

State Aid

Contributing editor
Ulrich Soltész



2016

GETTING THE
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CONTENTS

Overview	5	Netherlands	43
Ulrich Soltész Gleiss Lutz Isabel Taylor Slaughter and May		Maurice Essers, Marc Custers and Boyd Wolfers Loyens & Loeff NV	
Austria	9	Portugal	48
Bernt Elsner, Florian Kromer and Marlene Wimmer CMS Reich-Rohrwig Hainz		Rita Leandro Vasconcelos, Ana Isabel Marques and Stéphanie Sá Silva Cuatrecasas, Gonçalves Pereira	
Denmark	13	Serbia	53
Henrik Peytz, Thomas Mygind and Mia Anne Gantzhorn Nielsen Nørager Law Firm LLP		Bisera Andrijašević BDK Advokati/Attorneys at Law	
France	17	Spain	58
Stéphane Hautbourg and Sophie Quesson Gide Loyrette Nouel AARPI		Irene Moreno-Tapia Rivas, Javier Arana Rodríguez and Candela Sotés Macaya Cuatrecasas, Gonçalves Pereira	
Germany	23	Switzerland	63
Ulrich Soltész Gleiss Lutz		Simon Hirsbrunner Steptoe & Johnson LLP	
Ireland	28	Ukraine	68
Vincent JG Power A&L Goodbody		Igor Svechkar and Sergiy Glushchenko Asters	
Italy	33	United Kingdom	72
Stefania Bariatti and Cristoforo Osti Chiomenti Studio Legale		Isabel Taylor and Nele Dhondt Slaughter and May	
Montenegro	38		
Bisera Andrijašević BDK Advokati/Attorneys at Law			

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Rita Leandro Vasconcelos, Ana Isabel Marques and Stéphanie Sá Silva

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Overview

1 Outline your jurisdiction's state aid policy and track record of compliance and enforcement.

In recent years, Portugal's state aid policy has been focused on trying to attenuate the effects of the financial and economic crisis. In this regard, great attention has been given to the rescue of financial institutions (eg, the nationalisation of Banco Português de Negócios, the guarantees to Banco Privado Português, Caixa Geral de Depósitos, Millennium BCP, Banco Espírito Santo) and to the support of small and medium-sized undertakings.

In the banking sector, some recent cases have reached the news, for example, the state guarantee to Banco Privado Português, where the Commission's decision was confirmed by the General Court (Case T-487/11) and the Court of Justice (Case C-93/15 P). More recently, two Portuguese banks have been subject to state aid measures: Banco Espírito Santo (SA.39250) and Banif (SA.43977). It was also announced that the Portuguese government has reached an agreement with the European Central Bank and the European Commission on the main features of a recapitalisation plan for Caixa Geral de Depósitos, a Portuguese state-owned banking corporation, although no formal decision of the European Commission has been adopted at the time of writing.

In other sectors, we may identify state aid granted to Estaleiros Navais de Viana do Castelo (a Portuguese shipyard operator), which received aid via numerous measures, including capital increase, loans, comfort letters and guarantees (SA.35546), and the opening of the formal investigation procedure regarding the railway maintenance public company EMEF (SA.41727).

According to the European Commission's data, the Commission has initiated 35 formal investigations procedures regarding Portuguese aid measures and issued five negative decisions with recovery since 2001.

2 Which national authorities monitor compliance with state aid rules and have primary responsibility for dealing with the European Commission on state aid matters?

The entity with primary responsibility for guiding Portuguese action with the European institutions is the Directorate General for European Affairs within the Foreign Affairs Ministry (Regulatory-Decree 12/2012 of 19 January). It will do so with the sectoral ministries.

The Financial Affairs Inspection General is responsible for the maintenance of the public registry of awarded aid, according to Law 64/2013 of 27 August (Law 64/2013).

Pursuant to Decree-Law 140/2013, of 18 October, as amended, the Portuguese Development and Cohesion Agency is competent to define and to keep updated the central register of de minimis aid, and to control the accumulation of financial and tax aid granted in accordance with the de minimis rule laid down in Commission Regulation (EC) 1407/2013 of 18 December 2013, as rectified.

The Portuguese Competition Act (Law 19/2012 of 8 May) establishes that the Portuguese Competition Authority is the competent authority to analyse any state aid or state aid project when no effect on trade between member states is at stake. The Portuguese Competition Authority may issue recommendations to the Portuguese government or to any other public entity.

3 Which bodies are primarily in charge of granting aid and receiving aid applications?

The state administration, the autonomous regions of Azores and Madeira, local authorities, public corporations, public institutes and state-controlled enterprises, including state-controlled venture capital companies and real estate fund management companies may grant aid.

4 Describe the general procedural and substantive framework.

Decree-Law 167/2008 of 26 August, (Decree-Law 167/2008), as amended, establishes the legal framework applicable to public subsidies (any financial advantage awarded, directly or indirectly, through state budget allocation). Public subsidies include compensation to undertakings in charge of services of general economic interest (SGEI), as well as other public subsidies of a different nature that are compatible with competition rules.

Decree-Law 167/2008 lays down the conditions for the payment of compensations to undertakings in charge of SGEI, and the transparency and publicity obligations attached to it. As to the award of other public subsidies, except for subsidies granted by autonomous regions and local authorities, tax benefits, social benefits awarded to individuals, EU funds and state guarantees, Decree-Law 167/2008 determines that the conditions will be established in special legislation and the subsidy may be granted by an administrative act or an administrative contract.

State guarantees are regulated by Law 112/97 of 16 September (Law 112/97), as amended. These guarantees may only be awarded in exceptional circumstances, under the conditions laid down under Law 112/97. Law 60-A/2008 of 20 October legislates on the extraordinary issuance of state guarantees to financial institutions. State budgetary laws establish the maximum limits of the state guarantees for each year.

Aid may be awarded according to specific legislation, usually after a declaration of compatibility by the European Commission or following block exemption regulations.

Law 64/2013 establishes a general transparency obligation of public subsidies.

Law 19/2012 determines that the Competition Authority may analyse any aid or aid project and issue recommendations to the Portuguese government and other public entities. The Competition Authority may become aware of the aid ex officio, through notification (there is no notification form available, however), or through a complaint.

5 Identify and describe the main national legislation implementing European state aid rules.

Decree-Law 167/2008 establishes the legal framework applicable to public subsidies. Public subsidies include compensatory payments to undertakings in charge of services of general economic interest, as well as other public subsidies of a different nature (see question 4).

Law 64/2013 establishes the general transparency obligation of public subsidies (see question 16).

The Administrative Procedure Code (Decree-Law 4/2015 of 7 January) lays down the principles applicable to administrative proceedings, namely the requirements that must be met by administrative acts and the conditions according to which interested parties may challenge those acts hierarchically.

The Administrative Courts Proceedings Code (Law 15/2002 of 22 February, as amended) determines the conditions for challenging administrative decisions granting aid (any natural or legal person having

a legitimate interest) and the conditions to grant interim relief against unlawfully awarded aid.

Law 67/2007 of 31 December (Law 67/2007), as amended, establishes the conditions under which the Portuguese state may be liable.

Several other pieces of legislation implement state aid in specific sectors or specific cases or regarding specific instruments.

Programmes

6 What are the most significant national schemes in place that have been approved by the Commission or that qualify for block exemptions?

The following table lists some of the most significant national schemes in place that have recently been approved by the Commission or are block exempted.

Case no. and decision date	State aid scheme	Amount of aid	Duration
SA.44897 (17 March 2016; published on 19 April 2016)	Support scheme to the qualification of the offer 2016	€60 million (annual overall amount of the budget planned under the scheme)	31 December 2017
SA.41942 (20 May 2015; published on 26 January 2016)	Investigation and Technological Development	€100 million (annual overall amount of the budget planned under the scheme)	31 December 2020
SA.41943 (20 May 2015; published on 26 January 2016)	Qualification and internationalisation of SMEs	€140 million (annual overall amount of the budget planned under the scheme)	31 December 2020
SA.41505 (19 October 2015)	Internationalisation incentives subsystem	€48 million	Until 31 December 2020
SA.39992 (28 November 2014; published on 23 January 2015)	Contractual tax benefits regime for productive investment	€45 million (annual overall amount of the budget planned under the scheme)	Until 31 December 2020
SA.39993 (28 November 2014; published on 23 January 2015)	Tax scheme to support investment	€41 million (annual overall amount of the budget planned under the scheme)	Until 31 December 2020
SA.38571 (11 June 2014)	Portuguese regional aid map 2014-2020	Not applicable	Until 31 December 2020
SA.44013 (1 February 2016); SA.42156 (15 July 2015); SA.39991 (4 February 2015); SA.38900 (30 July 2014); SA.37698 (19 December 2013); SA.36869 (1 August 2013); SA.35743 (17 December 2012); SA.34958 (27 June 2012); SA.34034 (21 December 2011); SA.331785 (30 June 2011); SA.321584 (21 January 2011); N315/2010 (23 July 2010); N51/2010 (22 February 2010); NN60/2008 (29 October 2008)	Portuguese Guarantee Scheme	€24.67 billion	Until 30 June 2016

Case no. and decision date	State aid scheme	Amount of aid	Duration
SA.44013 (1 February 2016); SA.42156 (15 July 2015); SA.39958 (6 February 2015); SA.38788 (30 June 2014); SA.37688 (17 December 2013); SA.37417 (7 October 2013); SA.36180 (27 June 2013)	Portuguese Guarantee Scheme on EIB lending	€2.8 billion	Until 30 June 2016

7 Are there any specific rules in place on the implementation of the General Block Exemption Regulation (GBER)?

There are some rules implementing the GBER. These are:

- Decree-Law 162/2014 of 31 October, as amended (new Investment Tax Code and review of the legal framework of tax benefits applicable to productive investment and respective regulation);
- Decree-Law 6/2015, of 8 January, establishing the conditions and rules to be met regarding the creation of incentive systems applicable to undertakings within the continental territory; and
- Order 94/2015, of 27 March, regulating the legal framework of contractual tax benefits applicable to productive investment.

Public ownership and SGEI

8 Do state aid implications concerning public undertakings, public holdings in company capital and public-private partnerships play a significant role in your country?

Public undertakings and public holdings in company capital are regulated by Decree-Law 133/2013 of 3 October (Decree-Law 133/2013), as amended.

Decree-Law 133/2013 establishes a general principle of 'competitive neutrality'; in other words, public undertakings compete in the same way as private undertakings and the relationship between the public entity holding the company's capital and the public undertaking must abide by national and EU competition rules.

Under this piece of legislation, the creation of public undertakings or the acquisition or sale of public holdings in company capital depends on the authorisation of the Ministry of Financial Affairs and of the ministry responsible for the relevant sector, and on an opinion from the Technical Unit for the Monitoring of the Public Undertakings. Although the opinion is not binding, it is nevertheless mandatory, issued on the basis of technical studies on the viability of the undertaking, and it must be made public together with the authorisation from the Ministry, on the Technical Unit's website.

Public undertakings and public holdings are subject to obligations of financial transparency under Decree-Law 148/2003 of 11 July (Decree-Law 148/2003), as amended, which determines that the financial relationship between the state and the undertakings must be made public in a specific annex to the annual reports. Annual reports, holdings in companies' capital and members of the board are published on the Technical Unit's website.

As for financial control, public undertakings are subject to the jurisdiction of the Portuguese Court of Auditors.

Under the framework of the EU/IMF Financial Assistance Programme for Portugal, initiated in May 2011, Portugal implemented a wide programme of privatisation and eliminated golden shares and other special rights formerly held in incumbent companies in the energy and telecommunication sectors.

9 Are there any specific national rules on services of general economic interest?

Decree-Law 167/2008, applicable to public subsidies, elaborates on compensation for the provision of services of general interest. The provision of services of general interest is dependent on a contract existing between the state and the undertaking.

Compensation for SGEI must be calculated, taking into account cost, remuneration and reasonable profit based on the average return rate of capital invested in the sector at stake within the last three years. Entities in charge of SGEI keep separate accounts for SGEI and activities falling outside the scope of SGEI (Decree-Law 148/2003).

For transparency reasons, compensation for SGEI must be made public in the Financial Affairs Directorate-General's website.

Considerations for aid recipients

10 Is there a legal right for businesses to obtain state aid or is the granting of aid completely within the authorities' discretion?

As a rule, there is no legal right for businesses to obtain state aid. Notwithstanding, the granting of aid may not be completely within the authorities' discretion.

The granting of aid generally depends on the candidates for the aid fulfilling specific pre-established and public conditions laid down in the regulatory framework applicable to the aid scheme in question and on being selected within the scope of calls for applications launched on the basis of a specific aid scheme.

Depending on the type of aid, the applicable rules in each case may leave a certain margin of discretion to the Portuguese authorities or lead to an almost automatic grant of the aid. In particular, it will depend on the level of objectivity of the conditions that are applicable in each case, and if the granting of the aid is based on a call procedure or is directly negotiated with the beneficiary.

In case of ad hoc aid, not based on an aid scheme, the Portuguese authorities enjoy wider discretion, subject to compliance with European state aid rules.

11 What are the main criteria the national authorities will consider before making an award?

The criteria considered by national authorities before making an award are linked to the priorities defined by the Portuguese government and the European Union. The main objectives justifying the intervention of the Portuguese state in the economy are the strategic interest of a given project for national economy, the reduction of regional asymmetries, employment creation, professional qualification, increase of exports, productivity and competitiveness of Portuguese enterprises, business innovation and entrepreneurship, qualification and internationalisation of SMEs, research and technological development and the implementation of agricultural and environmental policies.

12 What are the main strategic considerations and best practices for successful applications for aid?

Applicants for aid should thoroughly analyse the conditions for the granting of the aid, prepare their applications in advance whenever there is a published calendar of the calls, and submit a complete and economically sound application satisfying the conditions laid down in the regulatory framework for the granting of the aid.

13 How may unsuccessful applicants challenge national authorities' refusal to grant aid?

The refusal by national authorities to grant aid may be challenged through two different procedures:

- through an administrative procedure, where the unsuccessful applicant may appeal to the higher hierarchical level of the entity that issued the decision; or
- the unsuccessful applicant may challenge the decision of refusal to grant aid before the court.

14 To what extent is the aid recipient involved in the EU investigation and notification process?

The aid recipient may be involved in the process.

The Administrative Procedure Code (Decree-Law 4/2015 of 7 January) determines that public entities should ensure the participation of individuals before the adoption of a (national) decision affecting its situation, namely through the preliminary hearing, which is mandatory, where the interested party may submit comments and pieces of evidence. The interested party also has the right to access the file.

Strategic considerations for competitors

15 To which national bodies should competitors address complaints about state aid?

Other than courts, complaints about state aid should be addressed to the Competition Authority, according to Law 19/2012. However, the complainant should not expect a direct result. The Competition Authority lacks the power to react against the aid-granting entity. Even in purely national cases, it can only issue a recommendation.

Complaints may also be addressed to the Provedor de Justiça (Ombudsman), who, likewise, may only issue recommendations.

Notwithstanding this, where the aid has been granted through an administrative act and the relevant conditions are met (legal standing, for example), competitors may complain directly to the aid-granting entity or appeal to the hierarchical superior, according to the cases.

16 How can competitors find out about possible illegal or incompatible aid from official sources? What publicity is given to the granting of aid?

To find out about possible illegal or incompatible aid, competitors have the following sources at their disposal:

- As a general rule, available aid schemes are published in the Portuguese Official Journal, on the website of the granting entities, or both.
- Law 64/2013 sets forth the obligation to publish information on any public subsidy (which for this purpose means any financial or asset advantage, including tax benefits, guarantees granted by any public entity, including the autonomous regions, municipalities, public undertakings) when it is higher than the amount corresponding to the annual guaranteed minimum monthly wage, with the exception of certain types of aid, namely subsidies of a social nature granted to natural persons, aid granted on the basis of the mere objective verification of legal conditions and payments related to agreements executed pursuant to the Portuguese Public Contracts Code. When applicable, this obligation consists of the publication and maintenance of an annual list of aid granted on the website of the granting entity and the Inspectorate-General of Finance. The information should indicate the granting entity, the name or corporate name of the beneficiary and its respective taxpayer number, the amount transferred or benefit received, the date of the decision, its purpose, and the legal basis.
- With respect to large investment projects that are granted state aid, Decree-Law 191/2014 of 31 December 2014 determines that the investment agreements executed in connection thereto must be approved by ministerial order or by Resolution of the Council of Ministers, as the case may be. This ministerial order or Resolution must be published in the Portuguese Official Journal and the investment agreement and respective process are subject to the legal provisions on the access to documents of the public administration and to a secrecy duty.
- The Portuguese Development and Cohesion Agency is competent to define and update the central register of de minimis aid.
- Regarding aid based on European Structural and Investment Funds, Regulation (EU) 1303/2013 of the European Parliament and of the Council of 17 December 2013 determines that member states and managing authorities shall maintain a list and summary of the supported operational programmes in that member state, which shall be accessible through a single website or a single website portal. Said Regulation also imposes disclosure obligations on the beneficiaries. In particular, support from the Funds must be acknowledged in all information and communication measures provided by the beneficiaries, and the beneficiaries must inform the public about the support obtained from the Funds. These disclosure obligations involve, for example, publishing information on the beneficiary's website, placing posters, or putting up billboards or plaques.
- Commission Regulation (EU) 651/2014 of 17 June 2014 adopts a revised General Block Exemption Regulation laying down a general obligation of member states, ensuring the publication on a comprehensive state aid website, at national or regional level, of information on each individual aid award exceeding €0.5 million (for specific schemes publication in ranges is admitted). This represents an important additional tool to find out about possible illegal or incompatible aid although, as mentioned above, Portugal already has a mandatory publication mechanism in place.

17 Give details of any legislation that gives competitors access to documents on state aid granted to beneficiaries?

In Portugal there is no specific legislation regarding access to documents on state aid. Whenever the administrative procedure is concluded, Law 46/2007 of 24 August, as amended (regulating the access to all administrative documents), determines that the administrative documents are made public, with some exceptions such as access to documents containing business secrets or that are subject to judicial secrecy. The Portuguese Administrative Procedure Code (Decree-Law 4/2015) regulates access to documents in administrative procedures that are still in progress. Parties

involved in the procedure may access the referred documents, but access is forbidden to parties that are not involved unless they demonstrate the existence of legitimate interest in the elements therein and subject to business secrets and any other applicable limitations.

18 What other publicly available sources can help competitors obtain information about possible illegal or incompatible aid?

The media is an important vehicle of information regarding support granted to undertakings, particularly when granted to major groups, projects or relevant foreign investors.

The annual accounts of the aid recipient and the grantor, as well as any communication (for instance through its website), may also reveal information regarding aid received.

19 Apart from complaints to the national authorities and petitions to national and EU courts, how else may complainants counter illegal or incompatible aid?

In theory, illegal aid could be pointed out to third parties (such as investors). This step should be taken very carefully though in order to avoid any possible misinterpretation and defamation claims.

Private enforcement in national courts

20 Which courts will hear private complaints against the award of state aid? Who has standing to bring an action?

Where aid is granted through an administrative decision, the courts that have jurisdiction to hear private complaints against the award of state aid are the administrative courts, whose highest judicial instance is the Supreme Administrative Court.

A party that demonstrates a direct and individual interest to bring an action against the award of state aid has got legal standing. Portuguese courts have accepted legal standing of competitors when challenging administrative decisions that benefit other companies (eg, Supreme Administrative Court Decision of 12 January 2012, Case 1050/03; Supreme Administrative Court Decision of 3 May 2007, Case 1050/03).

21 What are the available grounds for bringing a private enforcement action?

Taking into account the primacy of EU Law (that is accepted in article 8(3) of the Portuguese Constitution), article 108(3) of the Treaty on the Functioning of the European Union (TFEU) is a sufficient legal basis.

Depending on the specific conditions for granting aid laid down in the special regulatory framework, and more importantly, whether those conditions have been fulfilled or not, the decision to grant aid may be challenged on those grounds.

22 Who defends an action challenging the legality of state aid? How may defendants defeat a challenge?

The granting authority (which may be the state or other public entity) defends an action challenging the legality of state aid. The aid recipient, as an interested party, may participate in the judicial proceedings and submit allegations.

23 Have the national courts been petitioned to enforce compliance with EU state aid rules or the standstill obligation under article 108(3) TFEU? What is the national courts' track record for enforcement?

National courts have been petitioned to enforce compliance with EU state aid rules and the standstill obligation under article 108(3) TFEU. There are cases where national measures have been declared illegal (eg, ruling of the Supreme Administrative Court of 12 January 2012, Case 1050/03), and others where the national measure has not been qualified as state aid (eg, ruling of the Supreme Administrative Court of 23 April 2013, Case 29/13).

The Portuguese courts recognise their jurisdiction to dictate recovery in cases where aid has been declared illegal.

24 Is there a mechanism under your jurisdiction's rules of procedure that allows national courts to refer a question on state aid to the Commission and to stay proceedings?

There are no specific rules on referrals in state aid matters. According to article 269 TFEU, questions may be referred to the Court of Justice of the European Union (EUCJ). A referral to the Commission under the *amicus*

Update and trends

The partnership agreement defining the application of European Structural and Investment Funds in Portugal for the period 2014–2020, known as 'Portugal 2020', was approved by the European Commission on 30 July 2014. Portugal 2020 enables the granting of aid totalling €25 billion until 2020. As in the previous programme framework period, applicable for the period 2007–2013, Portugal 2020 sets forth a 'system of incentives for undertakings', which is an aid scheme designed to support investment projects, in particular those promoting the competitiveness and internationalisation of undertakings. The framework of the system of incentives for undertakings is divided in accordance with three different types of investment: business innovation and entrepreneurship, qualification and internationalisation of SMEs, and research and technological development. As a general rule, undertakings apply for these incentives within the scope of a call proceeding and the incentives granted, which may or may not be subject to reimbursement by the beneficiary, and are calculated by applying a certain rate to the eligible expenditure of the investment project in question. The first calls to the participation of undertakings in the system of incentives for undertakings were launched at the end of 2014. A website portal has been created for Portugal 2020 (www.portugal2020.pt/Portal2020/). This website contains information on Portugal 2020, such as the opened calls, and is the route by which undertakings may submit their application to Portugal 2020. The relevant provisions in what concerns the system of incentives for undertakings are set forth in Decree-Law 137/2014 of 12 September 2014, Decree-Law 159/2014 of 27 October 2014, as amended, Decree-Law 6/2015 of 8 January 2015 and Order 57-A/2015 of 27 February 2015, as amended.

In general, the Portuguese business community is more aware of state aid issues, mostly because of recent banking policy and its relation with regulatory obligations.

curiae procedure according to Council Regulation (EU) 734/2013 of 22 July 2013, amending Council Regulation (EC) 659/1999 of 22 March 1999, is also possible.

In both administrative and civil law procedures, the national court may stay proceedings while waiting for the answer to a referral.

Only 124 cases were referred to the EUCJ between 1989 and 2013. From those, 53 came from the Portuguese Supreme Administrative Court (the court more likely to know of state aid issues in the last instance).

25 Which party bears the burden of proof? How easy is it to discharge?

The party that challenges the administrative decision generally bears the burden of proof of the existence of illegal aid.

26 What is the role of economic evidence in the decision-making process?

Economic evidence is becoming an important tool in competition cases before the courts in Portugal.

However, having analysed the higher courts' decisions in state aid matters, we have come to the conclusion that economic evidence is not yet a crucial point of the courts' decisions since the questions discussed in those cases are usually of a legal nature.

27 What is the usual time frame for court proceedings at first instance and on appeal?

The time frame depends on the complexity of the case and the complexity of the facts.

28 What are the conditions and procedures for grant of interim relief against unlawfully granted aid?

Where state aid was illegally awarded, the administrative courts may grant interim relief.

The interim measure that will most probably be granted will be the suspension of the effects of the aid granting decision.

The party requesting interim relief bears the burden of proof of the following conditions:

- the party holds a *prima facie* right (*fumus boni iuris*);
- the execution of the aid-granting decision may cause damage that cannot be easily repaired (*periculum in mora*); and

- the suspension does not undermine any public interest that is considered to be more important than the interests of the party requesting interim relief (balance between public and private interests).

29 What are the conditions for competitors to obtain damages for award of unlawful state aid or a breach of the standstill obligation in article 108(3) TFEU? How do national courts calculate damages?

The conditions for competitors to obtain damages for award of unlawful state aid or a breach of the standstill obligation against the state are laid down in Law 67/2007, which establishes the conditions under which the Portuguese state may be liable.

The general conditions are that there is damage to the rights of a competitor and that the damage results from the wrongful act or omission of the state agents within the performance of his or her duties, or from the abnormal functioning of the public services.

Damages are awarded to a complainant for actual loss and for loss of profit.

The competitor may also claim damages against the beneficiary of the aid, in which case, the general liability rules apply (damage, breach, causal link).

State actions to recover incompatible aid

30 What is the relevant legislation for the recovery of incompatible aid and who enforces it?

Where aid has been granted by means of an administrative decision, it is possible to enforce a recovery decision by the means of an action for annulment. The Administrative Procedure Code that has recently entered into force has introduced the possibility of annulment of the administrative acts that confer a pecuniary right to the addressee, when its lawfulness is verified within a time limit of five years and a recovery decision may be imposed. In this case, the law sets forth a time limit of five years for the annulment of the administrative act. However, the law itself determines that this time limit may be different when EU law establishes different timings. This may be the case of article 15 of Council Regulation (EC) 659/1999 of 22 March 1999, which sets forth a limitation period of 10 years. This conclusion may be based on Portuguese case law applicable to the previous Administrative Procedure Code, according to which, Portuguese legislation established that the revocation of an administrative decision on grounds of unlawfulness had to be done within one year after its issuance. Taking into account the principles of primacy and direct effect, the Supreme Administrative Court decided that, where the Commission states that aid has been illegally awarded, the revocation time limit of one year after the issuance of the relevant administrative decision cannot be applicable since the expiry of national time limits for the revocation of administrative acts cannot undermine the duty of member states to enforce Commission decisions (Decision of the Supreme Administrative Court of 6 December 2005, Case 0328/02).

Also, administrative recovery decisions are considered to be 'implementing acts of the Commission's decisions' (Decision of the Supreme Administrative Court of 19 November 2008, Case 0576/08).

Civil law courts may have jurisdiction to enforce the Commission's decision in certain circumstances. For example, Portugal is currently enforcing the Commission's decision that considered the aid granted to Banco Privado Português by means of a guarantee (Commission decision of 20 July 2010, Case 33/2009). In this case, since the aid was granted through a private law instrument and the bank has subsequently bankrupted, the state has requested recovery in the insolvency procedure.

31 What is the legal basis for recovery? Are there any grounds for recovery that are purely based on national law?

The main legal basis for recovery is the Commission's decision and article 14 of the procedural regulations. Where the aid recipient does not fulfil the conditions based on which aid has been awarded, a legal basis for recovery may be envisaged.

32 How is recovery effected?

See question 30.

Where the aid recipient does not comply with the recovery decision, the granting authority that annulled the aid-granting decision, or that issued another decision ordering recovery, may bring an action before a court requesting mandatory enforcement of the administrative decision.

33 How may beneficiaries of aid challenge recovery actions by the state?

Where recovery is ordered through an administrative decision (by which the aid-granting decision is totally or partially annulled), the aid recipient may challenge recovery through both an appeal to the higher hierarchical level or an administrative action for annulment of such act.

34 Is there a possibility to obtain interim relief against a recovery order? How may aid recipients receive damages for recovery of incompatible aid?

It is possible to obtain interim relief against a recovery order (see question 28). The criteria set out in question 28 show that one may conclude that Portuguese law is in line with the case law of the EU courts.

It is noteworthy that, in line with the case law of the EU courts, Portuguese courts seem to interpret legitimate expectations narrowly (Decision of the Supreme Administrative Court of 6 December 2005, Case 0328/02).

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