



Republika e Kosovës
Republika Kosovo - Republic of Kosovo
Kuvendi - Skupština - Assembly

Law No. 05/L-100

ON STATE AID

The Assembly of the Republic of Kosovo;

Based on Article 65 (1) of the Constitution of the Republic of Kosovo,

Approves

LAW ON STATE AID

Article 1
Purpose

1. This Law defines the principles and procedures, general conditions and authorization rules, monitoring and revocation of state aid.
2. This law is partly in compliance with the Regulation (EU) 2015/1589, dated July 13, 2015, for defining the detailed rules for the implementation of Article 108 of the Treaty on the Functioning of the European Union.

Article 2
Scope

The provisions of this Law are binding to all sectors of manufacturing and services operating in the Republic of Kosovo, with the exception of agriculture and fishery sector, including the processed agricultural products.

Article 3 Definitions

1. Terms used in this law shall have the following meaning:

1.1. **State aid** - any actual or potential expenditure or decreased state revenue granted in any form whatsoever by the aid provider, or attributable to the state, which directly or indirectly distorts or threatens to distort the competition by favouring certain beneficiaries of state aid or manufacturing of certain goods or services, and that contradicts the international obligations of the Republic of Kosovo, as specified in Article 1 of this Law;

1.2. **State aid providers** - the Republic of Kosovo through all competent central administration and local governing authorities, public enterprises, or any other authority acting on behalf of the state and providing state aid;

1.3. **State Aid Beneficiaries** - any natural or legal person, public or private, who performs an economic activity, and thereby participate in trade of goods and services, and who receive some form of state aid;

1.4. **Aid scheme** - shall mean:

1.4.1. any act on the basis of which, without any additional actions required, individual aid may be granted to enterprises identified in the act in a general and abstract manner; and

1.4.2. any other act upon which, the state aid that is not linked to a particular project may be granted to one or more undertakings for an indefinite period of time and/or in an indefinite amount.

1.5. **Individual State Aid** - any state aid which is not granted under the state aid scheme and any state aid granted under the aid scheme which is subject to additional authorization;

1.6. **Unlawful aid** - any state aid granted or implemented without Commission's notification and authorization;

1.7. **Stakeholders** - any person, undertaking or association of undertakings whose interests may be affected by the granting of state aid,

1.8. **State aid Notification** – the request presented to Commission by the aid provider, for the approval of the state aid scheme or individual aid, accompanied with all documentation specified in this Law and in its implementing sub-normative acts, before the state aid is granted;

1.9. **Existing state aid schemes** - the act under which the state aid is authorized or granted before this Law enters into force;

1.10. **“De Minimis” Aid** - aid of a small value that is not considered a state aid and is not subject to notification and authorization of the Commission;

1.11. **New Aid** - any aid, state aid scheme or individual aid, that is not an existing aid, including amendments to existing aids; and

1.12. **Misuse of Aid** – utilization of state aid by the state aid beneficiary in contradiction with the Commission's authorization.

Article 4 **General prohibition of state aid**

Any state aid, pursuant to paragraph 1.1. of Article 3 of this Law, granted by the state aid provider regardless of the form, is a prohibited aid, unless if otherwise provided by this Law.

Article 5 **Compatible aid**

1. Without prejudice to Article 4 of this Law, the following aids are in compliance with this Law and are not subject to the prior approval of the Commission:

1.1. aid of a social character, granted to individual consumers, provided that such aid is granted without discrimination related to the origin of the products concerned; and

1.2. aid intended for repair of damages caused by natural disasters or emergency events.

Article 6 **Conditional State Aid Compatibility**

1. The following state aid may be considered to be compatible with this Law, provided that it is authorized beforehand by the Commission:

1.1. State aid granted to promote economic development in areas of the Republic of Kosovo where the standard of living is unusually low or where there is significant unemployment;

1.2. State aid granted to promote the execution of important projects of the Republic of Kosovo and of the European interest or to remedy a serious disturbance in the economy of the Republic of Kosovo;

1.3. State aid granted to facilitate the development of certain areas or certain economic activities, whereby such aid does not significantly affect the trade terms as to contradict the common interest defined in the agreements ratified by the Republic of Kosovo.

1.4. State aid promoting culture and preservation of heritage thereof, to the extent that this aid shall not significantly affect trading conditions and competition;

2. Conditions, criteria and the evaluation procedures of the state aid, foreseen in paragraph 1. of this Article, are defined with sub-legal act issued by the Government.

Article 7 **“De Minimis” aid**

1. Within the meaning of this law, the “De Minimis” aid shall not be considered a state aid and it is not subject to notification and authorization of the Commission, provided that it is granted in accordance with the legislation in force.

2. Criteria, scope and procedures for granting “de minimis” aid shall be defined in the bylaws.

3. In line with the applicable legislation of the EU, the Government of the Republic of Kosovo (hereinafter: Government) sets limits of “De Minimis” aid.

Article 8 **Department of State Aid**

1. The State Aid Department (hereinafter: Department) shall be established under the Ministry of Finance, which shall provide professional and administrative assistance to the Commission in terms of legal actions for the state aid, in compliance with the provisions of this law.

2. Department shall be responsible for:

2.1. assessing individual proposals for the state aid, the state aid schemes, and drafting of the appraisal reports for the Commission;

2.2. monitoring implementation of the granted state aid and effects created thereof, as well as the proposal for recovery of unlawfully granted aid;

2.3. collecting, processing and recording data on state aid;

2.4. maintaining and updating the state aid register;

2.5. cooperating with the state aid providers;

- 2.6. preparing the draft annual report on state aid regarding implementation of the Law; and;
 - 2.7. cooperating with the international institutions in terms of international obligations of the Republic of Kosovo in the field of state aid.
3. Other responsibilities, internal organization and systematization of jobs as well as appropriate measures to prevent the conflict of interest within the Department shall be defined by the relevant legal act on internal organization and systematization of jobs within the Ministry of Finance.

Article 9 **State Aid Commission**

1. The State Aid Commission (Commission) is an independent decision-making body for the State Aid composed of five (5) members, independent experts in the field of state aid.
2. Members of the Commission have three (3) years mandate, with a possibility of the re-election for another mandate. During the exercise of the mandate as the Commission members they do not carry public functions and politically appointed positions.
3. After the completion of the merit based recruitment process, members of the State Aid Commission shall be appointed by the Assembly of the Republic of Kosovo following the proposal of the Selection Committee, composed of:
 - 3.1. Chairman of the Committee for Oversight of Public Finances of the Assembly of the Republic of Kosovo;
 - 3.2. Chairman of the Committee for Budget and Finances of the Assembly of the Republic of Kosovo;
 - 3.3. Chairman of the Committee for Economic Development, Infrastructure, Trade and Industry of the Assembly of the Republic of Kosovo.
4. Any proposed candidate for a member of the Commission on State Aid, must have the qualifications and meet the following criteria:
 - 4.1. to be a citizen of the Republic of Kosovo;
 - 4.2. to be graduated in economic or law faculty, or other relevant fields related to the field of state aid;
 - 4.3. to have at least five (5) years of professional experience in the field of justice, public finance or other fields related to state aid;

- 4.4. not to be convicted by a final court decisions, to imprisonment for more than six (6) months; and
 - 4.5. to have the ability to perform duties impartially, conscientiously, diligently and responsibly.
5. Members of the Commission shall be dismissed by the Assembly of Kosovo if:
- 5.1. by a final judgment has been convicted of a criminal offense for more than six (6) months; and
 - 5.2. lost the mental or physical ability to work;
 - 5.3. has committed acts or behavior that seriously discredit his/her position and image; and
 - 5.4. is absent from duty without reason for more than three (3) months.
6. The Commission shall adopt rules of procedure, which defines the organization, administrative decision-making procedures as well as appropriate measures to prevent conflicts of interest.

Article 10

Maintaining of Confidentiality

1. During and after the completion of their employment relationship or mandate, officials of the Department and the Commission are obliged to keep in confidentiality the information and data of confidential character, which arise during the procedures for assessment and monitoring of state aid.
2. For the purposes of paragraph 1. of this Article the following information shall be considered confidential:
 - 2.1. all information classified as confidential by the legislation in force;
 - 2.2. all information classified as confidential by the beneficiary's internal regulations, which are estimated by the Department; and
 - 2.3. all correspondences made with the international organizations regarding state aid, for which there is an agreement to be treated as such.

Article 11
Notification for State Aid

1. For all state aid schemes, the aid provider shall submit to the Department a complete notification on state aid scheme or the plan for individual aid, including the normative acts, except the draft laws which are processed for preliminary comments under Article 12 of this Law. The Aid notified under this paragraph shall not create effect prior to decision of the Commission to authorize aid.
2. If within thirty (30) days from the receipt of notification on the proposed state aid or additional information, the Department does not require additional information from state aid provider or the beneficiary, it shall be deemed that the Department possesses all the information needed to assess the State aid.
3. Notification is not required when individual aid is granted under the scheme which the Commission has already approved it with the decision pursuant to Article 14 of this Law, except in cases when the value of individual aid must be notified, according to the Commission's decision.
4. Where state aid notification is not completed, the Department shall request all additional information within a period of fifteen (15) days from the receipt of the notification. The notification is considered withdrawn if the requested information have not been submitted within the specified term.
5. Procedures related to the notification for aid shall be regulated by the bylaw.

Article 12
Written Comments on Draft Law Covering State Aid

State Aid Commission shall provide written comments on all draft laws for which the proposing bodies considers that the draft law contains elements of state aid. The commission shall provide the comments within thirty (30) days from the day of receiving the draft-law. Advices and comments by the State Aid Commission shall be considered by the Government of the Republic of Kosovo before the draft law is approved by the Government and submitted to the Assembly of the Republic of Kosovo for final approval.

Article 13
Assessment Procedures of State Aid

1. After receiving the state aid notification under Article 11 of this Law, the Department will assess the compliance of the state aid with the provisions of this Law.
2. The Department shall request from all the state aid providers, as well as from the beneficiaries, all the information for assessing a state aid. Information received from a

stakeholder may be used, provided that all stakeholders in an assessment procedure have been able to comment on them.

3. Where a question concerning the interpretation or application of European energy legislation is raised in proceedings before the Department, it shall, upon request of a party or on its own motion, notify the Secretariat of the Energy Community in writing, in terms of five (5) working days, from the receipt of the matter in procedure. In its final decision, the Commission shall take into account the opinion submitted by the Secretariat.

Article 14

Decision on State Aid

1. Upon completion of compliance assessment procedures of state aid, the Commission shall issue a decision as follows:

1.1. ascertains that the notification of state aid scheme or individual aid plan is not state aid;

1.2. ascertains that the notification of state aid scheme or individual aid plan is a state aid and decides to conditionally or unconditionally authorize the state aid; or

1.3. ascertains that the notification of state aid scheme or individual aid plan is a prohibited state aid and does not authorize it.

2. The Commission's decision to authorize the aid is made:

2.1. within sixty (60) days from the date of receiving a complete notification for the proposed aid, in cases of reviewing new plans of state aid;

2.2. within thirty (30) working days from the date of receiving a complete notification for the proposed aid in cases of individual aid foreseen under state aid scheme previously approved by the Commission; and

2.3. within twenty (20) working days in cases of modification of existing state aid schemes.

3. The timeframe presented in paragraph 2. of this Article shall begin to be calculated starting from the next day, following the written confirmation by the Department that has received the full notification.

4. When the Commission fails to make a decision during the periods specified in paragraph 2. of this Article, the state aid provider is entitled to implement the state aid plan. Prior to this, the provider shall notify the Department in a written form for this action.

5. The Commission's decision shall be taken by a majority vote of its members.

6. Decisions of the Commission shall be submitted to the Aid Provider. They shall be published in the Official Gazette of the Republic of Kosovo and on the Commission's website.

Article 15

Compatibility Assessment on the State Aid

1. If the Department estimates the incompatibility of the state aid with this Law, it shall:
 - 1.1. notify, for this, the state aid provider as well as the beneficiary and require additional information within thirty (30) days;
 - 1.2. invite publicly all stakeholders to submit their written comments to the Department, within thirty (30) days from the date of publication; and
 - 1.3. propose the Commission to make a decision in accordance with the Article 14 of this Law.
2. Comments received from stakeholders, under paragraph 1.2. of this Article shall be submitted to the state aid provider, without disclosing the identity of their author if so requested. The state aid provider may submit his/her comments to the Department within a period of thirty (30) days starting from the date of being informed on the stakeholders' comments.

Article 16

Revocation of State Aid

1. If state aid is given without prior decision of the Commission under Article 14 of this Law, the Department shall initiate procedures on unlawful aid.
2. If the Department, acting on its own initiative, requested by the Commission, or on the basis of information from the stakeholders, obtains information on unlawful aid, it shall request from the provider of the unlawful state aid provider to submit all relevant information on the aforementioned aid within fifteen (15) working days.
3. If for the granted aid, the state aid provider fails to submit the relevant information required within the period stipulated by the Department or provides incomplete information, than the Department will repeat the request for submission of necessary information, by imposing a new deadline of fifteen (15) working days.
4. If within the deadline stipulated in paragraph 3. of this Article, the aid provider fails to present the required information, the Commission requires the state aid provider to suspend granting of aid.

5. The state aid provider, after receiving the request from the Commission to suspend the state aid, must cease granting the aid, and, shall inform the Department in the written form in regards to this.

6. The Commission shall order the revocation of the aid, in cases when it is assessed that state aid is not in compliance with the applicable provisions of state aid. Recovery of unlawful aid is made together with an average interest rate set by the Commission, and it is calculated from the day the unlawful aid was available to the beneficiaries until the date of recovery.

Article 17 **The Obsolescence of Unlawful State Aid**

1. The Commission may request the recovery of unlawful aid within a period of ten (10) years, from the moment of granting state aid.

2. The period of obsolescence begins on the day when the unlawful aid was granted to its beneficiaries, as an individual aid or as a state aid scheme. Any action taken by the Commission or by the aid provider, acting on the request of the Commission, regarding unlawful aid, shall interrupt the time limits. Any interruption causes the resumption of calculating the period of obsolescence. If the Commission's decision is appealed to the competent court, the obsolescence period shall be suspended until the end of judicial proceedings.

3. Any aid to which the obsolescence period has expired is considered as an existing aid.

Article 18 **Revoking the Decision**

1. The Commission may revoke a decision for approval of a state aid, if after approval has been ascertained that the decision was based on inaccurate information submitted by the provider, information that have been important in the decision-making, or it is not being used in accordance with the Commission's decision.

2. Prior to revoking the decision and taking a new decision, the Commission should verify the arguments of the provider and stakeholders.

Article 19 **Existing Aid Schemes**

1. State aid providers are obliged to, within six (6) months from the entry into force of this Law, submit to the Department, all data on existing aid schemes.

2. The Commission shall propose appropriate measures to ensure that any existing aid scheme is in line with the provisions of this Law. Due to this, the Commission may require to cease the existing state aid and decide to initiate the formal investigation of this aid if:

2.1. the additional information raises doubts on the noncompliance of the state aid with the provisions of this Law and that the state aid provider is not implementing appropriate measures proposed by the Commission;

2.2. the state aid is granted by disregarding the conditions set forth in the decision of the Commission;

2.3. the state aid provider fails to submit required additional information to the Department within a reasonable timetable fixed by the Department.

3. The Commission shall examine written complaints submitted by stakeholders, as well as other information related to state aid, it shall verify the data contained therein, assesses the significance of such information and takes a decision, according to Article 14 or Article 16, paragraph 6. of this Law.

Article 20

Appeal against the Decision of the Commission

1. Regardless the applicable provisions for the administrative procedure, the decision made by the Commission is a final decision in the administrative procedure.

2. The beneficiary, the provider or a third party that has an interest may initiate the court proceedings against decision of the Commission.

3. The procedure against the decision of the Commission shall be initiated within thirty (30) days at the Basic Court, the Department for Administrative Affairs.

4. The court procedure, pursuant to paragraph 3. of this Article, shall not suspend the execution of the Commission's decision.

Article 21

State Aid Annual Report

1. State aid provider, within three (3) months after the end of the calendar year during which state aid has been granted, shall submit to the Department an annual report on state aid granted during the previous year.

2. In case the Department, after examination of the information contained in the annual report of state aid and any information submitted by the state aid provider, has doubts that aid has not been granted in agreement with the provisions of this Law, then it shall

request from the provider to submit the missing information. The Department shall specify what information is missing and request their submission, within one (1) month from the date of annual report submission.

3. The Commission each year, by September 30, approves the Annual Report on State Aid and submits it to the Assembly of the Republic of Kosovo.

4. The report comprises information of decisions taken by the Commission, the overall amount of the aid granted, as well as distribution of the aid through state aid schemes and individual aids. The report also includes the information on aid granted in the agricultural sector and data on “De Minimis“.

Article 22

Issuing of bylaws

For implementation of this law the Government on the proposal of the Ministry of Finance, shall approve the bylaws, within six (6) months after the entry into force of this Law, unless otherwise stipulated in this Law.

Article 23

Transitional Provisions

1. The proceedings commenced pursuant to Law No.04/L-024 on State Aid prior to repealing of this law, shall continue conform procedures and terms foreseen in this Law.

2. Fifteen (15) days after the entry into force of this Law, the budget allocation for the Office of State Aid, which operates within the Kosovo Competition Authority, will be carried forward to the Ministry of Finance in accordance with Article 31 of the Law on Public Financial Management and Accountability.

3. Fifteen (15) days after the entry into force of this Law, the Office of State Aid, within the Kosovo Competition Authority, shall be ceased and employees of this office will be transferred to the Department of the State Aid within the Ministry of Finance.

Article 24

Transitional Provisions on State Aid Commission

1. Without prejudice to Article 9 of this Law, until December 31, 2017 the State Aid Commission will be composed as follows:

1.1. Minister of Finance - Chairman;

1.2. Chairman of the Commission on Budget and Finance of the Republic of Kosovo - member;

- 1.3. Chairman of the Commission for Protection of Competition - member;
 - 1.4. Representative of the Associations of Municipalities - member; and
 - 1.5. Representative of the civil society – member;
2. The Representative of the civil society in the Commission shall have a four (4) years mandate. Selection criteria and procedures are determined by bylaw.
 3. The Auditor General or his/her representative shall attend the meetings of the Committee as an observer.
 4. The Commission shall adopt Rules of Procedure, which defines the organization, administrative decision-making procedures and the necessary measures to avoid the conflict of interest.

Article 25
Abrogation Provisions

1. This Law shall abrogate the Law No. 04/L-024 on State Aid.
2. Sub-legal acts adopted for implementation of the Law No. 04/L-024 on State Aid will remain in force if they are inconsistent with this Law, until repealed by the new sub-legal acts.

Article 26
Entry into force

This Law shall enter into force fifteen (15) days after publication in the Official Gazette of the Republic of Kosovo.

Law No. 05/L-100
23 December 2016

President of the Assembly of the Republic of Kosovo

Kadri VESELI