

SERBIA: AN ONGOING HARMONISATION OF STATE AID RULES



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Abstract

European state aid control extends its influence beyond the borders of the European Union. Traces of the methods and approaches enshrined in Arts. 107 and 108 of the Treaty on the Functioning of the European Union can be found both in the domestic legal order of non-EU jurisdictions and in the trade agreements concluded between EU and non-EU countries, like the Republic of Serbia. The legislative framework for state aid control in Serbia is broadly in line with the EU *acquis* and the relevant provisions of the Stabilisation and Association Agreement concluded between EU and Serbia. Considering how European integration of Serbia is an ongoing process leaves limited space for an autonomous state aid policy in areas that are not yet fully aligned with EU law. Fiscal aid schemes have been identified as a domain in which Serbian state aid law differed from its EU counterpart for a significant period of time. Moreover, Serbia is yet to adopt its regional aid map. The drafting of the map is entrusted to the ministry in charge of regional development, and the draft map is to be assessed by both the Commission for State Aid Control and the European Commission. Until a regional aid map is drawn up, the entire national territory is considered an area with a GDP per capita of less than or equal to 45% of the EU-27 average.

Keywords: *state aid, Serbia, competition policy, European integration, regional aid*

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1. Introduction

The aim of state aid policy is to prevent distortion of fair competition, while achieving worthy policy objectives, such as regional development, environmental protection, or promotion of research, development, and innovation in industry. A state aid is traditionally understood as any transfer of public resources in favour of certain undertakings or the production of certain goods, which, by providing a selective economic advantage, distorts or threatens to distort competition. European state aid control extends its influence beyond the borders of the European Union.¹ Traces of the methods and approaches enshrined in Arts. 107 and 108 of the Treaty on the Functioning of the European Union (TFEU) can be found both in the domestic legal order of non-EU jurisdictions and in the trade agreements concluded between EU and non-EU countries, such as the Republic of Serbia. As an important pre-condition for accession to the European Union, the Republic of Serbia, like other South-East European (SEE) countries, is required to introduce a national system of state aid control. The duty to establish a national state aid legal framework stems not only from Serbia's participation in the Stabilisation and Association Process, but also from the Central European Free Trade Agreement and the Energy Community Treaty. The national state aid control systems are meant to be used as transitional mechanisms, since the monitoring of state aid will be carried out by the European Commission once the country joins the Union.²

The system of state aid control in Serbia is presented in this chapter through an analysis of (i) the requirements of the Stabilisation and Association Agreement (SAA), Central European Free Trade Agreement (CEFTA), and Energy Community Treaty (EnCT), (ii) the role and competences of the Commission for State Aid Control, (iii) the country's (partially autonomous) national state aid policy, and (iv) the state aid measures adopted in reaction to the coronavirus crisis.

2. Development of Serbian State Aid Law in line with SAA, CEFTA, and EnCT requirements

The Stabilisation and Association Agreements (hereinafter: the SAAs), such as the ones concluded with Serbia and other SEE countries, establish a general obligation

¹ Blauburger and Cramer, 2010, p. 4.

² One of the justifications of European state aid control advanced in economic theory is based on a potential commitment problem faced by national governments. The idea is that governments may not be able to commit to clear rules and a fixed budget ex-ante. In such a situation, firms have smaller incentives to become efficient, as they anticipate that the government will have no choice but to bail them out when the need arises. As a result, efficiency and welfare are reduced. See: Friederiszick, Röller and Verouden, 2006, p. 640.

for a candidate or potential candidate country to adopt national state aid legislation and establish a state authority competent for enforcing the said rules. The (potential) candidate country needs to ensure that its legislation is aligned with the EU *acquis* and is properly enforced by the competent authority.³ Regarding state aid, each of the SAAs concluded with the SEE countries provide that any

[...] state aid which distorts or threatens to distort competition by favoring certain undertakings or certain products, as they may affect trade between the Community and the [associated country], shall be incompatible with the proper functioning of the Stabilisation and Association Agreement.⁴

This definition is modelled on how incompatible state aid is defined in 107, para. 1 of the TFEU. The agreements concluded with SEE countries also mention that suspected practices shall be assessed based on the criteria arising from the application of the competition rules applicable in the Community, particularly from Art. 107 of the TFEU and interpretative instruments adopted by the Community institutions.⁵ Therefore, the associate countries need to assess state aid schemes based on the criteria arising from the application of secondary legislation, frameworks, guidelines, and other relevant administrative acts in force in the EU and those that will be adopted following the entry into force of the SAA; and based on the criteria developed in the case law of the EU courts and from any decision taken by the Association Council.

The duty to establish a national state aid legal framework stems not only from Serbia's participation in the Stabilisation and Association Process, but also from the Central European Free Trade Agreement (hereinafter: the CEFTA) with which this country is associated as well. The original CEFTA was concluded in 1992 by the members of Visegrad Group – Poland, Czech and Slovak Federative Republic and Hungary. It was conceived as a free trade agreement to facilitate the transition of former communist Central European countries into the market economies of West Europe. CEFTA membership is temporary in nature: once the participating country joins the European Union, its CEFTA membership ends. Art. 21 of the CEFTA lays down a general prohibition on state aid:

[...] any aid granted by a Party or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain goods shall, insofar as it may affect trade between the Party concerned and other Parties to this Agreement, be incompatible with the proper functioning of this Agreement.

³ Popović and Caka, 2017, p. 335.

⁴ See: SAA with Albania, Art. 71 para. (1) point (iii); SAA with Bosnia-Herzegovina, Art. 71 para. (1); SAA with the FYR Macedonia, Art. 69 para. (1) point (iii); SAA with Montenegro, Art. 73 para. (1) point (iii); SAA with Serbia, Art. 73 para. (1) point (iii).

⁵ SAA with Serbia, Art. 73 para. (2).

The CEFTA also requires that parties to the agreement assess state aid schemes under the conditions laid down by Art. 107 of the TFEU. Parties are required to ensure transparency in the area of state aid, *inter alia* by reporting to the CEFTA Joint Committee on the total amount and the distribution of aid and by providing to other parties information on aid schemes. Although a direct reference to Art. 107 of the TFEU is found in the Agreement, the CEFTA state aid framework differs significantly from the one provided under SAAs. CEFTA Member States are not explicitly required to establish a national state aid control authority.

Finally, the requirement to introduce a state aid control stems from the membership of the Republic of Serbia in the Energy Community, an international organisation dealing with the energy policy. This international organisation was established by the European Union, and it brings together the EU, the SEE countries (Albania, Bosnia-Herzegovina, Kosovo,⁶ the FYR Macedonia, Montenegro, Serbia), and countries from the Black Sea region (Moldova, Ukraine). Under Art. 18 of the Energy Community Treaty (hereinafter: the EnCT), any public aid that distorts or threatens to distort competition by favouring certain undertakings or certain energy resources shall be considered incompatible with the proper functioning of the Treaty. Any such practices should be assessed based on the criteria arising from the application of the rules of Art. 107 TFEU. Similar to the CEFTA, the EnCT does not explicitly require contracting parties to establish a state aid monitoring authority. However, a party that does not comply with EnCT requirements (e.g. by favouring its own national energy producers and distributors) may face sanctions.

In line with the requirements stemming from SAA, CEFTA and EnCT, the Republic of Serbia adopted its first State Aid Control Act (hereinafter: SACA, 2009)⁷ and established the Commission for State Aid Control in 2009. Ten years later, the National Assembly adopted the new State Aid Control Act (hereinafter: the SACA 2019),⁸ which is still in force.

3. Commission for State Aid Control

Under the auspices of the Ministry of Finance, the Commission for State Aid Control was established following SACA 2009. The members of the Commission were appointed by the Government from among persons who possess ‘expert knowledge in the field of state aid, competition, and/or EU legislation’,⁹ as proposed by the

6 The asterisk (*) indicates that the territory of Kosovo is member of this organisation in line with the United Nations Security Council Resolution 1244 (1999).

7 *Official Journal of the Republic of Serbia* 51/2009.

8 *Official Journal of the Republic of Serbia* 73/2019.

9 SACA, 2009, Art. 6 para. 4.

ministries of finance, economy, infrastructure, and environmental protection, as well as the Competition Authority. The member proposed by the Ministry of Finance was appointed chairperson of the Commission for State Aid Control, while the representative of the Competition Authority was appointed deputy chairperson. The Act on State Aid Control attempted to resolve the potential conflict of interest by ruling that a member of the Commission who is at the same time a representative of the aid grantor does not have the right to participate in the decision-making process, although the member may provide additional information within the state aid control procedure.¹⁰ The potential for conflict of interests within the Serbian state aid authority had drawn sharp criticism from the European Commission on several occasions. For example, in its 2016 Progress Report, the European Commission emphasised that the operational independence of the Commission was yet to be demonstrated.¹¹ Further to the issue of composition of the Commission for State Aid Control, its ambiguous legal status was also considered problematic as it could generate increased dependency on the executive power. The SACA 2009 did not define the legal status of the Commission apart from stating that the latter shall be ‘operationally independent in performing its duties’.¹² Therefore, the Commission could not have been classified as the Government’s working group, an independent agency, or an administrative organisation within the meaning of the Act on general administrative procedure. The proclaimed operational independence of the Commission was additionally compromised by its financial dependency on the Ministry of Finance, since the Commission did not have a separate budget.

The institutional design of a state aid authority, as prescribed by the SACA 2009, was actually ‘transplanted’ from countries of Central and Eastern Europe. Similar authorities existed in the majority of countries of Central and Eastern Europe in the pre-accession period. For example, in Slovenia, Hungary, Estonia, and the Czech Republic, the state aid control was implemented through a department within the Ministry of Finance. In Latvia, state aid policy was enforced by an interministerial state aid commission, supported by the office within the Ministry of Finance. Only Poland departed from this model, by choosing to empower the president of the national competition authority (not the Authority itself) with state aid control.¹³

Following the adoption of SACA 2019, the guarantee of independence of the Commission for State Aid Control was strengthened by modelling its institutional design on the Competition Authority.¹⁴ The status of the Commission shifted from being a body attached to the Ministry of Finance to an independent authority vested with public powers. The Commission comprises the council and a president. The council

10 SACA, 2009, Art. 21 para. 2.

11 Serbia 2016 Progress Report, SWD(2016) 361 final, p. 38.

12 SACA, 2009, Art. 6 para. 7.

13 Piszcz, 2011, p. 42.

14 The Competition Authority is empowered to enforce the Competition Act (*Official Journal of the Republic of Serbia* 51/2009 and 95/2013), which prohibits anti-competitive agreements, abuse of a dominant position, and concentrations that may restrict competition in the relevant market.

members, including the president, are appointed by the National Assembly for a period of five years. The Commission is supported by professional case handlers.¹⁵ The institutional re-design of the Commission for State Aid Control was welcomed by the European Union, which stated in its 2022 Serbia Progress Report that the SACA 2019 secures the Commission's legal independence.¹⁶ However, the European Commission insisted that the enforcement capacity of the Commission for State Aid Control is further strengthened, as it presently has 22 members of staff including the president, four council members and 11 case handlers, which is significantly lower than the 27 case handlers allowed.¹⁷

4. National state aid policy

The fact that European integration of Serbia is still an ongoing process leaves limited space for an autonomous state aid policy in areas that are not yet fully aligned with EU law. The Regulation on Regional State Aid (hereinafter: the RRSA)¹⁸ lays down explicit conditions and criteria for the compatibility of state aid designed to promote the economic development of areas with a low standard of living and to facilitate the development of certain economic activities or certain economic areas in the Republic of Serbia. The RRSA clarifies the regional state aid compatibility criteria, such as transparency and incentive effect. The transparency criterion implies that regional state aid is deemed compatible if the precise amount of the gross monetary equivalent can be calculated in advance. Regional state aid is also deemed compatible if it has an incentive effect. For this, applications for state investment aid must be submitted to the grantor before work on a project commences.¹⁹ The RRSA also establishes the methodology for setting the maximum state aid intensity, namely, (i) up to 50% of the eligible costs in level two areas of the nomenclature of statistical territorial units, the GDP per capita of which is less than or equal to 45% of the EU-27 average; (ii) up to 35% of eligible costs may be allocated for areas where GDP per capita ranges from (or is equal to) 45% to 60% of the EU-27 average; (iii) up to 25% of eligible costs for areas where GDP per capita ranges from (or is equal to) 60% to 75% of the EU-27 average. The RRSA indicates that until the regional aid map is drafted, the Republic of Serbia is deemed an area whose GDP per

15 SACA, 2019, Arts. 9–24.

16 Commission Staff Working Document, Serbia 2022 Report, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, COM(2022) 528 final, p. 97.

17 *Ibid.*, p. 98.

18 *Official Journal of the Republic of Serbia* 23/2021.

19 RRSA, Arts. 4–6.

capita is less than or equal to 45% of the EU-27 average.²⁰ A formula for setting the maximum amount of aid for large investment projects (the initial investment eligible costs of which exceed EUR 50 million) has also been introduced. Under the RRSA, the regional state aid for investments that exceed the maximum intensity for large investments can be considered compatible if it meets the supplementary conditions, for example, if it is proportionate, it contributes to an objective of common interest, if there is a need for state aid intervention, if the positive impact on trade between the EU and Serbia prevails over the negative effects, etc. Regional investment aid is granted for initial investments related to the establishment of new enterprises, capacity expansion, production diversification, and significant changes in the entire production process. The RRSA also regulates regional operating aid, which includes aid to reduce the operating costs of undertakings operating in sparsely populated areas.

Fiscal aid schemes have been identified as a domain in which Serbian state aid law differed from its EU counterpart for a significant period of time. Under Art. 73 of the SAA, Serbia was required to compile a comprehensive list of state aid schemes set up before the establishment of the Commission for State Aid Control and align them with the state aid rules by 1 September 2017. The failure of Serbia to comply with the obligation to align its fiscal schemes with the state aid rules caused a delay in the accession negotiations with the EU. In March 2022, the Commission for State Aid Control issued a notice on the obligation and manner of alignment of state aid schemes within the competence of the Ministry of Finance (hereinafter: the Notice).²¹ Under the Notice, the following fiscal schemes are designated as incompatible: (i) four schemes under the Corporate Income Tax Act (CITA), specifically: tax exemption for concession grantors, tax holiday for large investments, tax exemption for employment of persons with disability, and tax credit for risk investment; (ii) wage tax refund under the Personal Income Tax Act; (iii) refund of social security contributions under the Mandatory Social Security Contributions Act; and (iv) exemption from tax and other duties under the Free Zones Act. The Commission for State Aid Control emphasised that state aid under the designated fiscal schemes must be assessed in the context of the particular category of state aid to which it belongs, which is either horizontal or sector-specific aid. Alternatively, some aid may be granted as *de minimis*, in accordance with the regulation on rules and conditions for granting *de minimis* aid.²² The Commission further noted that as an alternative to making the said aid schemes compatible with state aid rules, the Government may abolish the schemes altogether.

²⁰ RRSA, Art. 15.

²¹ Notice no. 401-00-00259/2021-01/6 of 31 March 2022 and Supplemented Notice no. 401-00-00259/2021-01/7 of 8 June 2022. Both documents are available at: <https://www.kkdp.gov.rs/> (Accessed: 18 September 2023).

²² *Official Journal of the Republic of Serbia* 13/2010, 100/2011, 91/2012, 37/2013, 97/2013, 119/2014, 23/2021, 62/2021, 99/2021, 20/2023, 43/2023 and 48/2023.

The Notice designates tax exemptions for concession grantors as the first type of fiscal scheme that is incompatible with state aid rules. Under the CITA, revenues of the concession grantor generated from the transfer of assets without compensation received from the private partner as part of the implementation of the concession agreement (such as BOT agreements) shall not be included in the tax base of the concession grantor in the relevant tax period. Further, capital gains made on the transfer of real estate from a private partner to the concession grantor as part of a concession arrangement shall not be included in the tax base of the private partner in the relevant tax period. In each case mentioned, the estimated value of the concession is above EUR 50 million.²³ Under the Notice, this type of aid instrument is not available unless the circumstances of the specific investment make the aid compatible with the provisions of the SACA 2019 on the relevant type of aid (e.g. regional aid) and cumulation of state aid or if the aid qualifies as *de minimis*. Alternatively, these measures could be amended to remove the EUR 50 million threshold. This would make the measure general and not selective, and thus the measure would not be considered state aid. Tax holiday for large investments is the second type of incompatible fiscal scheme. The CITA provides for a 10 year corporate income tax holiday for any company that invests or ensures an investment in its fixed assets that have not been previously used in Serbia, to a value of more than RSD 1 billion and employs at least 100 persons for an indefinite period during the investment period.²⁴ Under the Notice, the corporate income tax holiday for greenfield investment can be compatible with state aid rules only if it can qualify as regional or other horizontal aid (e.g. energy) and if it does not violate the rules on cumulation. The Notice designates tax exemption for employment of persons with disability as the third type of incompatible fiscal scheme. The CITA provides for tax exemption for undertakings that engage in the employment and professional rehabilitation of persons with disability, proportionate to the participation of persons with disability to the total number of employees within the company.²⁵ This type of fiscal scheme is incompatible with the regulation on horizontal state aid.²⁶ Under the said regulation, the aid intensity is set at 75% of eligible costs (i.e. the costs of salaries of persons with disability), capped at EUR 10 million annually per undertaking, while the CITA does not place any limitation on this aid. Finally, the fourth type of fiscal scheme under the CITA, which the Notice designates as incompatible, is the tax credit for risk investment. The CITA provides to an incumbent company that makes a capital contribution toward an innovative start-up a tax credit for 30% of the investment, capped at RSD 1 million.²⁷ The Notice designates this scheme as incompatible with the regulation on horizontal

23 *Official Journal of the Republic of Serbia* 25/2001, 80/2002, 80/2002, 43/2003, 84/2004, 18/2010, 101/2011, 119/2012, 47/2013, 108/2013, 68/2014, 142/2014, 91/2015, 112/2015, 113/2017, 95/2018, 86/2019, 153/2020 and 118/2021, Art. 25a para. 3 and Art. 30a.

24 CITA, Art. 50a.

25 CITA, Art. 46.

26 *Official Journal of the Republic of Serbia* 62/2021.

27 CITA, Art. 50j.

state aid, both with respect to general criteria for granting horizontal state aids (such as transparency and incentive effect), and with respect to the specific rules for state aid for financing risk investments (e.g. additional conditions for investment).

The Notice also designates wage tax refund under the Personal Income Tax Act (hereinafter: the PITA)²⁸ as incompatible with state aid rules. The PITA provides for a partial refund to the employer tax paid on wages for newly hired employees before 31 December 2022, provided such employment increases the number of employees compared to the number of employees the employer had as of 31 March 2014. The refund depends on the number of new employees hired in the relevant period: if the employer hired up to nine new employees, 65% of the paid wage tax is refunded. If the employer hired 10 to 99 new employees in the relevant period, 70% of the wage tax paid is refunded. Finally, if the employer hired at least 100 new employees in the relevant period, a refund equal to 75% of paid wage tax is provided. Additional rules apply to hiring interns and persons under the age of 30. For employers to be eligible for the benefits, a newly hired person must have been unemployed for at least six months (three months in case of interns) immediately prior to being hired. Employers of micro and small enterprises, entrepreneurs, and agricultural workers are entitled to a refund of 75% of paid wage tax for any newly hired employee, provided they employ at least two persons.²⁹

Finally, the Notice designates the refund of social security contributions prescribed under the Mandatory Social Security Contributions Act (hereinafter: the MSSCA)³⁰ and the exemption from tax and other duties prescribed under the Free Zones Act (hereinafter: the FZA)³¹ as potentially incompatible aid. The Notice requires that a full or partial refund of social security contributions paid on wages, prescribed under the MSSCA, which qualify for wage tax refund under the PITA, be further aligned with rules on horizontal aid. Further, the Notice singled out as potentially incompatible the provisions of the FZA which provide that customs duties and other import duties are not payable for importation of goods intended for the conduct of business activity and construction of facilities in the zone.³² The permissibility of this measure would depend on the business activity of the beneficiary and the type of investment in a free zone. Consequently, this type of aid can be considered compatible only if granted as, for example, regional investment aid.

28 *Official Journal of the Republic of Serbia* 24/2001, 80/2002, 80/2002, 135/2004, 62/2006, 65/2006, 31/2009, 44/2009, 18/2010, 50/2011, 91/2011, 7/2012, 93/2012, 114/2012, 8/2013, 47/2013, 48/2013, 108/2013, 6/2014, 57/2014, 68/2014, 5/2015, 112/2015, 5/2016, 7/2017, 113/2017, 7/2018, 95/2018, 4/2019, 86/2019, 5/2020, 153/2020, 156/2020, 6/2021, 44/2021, 118/2021, 132/2021, 10/2022, 138/2022, 144/2022 and 6/2023.

29 PITA, Arts. 21v and 21d.

30 *Official Journal of the Republic of Serbia* 84/2004, 61/2005, 62/2006, 5/2009, 52/2011, 101/2011, 7/2012, 8/2013, 47/2013, 108/2013, 6/2014, 57/2014, 68/2014, 5/2015, 112/2015, 5/2016, 7/2017, 113/2017, 7/2018, 95/2018, 4/2019, 86/2019, 5/2020, 153/2020, 6/2021, 44/2021, 118/2021, 10/2022, 138/2022 and 6/2023.

31 *Official Journal of the Republic of Serbia* 62/2006.

32 FZA, Arts. 19 and 29 para. 3.

5. State aid and reaction to the coronavirus pandemic

In extraordinary situations, state aid rules need to be adapted to respond to the novel circumstances. In recent history, two episodes have already tested the European state aid control regime in times of emergency: the 9/11 attacks and the financial crisis. In the first, airlines became the prime beneficiaries of state aid, while in the second banks were rescued.³³ Given that the state aid rules were introduced in Serbia only in 2009, the first time the former needed to be adapted to extraordinary events was during the coronavirus pandemic. Following the declaration of state of emergency in Serbia due to the coronavirus outbreak, the Government issued in April 2020 two regulations that determine the conditions and criteria for compliance of state aid: (i) for remedying the negative effects caused by COVID-19; and (ii) for remedying a serious disturbance in the economy caused by COVID-19. The two regulations laid down rules on the types of state aid allowed, instruments for such aid, and the thresholds that need to be met for the aid to be compatible with SACA 2019. The Serbian state aid rules adopted in reaction to coronavirus pandemic were generally in line with the EU Temporary Framework, which concerned aid to remedy the serious disturbance in the economy of Member States caused by the coronavirus outbreak.³⁴

The regulation for remedying the negative effects caused by COVID-19³⁵ established conditions under which state aid can be granted as compensation for damages directly caused by the COVID-19 pandemic. State aid granted in accordance with the criteria provided in this regulation will represent a compatible state aid within the meaning of the SACA 2019. Aid can be provided under the following conditions: (i) total amount of aid is not higher than the expenses incurred by the beneficiary due to the COVID-19 outbreak; (ii) state aid is provided as a scheme with an estimated duration, budget, instrument, intensity, and beneficiaries; (iii) the actual loss did not occur due to the non-compliance with the rules during the COVID-19 epidemic, that is, if such expenses would be incurred regardless of the COVID-19 outbreak; and (iv) the beneficiary is not directly liable or it did not wilfully, that is, with gross negligence contribute to the incurrence of damage.³⁶ Aid can be granted up to 100% of incurred standardised expenses, if the beneficiary provides the grantor with a report from an independent evaluator on the expenses incurred, informs the grantor of its existing insurance policies, as well as any previous aid received for these purposes, and states that it will return any excessive amount of state aid received. These expenses shall be reduced for the amount of advance payment made by the grantor, business insurance, or other fees (obtained in court or similar proceedings

33 Costa-Cabral et al., 2020, p. 3.

34 The Temporary Framework is a set of guidelines that the European Commission announced for the assessment of compatibility of state aid in response to the COVID-19 outbreak. See: Bouchagiar, 2021, pp. 2–3; Biondi, 2020, pp. 23–26; Motta and Peitz, 2020, p. 73.

35 *Official Journal of the Republic of Serbia* 54/2020, 126/2020, 17/2021 and 125/2021.

36 Art. 4 of the regulation for remedying the negative effects caused by COVID-19.

concerning the coronavirus pandemic). This regulation remained valid until the end of June 2022.

The regulation for remedying a serious disturbance in the economy caused by COVID-19³⁷ established rules of state aid granted to undertakings to remedy the liquidity shortages caused by the coronavirus outbreak.³⁸ The state aid under this regulation can be granted only to undertakings that were not in difficulty on 31 December 2019. The aid instruments that concern direct grants for employee salaries and postponement of tax and social contributions do not amount to state aid during the application of this regulation if they are provided under a scheme encompassing all the undertakings. Certain instruments were considered permissible state aid up to certain thresholds. Direct subsidies, debt cancellation, favourable payment terms, tax, and other reliefs can be granted as a scheme if the nominal amount of aid does not exceed a gross amount of EUR 800.000 per single undertaking, and the scheme contains a total estimate of the amount of aid that will be provided. Direct subsidies for salaries to avoid layoffs that are provided via a scheme encompassing all undertakings do not amount to state aid. In case the scheme does not encompass all undertakings, such aid will be deemed permissible state aid if (i) the aim of the aid is to preserve jobs; (ii) the aid is targeted toward certain regions, sectors, or undertakings that are in particular affected by COVID-9; (iii) the direct grant encompasses salaries (up to 12 months) for employees who would be laid off due to the termination or reduction of business activities due to COVID-19; and (iv) monthly direct grant does not exceed 80% of the gross salary of employees for which the grant is provided. Finally, the postponement of tax and social contribution obligations does not amount to state aid if it encompasses all the undertakings. If it, however, does not encompass all the undertakings, it will be deemed a permissible state aid if it is a scheme targeted toward certain regions, economy sectors, or undertakings that are particularly affected by COVID-19, if granted before 31 December 2020.

6. Concluding remarks

The rules imposing state aid control in the Republic of Serbia have been introduced in line with the requirements of the SAA, CEFTA, and EnCT. These rules are enforced by the Commission for Control of State Aid, which was established under SACA 2009. The Commission was first established under the auspices of the

³⁷ *Official Journal of the Republic of Serbia* 54/2020, 126/2020, 17/2021 and 132/2021.

³⁸ In the European Union, during the corona crisis, a similar process took place where the first, most urgent, national measures were notified and approved as compensation for exceptional occurrences under Art. 107 para. (2) of the TFEU, while later measures had to stand the test of Art. 107 para. (3) of the TFEU. See: Bostoen et al., 2020, p. 86.

Ministry of Finance. In 2019, the institutional design of the Commission was drastically changed and improved, by its complete detachment from the Government. The Commission is now positioned as an independent authority whose members are appointed by the National Assembly.

Regarding the legislative framework, the SACA 2019 is broadly in line with the EU *acquis* and the relevant provisions of the SAA concluded between EU and Serbia. The fact that the process of European integration of Serbia is still ongoing leaves limited space for an autonomous state aid policy in areas that are not yet fully aligned with EU law. Fiscal aid schemes have been identified as a domain in which Serbian state aid law differed from its EU counterpart for a significant period of time. In March 2022, the Commission for State Aid Control issued a Notice on the obligation and manner of alignment of state aid schemes within the competence of the Ministry of Finance. Under the Notice, the following fiscal schemes are designated as incompatible: (i) four schemes under the CITA, specifically: tax exemption for concession grantors, tax holiday for large investments, tax exemption for employment of persons with disability, and tax credit for risk investment; (ii) wage tax refund under the Personal Income Tax Act; (iii) refund of social security contributions under the Mandatory Social Security Contributions Act; and (iv) exemption from tax and other duties under the Free Zones Act. The Commission for State Aid Control emphasised that state aid under the designated fiscal schemes must be assessed in the context of the particular category of state aid to which it belongs, which is either horizontal or sector-specific aid. Alternatively, some aid may be granted as *de minimis*. The Commission further noted that as an alternative to making the said aid schemes compatible with state aid rules, the Government may abolish the schemes altogether.

Regarding regional aid, Serbia still needs to adopt its regional aid map.³⁹ The drafting of the map is entrusted to the ministry in charge of regional development, and the draft map is to be assessed by both the Commission for Control of State Aid and the European Commission. Until a regional aid map is drawn up, the entire territory of the Republic of Serbia is considered an area with a GDP per capita of less than or equal to 45% of the EU-27 average.

39 On the concept of regional aid map, see: Pesaresi et al., 2016, pp. 704–705.

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