

STATE AID TRENDS IN THE WESTERN BALKANS IN THE LIGHT OF THE EUROPEAN UNION ACQUIS

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Abstract

How to cite this paper: Tota, E., & Hasanpapaj, B. (2023). State aid trends in the Western Balkans in the light of the European Union acquis [Special issue]. *Corporate Law & Governance Review*, 5(2), 174–181. <https://doi.org/10.22495/clgrv5i2sip4>

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ISSN Online: 2664-1542

ISSN Print: 2707-1111

Received: 20.09.2022

Accepted: 11.10.2023

JEL Classification: K2, L1, L4

DOI: 10.22495/clgrv5i2sip4

Granting state aid to market players while ensuring compliance with the internal market requirements, as derived from the European Union (EU) acquis, seems to be a challenging exercise for the Western Balkans. As an integral part of the competition rules (Cseres & Reyna, 2021) state aid requirements proved to be a challenge, especially at the outbreak of the COVID-19 pandemic, as part of the state efforts to keep alive certain key sectors of the economy (Bouchagiar, 2021). As an EU requirement and Stabilisation and Association Agreement (SAA) legal obligation became even more important. Struggling between the need to save the market while respecting the state aid rules, Western Balkans seem to have to pay more and closer attention to this field. This is why this paper, through an analytical and descriptive approach, intends to address such shortcomings and challenges in light of the efforts to enhance the harmonization of the legislation while ensuring its due application. Enforcing state aid rules requires professional and independent capacities within the relevant state aid authorities an objective remaining far from reach in the Western Balkans. The paper provokes further debates and analysis in the scholarly efforts to shed light on this sector.

Keywords: State Aid Rules, EU Acquis, Internal Market, Distorting Competition, Western Balkans

Authors' individual contribution: Conceptualization — E.T. and B.H.; Methodology — E.T.; Writing — Original Draft — E.T. and B.H.; Resources — E.T.; Writing — Review & Editing — E.T. and B.H.

Declaration of conflicting interests: The Authors declare that there is no conflict of interest.

1. INTRODUCTION

Introduced a long time by the European Community (EC) founding treaties (today the European Union, EU), the area of state aid has been traditionally less known in the Western Balkans (WB)¹, lacking scholarly and professional attention and as such insufficiently developed.

The rules on state aid along with the rules on competition have been an EU requirement for the WB since these countries became part of the Stabilization and Association Process (SAP)². As such, this process

by being associated with the Stabilisation and Association Agreements (SAAs) as contractual agreements signed between the EU on the one side and each of the countries of the WB on the other side does also include the component of the integration perspective of the region.

According to the obligations provided by the SAAs, as with the other rules, the rules on state aid have also to be adopted and properly implemented by the countries of the WB. In this regard, the WB has been facing a double challenge consisting of the following: first, the state aid rules have to be adopted and therefore be in line with the EU requirements which means that the approximation level of national state aid rules with the EU acquis should be at a satisfactory level and the respective countries should in continuation be

¹ Western Balkans refer to Albania, Bosnia and Herzegovina, Kosovo, Montenegro, North Macedonia and Serbia.

² The SAP represents the EU's policy applied to the WB aiming the eventual membership of the WB in the EU. As such, the SAP was launched (in 1999) as of a set of political, economic and legislative reforms to be carried out assisting the WB/SAA countries on their way to the EU integration.

able to follow up the respective legislative changes at the EU level, and second, the level of practical implementation of state aid rules should be enhanced, and in addition, the state aid authorities of the WB countries should be well-prepared.

Developing the state aid sector through the years could not have been practiced without the overall development of the other sectorial policies and only along the major economic and legal reforms throughout the WB countries. "Initiating, maintaining, and enhancing the economic growth requires decisive action of the creators of the development policies in order to improve the competitiveness of their countries and future economic prospects. Reforms and proper set of investments become crucial for economic transformation that leads to sustained high economic growth over the long term" (Najdanović et al., 2019, p. 93).

The state aid legislation framework derive by being based on the level of the EU primary law, specifically by Articles 107 to 109 of the Treaty on the Functioning of the European Union (TFEU), the former Articles 87 to 89 of the Treaty establishing the European Community (EC Treaty) and since then it is one of the pillars of competition law and policy. "The link between state aid rules and competition rules has been confirmed by the EU Courts stating that State aid law provisions and competition rules of the Treaty pursue the same objective: undistorted competition in the internal market" (Cseres & Reyna, 2021, p. 618). "A specific characteristic feature of European competition policy is the so-called state-aid control based on Article 87 of the EC Treaty. It relates to possible distortions of competition through state subsidies to private or public companies that are in active or potential competition with other companies. Article 87, paragraph 1 of the EC Treaty issues a general ban on state aid. There are, however, exceptions to the rule defined in Article 87, paragraph 3 of the EC Treaty, which allow aid under certain conditions" (Haucap & Schwalbe, 2011, p. 2).

"Hence, the focus of the State aid rules is to prevent distortion of competition in the internal market as well as to preclude inefficient subsidy races among Member States. ... Under the State aid rules an anticompetitive behaviour means some form of public intervention that increases the economic strength of the recipient of State aid" (Cseres & Reyna, 2021, p. 619). "In short, it prohibits the provision of advantages, in any form, by national public authorities to undertakings on a selective basis" (Miladinovic, 2022, p. 2).

"Since state aid can be very distortive there has to be a very clear rationale for why and when it is used. In principle, state aid intentionally distorts market outcomes to correct market failures or reduce inequalities. Specific circumstances (market failures) in which state aid is allowed are those in which unfettered markets are, in principle, not likely to give optimal results, and interventions are required" (Vasiljevic et al., 2019, p. 6).

Therefore, in addition to the mere fact that the state aid sector should be developed according to the EU standards, it is also crucial that at first a better understanding of state aid should take place as it is a *sine qua non* of further development of the sector. In this regard, dealing with state aid rules

has proved to be a challenging issue for the WB countries. It has been a lack of efficient institutions in adopting the appropriate state aid legislation, especially secondary acts, and a lack of professional human resources being able to understand and properly implement the state aid legislation, and therefore the enforcement capacities of the state aid authorities have remained mainly insufficient.

State aid did not attract the attention of young or even senior scholars and researchers which could help the development of state aid in the region. As such the need to clarify main concepts while diving deeper into the complexities of the relevant state aid rules poses a number of research questions to be considered:

RQ1: *What are the main principles, characteristics, and compatibility criteria of state aid?*

RQ2: *Why do state aid rules lack implementation in the WB?*

RQ3: *What are the main challenges?*

RQ4: *What are the capacities of the WB to cope with the latest EU developments in this field?*

Taking into account the above, the authors of this paper intend to highlight the importance of the proper engagement of the state authorities in implementing the state aid rules and establishing the appropriate mechanisms for their implementation.

The paper emphasizes the importance of the EU acquis on state aid, especially those incorporated into the SAAs as a direct international obligation for the WB countries. Practices violating state aid rules distorting or threatening to distort competition with a direct impact on the market competitiveness pose a threat to the proper development of this sector. EU developments, in addition, are an area requiring additional attention and are clearly neglected by state authorities in the WB.

In this endeavor, the paper reveals how the WB should increase their efforts in order to make further progress in the state aid rules and move forward to achieving the objectives of the EU integration process.

In addressing the above and in addition to this first section as an introduction, the paper is further structured in five additional sections followed initially by an overall literature review in Section 2, to reflect some EU trends on state aid in Section 3, and by explaining the methodology used in Section 4, to be able to show the paper results in Section 5, and a conclusion in Section 6.

2. LITERATURE REVIEW

Some of the main state aid rules are defined in the most important legal acts of the EU, namely, they are laid down in the founding treaties of the EU, establishing a system of state aid control in the EU. State aid is defined by Article 107(1) of the Treaty on the Functioning of the EU defines. The definition "comprises measures implemented by a governmental authority or using governmental resources in any form whatsoever, e.g. monetary transfers, tax relief, allocation of property and resources, or other contributions of financial worth, which give the recipient a selective advantage over other operators in the market, thereby affecting fair competition" (Kebapci et al., 2020, p. 6).

The state aid prohibition, is defined as part of the competition rules in EU primary law, stating that “Save as otherwise provided in the Treaties, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market” (Article 107(1) of the TFEU).

The authors explain the connection between state aid and competition with their direct impact on the markets. “For the purposes of the state aid rules the competitive advantage is considered to be a situation when a certain undertaking, sector, or region is treated in a manner which is not common in economic relations. The case law points out that the competitive advantage is when the recipient obtains benefits which would not be granted under common market conditions (Case C-39/94 SFED). Competitive advantage therefore means any measure that is selectively granted to an undertaking without adequate consideration or the compensation provided by the undertaking as a beneficiary is not corresponding to the extent of advantage it received” (Sciskalová & Münster, 2014, p. 225).

Consumer threats, discouragement of investments, and distorting of competition among undertakings are among the concerns of state aid prohibitions and competition regulation in the market. State aid prohibition though involves exceptions therein too since as a “policy instrument is vital for states to ensure certain interventions in case of market failures or when SMEs have difficulties finding investment capital or companies are reluctant to invest in employee training. State aid may also be necessary to achieve policy goals such as regional economic development or environmental protection. Governments can, for instance, use state aid to stimulate businesses to invest in poorer regions or to purchase advanced environmentally friendly technologies” (Jozepa, 2021, p. 8). To this extent, “Member States can enact measures of general application (which are not selective), such as generalised de-taxation measures, and/or measures in the form of general wage subsidies, or measures directly aimed at supporting consumers, as they fall already outside the scope of Article 107 TFEU. ... Economic intervention from the State may be needed in specific circumstances, or to address well-defined market failures and to protect certain social values” (Ferri, 2021, p. 177) all of them highly important for economic development and market sustainability.

“A long-time development of the system of state aid control of the European Union has led to the establishment of appropriate patterns and rules in the allocation of each specific category of state aid. The main objective of the established rules is the greater expediency of the use of state aid granted, with the least possible distortion of competition in the market” (Stojanović & Stanišić, 2015, pp. 331-332).

“Much like the COVID-19 outbreak, the rules on State aid in response to that outbreak are constantly evolving. As soon as Member States imposed the first lock-down measures, it became evident that State aid would be required to support several sectors of the economy in the severe economic crisis that would accompany the public health crisis of that outbreak” (Bouchagiar, 2021, p. 1).

Despite those practices in the EU, which in itself enhanced the understanding and importance of state aid, the COVID-19 emergency interventions in the WB for the same purposes were not in line with the EU practices. This is true, especially with regard to the modalities used for its distribution due to a total lack of transparency. Moreover, “the work of the Regulatory Authorities in the WB is not independent” (Stojanović et al., 2021, p. 181).

3. THE EU TRENDS ON STATE AID

3.1. Definition of state aid

At the EU level, state aid is granted under certain conditions, and as such, it is regulated by a number of rules which are led by the EU Treaty provisions, Articles 107-109 of the TFEU (former Articles 87-89 of EC Treaty). Since then, the state aid rules have been part of the EU Competition Law and Policy, developing jointly with competition rules and dealing with possible certain distortions of market competition.

As already mentioned above, Article 107(1) of the TFEU states, “Save as otherwise provided in this Treaty, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, insofar as it affects trade between Member States, be incompatible with the internal market”. The definition is used and further elaborated by the case law of the European Court of Justice (ECJ), which identifies four criteria that cumulatively must be met in order to speak of state aid from a legal point of view:

“Article 92(1) of the Treaty lays down the following conditions. First, there must be an intervention by the State or through State resources. Second, the intervention must be liable to affect trade between Member States. Third, it must confer an advantage on the recipient. Fourth, it must distort or threaten to distort competition” (Judgment of the European Court of Justice of 24 July 2003 in Case C-280/00).

“It is important to note that in most cases the two criteria (“distortion of competition” and “effect on trade”) are considered to be fulfilled if the measure is “selective” in terms of granting an advantage. A measure can be selective in terms of favouring certain companies, the production of specific products or the development of a specific region. Under this approach, the assessment of the criteria “distortion of competition” and “effect on trade” under Article 87(1) is rather rudimentary” (Friederiszick et al., 2006, p. 5).

Given the fact that EU state aid is addressed mainly in three categories as horizontal, regional, and sectorial state aid, each of the categories covers a set of certain objectives and therefore is adequately regulated by regulations, guidelines, and rules which in addition to that also serves as a cornerstone for regulation of the state aid sector at the level of EU Member State as well as for other countries with accession perspective such as the WB.

3.2. Compatibility of state aid

In general, state aid is incompatible with the EU internal market (Article 107(1) of the TFEU) and therefore it is understood that granting state aid is

prohibited unless there are exceptions provided. As such, the EU Treaty, Article 107(2) attributes the cases when state aid shall be compatible with the internal market stating that:

“(a) aid having a social character, granted to individual consumers, provided that such aid is granted without discrimination related to the origin of the products concerned; (b) aid to make good the damage caused by natural disasters or exceptional occurrences; (c) aid granted to the economy of certain areas of the Federal Republic of Germany affected by the division of Germany, in so far as such aid is required in order to compensate for the economic disadvantages caused by that division. Five years after the entry into force of the Treaty of Lisbon, the Council, acting on a proposal from the Commission may adopt a decision repealing this point”.

Further, the EU Treaty, Article 107(3) has provided the cases when state aid may be considered to be compatible with the internal market stating that:

“(a) aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment, and of the regions referred to in Article 349, in view of their structural, economic and social situation; (b) aid to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State; (c) aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest; (d) aid to promote culture and heritage conservation where such aid does not affect trading conditions and competition in the Union to an extent that is contrary to the common interest; (e) such other categories of aid as may be specified by decision of the Council on a proposal from the Commission”.

Exceptions to this general prohibition of state aid may be allowed based on a decision of the Commission (as provided by Article 108 of the TFEU) and without the consent of the Commission in cases of granting aid based on “*block exemption*”³ rules or “*de minimis aid*”⁴.

Nevertheless, it is to be noted that “in response to the COVID-19 outbreak, the European Commission relaxed the state aid restrictions, ... which gives EU Member States more flexibility to support their economies during and after the pandemic”⁵ (Jozepa, 2021, p. 18).

³ State aid rules allow national authorities (at local, regional or central levels of government) to grant aid for undertakings under certain conditions. The General Block Exemption Regulation (GBER) establishes conditions under which such aid can be provided without formally notifying the European Commission. On the categories of aid granted as compatible with the internal market for more see the GBER — Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty.

⁴ “*De minimis*” aid means aid of a small amount that is not considered a state aid and is not subject to notification and authorization of the Commission. Rules on *de minimis* aid are set up by the Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid.

⁵ For more see Communication from the Commission, Temporary Framework for state aid measures to support the economy in the current COVID-19 outbreak and the respective amendments/prolongations made by the Commission.

3.3. The SAA provisions on state aid

The legal requirement to adopt state aid related legislation in line with the EU standards is reflected in the SAAs, as the main instrument tracking the EU integration process. The SAAs explicitly contain individual provisions covering the state aid rules applicable to all the WB countries. The state aid rules are provided along with the competition rules and other economic provisions under certain SAA articles, such as approximation of law to the EU acquis, law enforcement and competition rules, competition, and other economic provisions, etc.⁶

“During the enlargement process, conditionality served as a proxy to expand the acquis to Central and Eastern European countries and to induce them to adjust their administrative structures for EU membership, also in regard to state aid control” (Botta & Schweltnus, 2015, as cited in Colombo, 2019, p. 309). EU acquis is incorporated through the transposition of the relevant legal framework into the national legislation. In order to make progress, the WB countries do have to progressively improve their respective national legislation aiming to bring it in line with the EU acquis. Particular areas of attention and concern for the actions of the WB as defined in and by the SAAs involve any state aid which distorts or threatens to distort competition by favouring certain undertakings or certain products:

- shall be incompatible with the internal market and may affect trade between the given country and the Community;
- shall establish an operationally independent authority that is entrusted with the powers necessary to authorise state aid schemes and individual aid grants in conformity with the competition rules applicable in the Community as well as the powers to order the recovery of state aid that has been unlawfully granted;
- shall ensure transparency in the area of state aid;
- shall establish a comprehensive inventory of aid schemes;
- shall draw up the regional aid map based on the relevant Community guidelines.

“In negotiation process regarding the accession of new member states to the European Union, all Western Balkan countries will face a request related to new legislation and the independence of the State Aid Control Commission” (Stojanović et al., 2021, p. 180). However, it is evident that the WB countries have significantly advanced their state aid primary legislation bringing it in line with the EU acquis. But, still, the most current challenge remains improving the existing secondary legislation as well as approving the new ones as a way of staying in coherence with the state aid legislative developments at the EU level. In addition to that, the WB needs to make essential progress in regard to implementing state aid legislation and increasingly enforcing the capacities of the state aid authorities.

3.4. The necessity of state aid control

In the EU integration process, the progress of the WB countries is measured by the level of fulfillment of obligations arising from the SAA signed with the EU. Among others, this includes

⁶ For more see the respective articles of the SAAs achieved between each of the Western Balkan countries and the EU.

the provisions of the SAA that provide the progress that should be made by WB institutions in the field of state aid.

As stated above, according to EU legislation referring to state aid, in general, state aid is prohibited, but can only be provided to undertakings after the request for aid is subject to an evaluation process that allows the award of a controlled aid if the aid is compatible and given for a specific purpose.

Since state aid is provided through state resources in various forms such as subsidies, soft loans, tax relief, various guarantees, and favours in public tenders, the aid must be controlled according to a professional evaluation and decision-making process by the relevant state aid institutions. Otherwise, the aid may provide certain undertakings with certain benefits and consequently a commercial advantage over other undertakings which do not enjoy such aid, thus leading to a distortion of competition in the market.

The appropriate implementation of the state aid rules — at first means that the aid provided must be controlled to ensure that such aid provided to market undertakings depends less on whether state, private, or non-government organization (NGO) is really needed and comes as a necessity to respond to an economic problem or market failure of the undertaking in question. And secondly, it means that this aid is proportionate — that is, not to provide excessive aid, and thirdly to be limited in time. This aid control must be effective and not exceed these parameters, the excessive or uncontrolled aid can have the effect of distorting competition in the free market by favouring certain undertakings in the market and on a larger scale may also affect the domestic or foreign trade with other countries.

4. RESEARCH METHODOLOGY

State aid rules from the perspective of the WB and the application therein is an area of high importance though not many publications are dedicated therein, thus the specific literature is still under construction. As such the methodology used is limited to the comparison of what has been published to date but mainly relies on the EU perspectives approach. As such the definition, characteristics, and economic principles of state aid control are presented through the lenses of the EU acquis.

Reference is made to the progress and the transformation these rules are undergoing, starting gradually from the concept of the prohibition of state aid to the rules on exceptions, and up to the most recent changes made to state aid legislation as a result of the COVID-19 pandemic. This is intended to be presented from a chronological point of view but reflects only the main ones relevant for this short paper, explaining only the basic concepts on the state aid issues: *What is state aid? What are the main principles for granting state aid? Why state aid is prohibited in principle?* This paper also aims to give answers to certain crucial questions such as: *What are the exemptions from state aid prohibition? Why in cases when state aid is granted it must be controlled? What are the effects to distort or threats to distort market competition of granting uncontrolled state aid to certain enterprises?*

In answering the research questions a qualitative research methodology was used. As such, the literature and legislation were reviewed; the evidence and documents were collected and comparatively analyzed. The research aimed at exploring, identifying, and understanding the weaknesses of the state aid rules in the WB. To this extent, it notes that there are significant steps needed to be taken in the future in order to meet the EU standards regarding state aid rules. This paper demonstrates the current situation in the field of state aid in the WB countries and determines the appropriate sectors where the efforts toward the gradual development of state aid rules should be focused.

Although analyzing and interpreting certain case studies from the selected countries of the WB would have contributed to the objectives of this paper, the authors did not find it suitable as there are no online platforms and or directories where such cases could be found and used for such purposes. Though, this can be subject to future articles and papers, especially in the light of the concrete recommendations emphasized by the Country Reports and SAAs towards the countries regarding the need to create state aid registries, including the need to increase transparency by publishing the decisions therein. This is why a general overview was perceived to be a more suitable approach at this stage for this paper. Hopefully, once the countries will create such registries and increase transparency, additional studies on the subject would follow.

5. RESULTS AND DISCUSSION

In reviewing the trends in the WB it can be noted that the WB countries have already made some progress in the harmonization of the state aid primary legislation with EU acquis. But it is also just as evident that in regard to indicators in the implementation of the state aid legislation, the WB countries have achieved limited results. The same is to be said for the enforcement capacities of WB's state aid authorities. These authorities remain significantly weak and have insufficient capacities.

In order to improve their indicators in state aid issues, the WB countries may benefit from the activity of the EU institutions and EU Member State in the field of state aid. In addition, to keep up to date with the most current developments, the WB countries should pay particular attention to the newest legislative EU and Member State acts in the field of state aid as well as to the ECJ case law. This would enable the WB's state aid authorities to improve their institutional understanding of the state aid issues and to further strengthen their capacities.

The incentive for the EU integration process of the WB serves as a sound tool gearing the reforms for a positive impact and thus improving the indicators on state aid issues. As such, it is worth mentioning the SAAs which have outlined the respective progress needed for each of the countries on an individual basis. Annual country reports published by the Commission measure the relevant progress in this field while identifying the main challenges and threats. In 2021 reports, the trend is reflected as follows:

Table 1. Main finding from the progress report 2021 for the State Aid Authorities

No.	Countries	Country progress in a legislative framework	Country progress on implementing legislation	State aid authorities' enforcement capacities
1.	Albania	Broadly in line with the EU acquis	Remains poor	Remains insufficient and needs to be significantly increased
2.	Kosovo	Largely in line with the EU acquis	Some progress was achieved	Remains weak and needs to be improved
3.	Montenegro	Largely in line with the EU acquis	Further strengthening needed	Remains significantly insufficient
4.	Serbia	Broadly in line with the EU acquis	Should be strengthened	Significantly strengthened
5.	North Macedonia	Broadly reflects Articles 107 and 108 of TFEU	Not in line with the EU state aid acquis	Still insufficient
6.	Bosnia and Herzegovina	Partially aligned with the EU acquis	Still have to be aligned with EU state aid rules	Insufficient

Source: European Commission (2021a, 2021b, 2021c, 2021d, 2021e, 2021f).

Most of the targeted countries have managed to adopt sound primary legislation, usually covering the main aspects and principles, though the secondary ones and implementing measures remain yet an objective to be reached. This is why the WB countries need to speed up the process of issuing the secondary legislation as well as to accelerate the steps towards implementing the state aid legislation, including especially a stronger focus on the enforcement capacities of the state aid authorities.

Even if we assume the primary legislation is already in place, including the secondary one to a certain degree too, the question remains regarding the institution's capacities and a sound track of implementation. Many of the countries are either lacking proper institutional structures or clearly have no track records regarding the implementation of this legislation. Much more works need to be done to improve this situation and further support is needed from the EU institutions through direct financial and technical support in this regard.

Adopting the legislation is only one side of the story, understanding it, and, especially, implementing it is another even more complicated side. State aid and competition are anyway areas requiring special expertise and skillful professionals making it even more difficult for the WB countries to deliver therein. This is why even the EU should increase its capacity-building programs for the region in this sector, providing targeted support for creating a group of professionals in the respective institutions. It is obvious that the implementation capacities remain a challenge for the entire region.

6. CONCLUSION

The EU trend of mastering the state aid rules and enhancing them to higher levels widens the existing gap with the Western Balkan countries. Limiting the efforts only to the primary legislation is not helping to bridge this gap. This is why the efforts of all these countries should be twofold: to incorporate and implement the existing EU acquis while ensuring they do not lack behind in the inevitable expected EU trends. To this extent, the region has to urgently speed up the internal reforms ensuring full transposition and due implementation of the state aid rules. Weak institutions responsible to implement such reforms pose another threat and call for urgent state policies to undertake the necessary reforms to ensure professionalism, independence, and transparency.

There cannot be a proper functioning market economy without a proper understanding and implementation of the state aid rules and the competition regime in general. Still, in cases where state aid is granted without institutional control and with a lack of professional evaluations, such aid granted may distort competition and provide commercial advantages for certain companies.

Therefore, the respective state aid institutions should pay particular attention to this sector to further develop it in order to support those companies which are in need, thus empowering the spirit of competitiveness in the market. Moreover, the development of this sector contributes directly to achieving economic criteria as envisaged by the SAA in the EU integration path of those countries.

Given the specifics of the state aid rules, particular attention should also be paid to human resources. As such and taking into account that the state aid rules are constantly changing at the EU level especially in recent times being under the influence of the COVID-19 pandemic, state aid capacities should be sufficiently trained and prepared to properly understand and implement the state aid rules as well as to be able to follow up on the ongoing changes which are taking place in this area at the EU level.

Taking into account the nature of the state aid rules, the concept of the general prohibition of state aid, compatible aid and compatibility criteria on state aid, conditional state aid compatibility, incompatibility of state aid, "de minimis" aid, as well as the fact that in the response to the pandemic outbreak, the rules on state aid are constantly evolving, it is impossible to encompass all the aspects of state aid and therefore this study is limited. The pressure for reforms imposed by the EU in the integration process influences many developments in the sector thus reforms are multidimensional and constantly evolving. This is why the paper reflects the observations at a glance without taking into account specifics that may be in individual countries of the region, which could be subject to other comparative studies. So are the current existing studies and data, not that many anyway in this particular region and field.

The area of the discussion presented herein is limited to a general overview of the current state of play of the main concerns pertaining to the state aid in the WB countries and it does not include a deep discussion for individual countries nor does it reflect particular cases therein. Data and information in this sector are very limited and a deeper discussion is beyond the scope of this paper.

The trends of state aid in the EU and their impact on the WB region deserve more attention from both scholarly contributors as well as experts in the field. Studies and expertise will help those countries' efforts to move ahead with the reforms and cope with the market needs by keeping a proper balance as intended by the overall objectives of the state aid rules. Future research is very much needed to further develop the understanding of this

topic and address properly the more challenging issues and reasons why the area of state aid in the WB has not sufficiently progressed. Additional publications being either on specific categories of state aid or certain subsections therein would be very beneficial for all the countries concerned. Other contributions and publications may be initiated by scrutinizing the specifics of individual countries in their path to achieving intended objectives.

REFERENCES

- Bouchagiar, A. (2021). *State aid in the context of the COVID-19 outbreak, including the Temporary Framework 2020* (Robert Schuman Centre for Advanced Studies Research Paper No. RSCAS 2021/03). <https://doi.org/10.2139/ssrn.3796216>
- Colombo, C. M. (2019). State aid control in the modernisation era: Moving towards a differentiated administrative integration? *European Law Journal*, 25(3), 292–316. <https://doi.org/10.1111/eulj.12324>
- Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid. *Official Journal of the European Union*, 352(1). EUR-Lex. <http://data.europa.eu/eli/reg/2013/1407/oj>
- Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty. *Official Journal of the European Union*, 187(1). EUR-Lex. <http://data.europa.eu/eli/reg/2014/651/oj>
- Communication from the Commission, Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak. *Official Journal of the European Union*, 91(1). EUR-Lex. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ%3AJOC_2020_091_L_0001
- Council and Commission Decision of 22 July 2013 on the conclusion of the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Serbia, of the other part (2013). *Official Journal of the European Union*, 278, 14–15. EUR-Lex. <http://data.europa.eu/eli/dec/2013/490/oj>
- Council and Commission Decision of 26 February 2009 concerning the conclusion of the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Albania, of the other part (2009). *Official Journal of the European Union*, 107, 165. EUR-Lex. <http://data.europa.eu/eli/dec/2009/332/oj>
- Council and Commission Decision of 29 March 2010 on the conclusion of the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Montenegro, of the other part (2010). *Official Journal of the European Union*, 108, 1–2. EUR-Lex. <http://data.europa.eu/eli/dec/2010/224/oj>
- Cseres, K. J., & Reyna, A. (2021). EU state aid law and consumer protection: An unsettled relationship in times of crisis. *Journal of European Competition Law & Practice*, 12(8), 617–629. <https://doi.org/10.1093/jeclap/lpab037>
- European Commission. (2021a). *Albania 2021 report* (SWD(2021) 289 final). <https://ec.europa.eu/neighbourhood-enlargement/system/files/2021-10/Albania-Report-2021.pdf>
- European Commission. (2021b). *Bosnia and Herzegovina 2021 report* (SWD(2021) 291 final/2). <https://neighbourhood-enlargement.ec.europa.eu/system/files/2021-10/Bosnia%20and%20Herzegovina%202021%20report.PDF>
- European Commission. (2021c). *Kosovo 2021 report* (SWD(2021) 292 final/2). <https://neighbourhood-enlargement.ec.europa.eu/system/files/2021-10/Kosovo%202021%20report.PDF>
- European Commission. (2021d). *Montenegro 2021 report* (SWD(2021) 293 final/2). <https://neighbourhood-enlargement.ec.europa.eu/system/files/2021-10/Montenegro%202021%20report.PDF>
- European Commission. (2021e). *North Macedonia 2021 report* (SWD(2021) 294 final). <https://neighbourhood-enlargement.ec.europa.eu/system/files/2021-10/North-Macedonia-Report-2021.pdf>
- European Commission. (2021f). *Serbia 2021 report* (SWD(2021) 288 final). https://www.eerstekamer.nl/bijlage/20211020/serbia_report_2021/document3/f=/vln7b07z72h3.pdf
- Ferri, D. (2021). The role of EU State aid law as a “risk management tool” in the COVID-19 crisis. *European Journal of Risk Regulation*, 12(1), 176–195. <https://doi.org/10.1017/err.2020.71>
- Finckenberg-Broman, P. (2022). *Weaponizing EU State aid law to impact the future of EU investment policy in the global context* (Studies in European economic law and regulation). Springer Cham. <https://doi.org/10.1007/978-3-031-10108-3>
- Friederiszick, H., Röller, L., & Verouden, V. (2006). *European State aid control: An economic framework*. <https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.525.1875&rep=rep1&type=pdf>
- Haucp, J., & Schwalbe, U. (2011). *Economic principles of state aid control* (Düsseldorf Institute for Competition Economics (DICE) Discussion Paper No. 17). <https://www.researchgate.net/publication/254459293>
- Jozepa, I. (2021). *EU State aid rules and WTO subsidies agreement*. House of Commons Library Research Briefing. <https://researchbriefings.files.parliament.uk/documents/SN06775/SN06775.pdf>
- Judgment of the European Court of Justice of 24 July 2003 in Case C-280/00, Altmark Trans GmbH, Regierungspräsidium Magdeburg and Nahverkehrsgesellschaft Altmark GmbH, Oberbundesanwalt beim Bundesverwaltungsgericht. EUR-Lex. <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62000CJ0280&from=EN>
- Kebapci, H., von Wendland, B., & Kaymaktchiyski, S. (2020). *State aid rules in research, development & innovation: Addressing knowledge and awareness gaps among research and knowledge dissemination organisations: Decision tree*. European Commission. <https://op.europa.eu/en/publication-detail/-/publication/10740aa6-223a-11eb-b57e-01aa75ed71a1/>
- Miladinovic, A. (2022). *Selectivity and the arm's length principle in EU state aid law*. IBFD. https://www.ibfd.org/sites/default/files/2022-02/20_00_Selectivity%20Arms_Length_Principle_EU_State_Aid_Law_proof_1.pdf

24. Najdanović, Z., Mladenović, M. Ž., & Tutek, N. (2019). Competitiveness of business environment of the Western Balkan countries. Paper presented at the *Management International Conference*. <https://doi.org/10.26493/978-961-6832-68-7.9>
25. Regulation (EU) 2015/940 of the European Parliament and of the Council of 9 June 2015 on certain procedures for applying the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and Bosnia and Herzegovina, of the other part, and for applying the Interim Agreement on trade and trade-related matters between the European Community, of the one part, and Bosnia and Herzegovina, of the other part (2015). *Official Journal of the European Union*, 160, 69–75. EUR-Lex. <http://data.europa.eu/eli/reg/2015/940/oj>
26. Regulation (EU) 2015/941 of the European Parliament and of the Council of 9 June 2015 on certain procedures for applying the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the former Yugoslav Republic of Macedonia, of the other part (2015). *Official Journal of the European Union*, 160, 76–83. EUR-Lex. <http://data.europa.eu/eli/reg/2015/941/oj>
27. Regulation (EU) 2017/355 of the European Parliament and of the Council of 15 February 2017 on certain procedures for applying the Stabilisation and Association Agreement between the European Union and the European Atomic Energy Community, of the one part, and Kosovo of the other part (2017). *Official Journal of the European Union*, 57, 59–62. EUR-Lex. <http://data.europa.eu/eli/reg/2017/355/oj>
28. Sciskalová, M., & Münster, M. (2014). Definition and characteristics of state aid. *Procedia — Social and Behavioral Sciences*, 110, 223–230. <https://doi.org/10.1016/j.sbspro.2013.12.865>
29. Stojanović, B., & Stanišić, T. (2015). Sectoral state aid in the European Union and the Western Balkan countries. *Economic Themes*, 53(3), 331–342. <https://doi.org/10.1515/ethemes-2015-0019>
30. Stojanović, B., Kostić, Z., & Vučić, V. (2021) Alignment with EU regulations in the field of the competition policy and system of state aid in Western Balkan countries. *Economic Themes*, 59(2), 173–192. <https://doi.org/10.2478/ethemes-2021-0010>
31. Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon, 13 December 2007 (2007). *Official Journal of the European Union*, 306, 1–271. EUR-Lex. <http://data.europa.eu/eli/treaty/lis/sign>
32. Treaty on the Functioning of the European Union (2012). *Official Journal of the European Union*, 326. <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:12012E/TXT:en:PDF>
33. Vasiljevic, D., Schiffbauer, M., Tan, S., & Shimbov, B. (2019). *Reforming state aid for growth: Serbia's new growth agenda*. World Bank Group <https://thedocs.worldbank.org/en/doc/525621576650023118-0080022019/original/SRBCEMStateAidsm.pdf>