

Enforcement of State aid law at national level. The relationship between national courts and the European Commission

Lecturer PhD **Agnieszka KNADE-PLASKACZ**¹

Abstract

The control of state aid is an unique feature of competition policy in the European Union. This paper sets out to show the balance between Member States and the European Union in the area of state aid policy.

After a brief overview of the principles underlying the enforcement of state aid law in the Member States, we will describe the basic principles underlying the division of responsibilities between the Commission and national courts in state aids matters, then we will discuss the two main responsibilities facing national courts – protecting competitors against unlawful aid and ensuring effective recovery of illegal and incompatible aid.

Keywords: *European Union, State aid, national courts, European Commission.*

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1. Introduction

This paper sets out to show the balance between Member States and the European Union in the area of State aid policy. The State aid control is unique feature of competition policy in the European Union. Only in the EFTA there is a similar system of supranational control over the subsidies granted by States to undertakings, a system which owes its existence to the need to harmonize competition policies in the European Economic Area².

Under the principle of cooperation in good faith laid down in Article 4(3) TEU, Member States are required to nullify the unlawful consequences of a breach of European Union law³. Such an obligation is owed, within the sphere of its competence, by every organ of the Member State concerned. Thus national courts are also under such an obligation⁴.

In the State aid Scoreboard of Autumn 2008, the Commission considers that State aid enforcement by national courts can play an important role in the overall system of State aid control. National courts are often well placed to protect individual rights affected by violations of the State aid rules and can offer quick

¹ Agnieszka Knade-Plaskacz - Faculty of Law and Administration, Nicolaus Copernicus University in Torun, Poland, akp@law.uni.torun.pl

² See: C. Buelens, G. Garnier, M. Johnson and R. Meiklejohn, *The economic analysis of state aid: Some open questions*. "European Economy. Economic Papers", 286/2007, p. 2.

³ See inter alia: Joined Cases C 6/90 and C-9/90 *Francovich and Others* [1991] ECR I-5357, paragraph 36.

⁴ For description and analysis of the member states varying approaches in applying EU State aid rules, see: C. Buts, T. Joris, M. Jegers, *State aid policy in EU Member States*. It's a different game they play, "European State Aid Law Quarterly" 2013, Vol. 1, pp. 330-342.

and effective remedies to third parties⁵. The aim of this article is to present the key aspects of enforcement in the State aid field, with a particular focus on the jurisprudence of the EU.

After a brief overview of the principles underlying the enforcement of State aid law in the Member States, we will describe the basic principles underlying the division of responsibilities between the Commission and national courts in State aid matters, then we will discuss the two main responsibilities facing national courts – protecting competitors against unlawful aid and ensuring effective recovery of illegal and incompatible aid.

2. EU State aid regime

In the European Union, which seeks sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy (art. 3(3) TEU), aiming at full employment and social progress, competition is of primary importance in achieving those goals. It affects, first, the activities of the Union, which include a system ensuring that competition in the internal market is not distorted and, second, the economic policy of the Union and the Member States, which must be conducted in accordance with the principle of free competition.

According to Article 3(1)(b) TFEU, the activities of the European Union include the establishment of the competition rules necessary for the functioning of the internal market. The scope of the EU State aid regime is defined by the terms of Articles 107 and 108 TFEU. Article 107(1) TFEU provides that 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 markets.

For a measure to be classified as illegal and *forbidden* aid within the meaning of Article 107(1) TFEU, all the conditions set out in that provision must be fulfilled⁶. Firstly, there must be an intervention by the State or through State resources⁷. Secondly, the intervention must be liable to affect trade between Member States. Thirdly, it must confer an advantage on the recipient by favouring certain undertakings or the production of certain goods. Fourthly, it must distort or threaten to distort competition.

⁵ State aid Scoreboard Autumn 2008 update (COM(2008) 751(final), paragraph 3.2.

⁶ See, to that effect, Case C-142/87 *Belgium v Commission* [1990] ECR I-959, paragraph 25 and Case C-280/00 *Altmark Trans and Regierungspräsidium Magdeburg* [2003] ECR I-7747, paragraphs 74 and 75.

⁷ See generally: A. Biondi, *Some Reflections on the Notion of "State Resources" in European Community State aid Law*, 2006 "Fordham International Law Journal", vol. 30, p. 1435; M. Köhler, *Private Enforcement of State Aid Law – Problems of Guaranteeing EU Rights by means of National (Procedural) Law*, "European State Aid Law Quarterly", 2012, Vol. 2 Issue 1, pp. 369-389; A. P. Komninos, *New prospects for private enforcement of EC competition law: Courage v. Crehan and the Community right to damages*, *Common Market Law Review* 39/2002, pp. 447-487.

The treaty contains no express definition of the concept of aid referred under article 107 TFUE. What then is state aid? The Court gave a definition of it in one of its earliest cases Steenkolenmijnen⁸:

The concept of aid is (...) wider than that of a subsidy because it embraces not only positive benefits, such as subsidies themselves, but also interventions which, in various forms, mitigate the charges which are normally included in the budget of an undertaking and which, without, therefore, being subsidies in the strict meaning of the word, are similar in character and have the same effect.

The Court has also made plain that analysis of state aid should take account of the effect of such member state assistance rather than its reason or purpose:

The aim of article [107] is to prevent trade between member states from being affected by benefits granted by the public authorities which, in various forms, distort or threaten to distort competition by favouring certain undertakings or the production of certain goods. Accordingly, article [107] does not distinguish between the measures of state intervention concerned by reference to their causes or aims but defines them in relation to their effects⁹.

Article 108 TFEU requires the Commission to monitor aid and the Member States to cooperate with the Commission in its task. Where the Commission considers that existing aid granted by a State or through State resources may not be compatible with the internal market, it must initiate the procedure provided for in Article 108(2) TFEU. Where Member States plan to grant new aid or alter existing aid, they are obliged to notify the Commission under Article 108(3). The last sentence of Article 108(3) unequivocally prohibits the Member States from putting any proposed measure into effect until the procedure under Article 108(2) has been completed and the Commission has adopted a decision¹⁰. Already in *Costa v. ENEL*¹¹ the Court gave this article direct effect.

The codification of procedural rules for state aid were adopted in two Council Regulations 994/1998¹² and 659/99¹³.

⁸ Judgment of the Court Case 30-59 *De Gezamenlijke Steenkolenmijnen in Limburg v High Authority of the European Coal and Steel Community* [1961], ECR 01, paragraphs 19.

⁹ See: Case 173/73 *Italy v Commission* [1974] ECR 709, paragraph 13.

¹⁰ See: Opinion of Advocate General Sharpston of 7 February 2013, Case C -6/12 P *Oy*, paragraph 3.

¹¹ See: Case 6/64 *Costa v ENEL* [1964] ECR 585.

¹² Council Regulation (EC) No 994/98 of 7 May 1998 on the application of Articles 92 and 93 (now 87 and 88 respectively) of the Treaty establishing the European Community to certain categories of horizontal State aid, OJ L 142, 14.05.1998, pp. 1-4

¹³ Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty, OJ L 83, 27.3.1999, amended by Council Regulation No 733/2013 of 22 July 2013 amending Regulation (EC) No 994/98 on the application of Articles 92 and 93 of the Treaty establishing the European Community to certain categories of horizontal State aid, OJ L 204, 31.07.2013, p. 11.

3. Application of EU State aid rules by national courts

The Commission is the administrative authority responsible for implementing and developing competition policy in the public interest of the European Union. Consequently it is exclusively authorised to examine all aid measures which are governed by Article 107(1) TFEU at issue for compatibility with the common market¹⁴.

Whilst assessment of the compatibility of aid measures with the common market falls within the exclusive competence of the Commission, subject to review by the Court, it is for the national courts to ensure that the rights of individuals are safeguarded where the obligation to give prior notification of State aids to the Commission pursuant to Article 108(3) TFEU is infringed¹⁵. Courts are often asked to intervene in cases where a Member State authority has granted aid without respecting notification and *standstill* obligations imposed by article 108(3) TFEU, in the event that the Commission subsequently declares the aid in question compatible with the common market. This situation arises either because the aid was not notified at all, or because the authority implemented it before getting the Commission's approval. The role of courts in such cases is to protect the rights of individuals affected by the unlawful implementation of the aid¹⁶.

National courts must offer to individuals the certain prospect that all appropriate conclusions will be drawn from an infringement of that provision, in accordance with their national law, as regards the validity of measures giving effect to the aid, the recovery of financial support granted in disregard of that provision and possible interim measures¹⁷. As Advocate General Sharpston stated in her Opinion in *P oy*: "it is clear from the case-law of the Court that national courts can none the less apply the concept of aid in Article 107(1) TFEU in order to determine whether contested national measures should have been subject to the standstill obligation. In that context national courts may have to decide whether a particular national measure is selective; and they may legitimately refer questions to the Court concerning the correct interpretation of the concept of State aid"¹⁸.

Subject to review by the EU Courts, it is for the national courts to ensure that the rights of individuals are safeguarded where the obligation to give prior

¹⁴ See inter alia the opinion of Advocate General Geelhoed delivered on 14 September 2006, Case C-119/05 *Ministero dell'Industria, del Commercio e dell'Artigianato V Lucchini SpA*, [2007] ECR I-6199.

¹⁵ The analysis of enforcement of state aid law by national Courts has already been published in A. Knade-Plaskacz, *The role of national courts in enforcing unlawful State aid*, Contemporary Legal and Economic Issues (ed.) I. Barkovic, M. Lulic, Josip Juraj Strossmayer University in Osijek 2013, p. 135-145.

¹⁶ Commission notice on the enforcement of State aid law by national courts, 2009/C 85/01, paragraph 21

¹⁷ Case C-354/90 *Fédération Nationale du Commerce Extérieur des Produits Alimentaires and Syndicat National des Négociants et Transformateurs de Saumon* [1991] ECR I-5505, paragraph 12.

¹⁸ See: Opinion of Advocate General Sharpston of 7 February 2013, Case C -6/12 *P Oy*, paragraph 12 and the case-law cited.

notification of State aid to the Commission pursuant to Article 108(3) of the Treaty is infringed¹⁹. It is necessary to clarify the position with regard to the demarcation of competences between the Commission, States and the national courts concerning that provision. Member States are in principle obliged to recover unlawful State aid. This general obligation stems from Article 108(2) TFUE and from Council Regulation No 659/1999 of 22 March 1999. The individual decision which declares a particular form of State aid to be unlawful imposes a more specific obligation on the Member State to which it is addressed. The decision is binding on its addressee. Those obligations serve to restore the *status quo* insofar as possible and to eliminate anti-competitive advantages created by unlawful State aids²⁰.

National courts are most frequently called upon to rule in recovery cases when a beneficiary tries to challenge the validity of a national recovery order. Court action may also be introduced by a competitor seeking redress against the national authorities' failure to do so²¹.

According to article 14(1) of Regulation (EC) No 659/1999, the Commission's assessment concludes that aid granted unlawfully is incompatible with the common market and enjoins the Member State concerned to recover the incompatible aid from the beneficiary. The Commission cannot order the return of a State aid on the sole ground that it was not notified in accordance with Article 108(3) of the Treaty²². National courts play an important role in the enforcement of recovery decisions adopted in that matter.

The CJEU has consistently held that any national court, including a constitutional court, is required to do everything within its power to give effect to the prohibition of aid under Article 107(1) TFUE and to the duty of notification and the obligation not to put measures into effect under Article 108(3) TFUE. At the same time, national courts must abstain from any measure which could jeopardize the attainment of the objectives of the Treaty²³. It is for the national courts to draw all the necessary consequences of the infringement of Article 108(3) TFUE in accordance with their national law, with regard to both the validity of the acts giving effect to the aid and the recovery of financial support granted in breach of that provision²⁴.

Proceedings before national courts give potential claimants the opportunity to resolve many state aid related concerns directly at national level, in particular

¹⁹ Joined Cases C-261/01 and C-262/01 *van Calster and Others* [2003] ECR I-12249, paragraph 75

²⁰ Case C-419/06 *Commission v Greece* [2008] ECR I-0000, paragraphs 53 and 54 and the case-law cited therein.

²¹ See: B. Brandtner, T. Beranger, C. Lessenich, *Private State aid Enforcement, European*, "State Aid Law Quarterly" 2010, Vol. 9, p. 27.

²² see Case C-354/90 *Fédération nationale du commerce extérieur des produits alimentaires et Syndicat national des négociants et transformateurs de saumon*, paragraph 13.

²³ Joined Cases C-266/04 to C-270/04, C-276/04 and C-321/04 to C-325/04, *Distribution Casino France and Others* [2005] ECR I-9481, paragraph 30.

²⁴ See: Case C-71/04 *Xunta de Galicia* [2005] ECR I-7419, paragraph 49 and C-199/06 *CELF and Ministre de la Culture et de la Communication* [2008] ECR I-469, paragraph 41.

concerning the recovery of illegal aid from the beneficiary, interim relief or possible damages actions. In the case *Transalpine Ölleitung*, the Court rules that “it is for the domestic legal system of each Member State to designate the courts having jurisdiction and to determine the detailed procedural rules governing actions at law intended to safeguard the rights which individuals derive from Community law”²⁵. The Court adds, that this only be so provided, firstly, that those rules are not less favourable than those governing rights which originate in domestic law (principle of equivalence) and, secondly, that they do not render impossible or excessively difficult in practice the exercise of rights conferred by the EU legal order (principle of effectiveness)²⁶.

In a number of rulings the Court has used the standard argument that article 108(3) TFEU entrusts the national courts with the task of preserving, until the final decision of the Commission, the rights of individuals faced with a *possible breach* by State authorities of the prohibition laid down by that provision. The objective of the national courts’ tasks is therefore to pronounce measures appropriate to remedy the unlawfulness of the implementation of the aid, in order that the aid may not remain at the free disposal of the recipient during the period remaining until the Commission makes its decision²⁷.

In that regard, it is important to note that, as the Advocate General Kokott stated in the Opinion to the case C-275/10 *Residex Capital IV CV*: “EU law requires national courts to order those measures which are appropriate effectively to remedy the consequences of the unlawfulness of an aid measure”²⁸. It is established case-law of the Court that national courts must therefore ensure that all appropriate inferences are drawn, in accordance with their national law, from an infringement of the third sentence of Article 108(3) TFEU, as regards both the validity of the measures giving effect to the aid and the recovery of financial support granted in disregard of that provision. This generally has the result that all transactions – civil law contracts not least of all – which are concluded in connection with the granting of State aid which is unlawful on procedural grounds are considered null and void or ineffective. The Court has held that ‘the validity of acts entailing implementation of aid measures is affected by failure, on the part of the national authorities, to observe the prohibition on implementing aid without Commission authorization.’ The main objective is to ensure in this way that aid which is incompatible with the internal market is never implemented. However, if aid is nevertheless granted in breach of the duty to notify and of the prohibition on implementation, it will at least be necessary to ensure that the recipient forfeits the resultant advantage and that the consequences of the unlawfulness of the aid

²⁵ Case C-368/04, *Transalpine Ölleitung*, [2006] ECR I-09957.

²⁶ *Ibidem*, paragraph 45 *in finem*.

²⁷ See: Case C-1/09 *Centre d'Exportation du Livre Français (CELF), Ministre de la Culture et de la Communication v Société Internationale de Diffusion et d'Édition*, [2011] ECR I-0000, paragraph 30-34.

²⁸ See for a analysis of these judgments also: M. Köhler, *Civil Law Consequences of Unlawful Aid -- State Guarantees and the Problem of the Recovery of Aid*, “European State Aid Law Quarterly”, 2013, Vol. 12 Issue 1, pp. 97-100.

measure are remedied so that no distortion of competition occurs or is perpetuated. The previously existing situation should be re-established²⁹.

The logical consequence of the finding that aid is unlawful is to remove it by means of recovery in order to restore the previous situation³⁰. Accordingly, the main objective pursued in recovering unlawfully paid State aid is to eliminate the distortion of competition caused by the competitive advantage which such aid affords³¹. By repaying the aid, the beneficiary forfeits the advantage which it had over its competitors on the market, and the situation prior to payment of the aid is restored³².

In its *Wienstrom* case, the Court clarified that where aid has been granted to a recipient in disregard of the last sentence of Article 108(3) EC, the national court may be required, upon application by another operator and even after the Commission has adopted a positive decision, to rule on the validity of the implementing measures and the recovery of the financial support granted. EU law requires the national court to order the measures appropriate effectively to remedy the consequences of the unlawfulness, but that, even in the absence of exceptional circumstances, EU law does not impose an obligation of full recovery of the unlawful aid. In such a situation, pursuant to EU law, the national court must order the aid recipient to pay interest in respect of the period of unlawfulness. Within the framework of its domestic law, it may, if appropriate, also order the recovery of the unlawful aid, without prejudice to the Member State's right to re-implement it, subsequently. It may also be required to uphold claims for compensation for damage caused by reason of the unlawful nature of the aid³³.

It is only in exceptional circumstances that it would be inappropriate to order repayment of the aid. In that regard, the Court has already held, in respect of a situation in which the Commission had adopted a negative final decision, that a recipient of illegally granted aid is not precluded from relying on exceptional circumstances on the basis of which it had legitimately assumed the aid to be lawful and thus declining to refund that aid³⁴. If such a case is brought before a national court, it is for that court to determine and interpret these circumstances in close cooperation with the Commission and with due regard for the possibility of preliminary questions to the Court³⁵.

²⁹ Opinion in Case C-275/10 *Residex Capital IV CV v Gemeente Rotterdam*, [2011] ECR, Unreported, paragraph 29-32 and the case-law cited therein.

³⁰ See, inter alia, Joined Cases C-328/99 and C-399/00 *Italy and SIM 2 Multimedia v Commission* [2003] ECR I-4035, paragraph 66; judgment of 28 July 2011 in Case C-403/10 P *Mediaset v Commission*, paragraph 122.

³¹ Case C-520/07 P *Commission v MTU Friedrichshafen* [2009] ECR I-8555, paragraph 57 and Case C-275/10 *Residex Capital IV CV v Gemeente Rotterdam*, paragraph 33-35.

³² Case C-350/93 *Commission v Italy* [1995] ECR I-699, paragraph 22.

³³ Case C – 384/07 *Wienstrom GmbH v Bundesminister für Wirtschaft und Arbeit* [2008] ECR I-10393 pp. 27-29

³⁴ Case C-5/89 *Commission v Germany* [1990] ECR I-3437, paragraph 16 and C-199/06 *CELF and Ministre de la Culture et de la Communication*, paragraph 42.

³⁵ For a recent overview of this issue, see: T. Jaeger, *The CELF Judgment: A Precarious Conception of the Standstill Obligation*, "European State Aid Law Quarterly", 2008, Vol. 7, pp. 279-289 See

The national courts could cooperate with Commission in that matter. According to art. 23a Regulation (EC) No 659/1999, national courts are able to ask the Commission for information or for its opinion on points concerning the application of State aid rules. The Commission is able to submit written or oral observations to courts which are called upon to apply article 107(1) or article 108 of the TFEU. The Commission may act under that provision only in the Union public interest as *amicus curiae*³⁶.

To justify the national court not ordering recovery under Article 108(3) of the Treaty, a specific and concrete fact must therefore have generated legitimate expectation on the beneficiary's part. The Court has repeatedly held that the right to rely on the principle of the protection of legitimate expectations extends to any person in a situation where a EU authority has caused him to entertain expectations which are justified. However, a person may not plead infringement of the principle unless he has been given precise assurances by the administration³⁷. Similarly, if a prudent and alert economic operator could have foreseen the adoption of a EU measure likely to affect his interests, he cannot plead that principle if the measure is adopted³⁸. The principle of legal certainty, which is fundamental to Union law,³⁹ requires, in particular, rules involving negative consequences for individuals to be clear and precise and their application predictable for those subject to them⁴⁰. In other words, individuals must be able to ascertain unequivocally what their rights and obligations are and take steps accordingly.

As indicated above, the protection of individual rights arising out of violations of the standstill obligation is one of the national courts' key responsibilities. Legal protection for third parties under Article 108 (3) TFEU is not limited to ordering the recovery of unlawful aid. The Court has also repeatedly held that the national courts' obligations may include awarding damages. This applies where a third party has suffered loss as a result of the unlawful aid.

National law provides legal basis for claims for damages based on infringement of Article 108(3) TFEU. The various Studies on the Enforcement of State aid Law at National Level show different examples. For instance, in Austrian law section 1 of the Austrian Act against Unfair Competition applies. In Finnish law the Act on Damages is mentioned in the studies, whereas in Dutch law actions for damages for breach of the State aid rules should be brought under the same rules and principles as actions for damages based on tort⁴¹.

for a critical analysis of these judgments also P.C. Adriaanse, *Appropriate Measures to Remedy the Consequences of Unlawful State aid. An analysis of the ECJ Judgment of 12 February 2008 in Case C-199/06 (CELF/SIDE)*, "Review of European Administrative Law" 2009 (1), pp. 73-86.

³⁶ See: Proposal for a Council Regulation amending Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty, COM/2012/725/FINAL

Proposal for a Council Regulation amending Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty

³⁷ Case C-506/03 *Germany v Commission* [2005] ECR I-0000, paragraph 58.

³⁸ Case 265/85 *Van den Bergh en Jurgens and Van Dijk Food Products Lopik v Commission* [1987] ECR 1155, paragraph 44.

³⁹ Case C-110/03 *Belgium v Commission* [2005] ECR I-2801, paragraph 30.

⁴⁰ Case C-63/93 *Duff and Others* [1996] ECR I-569, paragraph 20, and Case C-76/06 P *Britannia Alloys & Chemicals v Commission* [2007] ECR I-4405, paragraph 79.

⁴¹ See: B. Brandtner, T. Beranger, C. Lessenich, *Private State ...*, p. 26.

Few categories of claims can be distinguished in national legal systems:

- damages claims lodged by a competitor of the beneficiary against the Member State,
- damages claims lodged by a competitor of the beneficiary against the aid beneficiary,
- damages claims lodged by the aid beneficiary against the Member State,
- other claims for damages⁴².

The example of damages claims lodged by a competitor of the beneficiary against the Member State can be found in Conseil d'Etat *Pantochim* judgment⁴³. A competitor to the beneficiary sued the French State for the loss suffered as a result of the impossibility of marketing certain products which, unlike the products of the aid recipient, had not been subject to a tax exemption. The aid in question was both unlawful and incompatible with the internal market, but no causal link between the violation and the loss suffered was found to be proven⁴⁴.

In the *Baby Dan* case⁴⁵, the Dutch court rejected a claim for damages lodged by the plaintiff against two competitors which had received State aid (under an employment relief program) and allegedly used it to sell certain products below cost price. The Dutch Court of Appeal agreed that the measure should have been notified to the Commission but did not find that the aid recipients had committed a tortious act⁴⁶.

The duty of national courts to draw the necessary legal consequences from violations of the standstill obligation is not limited to their final judgments. As part of their role under Article 108(3) of the Treaty, national courts are also required to take interim measures where this is appropriate to safeguard the rights of individuals⁴⁷. Interim recovery can also be a very effective instrument in cases where national court proceedings run parallel to a Commission investigation.

The most approachable cases are those where unlawful aid has not yet been disbursed, but where there is a risk that such payments will be made during the course of national court proceedings. In such cases, the national court's obligation to prevent violations of article 108(3) TFEU can require it to issue an interim order preventing the illegal disbursement until the substance of the matter is resolved. Where the illegal payment has already been made, the role of national courts usually requires them to order full recovery (including illegality interest).⁴⁸

⁴² See: M. Honoré, N. Eram Jensen, *Damages in State aid Cases*, "European State Aid Law Quarterly", 2011, (2) p. 266.

⁴³ Conseil d'Etat, *Société Pantochim SA*, 31 May 2000, Cases n°192006 and n°196303, *Revue de jurisprudence fiscale* 2000, pp. 729–730.

⁴⁴ See: M. Honoré, N. Eram Jensen, *Damages* ..., p. 266.

⁴⁵ Court of Appeal Amsterdam ("Gerechtshof Amsterdam"), 29 June 2006, LJN AZ 1425, *Baby Dan A/S v Werkvoorziening Weert en Omstreken (De Risse) and Werkvoorziening De Kanaalstreek (WeDeKa)*

⁴⁶ See: M. Honoré, N. Eram Jensen, *Damages* ..., p. 268.

⁴⁷ See Case C-368/04, *Transalpine Ölleitung in Österreich*, cited above footnote 14, paragraph 46.

⁴⁸ See: The Commission notice on the enforcement of State aid law by national courts, OJ 2009 C 85, p. 1., pp. 48-49 and the case-law cited therein.

4. Final thoughts

Over the last years, there has been a significant improvement in the compatibility assessment of State aid measures at national level. The paper has shown, that introduction of an EU system of state aid control would be ineffective without the national courts. The activity of them significantly affects the enforcement degree of national State aid rules.

To sum up, there is positive correlation between Commission and national courts in protecting competitors against unlawful aid and ensuring effective recovery of illegal and incompatible aid. In both positions national courts play an important role for an instantaneous and complete recovery of the unlawful state aid, supported by the Commission which introduces practical tools of closer cooperation and informs about the remedies available.

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