

Hana Marková

Charles University in Prague, Czech Republic

markova@prf.cuni.cz

ORCID: 0000-0002-0204-4571

Marian Horváth

Danubius University in Sládkovičovo, Slovakia

marian.horvath@vsdanubius.sk

ORCID: 0000-0003-2792-2219

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Possibilities and Limits of Legal Instruments in the Field of State Support under the Current Conditions of the Czech Republic and Slovakia

Introduction

In recent years, many if not all spheres of life have been affected by the economic crisis that has gradually emerged as a result of the previous financial turmoil, and this has certainly been intensified by the COVID-19 epidemic. Last but not least, the deterioration of security has also contributed negatively to the current situation, with harsh economic consequences, especially in terms of security, stability and predictability in the energy sector.

Given the current state of play, demands for strengthening timely, effective support from public funds have inevitably increased. It is safe to say that without the support of public finances, the vast majority of small and medium-sized enterprises would not have been able to cope with the escalating economic crisis. There definitely would have been problems in the stability and functioning of large companies, which, in the long run, would have been reflected in emerging, deepening of problems in multinational companies. The need to strengthen the functioning of the economy is therefore a prerequisite to preserving society as we know it. The daunting economic situation of recent years is ultimately reflected in a poorer quality of life which affects everyone in some way, for example through the decreased availability of goods and services, inflation, the increased threat of widespread energy poverty from rising energy prices, and, not least of all, security risks.

The COVID-19 pandemic stunned the world not only from health and economic points of view, but the situation also surprised legislators from a legal point of view. At a time when it was necessary to deal with the situation on a society-wide basis and thus to take extraordinary legal steps to stabilise and manage the situation, government measures were adopted in both the Czech Republic and Slovakia on the basis of which forms of direct and indirect support from public finances were regulated.

The initial measures and decrees mainly concerned the modification of the form and manner of restricting rights and legally protected freedoms to prevent the spread

of disease, to ensure the availability of health-care, and to ensure the operation of essential sectors. Subsequently, measures to mitigate the impact of the crisis which gradually manifested itself in all sectors of the functioning of the state and society also came into play.

As a result of the restrictions on the freedom of association, both countries (but with different applications) temporarily froze or restricted the functioning of sectors such as tourism, trade and services, in a broad sense, industry, agriculture and many other sectors. The major economic impact of revenue shortfalls, disruptions in the supply of goods and restrictions on the performance of work was experienced by almost all companies, whether large or small, self-employed and, last but not least, by individuals.

The constraints caused by the COVID-19 crisis caused a chain reaction globally, to which, of course, public officials reacted.

The primary goal of this paper is to define the existing forms of state support that are currently applicable in the Czech Republic and Slovakia. The authors provide insight into the possibilities of receiving state support resulting from membership in the European Union, as well as an overview of national systems of subsidies, state guarantees, investment support and various tax relief that is available in the Czech Republic and Slovakia. The comparison of the method of application of the state support system in the Czech Republic and Slovakia aims to provide a theoretical perspective on relevant legal instruments and to underline their limitations.

In order to achieve these goals, standard scholarly methods were used especially description, analysis and synthesis. The sources used were the literature on financial law, internet sources and relevant legal regulations.

State Support from EU Funds

In this situation, membership in the European Union (EU) brought a number of economic benefits to both the Czech Republic and Slovakia, especially in terms of the possibility to benefit from European funds.¹

"In order to organize funding efficiently, the EU budget is divided into headings (spending categories) and programmes that support groups in different EU policy areas. In principle, each individual programme supports a different policy area and group of recipients, but there are also some transversal priority areas that may receive funding from several programmes. The programming period 2021 to 2027 covers the following headings:

- Single market, innovation and digitisation;
- Migration and border management;
- Natural resources and the environment;

¹ See further H. Marková, R. Boháč, *Rozpočtové právo*, 1. ed., Praha 2007, p. 98; M. Karfíková *et al.*, *Teorie finančního práva a finanční vědy*, Praha 2018, p. 131.

- Security and defence;
- Neighbourhood and the world;
- European public administration.”²

The EU’s long-term goals and visions are implemented through European Structural Funds. The disbursement of these funds is based on the principles set out in the Partnership Agreement.³ Based on this agreement, the national operational programme of a particular Member State (New Czechia, Modern Czechia, Slovakia Programme) is drawn up and approved. The operational programme identifies the objectives and priorities of each Member State, based on which national strategies, action plans or other documents are drawn up and through which the calls themselves are implemented. The individual recipients apply for the possibility to benefit from subsidies based on these calls. Some of the calls are addressed to natural persons as individuals (e.g. grants related to the renovation of houses), while others are addressed to companies carrying out certain types of activities only (depending on the part of the earmarked grants and the objective to be pursued by the use of the funds).

However, the EU also has mechanisms and capacities to respond to emergencies that require redirecting funds to meet emerging EU needs and objectives. These mechanisms were activated, for example, in the response to the COVID-19 pandemic and to deal with the energy crisis.

In response to the COVID-19 pandemic that affected Europe and the world, the EU allocated a stimulus package of EUR 2.018 trillion, made up of funds from the EU’s long-term budget for 2021–2027, an increase through the NextGenerationEU programme and the Temporary Recovery Facility. This funding was intended to help overcome the economic and social damage caused by the pandemic and the transition towards a modern, sustainable, resilient Europe. The EU’s long-term budget (seven years), which sets limits on EU expenses to provide the finance needed to meet policy priorities such as digitisation and the Green Deal, also provides room for flexibility, allowing the EU to respond to unforeseen circumstances. This can help boost investment in EU regions, offer support to farmers, businesses, researchers, students and citizens, as well as neighbouring countries.⁴

The NextGenerationEU programme with EUR 806.9 billion is designed to help rectify the immediate economic and social damage caused by the pandemic and prepare the market for the future. The aim is to create a European Union which is greener, more digital, more resilient and fit for current and forthcoming challenges. The focal point

² *The EU’s 2021–2027 long-term budget and NextGenerationEU*, p. 15, <https://op.europa.eu/sk/publication-detail/-/publication/d3e77637-a963-11eb-9585-01aa75ed71a1/language-sk> [accessed: 2023.03.02].

³ Basically, it is a document drawn up by the Member State together with its partners, in accordance with a multi-level governance approach, setting out the Member State’s strategy, priorities and conditions for using the ESIF in an efficient and effective manner in order to deliver the Union’s strategy for smart, sustainable and inclusive growth, and endorsed by the Commission after evaluation and dialogue with the Member State concerned.

⁴ *The EU’s 2021–2027 long-term budget...*

is the facility for providing grants and loans to support reforms and investment in EU Member States for a total of EUR 723.8 billion.⁵

Based on these basic documents and visions, each Member State has drawn up its specific plan for the use of the funds in question, from which the various options for drawing on funding support for specific projects are then derived. The plan submitted by the Czech Republic, called the National Recovery Plan, was approved in September 2021. The plan submitted by Slovakia, called the Recovery Plan, was approved in July 2021.

The recovery plans in question are based on priorities set by the EU (see above) and the visions and priorities in question are detailed in specific thematic clusters, or components, which inevitably included reforms and investments with precise allocation and timetables for funding. These components are further specified and broken down into specific milestones and targets against which they can be monitored and evaluated.

The National Recovery Plan of the Czech Republic set out the following priorities:

- digital transformation;
- physical infrastructure and green transition;
- education and labour market;
- institutions and regulation and business support in response to COVID-19;
- research, development and innovations;
- public health and resilience.

The National Recovery Plan contains six key areas which are implemented in 26 components. In total, the Czech Republic can draw EUR 7,035.7 million (CZK 179.1 billion) under this programme.⁶

The Recovery Plan approved by Slovakia specifies the following priorities:

- quality education;
- science, research and innovations;
- efficient public administration and digitisation;
- better health.

The thematic headings are subsequently subdivided into eighteen components, whereby a total of EUR 6.575 million could be drawn under this approved Recovery Plan.⁷

Interestingly, there are also programmes specifically targeted at certain territorial areas and their specificities. They include national cooperation programmes (e.g. the Central Europe 2021–2027 Interreg Programme or the Danube Transnational Programme 2021–2027), interregional cooperation (e.g. the ESPON Programme (2021–2027)) or cross-border cooperation. “We would like to note the Interreg Slovakia-Czech Republic Cross-border Cooperation Programme for the period 2021–2027. The pro-

⁵ *Ibid.*, p. 8.

⁶ *Národní plán obnovy*, 2021, <https://www.planobnovy.cz/pilire-a-komponenty> [accessed: 2023.03.03].

⁷ *Kompletný plán obnovy*, 2021, <https://www.planobnovy.sk/kompletny-plan-obnovy/> [accessed: 2023.03.03].

grammes budget from the European Regional Development Fund (ERDF) amounts almost to EUR 85.5 million. Depending on the recipient type, the projects will be supported up to 92% of the budget, with a maximum of 80% from ERDF support. The programme is under the umbrella of the managing authority, the Ministry of Investment, Regional Development and Informatisation of the Slovak Republic and the national authority – the Ministry for Local Development of the Czech Republic.⁸ The Czech Republic cooperates similarly with Poland, Austria, Bavaria, Saxony; the Slovak Republic has similar cross-border programmes with Austria, Hungary, Poland and the Interreg VI-A NEXT – Hungary – Slovakia – Romania – Ukraine multi-country programme.

At this point, it is also worth mentioning a programme that has been approved from the current budget period (the EU's long-term budget), namely the Fit for 55 package approved in December 2022. It is a set of proposals for review and update of the EU legislation and the introduction of new initiatives to ensure that EU policies are in line with the climate targets agreed to by the Council and the European Parliament.⁹ The climate targets are implemented under the European Green Deal which aims to commit EU countries to the achievement of the climate neutrality by 2050 and to meeting their commitments under the Paris Agreement. European green deal is the EU's strategy for reaching the objective by 2050.¹⁰

Similarly to the its response to the COVID-19 emergency, the EU has also taken measures to mitigate and overcome the energy crisis. Europe's heavy dependence on Russian imports of strategic energy raw materials (such as crude oil and natural gas) and the consequent significant disruption of the security and reliability of the supplies in recent years have had a significant impact on the energy crisis and deepening it. These price increases have inevitably been reflected in raising overall production and operating costs for companies, not only in industry and agriculture sectors but transversally and in end-use energy prices as well. The European response to rising energy prices, together with the threat to energy security and the stability of the supply of energy raw materials coming from Russia, was the introduction of the REPowerEU plan¹¹ in 2022. The aim of this plan is to cut Russian gas supplies by 2030 by promoting an increase in the share of renewable energy sources and the substitution of fossil fuels, increasing energy efficiency and, not least, by reducing energy consumption and diversifying suppliers of strategic raw materials.

In line with these objectives and ideas, the options and forms of funding and support are set to overcome the energy crisis in the coming years. Member States can

⁸ *Cross-border Cooperation Programme Interreg Slovakia-Czech Republic 2021–2027*, 2022, <https://www.eurofondy.gov.sk/operacne-programy/programy-cezhranicnej-spoluprace-interreg/program-cezhranicnej-spoluprace-interreg-slovensko-cesko-2021-2027/index.html> [accessed: 2023.03.03].

⁹ *Fit for 55*, 2022, <https://www.consilium.europa.eu/en/policies/green-deal/fit-for-55-the-eu-plan-for-a-green-transition/> [accessed: 2023.03.10].

¹⁰ *European Green Deal*, 2022, <https://www.consilium.europa.eu/en/policies/green-deal/> [accessed: 2023.03.10].

¹¹ *REPowerEU plan: affordable, secure and sustainable energy for Europe*, 2022, https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/european-green-deal/repowereu-affordable-secure-and-sustainable-energy-europe_sk [accessed: 2023.03.02].

use the remaining loans from the Recovery and Resilience Facility (currently EUR 225 billion) and new grants under the Facility, financed by auctioning emission allowances under the Emissions Trading Scheme, which are in the Market Stabilisation Reserve and are currently EUR 20 billion.¹²

At the same time, there are several other adjacent programmes from which EU subsidies can be drawn. It is possible to draw subsidies from some of the transversal programmes in combination, but it is essential to ensure that there is no overlap among individual programmes or duplication of subsidies. Furthermore, it is essential that the limits on state aid are respected and any exemptions in this area are applied equally across the EU. For this purpose, both the Czech Republic and the Slovakia have established national inspection services to carry out the tasks entrusted to them and to provide assistance to the European Anti-Fraud Office (OLAF – *Office européen de lutte antifraude*).¹³

In this section we focus on the outline of the EU subsidy system. The principles and rules set out at this level are central for determining the possibilities and limits of legal instruments in the field of EU-directed state support. European legislation does not apply to subsidies from EU funds only but the principles of state aid also apply to other forms of state aid from Czech and Slovak national sources.

Limits of Legal Instruments for National Public Support

The basic limits for the provision of public/state support in the Czech Republic and Slovakia are set by European legal acts. The European legal acts set out the main criteria and basic principles for state aid, ensuring that state aid does not unduly interfere with competition or the functioning of the EU's single internal market. Individual countries subsequently adopt national state aid legislation within defined frameworks.¹⁴

The main reason why state support is also limited by the EU is that a company receiving government support gains an advantage¹⁵ against its competitors. As a gen-

¹² *Ibid.*

¹³ European Anti-Fraud Office, 2023, https://anti-fraud.ec.europa.eu/index_sk [accessed: 2023.03.11].

¹⁴ For example: act 215/2004 Coll. of laws on the regulation of certain relations in the field of state support and on the amendment of the act on support for research and development, as amended; act 117/1995 Coll. of laws on state social support, as amended; act 211/2000 Coll. of laws on the State Investment Support Fund, as amended; act 358/2015 Coll. of laws on the regulation of certain relations in the field of state aid and minimal aid and on the amendment and supplementation of certain acts (State aid act); act 57/2018 Coll. of laws on regional investment support as amended and supplemented by certain acts, act 368/2021 Coll. of laws on the recovery and resilience support mechanism and on amendments to certain acts; act 292/2014 Coll. of laws on the contribution from the European structural and investment funds and on amendments to certain acts (for the 2014–2020 programming period), act 121/2022 Coll. on the contributions from the European Union funds and on the amendment and supplementation of certain acts (for the programming period 2021–2027) and others.

¹⁵ According to point 66 of the Commission Notice on the concept of State aid referred to in Article 107(1) of the Treaty on the Functioning of the EU (2016/C 262/01), an advantage is any econom-

eral rule, state aid is prohibited. Where state aid is granted in a manner incompatible with the internal market, both the provider and the beneficiary are exposed to the risk of having to reimburse this aid, with the recipient repaying aid including interest.

Pursuant to Article 107(1) of the Treaty on the Functioning of the European Union (TFEU), unless otherwise provided by the Treaties, an aid granted by a Member State or from state funds in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market.¹⁶

An exception to the prohibition of state aid is the granting of state aid which is justified on grounds of general economic development, support of a social character, aid in connection with natural disasters or exceptional occurrences, and state aid to promote culture, preserve cultural heritage, promote the economic development of less-developed regions and to promote the common European interest, etc.

“The scope of benefits which constitute State aid is clarified, *inter alia*, by the Communication from the European Commission on the concept of State aid referred to in Article 107(1) TFEU (2016/C 262/01), according to which State aid may be, in particular:

- Direct provision of funds: subsidies, grants, loans, guarantees, direct investment in the capital of companies, or benefits in kind;
- Foregoing revenue that would otherwise have been paid to the State¹⁷ (e.g. tax and social security receipts as a result of government tax exemptions or reductions, or exemptions from or reductions in social security contributions, or exemptions from the obligation to pay fines or other pecuniary penalties);
- Clear and specific commitment to provide state funds later;
- The provision of goods or services at below-market prices;
- Granting access to public property or natural resources or granting special or exclusive rights without reasonable remuneration in accordance with market prices;
- Exemption from costs necessarily connected with the economic activity of the undertaking (any reduction in charges; reimbursement of a part of the undertaking’s staff costs relieving the undertaking of costs necessarily connected with its economic activity).¹⁸

ic advantage which an undertaking would not be able to obtain under normal market conditions, i.e. without State intervention.

¹⁶ Consolidated version of the Treaty on European Union and the Treaty on the Functioning of the European Union, Treaty on European Union (Consolidated version), Treaty on the Functioning of the European Union (Consolidated version) Protocols to the Annexes to the Treaty on the Functioning of the European Union Declarations annexed to the Final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon, signed on 13 December 2007 Correlation tables, 2016, <https://eur-lex.europa.eu/legal-content/SK/TXT/?uri=CELEX%3A12016ME%2FTXT&qid=1678256407087> [accessed: 2023.03.08].

¹⁷ Judgement of the Court of 16 May 2000, *France v Ladbroke Racing Ltd and Commission*, C-83/98 P, ECLI:EU:C:2000:248, paragraphs 48–51.

¹⁸ Commission Notice on the notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union (C/2016/2946), 2016, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2016.262.01.0001.01.ENG&toc=OJ:C:2016:262:TOC [accessed: 2023.03.08].

Based also on the aforementioned, we can say that the concept of public/state support can include a number of individual as well as areas/blocks and financial or non-financial state measures. In this way, the state can take into account, for example, the specific situation of an economic sector (e.g. compensation for adverse weather in agriculture) or exceptional events caused by natural or ecological disasters. Furthermore, the state may take into account the need to provide direct/indirect state support to a certain group of undertakings or, in specific cases, to individual companies (e.g. those which are in a certain sense of strategic importance for the state).

Moreover, direct and indirect state support can be used in the same way as in the cases of the COVID-19 pandemic or the energy crisis. This use of state aid took into account the exceptional situation which concerned all entities operating in the state's market economy, as well as individuals. As the globalised world is at greater risk of similar pandemics and recurrent outbreaks, it is not excluded that similar measures will also be used in the future. State support measures related to the energy economic crisis are also now being implemented. In the following section we will therefore take a closer look at some selected instruments of state aid introduced by the Czech Republic and Slovakia in this context.

De Minimis State Aid

In the context of the prohibition of state aid, it is also worth mentioning small-scale state aid, referred to as *de minimis* aid, the specification of which can be found in Commission Regulation 1407/2013 on the application of Articles 107 and 108 TFEU to *de minimis* aid.¹⁹

Given the limited amount and the conditions for granting this aid (EUR 200 000 per single undertaking over three years), it does not distort competition and is therefore not considered state aid. Unlike other types of state aid, this aid may also be granted as aid of an investment nature.²⁰

Temporary Framework of State Aid

In response to the COVID-19 pandemic emergency, the EU adopted a temporary state aid framework in March 2020 to take full advantage of the flexibility of state aid legislation (authorised state aid) to support the economy. This temporary framework was based on Article 107(3)(b) TFEU and complemented other options available to Mem-

¹⁹ Commission Regulation No 1407/2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid, 2023, <https://eur-lex.europa.eu/legal-content/SK/TXT/PDF/?uri=CELEX:32013R1407&from=SK> [accessed: 2023.03.11].

²⁰ *State support*, 2021, <https://www.uohs.cz/cs/verejna-podpora/podpora-de-minimis-a-registr-de-minimis.html> [accessed: 2023.03.06].

ber States to mitigate the social and economic impact of the COVID-19 pandemic in accordance with EU state aid rules (in particular the possibility under Article 107(2)(b) TFEU to compensate specific companies or sectors for damage directly caused by emergencies such as the COVID-19 pandemic). The temporary framework was in place until the end of June 2022 (with a number of targeted adjustments).²¹

Financial Contributions and Compensations Aimed at Maintaining Employment

The COVID-19 pandemic itself, as well as the extraordinary temporary restrictions on the rights and freedoms of society in order to control the spread of the disease also had serious economic consequences in both the Czech Republic and Slovakia. In order to support the sectors of the economy, employers, tradespeople and employees most affected by the pandemic and the constraints of COVID-19, both direct and indirect support was provided to companies as well as individuals from public funds between 2020 and 2021 (with an extended drawdown until 2022). In both countries the adopted measures had time limitations taking into account the evolution of the COVID-19 pandemic.

For example the Czech Republic implemented the measures in the packages named: Program Antivirus, Antivirus A,²² Antivirus B²³ and in Slovakia similar measures were called: *Prvá sociálna pomoc* (The First Social Assistance) and *Druhá sociálna pomoc* (The Second Social Assistance)²⁴ or *Kurzarbeit*.²⁵ The measures in question were implemented mainly in the form of allowances and compensations granted to em-

²¹ Coronavirus Outbreak – List of Member State Measures approved under Articles 107(2)(b), 107(3)(b) and 107(3)(c) TFEU and under the State Aid Temporary Framework, 2016, https://competition-policy.ec.europa.eu/system/files/2023-02/State_aid_decisions_TF_and_107_2b_107_3b_107_3c.pdf [accessed: 2023.03.08].

²² Compensation amounted to 80% of the salary paid, including insurance premiums, with a maximum amount per employee of EUR 1,659.01/CZK 59,000.

²³ Compensation worth 60% of the costs which consisted of the salary reimbursement paid to the employee and the corresponding amount of the statutory contributions - with a maximum value of EUR 1,233.62/CZK 39,000.

²⁴ Compensation to employers: a contribution to an employee's wages in the amount of 80% of their average earnings (up to a maximum of EUR 1,100), or to self-employed persons who were forced to close their enterprises pursuant to decisions of the Public Health Office, or a contribution to compensate for the loss of income from self-employment (in case of a drop in sales of at least 20%).

²⁵ Under *Kurzarbeit*, the form of public aid was basically set up for two possibilities of drawing contributions, either in the form of reimbursement of wages up to a maximum of 80% in the event of an impediment on the part of the employer (whereby the company does not have to prove a drop in sales); or in the form of proving a drop in sales, on the basis of which the company will receive the relevant amount for employee wages up to a maximum of EUR 540 per month. The method of determining the decrease in net turnover and income from business was regulated by government decree 76/2020 Coll. of laws on the method of determining the decrease in net turnover and income from business and other self-employment activities.

ployers whose employees were in ordered quarantine or isolation or did not work due to obstacles on the employer's side.

The form of application of state aid from the aforementioned packages was basically set up in the Czech Republic and Slovakia in such a way that recipients of aid (employer or self-employed person) submitted an application for the provision of the specified compensation and on the basis of this application the financial contribution was paid to them. Both countries set out the conditions for recipients which had to be met in order to qualify for the compensation allowance.

The Czech Republic provided allowances "on the basis of an agreement concluded between the recipient and the Czech Labour Office (or through an application in which they filled in the relevant application form), and the funds were provided on the basis of an account processed by the employer after the end of the calendar month in which the wages and statutory contributions in question were paid by the employer. Only those employers were entitled who strictly comply with the Labour Code; who have paid the wages and contributions in question; they (the employers) may claim compensation for only employees who are not on notice/no notice is given to them, who are employees and are covered by sickness and pension insurance."²⁶ Similar conditions for recipients were set in Slovakia.

As part of the above-mentioned packages of measures, Slovakia modified, inter alia, the conditions for providing public support in the form of sickness and nursing benefits to parents for all days during the closure of schools and pre-schools, which was also a form of a direct state aid, this time to employees, who were compensated in some way for the loss of income.

An indirect state support related to the situation caused by the COVID-19 pandemic was implemented, for example, in the form of the deferral of levies (in Slovakia, employers and self-employed persons were allowed to defer paying levies to health and social security insurance companies for March 2020), postponing of tax return submission (implemented by both the Czech Republic and Slovakia in the form of not charging the default interest on the late submission of tax returns or penalties for the late submission of tax returns), but also by deferring payment of value added tax (allowed by the Czech Republic for 12/2020, 01/2021 to 03/2021, for the fourth quarter of 2020 and the first quarter of 2021). As for other forms of direct and indirect state support included the possibility of tax payment in instalments, the remission of administrative fees and many other measures.

Bank Guarantees and Loan Moratoriums

Both Slovakia and the Czech Republic took measures in the monetary area concerning credit moratoriums and state bank guarantees. One of the measures taken by the

²⁶ *Antivirus – employment protection – employment support*, 2021, <https://www.mpsv.cz/antivirus> [accessed: 2023.03.06].

Czech government to combat the COVID-19 pandemic was the adoption of a credit moratorium for persons unable to repay their debts by Act 177/2020 Coll. of laws on certain measures in the field of repayment of loans in connection with the COVID-19 pandemic. It was possible to postpone loan instalments for three or six months. Slovakia adopted Act 67/2020 Coll. of laws on certain extraordinary measures in the financial sector in connection with the spread of the dangerous contagious human disease COVID-19, which allowed bank customers to apply once for a deferment of loan repayments for nine months maximum.

In the Czech Republic state bank guarantees were provided to loans with a maximum amount of CZK 50 million for the purposes of financing company operation. In the case of companies with 250 to 500 employees, the guarantee was 80%, in case of fewer employees the Czech-Moravian Guarantee and Development Bank guaranteed 90% of the loan volume. On the other hand, in Slovakia, guarantees were provided for loans worth between EUR 2 million and EUR 50 million. These are significantly higher volumes than in the Czech Republic. At the same time, the purpose was not only to finance operations but also investment activities. As in the Czech Republic, the level of the guarantee was 80% of the loan amount.

Energy Crisis

In response to the energy crisis, the Temporary Framework for State Aid has been adapted for the use of state aid to support the economy under the circumstances of the energy crisis. A temporary crisis framework for state aid was adopted in March 2022, which was subsequently adjusted in line with the objectives of the aforementioned REPowerEU plan. This temporary crisis framework will be in force until 31 December 2023; its possible further duration will be assessed on an ongoing basis.²⁷

In the context of the energy crisis, coupled with a sharp rise in energy prices, the Czech Republic and Slovakia have also taken extraordinary measures to support small and large employers and tradespeople in order to preserve employment and the functioning of the market.

The Czech Republic has adopted a government aid programme called Umbrella Against Expensiveness, which encompasses a number of instruments of both direct and indirect state support targeting companies as well as individual groups of the population. Currently, this state support also includes, for example, provision of advice on the use of subsidies for the renovation of buildings, housing allowance (in the event that housing costs - rent, electricity, gas, utilities, water charges, etc. are higher than 30% of net income), housing supplement, a one-off child allowance of EUR 5,000, as well as immediate emergency assistance. It is also worth mentioning, for example, the

²⁷ *State aid: Commission prolongs and amends Temporary Crisis Framework*, 2022, https://ec.europa.eu/commission/presscorner/detail/en/ip_22_6468 [accessed: 2023.03.08].

reduction of excise tax on diesel and various support instruments for the elderly.²⁸ In the context of the energy crisis, the Czech Republic has further agreed to cap energy prices from 1 January 2023. The government has allocated more than EUR 1.2 billion (over CZK 30 billion) to support large energy consumers.²⁹

At the end of 2022, Slovakia adopted support schemes for individual groups of consumers affected by the surge in energy prices. In December 2022, the Ministry of Economy of the Slovak Republic announced a call for all entities carrying out economic activities. Not only could companies ask for compensation, but so could the public sector such as municipalities, social care centres and civic societies. Large, energy-intensive companies could also apply. Publishing the call, processing and the disbursement of compensation was carried out by the Ministry of Economy of the Slovak Republic until the end of 2022. Applicants who met the conditions set out in the call received a subsidy of 100% of the eligible energy costs of the difference from the sum they paid for the supply of the commodity during the eligible period. Furthermore, in January 2023, the Slovak government proceeded to cap energy prices, but the capping was for a group of customers from the small business category³⁰ and for household consumers. Another form of state support was the announcement of the first call for EUR 40 million to help energy-intensive businesses to combat high energy prices. The total allocated amount was disbursed to 138 companies. Further, many other measures have been taken to the aid citizens as individuals.³¹

Conclusion

A company that receives public/state support gains an advantage over its competitors. It can be said that the possibilities of legal instruments in the field of state support are limited to a large extent by the fact that state aid is generally prohibited unless it is justified on the grounds of general economic development, other exceptional situations and events or unless it is aid in amounts that do not pose risks to the market or is granted in accordance with the principles of *de minimis* aid.

This article deals with the framework of possibilities and limits of legal instruments in the field of state support under the current conditions in the Czech Republic and Slovakia. Based on the aforementioned we can say that they do not differ much in principle as they are based on European legislation, which lays down the basic principles and rules for granting state support. Adherence to the same principles and practices

²⁸ "Umbrella against Expensiveness" – government aid programme, 2023, <https://www.destnikpro-tidrahote.cz/> [accessed: 2023.03.11].

²⁹ Large companies applied for compensation of expensive energy for more than CZK 5.5 bln, 2023, <https://oenergetice.cz/energetika-v-cr/velke-firmy-zazadaly-o-kompenzace-za-drahe-energie-za-vice-nez-55-miliardy-kc> [accessed: 2023.03.11].

³⁰ These are businesses with electricity consumption up to 30 MWh per year and gas consumption up to 100 MWh per year.

³¹ Overview of aid, 2023, <https://www.mhsr.sk/prehľad-pomoci> [accessed: 2023.03.12].

in the area of state support as well is a fundamental prerequisite for the functioning of the single European internal market; therefore it is highly appropriate that the application of these rules in various Member States be uniform in principle.

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Summary

Hana Marková, Marian Horváth

Possibilities and Limits of Legal Instruments in the Field of State Support under the Current Conditions of the Czech Republic and Slovakia

Currently, more and more companies are facing difficult financial situations under the influence of the ongoing financial and energy crisis. Often, the survival of companies depends on timely, appropriate financial assistance from the state. In the following article, the authors take a closer look at the forms of state support that are currently applicable in the Czech Republic and Slovakia. The authors provide insight into the possibilities of receiving state support resulting from membership in the European Union and an overview of national systems of subsidies, state guarantees, investment support, and various tax relief schemes that can be used in the Czech Republic and Slovakia. The comparison of how the state support system is applied in the Czech Republic and Slovakia aims to provide a theoretical perspective on the relevant legal instruments as well as to underline their limitations.

Keywords: financial law, state support, legal instruments.

Streszczenie

Hana Marková, Marian Horváth

Możliwości i ograniczenia instrumentów prawnych w zakresie państwowego wsparcia w obecnych warunkach Republiki Czeskiej i Słowacji

Obecnie coraz więcej firm znajduje się w trudnej sytuacji finansowej pod wpływem trwającego kryzysu finansowego i energetycznego. Często przetrwanie firm zależy od terminowej i odpowiedniej pomocy finansowej państwa. W artykule autorzy przyjrzyli się bliżej formom pomocy oferowanym przez państwo, które obowiązują obecnie w Czechach i na Słowacji. W opracowaniu omówiono możliwości otrzymania pomocy od państwa wynikającej z członkostwa w Unii Europejskiej, a także zaprezentowano przegląd krajowych systemów dotacji, gwarancji państwowych, wsparcia inwestycji czy różnych ulg podatkowych, z których można skorzystać w Czechach i na Słowacji. Porównanie sposobu stosowania systemu wsparcia państwa w Cze-

chach i na Słowacji ma na celu przedstawienie teoretycznego spojrzenia na odpowiednie instrumenty prawne, a także podkreślenie ich ograniczeń.

Słowa kluczowe: prawo finansowe, pomoc państwa, instrumenty prawne.