

STATE AID

Greece



State Aid

Consulting editors

Ulrich Soltész

Gleiss Lutz

Quick reference guide containing side-by-side comparison of local insights into state aid, including national policies and track record; relevant national authorities and implementing legislation; national schemes and any specific rules on implementing the General Block Exemption Regulation; implications of public ownership; services of general economic interest; considerations for aid applicants and for competitors; private enforcement in national courts; state actions to recover incompatible aid; and recent trends.

Generated 09 May 2023

The information contained in this report is indicative only. Law Business Research is not responsible for any actions (or lack thereof) taken as a result of relying on or in any way using information contained in this report and in no event shall be liable for any damages resulting from reliance on or use of this information. © Copyright 2006 - 2023 Law Business Research

Table of contents

OVERVIEW

Policy and track record
Relevant authorities
General procedural and substantive framework
National legislation

PROGRAMMES

National schemes
General Block Exemption Regulation

PUBLIC OWNERSHIP AND SERVICES OF GENERAL ECONOMIC INTEREST (SGEI)

Public undertakings, public holdings in company capital and public-private partnerships
SGEI

CONSIDERATIONS FOR AID RECIPIENTS

Legal right to state aid
Main award criteria
Strategic considerations and best practice
Challenging refusal to grant aid
Involvement in EU investigation and notification process

STRATEGIC CONSIDERATIONS FOR COMPETITORS

Complaints about state aid
Dealing with illegal or incompatible aid
Other ways to counter illegal or incompatible aid

PRIVATE ENFORCEMENT IN NATIONAL COURTS

Relevant courts and standing
Available grounds
Defence of an action
Compliance with EU law
Referral by national courts to European Commission
Burden of proof
Deutsche Lufthansa scenario
Economic evidence

Time frame

Interim relief

Legal consequence of illegal aid

Damages

STATE ACTIONS TO RECOVER INCOMPATIBLE AID

Relevant legislation

Legal basis for recovery

Commission-instigated infringement procedures

Implementation of recovery

Article 108(3) TFEU

Defence against recovery order

Interim relief against recovery order

UPDATE AND TRENDS

Key developments of the past year

Contributors

Greece



Dimitris Vallindas
dvallindas@sheppardmullin.com
Sheppard Mullin Richter & Hampton LLP

SheppardMullin

OVERVIEW

Policy and track record

Outline your jurisdiction's state aid policy and track record of compliance and enforcement. What is the general attitude towards subsidies in your system?

According to the latest available data (2020), Greece granted on average more state aid in 2020 than other member states. In 2020, Greece granted state aid amounting to approximately 4.28 per cent of its GDP, compared to the EU27 average of approximately 2.39 per cent. In absolute amounts, this corresponded to approximately €7.1 billion, up from approximately €1.1 billion in 2019. This increase was mainly due to covid-related aid granted under articles 107(3)(b) and 107(2)(b) TFEU. Greece was the third-lowest provider of state aid to the railways in absolute amounts in 2020 (circa €50 million).

In 2020, the share of General Block Exemption Regulation measures in Greece was 4.9 per cent of the total, with the vast majority of the granted aid being covid-related notified aid (94.8 per cent).

In terms of objectives, 83.4 per cent of the state aid granted by Greece aimed at 'remedying a serious disturbance in the economy' (ie, covid-related aid). Of the remainder, 8.6 per cent related to environmental protection and 2.8 per cent concerned SMEs, including risk capital aid.

In terms of Greece's track record with the European Commission (the Commission), the latter has opened 12 formal investigation procedures in the past 10 years concerning Greece and has adopted six recovery decisions. These concerned a variety of sectors, such as manufacturing, air transport, mining, agriculture, the defence industry and casinos. The latest negative decision with recovery concerned the Sogia Ellas ao case, in which the Commission ordered Greece to recover the aid granted to various companies active in the agricultural sector in the form of interest subsidies and guarantees linked to the fires of 2007 (SA.39119).

Law stated - 28 February 2023

Relevant authorities

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

Law No. 4152/2013 established the Central State Aid Unit (CSAU), a directorate of the Ministry of Finance. The CSAU is the main Greek authority responsible for state aid matters. Its main competences and powers are:

- the notification of aid measures by Greece to the Commission;
- the role of national sole contact point for state aid issues with the Commission and with other European and international bodies;
- the monitoring of compliance of national measures with EU state aid rules and the processing of cases under examination by the Commission (it assists in preparing the responses to any issues raised by the Commission and controls the submission of all such responses);
- ensuring state aid recovery decisions are properly implemented; and
- the annual reporting obligation.

By virtue of its constituent law, the CSAU is not competent to liaise with private undertakings (whether a beneficiary or a third party); therefore, it has no investigatory or enforcement powers. In principle, a measure that may possibly contain state aid cannot be implemented without the prior consent of the CSAU.

The CSAU is assisted in its tasks by decentralised state aid units (DSAsUs). DSAsUs operate as offices within ministries and other bodies dealing with state aid issues. DSAsUs are in charge of identifying state aid measures in legislation and other administrative decisions and of approving those that do not require notification to the Commission, under the guidance of the CSAU. All other identified aid measures are forwarded to the CSAU.

In the case of disagreement between competent bodies regarding a specific state aid case or in the case of state aid with particular importance for the Greek economy, a special inter-ministerial committee for state aid, consisting of the Minister of Finance as chairman, the Minister of Foreign Affairs, the Minister of Development, Infrastructure and Transportation, any minister competent for the matter in question and a public servant working for the CSAU, will meet to discuss and resolve the issue.

Law No. 4152/2013 provides for the establishment of a Central Information System of State Aid (CISSA), which contains every Greek state aid measure approved by the Commission or granted in accordance with the De Minimis Regulation or any Block Exemption Regulation. The CISSA is monitored by the CSAU and connected to each DSAU. The CSAU also manages at national level the Transparency Award Module on which brief information regarding awarded state aid is uploaded. This contains information such as the beneficiary's name and amount and type of aid.

Law stated - 28 February 2023

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

The body primarily in charge of granting aid and receiving aid applications depends on the relevant national, regional and local competences and on the aid in question. The legal basis needed to grant aid depends on the origin of the aid.

Law stated - 28 February 2023

General procedural and substantive framework

Describe the general procedural and substantive framework.

There are no specific provisions regarding the application or enforcement of EU state aid rules with the exception of procedural rules for the recovery of aid that are described in article 22 of Law No. 4002/2011 and subparagraph B.10 of Law No. 4152/2013.

Pursuant to the above articles, the national authority competent for seeking the recovery of unlawful and incompatible state aid is that which supervises the activities of the beneficiary undertaking. In practice, the granting authority is informed by the CSAU and assisted by a DSAU. The first step in the recovery procedure is to send the beneficiary a copy of the decision ordering the recovery, inviting it to repay the aid within, in principle, 30 calendar days. If the beneficiary does not voluntarily repay the aid amount before the set deadline, the relevant information is sent to the competent tax authority to proceed with the collection pursuant to the Code of Collection of Public Revenue. Article 3(6) of the latter Code provides that aid to be recovered must be repaid as a lump sum. The amount to be recovered must be repaid to the competent tax authority to which the beneficiary submits its income declaration. In this context, the CSAU coordinates the actions of recovery and assists in identifying the beneficiaries, determining the amount of aid to be recovered and the relevant interest. In some instances, Greece adopted a specific law for the recovery of aid found incompatible by the European Commission: article 47 of Law No. 3614/2007 concerning the recovery ordered by the European Commission's decision in Case C37/2005 on a tax-exempt reserve fund for certain companies.

Law stated - 28 February 2023

National legislation

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

There are no specific provisions regarding the application or enforcement of EU state aid rules with the exception of procedural recovery rules. EU law is directly applicable and the Greek aid schemes refer explicitly to EU rules.

Law stated - 28 February 2023

PROGRAMMES

National schemes

What are the most significant national schemes in place governing the application and the granting of aid, that have been approved by the Commission or that qualify for block exemptions?

The main national schemes in place are the following (for more information on the aid granted under all schemes please see the Transparency Award Module developed by the European Commission and available online):

- SA.101520: modern manufacturing in Western Greece – Strengthening the size and competitiveness of manufacturing and other enterprises in the Western Greece region under the Operational Programme 'Western Greece 2014–2020';
- SA.59178: strengthening of SMEs in Western Greece;
- SA.56242: aid to R&D&I projects in RIS3 sectors;
- SA.106322: aid and incentives to the investment body Theracell Laboratories IKE for an investment qualifying as a strategic investment under law 4608/2019;
- SA.101934: working capital in the form of grants to companies continuously and severely affected by covid-19;
- SA.60064: Greek RES scheme 2021–2025;
- SA.63896: aid to newspapers and magazines, regional media service providers and radio stations;
- SA.63004: covid-19 aid to the audiovisual sector;
- SA.62835: capped business loan portfolio guarantees for new loans in the construction sector during the covid-19 outbreak;
- SA.63123: covid-19 support to the tourism sector;
- SA.62626: covid-19 subsidy to food service enterprises;
- SA.58867: wage subsidies to self-employed affected by the covid-19 outbreak;
- SA.48983: establishment and promotion of international institutions of contemporary culture in Attica;
- SA.46778: promotion of research and innovation, in the agri-food and tourism sectors;
- SA.49135: modern dance: theory and practice;
- SA.49043: cinephilia in contemporary times II;
- SA.49505: GNO Alternative Stage: Annual Festivals;
- SA.48143: auctions for renewable energy sources and combined heat and power support in Greece;
- SA.45002: aid to compensate for the damage caused by an adverse climatic event that can be assimilated into a natural disaster;
- SA.50988: support for the production of audiovisual works in Greece;
- SA.50649: fund for innovation and technology transfer;
- SA.50648: fund for seed and early-stage capital;
- SA.50223: 'New independent SMEs' of Development Law No. 4399/2016;
- SA.50130: 'General entrepreneurship' of Development Law No. 4399/2016;
- SA.50161: development of distribution networks and low-pressure gas;

- SA.48672: development of basic infrastructure and applications for the exploitation of geothermal energy in urban, rural and industrial areas;
- SA.48628: R&D&I action – ‘Research, create, innovate’;
- SA.48676: aid for investments concerning the processing of agricultural products into non-agricultural products or the production of cotton;
- SA.46443: research in the sectors of microelectronics and advanced materials;
- SA.38968: transitory electricity flexibility remuneration mechanism;
- SA.32060: public service obligations on non-interconnected Greek islands;
- SA.38630: compensation of indirect EU emissions trading system costs in Greece;
- SA.34405: Joint European Support for Sustainable Investment in City Areas Holding Fund Greece; and
- SA.34338: Joint European Resources for Micro to Medium Enterprises Early Stage ICT Venture Capital Fund and Seed/Technology Transfer ICT Fund Financial Instruments.

Law stated - 28 February 2023

General Block Exemption Regulation

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

Law No. 4399/2016 establishes the legal framework for the establishment of aid schemes aimed at supporting private investments for regional and economic development, subject to the provisions of the GBER. Greece has not adopted any other specific rules on the implementation of the GBER. That said, all public authorities publish the necessary information by feeding it into the Transparency Award Module developed by the European Commission and available online.

Law stated - 28 February 2023

PUBLIC OWNERSHIP AND SERVICES OF GENERAL ECONOMIC INTEREST (SGEI)

Public undertakings, public holdings in company capital and public-private partnerships

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

There have been several important state aid cases involving companies in which the Greek state has some participation.

In Case SA.34308, involving aid to Hellenic Defence Systems SA (HDS), the European Commission (the Commission) ordered Greece to recover up to €55 million of public support for civil activities of HDS (almost fully owned by the Greek state), which distorted competition in breach of EU state aid rules.

In Case SA.15526 the Commission requested Greece to recover more than €230 million of illegal state aid from Hellenic Shipyards SA (HSY – partly owned by the Greek state for some of the relevant period). Between 1996 and 2002, Greece implemented 16 separate aid measures for HSY, at a time when the yard was in difficulty. The Commission found that some of this aid was granted to HSY by the Greek state and the then state-owned bank ETVA in the form of loans, guarantees and capital injections without prior authorisation from the Commission and, in addition, was incompatible with state aid rules. The Commission also found that Greece and HSY had failed to respect conditions attached to the aid it had authorised in 1997 and in 2002. All of these measures benefited the civil commercial activities of HSY, giving it an unfair advantage over its competitors, and the aid therefore had to be recovered with interest from HSY. As the recovery was not implemented in time by Greece, the Commission referred the

case to the CJEU for the imposition of pecuniary sanctions on Greece (Case C-93/17). In its judgment of 14 November 2018, the court ordered Greece to pay a lump sum of €10 million and a periodic penalty payment of approximately €7.3 million for every six months of delay from the date of delivery of this judgment. For the court, on the date of the expiry of the period prescribed by the Commission in its letter of formal notice of 2014 (that is 27 January 2015), Greece had failed to fulfil its obligation to take all the measures necessary to comply with the judgment of 2012 in Case C-485/2010, and the failure to fulfil obligations persisted until the examination of the facts by the court in this case.

In Case SA.34572, the Commission concluded that Greek public support measures granted to Larco General Mining and Metallurgical Company SA (Larco) gave the company an undue advantage over its competitors, in breach of EU state aid rules. In total, the capital injections and public guarantees were worth €136 million. The Commission decided that Larco must pay back the amount with interest to mitigate the distortions of competition resulting from the incompatible aid. On 20 January 2022, the Court of Justice ordered Greece to make a lump sum payment of €5.5 million and periodic penalty payments of over €4 million for every six months' delay for failure to recover state aid granted to Larco (Case C-51/20). The Commission's decision dates back to 2014, and the court first declared that Greece had failed to fulfil its obligations in a judgment delivered in 2017. In setting the amounts of the financial penalties, the Court noted that there had been repeated infringements on the part of Greece in the field of state aid.

Law stated - 28 February 2023

SGEI

Are there any specific national rules on SGEI? Is the concept of SGEI well developed in your jurisdiction?

Article 7 of Law No. 4413/2016 provides that the state can define, through laws, regulations or administrative provisions, which services constitute SGEI, how they should be organised and financed in accordance with state aid rules and to which obligations they should be subject in accordance with the applicable legislation.

Other than the above reference, there is no general definition of SGEI. There are various references to this concept in various laws. For instance, article 3 of Law No. 4199/2013 provides that rural motor passenger transport constitutes an SGEI pursuant to article 14 TFEU. Likewise, article 3, paragraph 2, indent xviii of Presidential Decree 33/2007 provides that the Hellenic Natural Gas System Operator SA provides several services (such as security and environment protection services) that constitute SGEI.

Law stated - 28 February 2023

CONSIDERATIONS FOR AID RECIPIENTS

Legal right to state aid

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

In Greece, there is no general principle pursuant to which businesses have a legal right to obtain state aid. Once an aid measure has been approved, the authorities' discretion can be limited by the conditions that must be met for a company to be entitled to a specific aid measure. If these conditions are detailed and objective, then companies meeting them have, in principle, a legal right to obtain the aid in question, within the limits of the budget available for that measure.

Law stated - 28 February 2023

Main award criteria

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

Depending on the type of aid measure in question, the Greek authorities consider a wide-ranging set of criteria before making an award, including culture and heritage conservation, support for small and medium-sized enterprises (SMEs), regional development, job creation, and research, development and innovation.

Law stated - 28 February 2023

Strategic considerations and best practice

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

Aid for environmental protection and for regional and sectoral development are the most common types of aid in Greece, and aid in the railway sector is also significant. However, in 2020 everything was overshadowed by covid-related aid, which represented the vast majority of the aid granted by Greece (almost 95 per cent of total aid granted).

There are no specific best practices for successful aid applications, other than meeting the required conditions for the requested aid. Certain conditions are imposed directly by the EU – for example, having repaid any past incompatible aid.

Law stated - 28 February 2023

Challenging refusal to grant aid

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

The procedure for granting state aid is subject to the control of the judge who examines the legality of the refusal to grant aid. Depending on the legal basis on which the aid was requested, administrative or civil courts are competent to hear the case of unsuccessful applicants.

Administrative courts

In most cases, the Greek administrative courts are competent to hear state aid matters. According to article 1(4)(f) of Law No. 1406/1983, the administrative courts have jurisdiction regarding disputes that derive from the issuance of administrative acts that refer to the award of European or national aid, subsidies and similar benefits, as well as the administrative acts that impose a relevant measure or sanction. State aid cases are introduced before the Greek administrative courts of first instance.

However, where the aid is linked to a tax measure of an amount exceeding €150,000 or a contract awarded after a public procurement procedure, the case is introduced to the administrative court of appeals as the court of first instance.

Finally, in case the measure is part of an investment scheme, the Supreme Administrative Court is competent pursuant to article 110, paragraph 14 of Law No. 4055/2012.

Civil courts

If aid is granted via a contract between the beneficiary and an administrative body under the provisions of private law, then the civil courts are competent to examine the case.

Law stated - 28 February 2023

Involvement in EU investigation and notification process

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

All will depend on the nature of the aid measure and of the lead ministry in charge.

It must be noted that, formally, the procedure with the European Commission (the Commission) is strictly bilateral, the national authorities being in direct contact with the Directorate-General for Competition of the European Commission through Greece's Permanent Representation.

In the event of aid schemes, the aid beneficiaries are generally not involved, except through preliminary public consultations.

Concerning individual aid, the beneficiary is generally more closely involved, including in the drafting of the aid measures or the responses to questions by the Commission about specific measures being investigated. This is particularly the case in restructuring or rescue aid cases and within the framework of services of general economic interest measures.

In case of close involvement, the aid beneficiary usually has access to the entire file and can attend meetings between the national authorities and the Commission (the latter being decided on a case-by-case basis depending on the political situation).

Law stated - 28 February 2023

STRATEGIC CONSIDERATIONS FOR COMPETITORS

Complaints about state aid

To which national bodies should competitors address complaints about state aid? Do these bodies have enforcement powers, and do they cooperate with authorities in other member states?

In Greece, there is no specific entity for hearing complaints from competitors of a state aid beneficiary outside the competent courts. Only the courts are competent to efficiently hear competitor claims contesting the grant of state aid.

In particular, the Central State Aid Unit (CSAU) is not competent to receive complaints from private parties and has no investigatory or enforcement powers. But if any administrative authority receives a state aid complaint, the principle of good administration normally obliges it to inform the complainant that its complaint has been received and to forward it to a decentralised state aid unit (DSAU) or the CSAU. The latter will decide whether a notification to the European Commission (the Commission) is necessary.

Pursuant to the general rules of the Greek Code of Administrative Procedure, any person with a legitimate interest can request the review of an administrative act by the same body that issued the act or by its superior or supervising body. Regarding state aid issues in particular, in case of rejection of an application for aid in accordance with Law No. 4399/2016, the applicant should first file an objection against this decision before being able to challenge the rejection before the competent court.

Law stated - 28 February 2023

Dealing with illegal or incompatible aid

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

Information on all state aid expenditure is collected by DSAUs with a view to complying with the annual reporting exercise pursuant to Regulation (EC) No. 794/2004. It is then transmitted by the CSAU to the Commission for publication through the annual state aid scoreboard and on the Eurostat website.

In addition, Law No. 4152/2013 provided for the establishment of a Central Information System of State Aid.

Finally, for some measures, information is published in the Transparency Award Module developed by the Commission.

Law stated - 28 February 2023

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

Right of access to public documents is governed by Law No. 2690/1999 as well as various acts, depending on the level of the administration concerned. This law provides for an in-principle right to access, subject to IP rights, private and family life information or confidential information.

Further, Law No. 3448/2006 transposed Directive 2003/98/EC of the European Parliament and of the Council of 17 November 2003 on the reuse of public sector information.

In addition, parliamentary debates are published, which can provide useful information on certain aid measures.

Law stated - 28 February 2023

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

Many companies are obliged to publish their annual financial results, which can provide useful information on possible aid they may have received. The Greek business register is called the General Electronic Commercial Registry . It is governed by Law No. 3419/2005. It records all disclosures of business documents and information and is available online.

Law stated - 28 February 2023

Other ways to counter illegal or incompatible aid

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

In case of suspected unlawful or incompatible aid granted to an alleged aid beneficiary, competitors (or in fact any interested parties) have the right to raise these issues by virtue of any legal means or threaten to bring an action against such a measure at EU level (before the Commission) or national level (before national courts).

Law stated - 28 February 2023

PRIVATE ENFORCEMENT IN NATIONAL COURTS

Relevant courts and standing

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

The main principles are governed by EU state aid law directly. Against this EU state aid law background, any competent court will have to hear private complaints against the award of state aid (unlawful aid – that is, not notified to the European Commission (the Commission) or implemented before the latter's approval; unlawful and incompatible aid following a negative decision by the Commission; or misused aid – that is, not in compliance with the conditions and or commitments set in the Commission's decision).

There is no specific national rule describing in detail who has legal standing to bring an action against the award of state aid. The direct effect of article 107(1) TFEU (on the existence of aid) and of article 108(3) TFEU (on the notification and standstill obligations) allows affected parties such as competitors of the beneficiary to bring an action before the competent court. Under general administrative law, the most important element to be demonstrated is the causal link between the administrative act and the alleged damage.

Administrative courts

In most cases, the Greek administrative courts are competent to hear state aid matters. According to article 1(4)(f) of Law No. 1406/1983, the administrative courts have jurisdiction regarding disputes that derive from the issuance of administrative acts relating to the award of European or national aid, subsidies and similar benefits, as well as the administrative acts that impose a relevant measure or sanction. State aid cases are introduced before the Greek administrative courts of first instance.

However, where the aid is linked to a tax measure of an amount exceeding €150,000 or a contract awarded after a public procurement procedure, the case is introduced to the administrative court of appeals as the court of first instance.

Finally, if the measure is part of an investment scheme, the Supreme Administrative Court is competent pursuant to article 110, paragraph 14 of Law No. 4055/2012.

Decisions of the administrative courts of first instance can be appealed before the administrative courts of appeal where the total amount of the dispute exceeds €5,000, within 60 days of the date on which the decision of the court is served to the parties. An appeal does not have suspensory effect, but such suspension can be requested in case of risk of irreparable damage.

Decisions of administrative courts of appeal can be appealed solely on points of law before the Council of State, Greece's supreme administrative court.

Civil courts

If aid is granted via a contract between the beneficiary and an administrative body under the provisions of private law, then the civil courts are competent to examine the case. Judgments of civil courts can be appealed within 30 days if the party lives in Greece and 60 days if the party lives abroad or does not have a known residence. An appeal in principle suspends execution of the first-instance judgment, unless the judge has decided it is provisionally enforceable.

Law stated - 28 February 2023

Available grounds

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

There are several available grounds for bringing a private enforcement action, including article 108(3) TFEU directly, tort and contractual provisions.

Law stated - 28 February 2023

Defence of an action

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

Before administrative courts, it is the state (in the broad sense) that will defend the aid measure being challenged. Before civil courts, it could be either the state or the beneficiary, depending on how the applicant has formulated his or her application.

Law stated - 28 February 2023

Compliance with EU law

Have the national courts been petitioned to enforce compliance with EU state aid rules or the standstill obligation under article 108(3) TFEU? Does an action by a competitor have suspensory effect? What is the national courts' track record for enforcement?

Greek national courts have been petitioned to enforce compliance with state aid rules or the standstill obligation under article 108(3) TFEU, although such actions are still not very frequent. An action by a competitor does not automatically have suspensory effect, but the competitor can request the suspension or even the provisional recovery of the aid granted in violation of the standstill obligation.

Pursuant to article 202 of the Greek Code of Administrative Procedure, the applicant can request the suspension of the execution of the administrative act granting the aid. The suspensory effect of the decision expires with the issuance of the final judgment of the administrative court on the legality of the administrative act in question. Suspension can be granted if the measure would lead to irreparable damage for the applicant or if the main action for the annulment of the administrative measure is very likely to be accepted. The applicant bears the burden of proof. In any case, the suspension request is denied if the action for annulment is obviously unfounded or inadmissible (even if the damage is considered to be irreparable). The suspension request is also denied if the negative effects of such a suspension on the public or third-party interest exceed the benefit for the applicant.

Concerning specifically the recovery of aid found incompatible by a Commission decision, a specific process is provided for in article 202, paragraph 4 of the Greek Code of Administrative Procedure. According to this procedure, if the beneficiary wants to request the suspension of the act implementing such recovery, the following cumulative conditions must be satisfied (in line with the EU courts' case law – see Joined Cases C-143/88 and C-92/89, Zuckerfabrik Süderdithmarschen ao, and Case C-465/93, Atlanta ao):

- apart from the action before the national court, they must have filed an action for annulment before the General Court. Where such an action has not been filed, the national court must send a relevant preliminary question to the CJEU;

- there is serious doubt as to the validity of the Commission's decision or the national act implementing it; and
- the plaintiff demonstrates that the immediate execution of the act will cause the plaintiff irreparable damage.

Unfortunately, there seems to still be some confusion or reluctance to apply the direct effect of article 108(3). For instance, in its Decision A3016/2014, in which the applicants had raised the violation of article 108(3) TFEU, the Council of State rejected the argument on the basis that it was not competent to rule on the compatibility of the alleged aid. But this is a separate question, which indeed falls under the exclusive competence of the Commission, independent from the obligation to notify state aid measures and only implement them after their approval from the Commission. The Council of State should have assessed whether the measure constituted aid that had to be notified to the Commission, without examining its possible compatibility or incompatibility.

Law stated - 28 February 2023

Referral by national courts to European Commission

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?

Greek courts can directly apply article 29 of Regulation (EU) 2015/1589 providing for the amicus curiae conditions in state aid matters. There is no need for a specific national rule of procedure. Pursuant to this provision, Greek courts can ask the Commission:

- to transmit to them relevant information in its possession (whether a procedure is ongoing, whether a decision has been taken, data, statistics, etc); and
- for an opinion concerning the application of EU state aid rules (on all economic, factual or legal matters arising in the context of the national proceedings).

Although national courts can stay proceedings while waiting for the Commission's opinion, they remain under the obligation to protect individual rights under article 108(3) TFEU, which can include interim measures.

The Athens Court of First Instance requested the Commission's opinion in the Hellenic Shipyards case (SA.15526, Commission decision of 2 July 2008, confirmed by the General Court in Cases T-384/98, T-391/08 and by the CJEU in Case C-246/12 P), which the Commission provided on 29 July 2009.

The amicus curiae provisions also allow the Commission, where the coherent application of state aid rules so requires, acting on its own initiative, to submit written observations to Greek courts. The Commission may, with the permission of the court, also make oral observations and, to prepare its observations, it may request the court to transmit documents at its disposal.

The Commission submitted such observations to the Athens Administrative First Instance Court again concerning the Hellenic Shipyards case, but this time in the context of a request to suspend the acts implementing the Commission's decision ordering the recovery of the aid found incompatible.

The above possibilities are of course without prejudice to the possibility or obligation for the national court to ask the CJEU for a preliminary ruling regarding the interpretation or the validity of EU law in accordance with article 267 TFEU.

Greek courts have used the procedure under article 267 TFEU, although not very frequently: see for example Cases C-262/19 Agrotiki Trapeza Ellados ; C-690/13 Trapeza Eurobank Ergasias AE v Agrotiki Trapeza tis Ellados AE (ATE) and Pavlos Sidiropoulos ; C-134/91 Kerafina-Keramische v Greece ; and C-106/87 Asteris and Others v Greece and EEC .

Burden of proof

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

It is the claimant that bears the burden of proof under article 145 of the Greek Code of Administrative Procedure. Likewise, according to article 338 of the Civil Procedure Code, each party must prove the facts necessary to support its claim. The claimant must therefore establish the existence of the contested aid and produce evidence thereof.

Law stated - 28 February 2023

Deutsche Lufthansa scenario

Should a competitor bring state aid proceedings to a national court when the Commission is already investigating the case? Do the national courts fully comply with the Deutsche Lufthansa case law? What is the added value of such a 'second track', namely an additional court procedure next to the complaint at the Commission?

A competitor should bring state aid proceedings before a national court when the Commission is already investigating the case, as national courts have significant powers in state aid matters. While the Commission itself is competent to order the suspension of the provisional recovery of state aid granted in violation of the standstill obligation, national courts may be more willing to hear the competitor's case. That said, granting interim relief is subject to very strict legal requirements before national courts as well (see joined Cases C-143/88 and C-92/89, Zuckerfabrik Süderdithmarschen *ao*, and Case C-465/93, *Atlanta ao*).

In addition to the above added value, national courts are obliged to take into account the preliminary assessment of the Commission in its decision to open a formal investigation, pursuant to the CJEU's judgment in Case C-284/12, *Deutsche Lufthansa*. In this judgment, the CJEU found that:

'a national court hearing an application for the cessation of the implementation of that measure and the recovery of payments already made is required to adopt all the necessary measures with a view to drawing the appropriate conclusions from an infringement of the obligation to suspend the implementation of that measure. To that end, the national court may decide to suspend the implementation of the measure in question and order the recovery of payments already made. It may also decide to order provisional measures in order to safeguard both the interests of the parties concerned and the effectiveness of the European Commission's decision to initiate the formal examination procedure. Where the national court entertains doubts as to whether the measure at issue constitutes State aid within the meaning of Article 107(1) TFEU or as to the validity or interpretation of the decision to initiate the formal examination procedure, it may seek clarification from the European Commission and, in accordance with the second and third paragraphs of Article 267 TFEU, it may or must refer a question to the Court of Justice of the European Union for a preliminary ruling.'

While we are not aware of any specific example of this being applied by a national court, we would expect that to be the case if the situation were to arise.

Law stated - 28 February 2023

Economic evidence

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

As national courts are competent to assess whether a measure constitutes state aid under EU law, economic evidence can play an important role, in particular when ruling on whether the state acted as a private operator pursuant to the market economy investor principle.

Law stated - 28 February 2023

Time frame

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

The time frame for court proceedings is generally long in Greece, although requests for interim measures are faster.

Law stated - 28 February 2023

Interim relief

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

Concerning specifically the recovery of aid found incompatible by a Commission decision, a specific process is provided for in article 202, paragraph 4 of the Greek Code of Administrative Procedure. According to this procedure, if the beneficiary wants to request the suspension of the act implementing such recovery, the following cumulative conditions must be satisfied (in line with the EU courts' case law – see Joined Cases C-143/88 and C-92/89, Zuckerfabrik Süderdithmarschen ao , and Case C-465/93, Atlanta ao):

- apart from the action before the national court, they must have filed an action for annulment before the General Court. Where such an action has not been filed, the national court must send a relevant preliminary question to the CJEU;
- there is serious doubt as to the validity of the Commission's decision or the national act implementing it; and
- the plaintiff demonstrates that the immediate execution of the act will cause the plaintiff irreparable damage.

Unfortunately, there seems to still be some confusion or reluctance to apply the direct effect of article 108(3). For instance, in its Decision A3016/2014, in which the applicants had raised the violation of article 108(3) TFEU, the Council of State rejected the argument on the basis that it was not competent to rule on the compatibility of the alleged aid. But this is a separate question, which indeed falls under the exclusive competence of the Commission, independent of the obligation to notify state aid measures and only implement them after their approval from the Commission.

Law stated - 28 February 2023

Legal consequence of illegal aid

What are the legal consequences if a national court establishes the presence of illegal aid? What happens in case of (illegal) state guarantees?

National courts can only rule on the existence of aid and on whether it is unlawful (ie, whether it has been notified to and approved by the Commission). The assessment of the compatibility of an aid measure is an exclusive competence of the Commission.

The legal consequences of the presence of unlawful aid will depend on what the applicant has requested. The EU courts' case law imposes that the measures of the national courts must make it possible to restore the competitive situation existing prior to payment of the aid. The consequences could include suspension of the grant of the aid, provisional recovery of aid already granted or damages.

Pursuant to the judgment in Case C-275/10, *Residex*, while EU law does not impose specific consequences that the national courts must draw with regard to an infringement of article 108(3) TFEU, the measures of the national courts must make it possible to restore the competitive situation existing prior to payment of the aid. Therefore, it is for the national courts to determine whether cancellation of a guarantee may, given the specific circumstances of the dispute, be a more effective means of achieving that restoration than other means.

National courts can, therefore, cancel a state guarantee if they consider it constitutes unlawful aid. It is for the national court to decide whether there is any less onerous procedural measure to restore the competitive situation, such as increasing either the premium paid for the guarantee or the interest rate for the corresponding loan.

The legal council of the Greek state, within its competence to advise administrative authorities following the submission of a relevant question, in its Opinion 42/2014, clarified that in case the granting of a guarantee by state bodies for securing a loan violates article 108(3) TFEU, taking into account the direct effect of Treaty articles, this results in the automatic declaration of the loan contract as null and void, under the national rule of articles 174 and 180 of the Greek Civil Code. These articles provide that an agreement that violates the law is invalid and is considered as non-existent. Therefore, the declaration of the loan contract as null and void is automatic and there is no need for a national court to recognise and declare its invalidity.

Law stated - 28 February 2023

Damages

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? Can competitors claim damages from the state or the beneficiary? How do national courts calculate damages?

Damages claims by competitors, third parties or beneficiaries against the granting authority before the national courts

Damages can be sought from the Greek state for non-compliance with EU law in the following two ways.

First, under national liability law, the Greek state and its organs can also be held liable for fault or negligence under articles 104 to 106 of the Introductory Law to the Greek Civil Code. Before administrative courts, the general procedural rules are described in articles 71 to 78 of the Greek Code of Administrative Procedure.

It is necessary to prove a fault, the resulting damage and a causal link. These provisions can therefore be used to engage the state's responsibility (including the legislature and even the judiciary in certain circumstances) for adopting an act that breaches EU law.

Second, damages can also be sought from the Greek state under EU law liability principles directly, in line with the principles set out in CJEU cases (Joined Cases C-6/90 and C-9/90, *Francovich and Bonifaci*, and Joined Cases C-46/93 and C-48/93, *Brasserie du Pêcheur-Factortame III*). Under this case law, the liability of the state will be engaged where:

- the rule of law infringed is intended to confer rights on individuals;
- the breach is sufficiently serious; and
- there is a direct causal link between the breach of the obligation resting on the state and the damage sustained by the injured parties.

As regards the second condition, where the state has a large margin of discretion in implementing a policy, the CJEU has considered that its liability can only be engaged where it has manifestly and gravely disregarded the limits on its discretion. However, in the field of state aid, no margin of discretion is left to the member states on the application of article 108(3) TFEU. By definition, therefore, a violation of article 108(3) TFEU should always be regarded as a serious breach, likely to engage the state's liability within the meaning of the case law mentioned above.

Damages claims by the beneficiary (against the granting authority) before the national courts are based on the same principles. However, the damage for the beneficiary cannot be the recovery of the aid. This is not damage, only the logical consequence of the restoration of undistorted competition following the granting of unlawful aid. The damage must be inherently different in nature and in scope: the beneficiary should show specific damage (eg, that it would have invested its money differently in the absence of the annulled aid measure).

Damages claims by competitors or third parties against the beneficiary before the national courts

Under EU case law, the beneficiary, by claiming any benefit from the violation of article 108(3) TFEU, commits an act of unfair competition under national legislation (Case C-39/94, SFEI and others v La Poste and others). The competitor of such a beneficiary has the right to stop this act of unfair competition by having recourse to an efficient litigation procedure that leads to a definitive decision. In Greece, there is no specific national law providing explicitly for damages actions by a third party against the beneficiary of a state aid measure. Any person that considers it has suffered damages by any action of the aid beneficiary, which can be directly linked to the aid received, can claim compensation before the civil courts, under the general reparative provisions of article 914 of the Greek Civil Code, or, eventually, under the unjustified enrichment provisions, in particular article 904 of the Greek Civil Code, although the conditions of the latter would be very difficult to satisfy.

In both types of claims described above, damages are calculated according to methodologies similar to antitrust cases (loss of revenue, reduction of turnover, etc) but, as explained above, they cannot include the aid and interest to be recovered.

Law stated - 28 February 2023

STATE ACTIONS TO RECOVER INCOMPATIBLE AID

Relevant legislation

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

Procedural rules for the recovery of aid are described in article 22 of Law No. 4002/2011, subparagraph B.10 of Law No. 4152/2013 and article 3(6) of the Code of Collection of Public Revenue.

Pursuant to the above articles, the national authority competent for seeking the recovery of unlawful and incompatible state aid is that which supervises the activities of the beneficiary undertaking. In practice, the granting authority is informed by the Central State Aid Unit (CSAU) and assisted by a decentralised state aid unit. The first step in the recovery procedure is to send the beneficiary a copy of the decision ordering the recovery, inviting it to repay the aid

within, in principle, 30 calendar days. If the beneficiary does not voluntarily repay the aid amount before the set deadline, the relevant information is sent to the competent tax authority to proceed with the collection pursuant to the Code of Collection of Public Revenue. Article 3(6) of the latter Code provides that aid to be recovered must be repaid as a lump sum. The amount to be recovered must be repaid to the competent tax authority to which the beneficiary submits its income declaration. In this context, the CSAU coordinates the actions of recovery and assists in identifying the beneficiaries, determining the amount of aid to be recovered and the relevant interest.

Law stated - 28 February 2023

Legal basis for recovery

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

The legal basis for recovery is usually the decision of the European Commission (the Commission) declaring the aid unlawful and incompatible, and ordering its recovery by the state (a negative decision – even if in some cases Greece adopted a specific law to implement the Commission’s decision). Otherwise, the legal basis is article 108(3) TFEU in case of aid unlawfully granted where the Commission has not adopted any decision. In certain circumstances, the granting of aid is subject to compliance with certain conditions, especially in terms of investment, employment or environmental objectives. Non-compliance with those conditions could serve as a basis for the granting authority to demand the recovery of the aid.

Law stated - 28 February 2023

Commission-instigated infringement procedures

Has the Commission ever opened infringement procedures before the CJEU because of non-recovery of aid under article 108(2) TFEU?

When a member state does not comply with a state aid decision in due time, the Commission can refer it to the CJEU without initiating an infringement procedure under article 258 TFEU. This has been the case for Greece on several occasions; in particular, the following:

- Case C-51/20: failure to fulfil obligations under the CJEU’s judgment in Case C-481/16 (the Court ordered Greece to make a lump sum payment of €5.5 million and periodic penalty payments of over €4 million for every six months’ delay for failure to recover the state aid in question);
- Case C-11/20: failure to adopt within the prescribed period all the measures necessary to implement the Commission’s decision of 7 December 2011 in Case SA.28864; concerning compensation payments made by the Greek Agricultural Insurance Organisation in 2008 and 2009 or, in any event, by failing to inform the Commission; sufficiently – in accordance with article 4 of that decision – of the measures it has taken;
- Case C-93/17: failure to fulfil obligations under the CJEU’s judgment in Case C-485/10;
- Case C-481/16: failure to fulfil obligations under article 288 TFEU and Commission Decision 2014/539/UE of 27 March 2014 concerning aid granted by Greece to Larco General Mining and Metallurgical Company SA, by not adopting within the period prescribed the measures necessary to recover the unlawful and incompatible aid;
- Case C-363/16: failure to fulfil obligations under article 288 TFEU and Commission Decision 2012/541/EU of 22 February 2012 concerning aid granted by Greece to United Textiles SA, by not adopting within the period prescribed the measures necessary to recover the unlawful and incompatible aid;
- Case C-77/14: case removed from the register;
- Case C-60/14: case removed from the register after the annulment of Commission Decision 2011/716/EU of 24

May 2011 by the General Court in Case T-425/11 confirmed by the court in Case C-530/14 P;

- Case C-263/12: failure to fulfil obligations under Commission Decision C(2011) 1006 final of 23 February 2011 on the aid granted by Greece to Ellinikos Xrysos AE, by not adopting within the period prescribed the measures necessary to recover the unlawful and incompatible aid;
- Case C-485/10: failure to fulfil obligations under Commission Decision 2009/610/EC of 2 July 2008 on the aid granted by Greece to Hellenic Shipyards SA, by not adopting within the period prescribed the measures necessary to recover the unlawful and incompatible aid;
- Case C-369/07: failure to fulfil obligations by not complying with the court's judgment in Case C-415/03 on aid from Greece to Olympic Airways found incompatible with Commission Decision 2003/372/EC of 11 December 2002. This was the first time financial penalties were imposed for non-compliance with a Commission state aid decision;
- Case C-419/06: failure to fulfil obligations under Commission Decision of 14 September 2005 on the aid granted by Greece to Olympic Airways and Olympic Airlines, by not adopting within the period prescribed the measures necessary to recover the unlawful and incompatible aid; and
- Case C-415/03: failure to fulfil obligations under Commission Decision 2003/372/EC of 11 December 2002 on the aid granted by Greece to Olympic Airways, by not adopting within the period prescribed the measures necessary to recover the unlawful and incompatible aid.

Law stated - 28 February 2023

Implementation of recovery

How is recovery implemented?

The recovery procedure is put in motion by the relevant administration in the same way as the state would proceed to obtain the repayment of any other debt. When the aid beneficiary does not obey the order, the public authorities must go to court to enforce the recovery order.

If the beneficiary of the aid refuses to comply with the letter of formal notice, the relevant Greek authority can bring an action before the competent courts to obtain a judgment ordering the beneficiary to pay the debt.

Action for recovery

By the state

Greece adopted a specific law for the recovery of aid found incompatible by the Commission: article 47 of Law No. 3614/2007 concerning the recovery ordered by the Commission's decision in Case C37/2005 on a tax-exempt reserve fund for certain companies.

By competitors

We are not aware of any case where a competitor has sought to obtain the recovery of unlawful aid.

By beneficiaries

There have been few actions brought by beneficiaries opposing a recovery order. The most recent concerned the Hellenic Shipyards case; judgment of the Athens Administrative First-Instance Court No. 2735/2016 rejecting an application to suspend the recovery order; judgment of the Athens Administrative First-Instance Court No. 8240/2016

rejecting an application for suspension of the tax authorities' acts confirming the recovery amount as a debt of the company and requesting the payment of this debt; pending Case 5864/2016 before the Athens Administrative First-Instance Court on the application to set aside tax authorities' acts confirming the recovery amount as debt of the company and requesting payment of this debt; and pending Case 1981/2016 before the Athens Administrative First-Instance Court against the recovery order.

Law stated - 28 February 2023

Article 108(3) TFEU

Can a public body rely on article 108(3) TFEU?

In view of the primacy of EU law over national law, national courts are obliged to set aside the contractual provisions that constitute the contractual basis for grant of the aid. Therefore, a public body can rely on article 108(3) TFEU, even if this means that it is relying on its own fault to escape its contractual obligations, which seems contrary to the principle that no one can be heard to invoke his or her own turpitude.

The CJEU accepted this in Case C-505/14, Klausner Holz Niedersachsen, where the unlawfulness of aid contained within a contract was invoked to escape the execution of that contract. A final judgment from a national court had held that the contract in question remained in force. The CJEU found that EU state aid rules must prevail even over the res judicata principle. Consequently, the principle that no one can be heard to invoke his or her own turpitude must also be set aside in case of a violation of article 108(3) TFEU.

In addition, articles 174 and 180 of the Greek Civil Code provide that an agreement that violates the law is invalid and is considered as non-existent. Therefore, the declaration of a loan contract as null and void in case of violation of article 108(3) TFEU is automatic and there is no need for a national court to recognise and declare its invalidity.

Finally, the fact that a public body can rely on article 108(3) TFEU will not exonerate it from its potential liability for damages it may have caused by not complying with the EU notification and standstill obligations (we simply reiterate that the beneficiary's damage cannot include recovery of the aid plus interest).

Law stated - 28 February 2023

Defence against recovery order

On which grounds can a beneficiary defend itself against a recovery order? How may beneficiaries of aid challenge recovery actions by the state?

In Greece, the administrative act ordering recovery can be based directly on the negative Commission decision. The beneficiary of the aid can contest the recovery order by bringing an action for annulment before an administrative court. There have only been a few direct actions brought by beneficiaries of state aid against recovery orders.

Action contesting the validity of a Commission decision

National courts have no jurisdiction under EU law to assess the validity of acts of European institutions. Even though they might consider the Commission's negative decision to be illegal, a national court may not prevent the ensuing recovery procedure. Should they disagree with a Commission decision, the courts should refer a preliminary question as to its validity to the CJEU under article 267 TFEU.

Such requests (by the beneficiaries of aid or competitors of the beneficiaries) are, however, inadmissible if a direct challenge of the Commission decision before the General Court under article 263 TFEU would have been manifestly

admissible (Case C-355/95 P, TWD v Commission).

Other grounds

While the national courts' recovery obligation is not absolute, the EU courts' case law demonstrates that it is only in exceptional circumstances that the recovery of unlawful state aid will not be appropriate. The legal standard to be applied in this context is similar to that applicable under articles 16 and 17 of the Procedural Regulation. In other words, circumstances that did not stand in the way of a recovery order by the Commission cannot justify a national court refraining from ordering full recovery on the basis of the Commission's decision. The standard that the EU courts apply in this respect is very strict. In particular, the CJEU has consistently held that, in principle, a beneficiary of unlawful aid cannot plead legitimate expectations against a Commission recovery order. This is because a diligent businessperson would have been able to verify whether the aid received was notified.

In fact, the only exception that has been accepted by the EU courts is the absolute impossibility to implement the recovery decision. But this must, in principle, be argued by the member state before the Commission and eventually the EU courts. And even this concept has been interpreted in a very restrictive manner. For instance, one cannot plead requirements of national law, such as national prescription rules (Case C-24/95, Alcan) or the absence of a recovery title under national law (Case C-303/88, Italy v Commission). Moreover, the CJEU has consistently held that the obligation to recover is not affected by circumstances linked to the economic situation of the beneficiary. In other words, a company in financial difficulties does not constitute proof that recovery is impossible (Case C-52/84, Commission v Greece). For the CJEU, the only way to demonstrate an absolute impossibility of recovering the aid is to show the absence of any recoverable assets (Case C-52/84, Commission v Greece).

Law stated - 28 February 2023

Interim relief against recovery order

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

Interim relief is available to a beneficiary wanting to suspend a recovery order, under the following conditions set out by the EU courts and the applicable Greek legislation: prima facie case; urgency; and risk of irreparable damage. The conditions of liability of the state for having granted unlawful and incompatible aid are described below.

Damages can be sought from the Greek state for non-compliance with EU law in the following two ways.

First, under national liability law, the Greek state and its organs can also be held liable for fault or negligence under articles 104 to 106 of the Introductory Law to the Greek Civil Code. Before administrative courts, the general procedural rules are described in articles 71 to 78 of the Greek Code of Administrative Procedure.

It is necessary to prove a fault, the resulting damage and a causal link. These provisions can therefore be used to engage the state's responsibility (including the legislature and even the judiciary in certain circumstances) for adopting an act that breaches EU law.

Second, damages can also be sought from the Greek state under EU law liability principles directly, in line with the principles set out in CJEU cases (Joined Cases C-6/90 and C-9/90, Francovich and Bonifaci , and Joined Cases C-46/93 and C-48/93, Brasserie du Pêcheur-Factortame III). Under this case law, the liability of the state will be engaged where:

- the rule of law infringed is intended to confer rights on individuals;
- the breach is sufficiently serious; and

- there is a direct causal link between the breach of the obligation resting on the state and the damage sustained by the injured parties.

As regards the second condition, where the state has a large margin of discretion in implementing a policy, the CJEU has considered that its liability can only be engaged where it has manifestly and gravely disregarded the limits on its discretion. However, in the field of state aid, no margin of discretion is left to the member states on the application of article 108(3) TFEU. By definition, therefore, a violation of article 108(3) TFEU should always be regarded as a serious breach, likely to engage the state's liability within the meaning of the case law mentioned above.

Damages claims by the beneficiary (against the granting authority) before the national courts are based on the same principles. However, the damage for the beneficiary cannot be the recovery of the aid. This is not damage, only the logical consequence of the restoration of undistorted competition following the granting of unlawful aid. The damage must be inherently different in nature and in scope: the beneficiary should show specific damage (eg, that it would have invested its money differently in the absence of the annulled aid measure).

Law stated - 28 February 2023

UPDATE AND TRENDS







Key developments of the past year

Are there any emerging trends or hot topics relating to state aid control in your jurisdiction? What are the priorities of the national authorities? Are there any current proposals to change the legislation? Are there any recent important cases in the field of fiscal aid (taxes), infrastructure, or energy? Any sector enquiries?

No updates at this time.

Law stated - 28 February 2023

Jurisdictions

	Belgium	Sheppard Mullin Richter & Hampton LLP
	Germany	Gleiss Lutz
	Greece	Sheppard Mullin Richter & Hampton LLP
	Malta	GVZH Advocates
	Netherlands	Pels Rijcken
	United Kingdom	Willkie Farr & Gallagher LLP