

# State aid and sport

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# What is state aid?

## Article 107 (1) TFEU

- any aid in any form whatsoever – provides an advantage
  - direct grants
  - tax allowances, exemptions
  - guarantees
  - investments
- granted by a Member State or through State resources – reducing the state resources directly or indirectly
  - financed from state resources
  - imputable to the State
  - indirect cases – state owned or controlled companies / entities

# What is *(incompatible)* state aid?

(continued)

- favouring certain undertakings or the production of certain goods
  - only *undertakings* can get incompatible aid – wide concept based on economic activity
  - selectivity
- which distorts or threatens to distort competition
  - advantage – could not have been achieved under market terms
- in so far as it affects trade between Member States

# Hungary's own sport state aid case

SA.31722 - Hungary Supporting the Hungarian sport sector via tax benefit scheme

- Aim: channel additional funds to the sport sector (originally football, basketball, ice hockey, water polo, handball – later also volleyball)
- Undertakings can decide to dedicate part of their corporate tax to sport development – donation to specific sport clubs / associations for the purpose of investment in and renovation of tangible assets used for sport
  - the donation can be up to 70% of the yearly corporate tax payment of the donor undertaking
  - first aid element: the donation can be deducted from the tax base and also from the tax payable (double deduction)
  - second aid element: in case of the purchase of a sport site or land acquisition for sport infrastructure development, a transfer tax exemption applies

# Elements of state aid definition

- Aid elements: tax deduction, donation, tax exemption
- It is obviously financed by state resources
  - the tax deductions and exemptions reduces fiscal revenues
  - imputable to the State – tax measure, directly granted by the State
- The recipients are undertakings – pursuing economic activities
  - donors – undertakings that pay corporate tax
  - professional sport clubs / associations – pursue economic activities, and exploitation of sport facilities also have an economic nature
  - amateur clubs could also receive aid – however, they do not qualify as undertakings
- Advantage
  - obvious in case of sport clubs / investors: received donation and tax exemption
  - for donors: double deduction results in lower tax payable

# Elements of state aid definition

(continued)

- Selectivity
  - in case of donors: no selectivity – general measure, i.e., *no state aid*
  - in case of sport clubs: only selected sports and usually dedicated facility to a specific sport club
- Distortion of competition
  - benefit from the sport facilities that would not be available on market terms
- Effect on trade between Member States
  - professional sport clubs compete internationally - European tournaments
  - specific example of Hungarian ice hockey league: non-Hungarian clubs also participate in the Hungarian first division

# The Commission's conclusion

- The tax aid scheme is compatible with the internal market.
  - „Within the specific Hungarian context, State aid to the sport sector could provide a remedy for a well defined market failure, i.e., situations where individual market investors do not invest [even though this would be efficient from a wider economic perspective].”
  - Other elements: monitoring and safeguards
- EU competition law tolerates state aid because if it is a remedy for a market failure
  - reversed: if there is no market failure, there is no need for state aid – incompatibility
- If the State invests under market terms, just as a private investor, there is no state aid

# The market economy investor principle (MEIP)

## MEIP test

- Used when the State or a State owned / controlled company acts as a market player
  - investments – capital injections
  - loans or guarantees
  - sale or purchase of goods
  - acquisition of assets, leases
- Question: Would a comparable private, profit-oriented market economy operator, in a similar situation, have acted in the same way?
  - direct comparison – if the transaction involves a private investor, terms can be compared
  - comparison to similar transactions
  - projections and analysis based on market data – realistic assumptions, alternative scenarios



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**Thank you for your attention!**

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