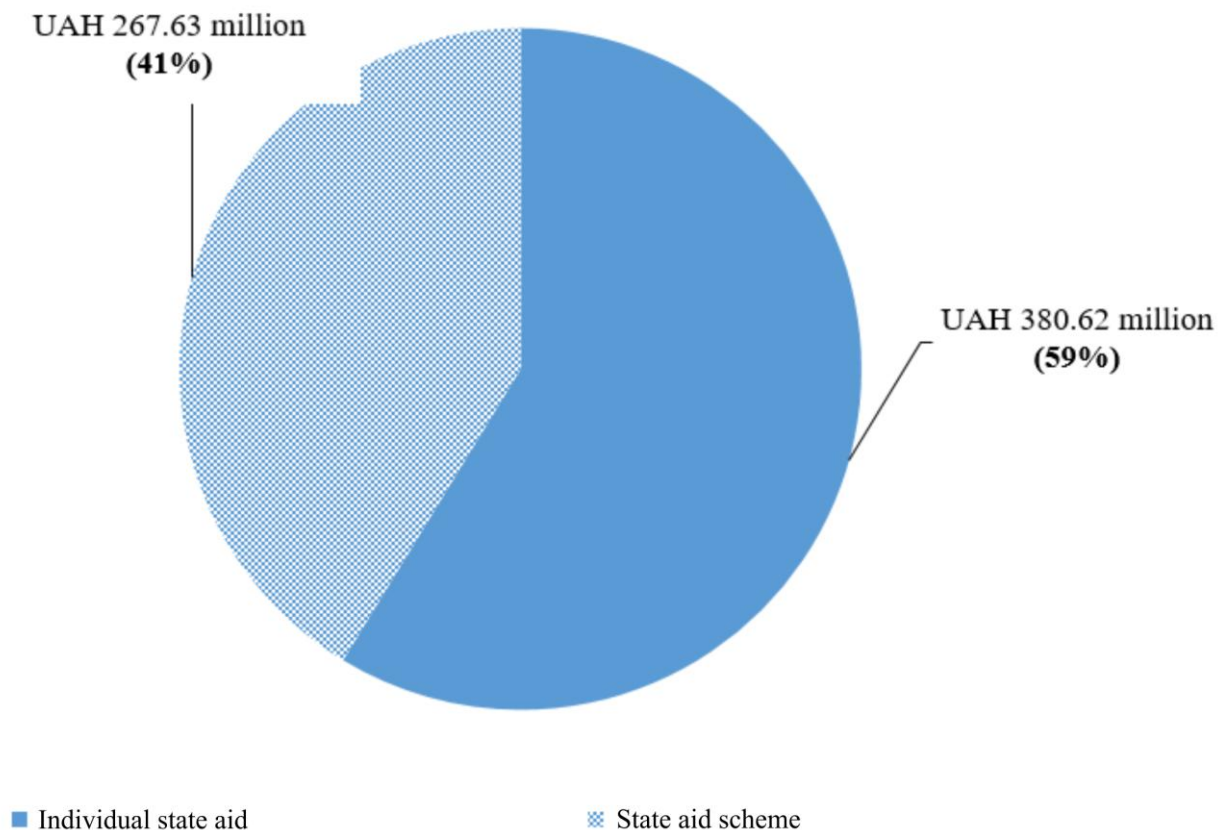


Fig. 6. Indicators of state aid by aid types (according to the information supplied by providers) in 2018

*During 2018 individual state aid exceeded the amount of the aid granted under state aid schemes and represented 59% in the total amount of state aid granted. According to the information received, individual state aid is the most widespread in Ukraine.*

<sup>60</sup> Pursuant to paragraph 3 of part one of Article 1 of the Law.

<sup>61</sup> Pursuant to paragraph 15 of part one of Article 1 of the Law.

### 2.3. Indicators of state aid by aid forms (according to the information supplied by providers)

Information from the state aid providers on state aid granted in 2018 by state aid forms is provided in Fig. 7.

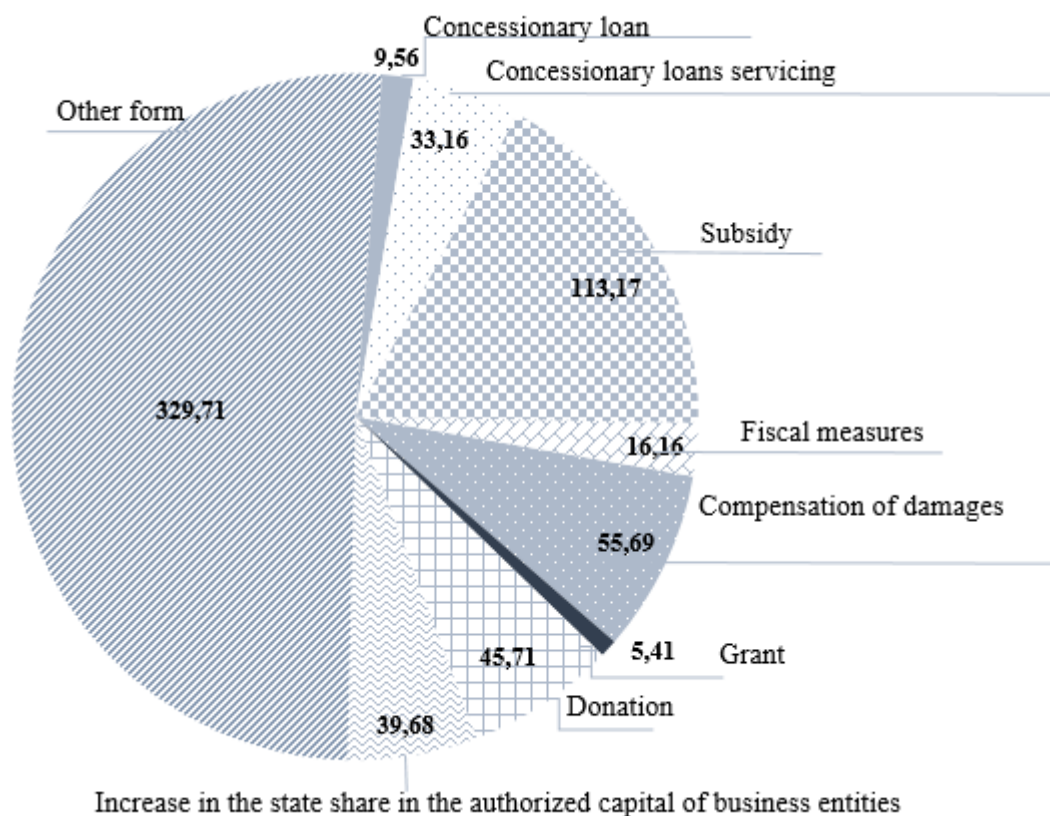


Fig. 7. Amount of state aid by aid forms (according to the information supplied by providers) in the structure of state aid in 2018, million Hryvnias

*The most common form of state aid in 2018 was a subsidy, which represented 17% according to the information supplied by providers. Compensation of damages represented 9%, grants - 7%, increase of the state share in the authorized capital of undertakings - 6%, servicing of loans at preferential rates - 5%. Other forms of state aid represented 51%.*

## 2.4. Indicators of state aid by types of economic activity (according to the information supplied by providers)

Information from the state aid providers on state aid granted in 2018 by types of economic activity is provided in Fig. 8.

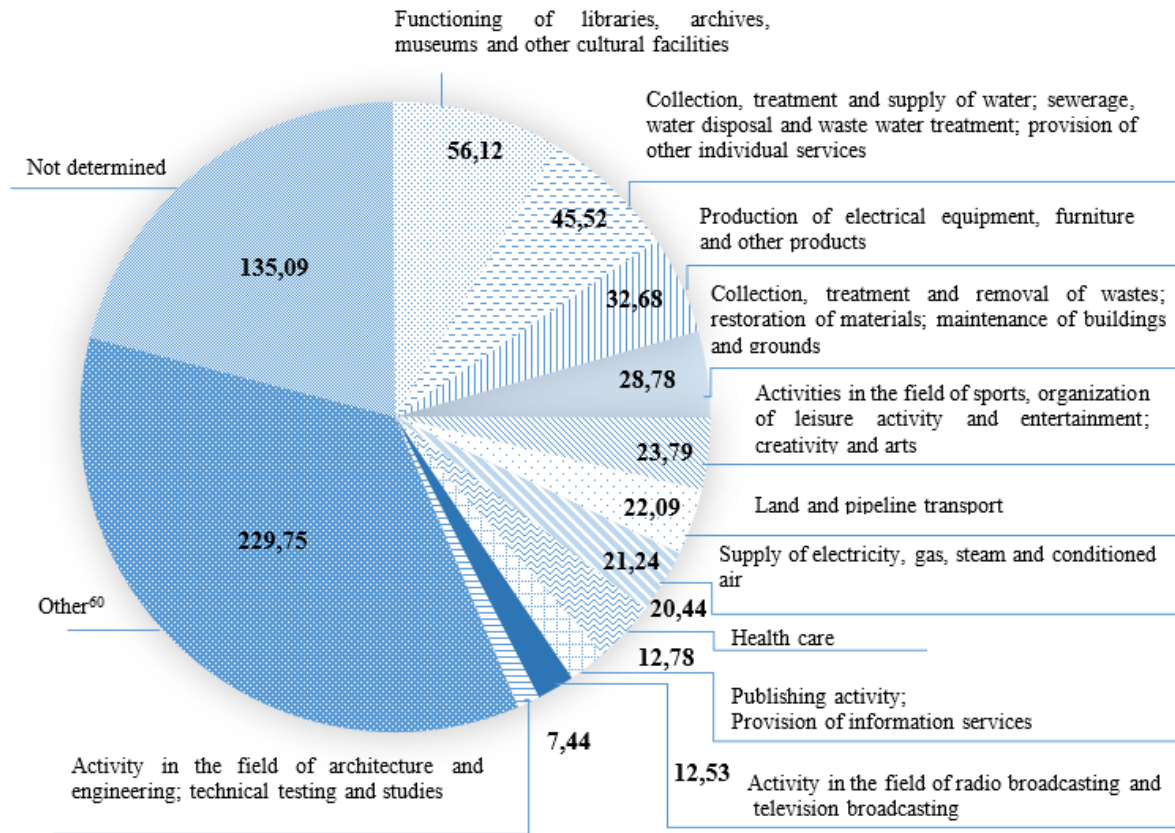


Fig. 8. Indicators of state aid by types of economic activity (according to the information supplied by providers) in 2018, million Hryvnias

*The largest state aid in 2018 was granted for the functioning of libraries, archives, museums and other cultural facilities (9 %), collection, treatment and supply of water; sewerage, disposal and treatment of waste water; provision of other individual services (7 %); production of other products; production of electrical equipment; production of furniture (5 %).*

<sup>62</sup> The “Other” category includes state aid by types of economic activity (according to the information supplied by providers), the share of which is insignificant (less than 1%).



## 2.5. Indicators of state aid by sources of financing (according to the information supplied by providers)

Information from the state aid providers on state aid granted in 2018 by sources of financing is provided in Fig. 9.

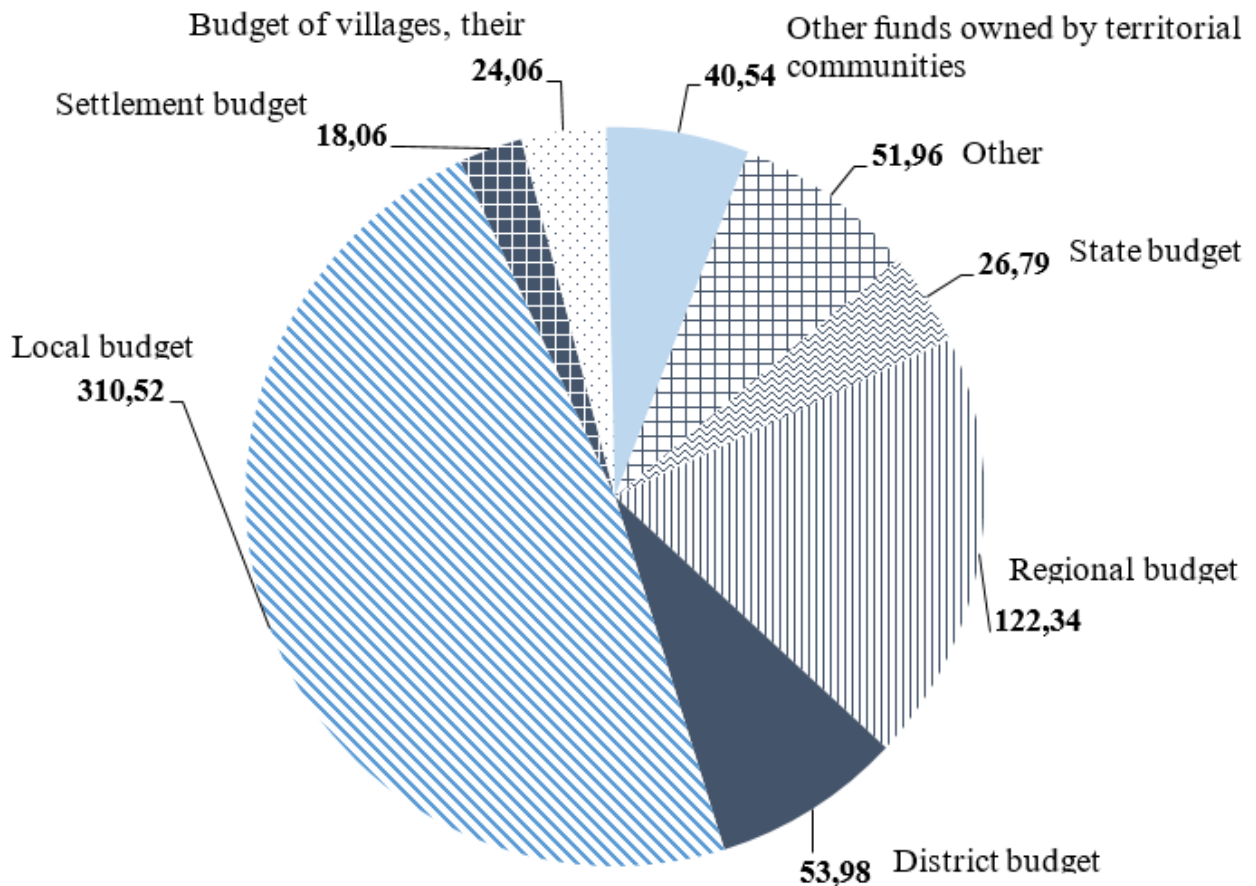


Fig. 9. Amount of state aid by sources of financing (according to the information supplied by providers) in the structure of state aid in 2018, million Hryvnias

*According to the information supplied by the state aid providers, state aid granted in 2018 out of the local budgets represented 96% (including: 48% from local budgets, 19% from regional budgets), 4% from the state budget.*

## 2.6. Indicators of state aid broken down by regions (according to the information supplied by providers)

Information from the state aid providers on state aid granted in 2018 broken down by regions is provided in Fig. 10.

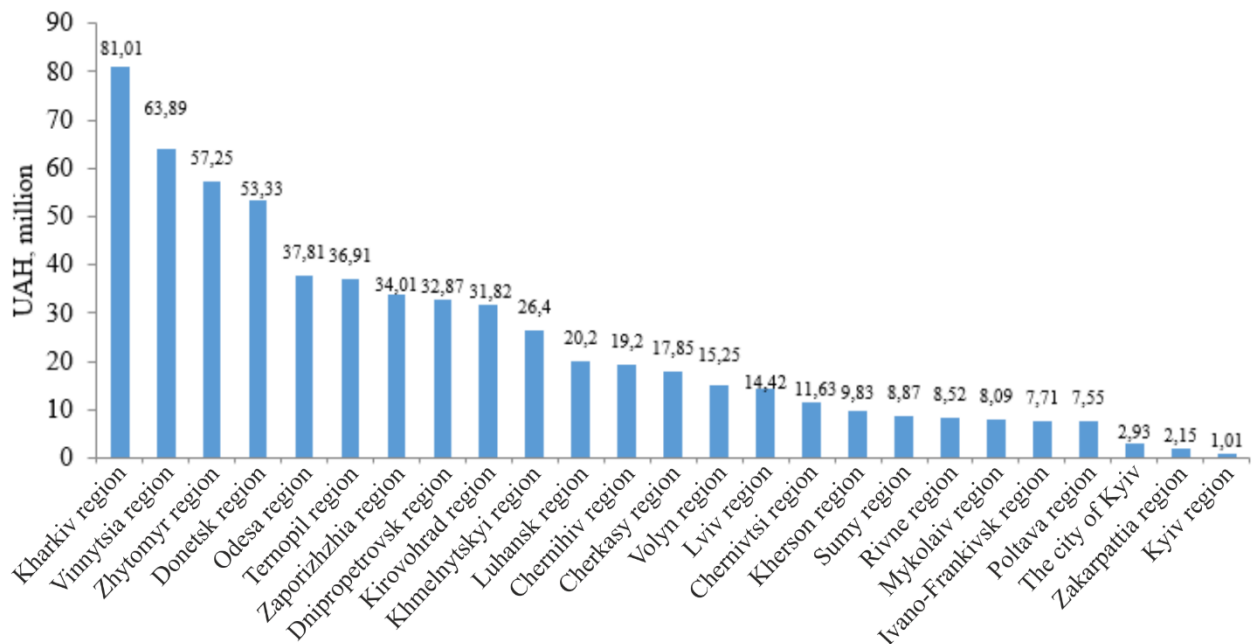


Fig. 10. Indicators of state aid by regions (according to the information supplied by providers) in 2018

Data does not include the temporary occupied territory of the Autonomous Republic of Crimea, city of Sevastopol and the temporary occupied territories of Donetsk and Luhansk regions.

*The information supplied does not indicate that the amount of state aid granted in Kharkiv region is higher than in other regions. The Diagram suggests that this region paid more attention to the supply of information on state aid, than the regions, which supplied information on low amounts of state aid.*

*While 91 information forms were received from Kharkiv region, 94 from Zhytomyr region and 58 from Vinnitsia region, only 2 information forms were received from Zakarpattia region and 3 forms were provided by each of Kyiv, Mykolaiv, Poltava regions and the city of Kyiv.*

*Hence, the Diagram also shows the activity of the state aid providers in the relevant regions in the application of the state aid laws and supply of the relevant information to the Committee.*

### 3. Conclusions and areas of concern

The annual report is based on the information on state aid to undertakings granted in 2018, which was received by the Antimonopoly Committee of Ukraine from central executive authorities, local executive authorities and local self-government bodies being the state aid providers.

#### Conclusions

1. The national system of state aid control has been set up and operates in Ukraine. The regulatory framework of the national state aid control system needs to be refined, taking into account the practice of enforcement of the rules on state aid regulation and to be aligned with the EU acquis.

2. The overwhelming majority of decisions made in 2018 by the Antimonopoly Committee of Ukraine on the merits following the consideration of notifications of new state aid (94.1%) are decisions declaring the support of an undertaking as not being state aid under the Law. This suggests, in particular, that state aid providers face difficulties in qualifying the term "state aid" in accordance with its definition in the Law and the support not being state aid.

3. The small number of reports on support schemes that existed at the date of entry of the Law into force received by the Committee suggests that in 2018 the state aid providers did not supply comprehensive information regarding the inventory of such schemes. This work should be continued in the coming years.

4. When forming the annual budget of Ukraine, the state aid providers must comply with the requirements of part four of Article 35 of the Budget Code of Ukraine<sup>63</sup>.

5. Given that most of the decisions of the Antimonopoly Committee of Ukraine concerned the support of communal enterprises, as well as the dynamics of growth in their number, the procedure and grounds for establishing communal enterprises by local self-government bodies requires regulation, as well as the terms of financing of communal enterprises at the expense of local budgets and subject to the legislation of the state aid to undertakings.

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<sup>63</sup> According to the said part, if a budget request provides for the granting of state aid to undertakings at the expense of the state budget in whatever form, main spending units shall attach to the budget request a copy of the Authorized Body's decision on state aid based on the results of consideration of a notification of the new state aid or state aid cases pursuant to [Law of Ukraine](#) "On State Aid to Undertakings", or shall notify in writing of their release from the duty to notify of the new state aid with reference to the provisions of the said Law and legal acts and regulations establishing the relevant conditions for release.



Considering the Committee's analysis and practical work during 2018, the following are the **main areas of concern in 2019** on the path to creating an effective state aid system:

1. Decision-making in accordance with the Law of Ukraine "On State Aid to Undertakings" based on the consideration of notifications of new state aid.

2. Improvement of the statutory regulation of the sphere of state aid by amending the existing legal acts and regulations, including the Law of Ukraine "On State Aid to Undertakings", the Tax Code of Ukraine, the Customs Code of Ukraine, and the Rules of Procedure of the Cabinet of Ministers of Ukraine, as well as the adoption of new decrees of the Cabinet of Ministers of Ukraine determining the criteria for assessing the compatibility of certain categories of state aid to undertakings, and other legal acts and regulations.

Improvement of the provisions of the Law of Ukraine "On State Aid to Undertakings", including by aligning them with the EU acquis to ensure proper performance of Ukraine's international obligations under the Association Agreement and the Treaty Establishing the Energy Community, in terms of:

- introduction of the criterion of influence on trade of Ukraine with the EU in the definition of "state aid to undertakings";
- introduction of new definitions of "economic activity" and "undertaking" in line with the EU acquis;
- aligning of the rules of Law in terms of the provision of services of general economic interest with the EU acquis;
- introduction of the possibility of establishing common criteria for assessing the compatibility of State aid with competition;
- introduction of a possibility of charging interest on the use of state aid, which was declared incompatible and is subject to refund, which is in conformity with the EU acquis;
- improvement of the proceedings of consideration by the Committee of notifications of state aid;
- classification of the state aid institute as national competition law.

3. Continuation of work on the analysis of rules of the Tax and Customs Codes of Ukraine at the level of the inter-departmental working group with the participation of experts of the EU Project.

4. Issue of clarifications on the issues of application of state aid laws.
5. Holding of various events in order to raise awareness in the field of state aid among the providers and recipients of state aid on regular basis.
6. Informing of the European Commission on state aid granted in Ukraine in compliance with the Association Agreement.

### **List of Annexes**

**Annex 1.** Decisions of the Committee on compatibility of state aid with competition adopted in 2018.

**Annex 2.** Decisions of the Committee on incompatibility of state aid with competition adopted in 2018.

**Annex 3.** List of issues that are intended to be regulated by the draft Law of Ukraine “On Amendments to the Law of Ukraine “On State Aid to Undertakings”.

**Decisions of the Committee on compatibility of state aid with competition adopted in 2018**

No.	Name of the SA provider	Name of the SA recipient	Objective of SA	Form of SA	Type of SA (scheme/individual)	Region	Activity, for which the funds are allocated	Amount of state aid, thousand Hryvnias	Aid duration	Number and date of the decision of the Committee (application of criteria)
1	Directorate of Culture and Tourism of Chernihiv City Council (LSB)	CE "City Cultural Centre"	Culture and education	Current transfers (partial financing of payroll expenses, utilities and energy). Operating aid.	Individual	Chernihiv region	Culture and education	<b>6237.16</b>	01.01.2018 – 31.12.2018	<b>No. 200-p, 17.04.2018</b> On compatibility of the new SA with competition
2	State Management of Affairs	SE "Mystetskyi Arsenal" National Cultural, Art and Museum Complex	Culture and education, preservation of cultural heritage	Subsidies and financial support of investment projects. Operating aid (coverage of current expenses). Investment aid	Individual	Ukraine	Culture and education	<b>138,660.6</b>	01.01.2019 – 31.12.2019	<b>No. 515-p, 27.09.2018</b> On compatibility of the new SA with competition
3	Ministry of Economic Development and Trade of Ukraine (EA) State Innovative Financial and Credit Institution	Undertakings - legal entities engaged in production by types of economic activity in the processing industry within Ukraine - carriers of industrial and innovative projects	Support of the implementation of industrial and innovative projects aimed at technological innovations for the industrial development	Co-financing of industrial and innovative projects on non-repayable terms. Partial compensation of interest on loans for the implementation of industrial and innovative projects on non-repayable terms	Scheme	Ukraine	Processing industry	<b>300,000.0</b>	From the date of adoption of the Decree of the CMU <sup>64</sup> - 31.12.2019	<b>No. 572-p, 19.10.2018</b> On compatibility of SA with competition (Criteria for assessing the compatibility of SA for scientific research, technical development and innovations according to Decree of the CMU No. 118

<sup>64</sup> Decree was not adopted by the Cabinet of Ministers of Ukraine. The Ministry of Economic Development and Trade of Ukraine informed the Committee that during 2018 no state aid was granted under this scheme.

										<b>dated 07.02.2018).</b>
4	Department of Culture and Tourism of Zaporizhzhia City Council (LSB)	Zaporizhzhia Municipal Theatre - Laboratory "Vi"; Zaporizhzhia Municipal Dance Theatre	Preservation and maintenance of theatre buildings; satisfaction of public needs for the performing arts	Subsidies, current and capital transfers	Individual	Zaporizhzhia region	Culture and education	<b>40,911.945</b>	01.01.2019 – 31.12.2021	<b>No. 574-p, 19.10.2018</b> On compatibility of the new SA with competition
5	Directorate of Economic Development of Chernihiv Town Council (LSB)	Small and medium enterprises in the city of Chernihiv	Promotion of the social and economic development of regions, support of local commodity manufacturers	Partial compensation of the costs of enterprises for participation in exhibitions and fairs	Scheme <b>(existing)</b>	Chernihiv region, city of Chernihiv	-	-	01.01.2017 – 31.12.2020	<b>No. 612-p, 05.11.2018</b> On compatibility of SA with competition (Criteria for assessing the compatibility of SA for the promotion of regional development and support of small and medium enterprises according to Decree of the <b>CMU No. 57 dated 07.02.2018).</b>
6	Directorate of Culture of the Executive Committee of Kryvyi Rih City Council (LSB)	CE "Kryvorizkyi Academic Theatre of Music and Plastic Arts "Movement Academy" of Kryvyi Rih City Council; CE "Kryvyi Rih City Puppet	Development of performing arts, satisfaction of public needs for the performing arts	Subsidy; Tax privilege	Individual	Dnipropetrovsk region	Culture and education	<b>58,378.8</b>	01.01.2018 – 31.12.2019	<b>No. 701-p, 06.12.2018</b> On compatibility of the new SA with competition

		Theatre of Kryvyi Rih City Council”; CE “Kryvorizkyi Academic City Drama and Musical Comedy Theatre named after Taras Shevchenko”.								
7	Department of Public Utilities Sector of Kharkiv City Council (LSB)	Communal Organization “Kharkiv Zoo”	Renovation and development of Kharkiv Zoo by reconstructing it completely, creating conditions for keeping animals that meet European and world standards, preserving and increasing zoological collections.	Subsidies and current transfers; Capital transfers; Contributions to the authorized capital.  Operating aid (for coverage of current expenses during reconstruction). Investment aid (for reconstruction and purchase).	Individual	Kharkiv region, city of Kharkiv	Culture and education	<b>2,117,510.54</b>	01.01.2019 – 31.12.2022	<b>No. 740-p, 17.12.2018</b> On compatibility of the new SA with competition (subject to performance by the recipient of its obligations)
8	Directorate of Culture and Tourism of Chernihiv City Council (LSB)	CE “City Cultural Centre named after Viacheslav Radchenko”	Promotion of training, cultural and educational work among different segments of the population	Current transfers (partial financing of payroll expenses, utilities and energy (general fund), replenishment of material and technical resources (special fund)	Individual	Chernihiv region, city of Chernihiv	Culture and education	<b>32,760.0</b>	01.01.2019 – 31.12.2021	<b>No. 766-p, 20.12.2018</b> On compatibility of the new SA with competition
9	Unit of Culture, Family, Youth, Sports and Tourism of Druzhkivka	CE “Druzhkivskyi Town Park of Culture and Leisure”	Organization of meaningful leisure and recreation, realization of	Grant. Financial support in the form of use of 100% of the rent for communal property for the	Individual	Donetsk region	Culture	<b>1,262.96</b>	01.01.2019 – 31.12.2019	<b>No. 784-p, 27.12.2018</b> On declaring the support specified in the

	Town Council (LSB)		theatrical- concert, cultural and educational activity, by holding mass cultural events	enterprise's needs.  Operating aid for covering current expenses, in particular, payroll expenses and accruals thereon, utilities, purchase of solid fuel.						notification as not being state aid pursuant to the Law, and on compatibility of SA with competition
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**Decisions of the Committee on incompatibility of state aid with competition adopted in 2018**

No.	Name of the SA provider	Name of the SA recipient	Objective of SA	Form of SA	Type of SA (scheme/individual)	Region	Activity, for which the funds are allocated	Amount of state aid, thousand Hryvnias	Aid duration	Number and date of the decision of the Committee
1	Department of Energy, Transport and Communications of Vinnytsia City Council (LSB)	CE "Vinnytsia Transport Company"	Promotion of certain activities	Financial support means a grant to cover losses from the provision of services by public passenger road transport, including losses due to gratuitous transportation of passengers by municipal road transport on the days of any national or local holidays, New Year and other holidays and events.	Individual	Vinnytsia region	Transportation of passengers by public road transport	<b>407,772.2</b>	01.01.2018 – 31.12.2023	<b>No. 652-p, 20.11.2018</b> On declaring the new SA incompatible with competition, termination and refund of illegal SA declared incompatible with competition
2	Directorate of Housing of Zhytomyr City Council	CE "Road Transport Enterprise 0628"	Improvement of the sanitary condition and reduction of the adverse effect of waste on environment; establishment of the waste management system; reclamation of secondary raw materials to the maximum extent possible	Current transfers, capital investments	Individual	Zhytomyr region	Solid waste management	<b>18,990.0</b>	01.01.2018 – 31.12.2020	<b>No. 654-p, 20.11.2018</b> On declaring the new SA incompatible with competition, termination and refund of illegal SA declared incompatible with competition

**List of issues that are intended to be regulated by the draft  
Law of Ukraine “On Amendments to the Law of Ukraine “On State Aid to Undertakings”**

List of issues	Substantiation
<p>Limitation of the current definition of “state aid to undertakings” under the Law “On State Aid to Undertakings” (hereinafter the Law) due to the absence in it of the criterion of influence on Ukraine's trade with the EU, which is an attribute for the recognition of state support as a state aid under the Association Agreement</p>	<p>According to Article 262(1) of the Association Agreement, “Any aid granted by Ukraine or the Member States of the European Union through state resources which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods is incompatible with the proper functioning of this Agreement insofar as it may affect trade between the Parties”.</p> <p>The definition of "state aid to undertakings" contained in paragraph 1 of part one of Article 1 of the Law "On State Aid to Undertakings" does not include a criterion of influence on Ukraine's trade with the EU Member States. As a consequence, the support that is provided and meets the criteria of "state aid" under the Law, but does not affect trade between Ukraine and the EU Member States, constitutes state aid under the Law and is subject to notification to the Committee in cases provided for by the Law. If the trade criterion is introduced in the definition of "state aid", the support shall not constitute state aid and shall not require notification. This will reduce the burden on providers, recipients of state aid (mainly at the local level where there is no impact on EU trade) and on the Committee by reducing the number of cases requiring notification to the Committee.</p>
<p>Inconsistency of the definition of an "undertaking" provided in the Law of Ukraine "On the Protection of Economic Competition" and used for the purposes of the Law, with the similar definition provided in the EU acquis</p>	<p>Pursuant to paragraph 1 of part one of the Law, state aid to undertakings means any form of support to undertakings at the expense of the state budget or local budgets, that distorts or threatens to distort economic competition by creating advantages for the production of certain types of goods or conduct of certain types of economic activity.</p> <p>Pursuant to part two of Article 1 of the Law, the term “undertaking” is used in the meaning provided in the Law of Ukraine “On the Protection of Economic Competition”.</p>
<p>Inconsistency of application of the definition of the “state aid to undertakings” under the Law with its application in accordance with the EU acquis, since the Law provides no definition of “economic activity”</p>	<p>According to Article 1 of the Law of Ukraine "On the Protection of Economic Competition", an undertaking means a "legal entity, regardless of its legal form of incorporation and form or ownership, or an individual engaged in the production, sale, purchase of goods, other economic activity, including those exercising control over another legal entity or individual; a group of undertakings, if one or more of them control the others. Undertakings also include government authorities, local self-government bodies, as well as administrative and</p>



	<p>regulatory bodies in terms of their activity for the production, sale, purchase of goods or other economic activity”.</p> <p>According to part one of Article 3 of the Commercial Code of Ukraine, economic activity in this Code means activity of undertakings in the field of public production, aimed at the manufacture and sale of products, performance of works or provisions services of value nature with a certain price.</p> <p>The definition proposed in the Draft Law: “an undertaking shall mean an individual - a businessman or an individual who carries out an independent professional activity (is a self-employed person) or a legal entity, regardless of its form of ownership, legal form of incorporation and sources of funding, which carries out economic activity” is in conformity with the EU acquis.</p> <p>Therefore, as a result of the introduction of the new definition of an "undertaking" and the new term "economic activity" proposed for the purposes of state aid more support measures, such as state support for non-profit organizations of a social nature, as well as support provided in connection with the exercise by undertakings of functions entrusted to them by government authorities and local self-government bodies, there will be no need for the Committee's decision</p>
<p>Inconsistency of the rules of Law in terms of the provision of services of general economic interest with the EU acquis</p>	<p>According to paragraph 14 of part two of Article 1 of the Law, services of general economic interest mean services related to satisfaction of particularly important general needs of citizens, which may not be provided on commercial basis without state support.</p> <p>According to Article 3 of the Law, it does not apply, in particular, to a support of economic activity related to the provision of services of general economic interest, to the extent related to compensation of reasonable costs for the provision of such services.</p> <p>Pursuant to part three of paragraph 2 of part two of Article 3 of the Law, the list of services of general economic interest shall be established by the Cabinet of Ministers of Ukraine. This approach is not in conformity with the EU acquis, according to which compensation for the provision of services of general economic interest is assessed in accordance with the criteria according to which such a support measure is either not regarded as state aid or regarded as state aid compatible with competition.</p> <p>The proposed amendments to the Law provide for a change in the definition of "services of general economic interest", as well as the definition of specific conditions under which compliance the Law does not apply to compensation for the provision of services of general economic interest. In this case, the definition by the Cabinet of Ministers of Ukraine of the</p>

	list of services of general economic interest is abolished, but the Cabinet of Ministers of Ukraine is empowered to determine the criteria of compatibility of state aid for services of general economic interest.
Absence of a possibility under the Law to assess measures that do not fall within any of the objectives set out in Article 6 of the Law, which makes it impossible to establish general criteria for assessing the compatibility of State aid with competition	<p>Article 6 of the Law establishes special criteria for assessing the compatibility of state aid for certain purposes. According to this Article, state aid can be declared compatible, if it is granted for the following purposes:</p> <ol style="list-style-type: none"> <li>1) promotion of the social and economic development of regions, in which the standard of living is low or the unemployment rate is high;</li> <li>2) implementation of nation-wide programs for the development or solution of nation-wide social and economic problems;</li> <li>3) promotion of certain economic activities or undertakings in certain economic areas, provided that this shall not contradict the international treaties of Ukraine, in respect of which the Verkhovna Rada of Ukraine gave its consent to be bound by;</li> <li>4) support and preservation of the national cultural heritage, if the impact of such state aid on competition is insignificant.</li> </ol> <p>However, the provisions of the Law exclude the possibility of assessing measures that do not fall within any of the objectives set out in this Article.</p> <p>In order to address this issue, the Draft Law proposes to authorize the Cabinet of Ministers of Ukraine to approve the General Criteria for Assessing the Compatibility of State Aid with Competition, which will allow the assessment of state aid measures that do not fall under any of the specific objectives. One such area is sports. For example, according to the General Criteria for Assessing the Compatibility of State Aid with Competition, state aid to football clubs for the construction of sports arenas would be assessed, etc.</p>
Absence of a statutory possibility of charging an interest rate on the use of state aid, which was declared incompatible and subject to refund, which is not in compliance with the EU acquis	<p>Section 6 of the Law provides for the refund of state aid, which is incompatible with competition, in the manner prescribed by the Cabinet of Ministers of Ukraine. The Law, however, does not provide for charging an interest rate on the use of state aid, which was declared incompatible and subject to refund. Such an approach is not in conformity with the approach of the EU acquis to illegal / improperly used state aid declared incompatible. The Draft Law proposes to harmonize the Law with the EU acquis by introducing an interest rate on the use of state aid, which was declared incompatible and is subject to refund. Procedure of charging the interest rate on use of such state aid shall be established by the Cabinet of Ministers of Ukraine.</p>

<p>Imperfect proceeding for consideration by the Committee of notifications of state aid, in particular, the absence of a possibility to consider issues in the field of state aid by the administrative panels of the Committee</p>	<p>According to paragraph 5 of part one of Article 1 and part one of Article 8 of the Law, the Antimonopoly Committee of Ukraine is the Authorized Body in the field of state aid, whose powers in the field of state aid are set forth by part two of Article 8 of the Law. Hence, all issues falling within the competence of the Committee in this field are only considered at the meetings of the Committee as a supreme collegial body. At the same time, Article 6 of the Law of Ukraine “On the Antimonopoly Committee of Ukraine” provides that the administrative panels of the Committee are one of the Committee’s bodies.</p> <p>In order to accelerate the decision-making in the field of state aid, the Draft Law provides for the ability of the Committee to set up administrative panels for the purpose of exercising powers in the field of state aid.</p>
<p>Absence of the state aid institute in the system of national competitive law.</p>	<p>According to part one of Article 3 of the Law of Ukraine “On the Protection of Economic Competition, the laws on the protection of economic competition is based on the rules established by the Constitution of Ukraine, and consists of the Law of Ukraine “On the Protection of Economic Competition”, the Laws of Ukraine “On the Antimonopoly Committee of Ukraine”, “On the Protection from Unfair Competition”, other legal acts and regulations adopted thereunder.</p> <p>The Law of Ukraine “On State Aid to Undertakings” establishes the legal basis for monitoring state aid to undertakings, exercising control over the compatibility of such aid with competition, aimed at ensuring the protection and development of competition, enhancing the transparency of the functioning of the state aid system and compliance with international obligations of Ukraine in the field of state aid.</p> <p>Hence, the Law remains outside the scope of the legislation on the protection of economic competition, although it aims at ensuring the protection and development of competition.</p> <p>The Draft Law proposes to resolve this issue by amending the Law of Ukraine “On Protection of Economic Competition” as regards the incorporation of the Law of Ukraine “On State Aid to Undertakings” into the system of legislation on the protection of economic competition.</p>