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State Aid Control in South-East Europe: the Endless Transition

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The views expressed are those of the author and do not necessarily reflect the views of UNCTAD.



INTRODUCTION I

- **Subsidies /aids** = typical example of distortion of competition directly caused by State's intervention in the market
- **Question:** can the State **self-control** its ability to grant subsidies?
EU State aid control relies on a multi-level system of enforcement;
Can a State aid control be carried out at a pure national level?
- **Objective of the paper:** Analysis of the "effectiveness" of national State aid systems introduced in SEEs during the last decade, in view of their EU membership perspective
The paper focusses on SEEs; BUT final conclusions can be useful for other developing countries



INTRODUCTION II

- **EFFECTIVENESS:**

1. Ability of national authorities to “actively enforce“ State aid law
2. Achievement of 2005 SAAP objectives:
 - i) Long term overall reduction of the level of aids/GDP
 - ii) Shift from vertical to horizontal aids; focus on market failures

SCOPE OF THE RESEARCH:

1. Normative argument: SEE are required to enforce EU State aid *acquis.*; no analysis suitability of certain subsidies for development of these countries
2. Focus on the institutional framework of enforcement, rather than on the features of different types of State aids
3. Countries analyzed: AL, BiH, KS, SB, MK, CR, MNE

METHODOLOGY:

1. Cross-country horizontal analysis; comparison CEEC v. SEE
2. Sources: literature CEECs; SAAs; State aid laws/sub-laws; annual reports EU Commission and national State aid authorities in SEE



DEVELOPMENT OF STATE AID CONTROL IN EU

- Rules on State aid in Treaty of Rome – not enforced for long time
- EU Commission “de-politicized” State aid enforcement
- State Aid Action Plan (SAAP) 2005:
 1. “More economic approach“:
 - a. Only aids which achieve a public interest goal and which solve a market failure are allowed = need of counterfactual analysis by MS
 - b. Shift of preference from vertical to horizontal aids
 - c. Goal: long-term overall reduction of aids/GDP = State Aid Scoreboard
 2. “Decentralization“ State aid enforcement:
 - a. Positive experience from CEEC
 - b. Proposal rejected by most EU MS > risk of politicization and inconsistent enforcement of State aid enforcement



STATE AID IN CEEC DURING EU PRE-ACCESSION

- Past enlargements: new aids notified after EU accession
- 2004 enlargement: EU Commission included State aid provisions in European Agreements in 1990s
- Rationale: in 1990s, CEECs granted restructuring aids to recently privatized companies = EU Commission concerned of monitoring existing restructuring aids after CEEC joined the EU
- CEECs established national State aid authorities until EU accession:
 1. State Aid Commissions in most CEEC, part of Ministry Economy
 2. State aid enforcement granted to NCA (i.e. Poland)
- State aid enforcement effective in CEEC independently of the institutional design adopted



INT. COMMITMENTS OF SEE IN STATE AID

- **Stabilization and Association Agreements (SAA):**
 1. Concluded by most SEE
 2. Introduction EU State aid *acquis* enforced by an “operationally independent authority“
 3. Conditionality exercised by EU Commission in its Annual Reports
- **Central European Free Trade Area (CEFTA):**
 1. Only obligation to prohibit State aid, no institutional provisions
 2. Weak system of enforcement (i.e. trade retaliation between SEE)
- **Energy Community Treaty (EnCT):**
 1. Prohibits State aids in energy sector
 2. Investigations conducted by EnCT Secretariat (i.e. lack of adoption State aid law by BiH).



INSTITUTIONAL MODELS IN SEE

- All SEE have introduced State aid law (i.e. last BiH in Jan 2012)
- **Two institutional models of enforcement:**
 1. State Aid Commission/Office > inter-governemental commission linked to the Ministry of Finance (AL, SB, MNE, KS)
 2. State aid enforced by NCA (CR, MK), BUT opposite patterns enforcement
- Croatia:
 1. AZTN provides binding opinion on draft law including State aid
 2. AZTN conditionally approved sensitivie restructuring aids to shipbuilding and steel sector > conditions for EU accession
- Rep. of Macedonia:
 1. KZK is an “isolated“ institution: few aids notified after being implemented; no decision prohibiting sensitive aid schemes



STATE AIDS IN SEE, HOW MANY?

- Unlike CEEC in 1990s, level of aids/GDP in SEE comparable to EU average = weaker need national State aid control:
 1. Restructuring privatized companies completed in 1990s
 2. SEE governments have few resources to grant subsidies
- EU *De Minimis* and Block Exemption Reg. for SME have been transposed in SEE, but criteria are too broad for these economies > less aids notified to SEE State aid authorities
- SAAP goals not achieved in SEE:
 1. Persistence of vertical aids in most of SEE
 2. No temporal correlation between introduction of State aid law and fluctuations on the amount of subsidies granted = ineffectiveness State aid system



CONCLUSIONS

- Functioning of national State aid system depend on the will of national government to self-constraint its budget expenditure.
- Temporary self-constraint is accepted by EU candidate countries if they have a clear “timeframe“ for EU membership (i.e. CEEC and CR). Currently no clear timeframe exists for other SEE.
- No causal link between independence of national State aid authority and effectiveness of enforcement (i.e. CR and MK).
- State aid control cannot be effectivelly carried out internally in the lack of any external incentive (i.e. EU membership perspective); State aid control can work only within a multi-level system of enforcement