



State aid – Case Studies

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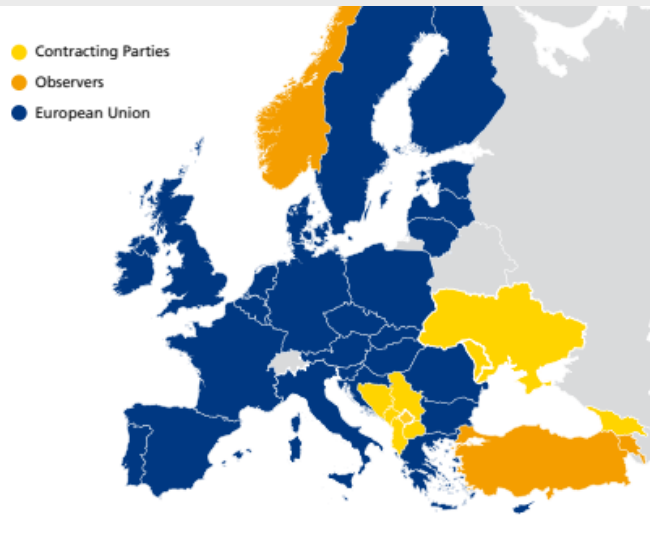


- ***Energy Community and State aid prohibition***
- ***Loans and State guarantees***
- ***Case studies***
 - ***Kolubara B***
 - ***Tuzla 7***
- ***Dispute Settlement Procedures***

Energy Community and State aid prohibition



- International organization
- Founded by the Treaty establishing the EnC signed in October 2005, in force since July 2006



- **containing:**
 - The EU
 - 9 Contracting Parties: Albania, Bosnia and Herzegovina, Georgia, North Macedonia, Kosovo*, Moldova, Montenegro, Serbia, and Ukraine
 - Observers: Armenia, Norway, Turkey
- **Aim:** to extend the EU's internal energy market rules and principles to the countries in South Eastern Europe and the Black Sea region

* in line with UNSCR 1244

Article 18 EnCT

“1. The following shall be incompatible with the proper functioning of the Treaty, insofar as they may affect trade of Network Energy between the CP:

...

(c) any public aid which distorts or threatens to distort competition by favouring certain undertakings or certain energy resources.

2. Any practices contrary to this Article shall be assessed on the basis of criteria arising from the application of the rules of Articles [101, 102 and 107 TFEU] (attached in Annex III).”

Article 19 EnCT

“With regard to public undertakings and undertakings to which special or exclusive rights have been granted, each CP shall ensure that as from 6 months following the date of entry into force of this Treaty, the principles of the [TFEU], in particular Article [106 (1) and (2)] thereof (attached in Annex III), are upheld.”

Article 94 EnCT

„The institutions shall interpret any term or other concept used in this Treaty that is derived from European Community law in conformity with the case law of the Court of Justice or the Court of First Instance of the European Communities [...].“

As of entry into force:

- **Obligation to transpose**
- **Obligation to implement (in compliance)**
- **Direct application**



Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees:

- Purpose of the Notice
- Types of guarantees
- Aid beneficiary: borrower and/or lender
- Market economy investor principle



Individual guarantees: no State aid IF

- The borrower is not in financial difficulty.
- The extent of the guarantee can be properly measured when it is granted (i.e. linked to a specific financial transaction, for a fixed maximum amount and limited in time).
- The guarantee does not cover more than 80% of the outstanding loan or other financial obligation.
- A market-oriented price is paid for the guarantee.

Guarantee schemes: similar conditions



State aid element: difference between the appropriate market price of the guarantee and the actual price paid for that measure

Whether or not this aid is **compatible** with the common market will be examined by the Commission according to the same rules as are applied to aid measures taking other forms (framework and guidelines concerning horizontal, regional and sectoral aid).

Case study: Kolubara (Serbia)



- **Electricity sector in Serbia: EPS**
- **Thermal Power Plant Kolubara**
- **State aid enforcement system in Serbia:**
 - *Law on State Aid Control (2009)*
 - *Commission for State Aid Control*
- **Complaint:**
 - *Loans by EBRD and Kreditanstalt für Wiederaufbau (KfW) -> State guarantee*
 - *Transfer of property*
- **Lack of assessment**

Case study: Tuzla 7 (BiH)



Not opened yet

Tuzla 7 project

Loan by Chinese Export-Import Bank for 80% of the costs

Secured by State guarantee for the entire loan

Potential State aid

**Cooperation mechanism with national authorities
(Art. 2 DSR)**

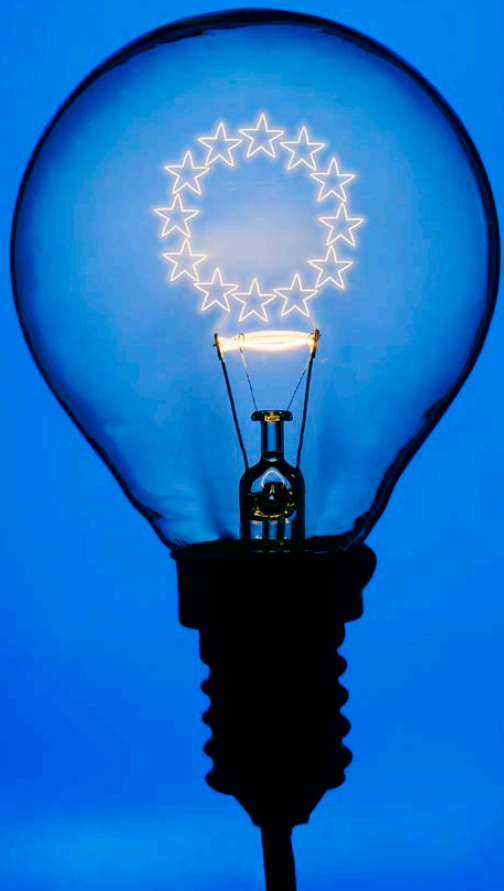
DISPUTE SETTLEMENT PROCEDURE

- ▶ ***A Party to the Treaty, the Regulatory Board and the Secretariat may initiate a case of non-compliance***

3-step procedure

- ▶ ***Opening Letter*** – Secretariat requests national government to comment on non-compliance within 2 months
- ▶ ***Reasoned Opinion*** – In case of no/unsatisfactory reply, Secretariat states reasons why it believes there is a breach of Energy Community law and requests compliance within 2 months
- ▶ ***Reasoned Request*** – Secretariat refers case to Ministerial Council
- ▶ **No Court of Justice and no financial penalties!**

Take aways



- **Lack of enforcement of State aid prohibition in the energy sectors**
- **Superficial assessment**
- **Lack of expertise**
- **Lack of courage**

The background is a satellite-style image of the Earth, showing the continents of Europe and Africa. Overlaid on this is a complex network of glowing blue lines that represent energy transmission or data flow. The lines are curved and intersect, creating a sense of dynamic connectivity across the globe.

*Thank you
for your attention!*

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