E-ISSN: 2360 – 6754; ISSN-L: 2360 – 6754

European Journal of Law and Public Administration

2020, Volume 7, Issue 1, pp. 50-60

https://doi.org/10.18662/eljpa/7.1/113

FORMULATING THE ESSENCE OF THE STATE AID MONITORING PRINCIPLES TO ECONOMIC ENTITIES IN UKRAINE

Natalia PETROVA

Covered in:

CEEOL, Ideas RePeC, EconPapers, Socionet, HeinOnline

Published by:
Lumen Publishing House
on behalf of:
Stefan cel Mare University from Suceava,
Faculty of Law and Administrative Sciences,
Department of Law and Administrative Sciences

FORMULATING THE ESSENCE OF THE STATE AID MONITORING PRINCIPLES TO ECONOMIC ENTITIES IN UKRAINE

Natalia PETROVA[1]

Abstract

The article analyzes various approaches to determining the principles of administrative law, administrative procedure and disclosure of their essence. The article formulates and reveals a system of principles for monitoring state aid to economic entities in Ukraine. It has been found out that the basic principles of public administration activity in the analyzed sphere are: the rule of law, legality, transparency, equal opportunities, timeliness, objectivity, regularity, mutual cooperation, prevention, efficiency, completeness, competence (professionalism), independence, protection and storage of information, protection of competition, public interest consideration, etc. It is concluded that disclosure of the essence of the state aid principles to economic entities will give an opportunity to understand the monitoring of state aid, differentiate it from other related legal concepts, such as control and supervision, will allow to form an effective system of information support of the activities of governing bodies and to facilitate the development of legal norms, which will ensure the effectiveness of this activity.

Keywords:

Principles of monitoring; principles of administrative law; monitoring; state aid; public administration; administrative procedures.

I. Introduction

Special attention is paid today to important administrative legal points in state aid to business entities and to the role of state and public authorities in sphere of provision, monitoring and control of state aid in Ukraine [10], especially after the signed agreement Association Agreement Between Ukraine of the one part, and, the European Union and its member States, of the other part. Among the existing obligations of Ukraine to harmonize domestic legislation with the European was the adoption of the Law of

[1] Sumy National Agrarian University, E-mail: natalochkapetrova25@gmail.com

Ukraine "On the State Aid to Business Entities of July 1, 2014 no. 1555-VII, (hereinafter - Law no. 1555-VII), that came into legal force on August 2, 2017. The formation and improvement of the organizational and legal mechanisms for the implementation of state aid to the economic entities needs a special attention. Thus, it is important to find new approaches to creating an effective permanent mechanism of control and its important component - monitoring of state aid to economic entities. At the same time, it is necessary to formulate the basic principles of monitoring, one of the final tasks of which is to establish the discipline of providing state aid to economic entities and its use, ensuring the most transparent and effective use of state and local resources, compliance with the rules of protection and development of competition.

II. Analysis of the problem study

Fundamental understanding and application of the term "principles" as a category of legal, including administrative science, laid in their works such scientists as: V. Averyanov, N. Armash, O. Bandurka, A. Basov, V. Bevzenko, Yu. Bytyak, V. Galunko, V. Zui, A. Komziuk, T. Kravtsova, R. Melnyk, Y. Frolov, and others. However, the issue of detailing the essence of the principles of monitoring state aid to economic entities in Ukraine requires a separate detailed study, despite the existence of publications aimed at examining the nature of the principles of administrative law, administrative procedures.

The purpose of the article is formulation and revealation the principles of the state aid monitoring to economic entities, which in turn allows it to differentiate it from other related legal concepts in further studies.

III. Main material presentation

The word "principle" is translated from the French "principe" and from Latin "rincipium" means the beginning, the basis. This is the basic starting point of theory, doctrine, science, outlook, it is the basic principles, original ideas that is characterized by universality, general importance, higher imperativeness and reflect the significant provisions of theory, doctrine, science, the systems of domestic and international law, of political, state or public organisation. [11]

The team of authors in the field of the theory of state and law under the principles of law understand the guiding ideas, provisions, guiding principles that determine the content and focus of legal regulation of social relations. [18: 201]

Other authors have identified the principles of law as the main guiding principles, provisions that are determined by the objective laws of existence and development of the individual and society and determine the content and direction of legal regulation. [19: 160]

Kozyubra M. I. defines the principles of law as the most general and stable requirements that embody public values, allow reproduce them during the formation and action of law, defining its nature and directions of further development. [6: 70]

The foreign scientist Marchenko M. N notes that the principle of law should be understood as the basic principle, guiding idea, position of the vector-guiding value of any phenomenon (organization, teaching, activity, etc.) [7: 75].

Under the principles of law, Pogrebnyak SP proposes to understand the system of stable and general imperative requirements that find their formalization in law, and proclamed as fundamental, substantive values and traits that are inherent in the system of law, determining both its nature and directions of further development. [16: 101]

It should be noted that principles are an fundamental category of administrative law science. Yu. Bytyak reveals the legal nature of the principles of administrative law and describes them as starting, objectively determined fundamental principles, according to which the system and content of this area of law are formed and functioning. [4: 29]

According to V. Kolpakov, the principles of administrative law are positive regularities, that is known in science and practice, are fixed in the legal norms, or are generalized by legal rules that exist in force in the state. [8: 18]

Another team of scientists drew attention to the importance of formulating principles. Thus, it was noted that the study of the principles of administrative law answers the questions: what is the main in the system of rules governing administrative and legal relations; what is the constant satellite of this relationship; without which there cannot be different institutes of administrative law. The fundamental significance of the administrative law principles is that they determine the "legal fate", viability, practical organization and real functioning of the executive power. [1: 341]

The collective of scientists formulated the definition of the principles of administrative law that is based on the define of characteristic features of the administrative law principles, that are understood as the most general and stable requirements, are objectively based on the foundation, on which the administrative activities of public administration entities are based, with purpose to ensure the rights, freedoms and legitimate interests of individuals, the proper functioning of civil society and the state. [2: 40].

There are general and special-branches of law that selecte among the principles of modern administrative law. The general principles of Ukrainian administrative law are enshrined in the Constitution of Ukraine, specified and developed in legislative and other normative legal acts. These include: 1) the principle of the priority of human and citizen's rights and freedoms; 2) the principle of the rule of law and legal law; 3) the principle of the equality of homogeneous subjects of administrative law before the law; 4) the principle of democracy; 5) the principle of mutual responsibility of the subjects of public administration and objects of public governing; 6) the principle of humanism and fairness in the relationship between subjects of public administration and objects of public governing. The special-branches principles of administrative law include: a) basic-branches principles of administrative law; b) special principles of the separate institutions of administrative law. [3]

Among the various types of classification of the administrative law principles, the main ones are: the rule of law, good governance, ensuring participation in decision-making and appropriate response, openness and transparency, integrity and ethical behavior, the principle of efficiency, competence and ability, innovation and openness to change, sustainability and long-term orientation, respect for human rights and cultural diversity, ensuring social cohesion and accountability. [2: 39-49]

Kravtsova T.M. notes that the principles are the result of reflection and cognition of objective reality, a means of constructing activity in accordance with its objectively natural character. The scientist has characterized the principles of state regulation of economic activity, which are the initial provisions that reflect the specifics of state regulation of economic activity and are the basis of its substantive and rational organization. It also means that the principles of regulatory activity are an criterion for the legitimacy of the whole system of state regulation of economic activity. The principles apply even to those relations in the sphere of state regulation of business, which for whatever reasons are not regulated

by specific norms. Thus, the principles form the basis of lawfulness and order in the sphere of state regulation of economic activity [9: 36].

Thus, the principles can be viewed first as guiding vectors of the activities of participants in public relations, and secondly, as imperative rules that is put forward to the participants in such public relations. However, it should be understood that the detailing and refinement of the principles depends on the types, area or field of regulation of social relations, their direction.

It should be noted that the state aid monitoring is an administrative procedure that is conducted by the Antimonopoly Committee (further - AMC), as a public administration body - a subject of public administration. In general, considerable attention was focused to the principles of administrative procedure by different scientists. In particular, under the principles of administrative procedures, the authors understand the key basic ideas that underlie in procedural activity, are characterized by versatility and determine the direction of of public administration entities's action. [2: 208]

Frolov Y.M., outlines the basic general principles of administrative procedures: the rule of law, legality, equality and publicity; and special procedural principles: efficiency, which includes such additional principles as promptness and informality, proportionality, impartiality (neutrality and control), the unity principle of requirements of administrative procedures for all public authorities and local self-government. [5: 428]

In addition, the collective of authors [2: 209-210] refers to the general principles of administrative procedures as follows: rule of law; legality; systemic; impartiality and neutrality; optimization; legal certainty; controllability; the priority of human rights and freedoms; the presuming legitimacy of the applicant's legal position. The specific principles of the administrative procedure are: the principle of equality before the law, the principle of access to information, the right to assistance and representation, the right to be heard, efficiency, promptness (reasonable time), reasonableness of the decision, effective remedy.

Pershin V.G., who researched the nature and principles of financial monitoring, rightly notes that such monitoring should be considered through the prism of the public duty of the state. [14: 216]

Thus, disclosure of the essence of the state aid monitoring, achievement of the purpose and tasks of monitoring, as an administrative procedure and a tool of public administration, is impossible without formulating and fixing basic fundamental ideas in the state aid regulations - fundamental principles that are worldview, a legislative benchmark.

Moreover, the basic principles of the state aid monitoring, as a new category in national law and science, must be correspond with the general principles of administrative law. At the same time, not only the definition and formulation of monitoring principles as an administrative procedure is a particularly pressing issue today, but also issues of specifying and detailing their content in accordance with the purpose and tasks of monitoring state aid to economic entities.

It is necessary and important to realize monitoring of state aid, as current aid schemes and next ones, as well as ex post monitoring (after state aid is granted). In other words, total monitoring is an important tool in ensuring the supervision and control over the effectiveness and targeted use of state aid, the prevention of illegal state aid, which is also the basis for making decision by the Authorized body of the state aid questions - AMC.

According to par. 5 of art. 1 of the Law no. 1555-VII, monitoring is defined as "collecting and conducting analysis of information on state aid in order to monitor compliance with the requirements of the Law no. 1555-VII and the AMC decisions, thet is defined by the Law no. 1555-VII, and to prepare and submit reports on the state aid» [13].

In addition, it has been established that some by-laws have already been adopted in the sphere of the state aid to economic entities, which are intended to regulate the procedure rules of granting, monitoring, control, return of state aid, etc. [15: 188-189].

Such acts include the Procedure for Conducting the Monitoring of State Aid to Business Entities, approved by the Decree of the Antimonopoly Committee of Ukraine no. 43-rp of December 28, 2015. This legal act defines and specifies the purpose of monitoring state aid. It is meaning making control with the requirements of the Law no. 1555-VII and decisions of AMC, as well as preparation and submission of reports about state aid, ensuring the transparency of providing state aid to beneficiaries, informing all interested partys on state aid, ensuring the effectiveness of the state aid system in Ukraine, protection and development of economic competition [12].

Thus, the AMC obliges state aid providers to provide information on all programs of support to economic entities through public resources that existed at the date of entry into force of the Law no. 1555-VII, as well as to notify about new state aid to the AMC. In the case that providers are released from the obligation to inform about the new state aid (for example, it concerns of certain categories of state aid, in accordance to art. 7 of the Law no. 1555-VII, as well as minor (de minimis) state aid), such notification

is required, according to the established form [17]. The permanent observation, analysis and evaluation of various aspects of state aid are proceed.

Thus, there is a uninterrupted, continuous, mutual cooperation, interaction between the state aid providers and the AMC, which collects, organizes, processes, summarizes and uses the datas for analysis, reporting, application in making governing and legal decisions, providing consults for the providers of state aid and for business entities.

Therefore, the AMC, as a public administration body, must monitor the state aid, based on general rules, fundamental and modern doctrinal ideas of administrative science and practice, in particular, taking into account the specifics of the special rules in the field of state aid, the peculiarities of the state of national state aid and the international experience of the state aid practice.

Thus, we consider the basic principles of monitoring in the field of state aid to economic entities:

-the rule of law is a fundamental comprehensive principle, the essence of which is the priority of human rights and freedoms, justice and humanism in the activities of public authorities and local self-government on the basis of the supremacy of law during their activity. This principle is fixed in the Art. 8 of the Constitution of Ukraine, in which the recognition and operation of the rule of law has established. That is, the monitoring of the state aid is necessarily based on the supremacy of law.

-legality. The activity of the AMC is concerning the monitoring of state aid and is carried out in accordance with the power and in the order that is prescribed by the legislation.

-transparency. Monitoring of State aid to economic entities means the open nature of procedural, observational and control actions within the framework of monitoring procedure; accessibility of information on state aid, recipients of state aid and its effectiveness to persons interested in it and the publicity, in particular the availability, types, forms and amounts of existing, new, minor and state aid, the period for granting, and its utilization in accordance with the legislation. It needed to have open access to the AMC reporting on state aid monitoring results. For now this information on State aid is available on the electronic platform of State Aid Registry's. Transparency of monitoring makes it possible to study the mechanisms of decision-making, public administration acts and creates the conditions for further continuous monitoring of the State Aid by authorities (AMC).

-equal opportunities. Monitoring is carried out according to procedural rules in a legally defined manner, which does not allow any distinction, exclusion, restriction, preference between different economic entities or preconceived opinion depending on the type of ownership, origin or type of economic activity, and is not allowed to appear between state aid providers.

-timeliness is expressed in the specific periodization of requesting and providing information, on measures of economic aid to entities at the expense of state or local resources, to conduct analysis and formulate systematic reports on state aid.

-objectivity as a principle of monitoring the state aid means that monitoring must be based on reliable and objective information collected, specific facts available, documents that are carefully and accurately examined, analyzed, specified or summarized and evaluated.

-regularity means that observation, information gathering and analysis, as well as monitoring, should be carried out on a regular but not periodic basis. This persistence and stability of monitoring procedures forces the subjects to be monitored to have a fair habit of legitimate behavior, and encourages the control activity itself to increase efficiency and have a positive impact on the results achievement.

- mutual collaboration. This principle is important to get the best possible result when interacting with the AMC and other entities in the field of state aid: providers and recipients of state aid, interested persons, with the fiscal authorities on request get the necessary information for decision-making by the State Aid Authority , etc.

-prevention, means measures preventing violation of state aid law, in particular related to the provision and use of unlawful state aid, and in unlawful utilization of state aid.

-efficiency. The activities should have an aim to analyze, evaluate the observed and received information, as well as to achieve the final result - the effectiveness of the functioning of the state aid system in Ukraine. The principles of effectiveness are always adhered to, where the is point of validity and justification of state aid, as well as the positive and negative consequences of its granting and utilization based on the ratio of the achieved state aid results to the expected ones.

-completeness consists of comprehensive full and objective collection of information, recording, studying and analysis of observed results, based on the results of monitoring conducted, detailed analysis of the information received, as well a thorough and comprehensive study, and rapid response on limitations and non-compliance with legal requirements.

-competence (professionalism) is that the persons performing the administrative monitoring procedure and related activities must have the necessary knowledge, qualifications, which are important and necessary for the performance of their professional duties.

-independence, which is in the AMC's ability to make its own decision, regardless of political, economic situation, which should not be based on personal interest in the results and consequences of monitoring.

-protection and storage of information is an important monitoring principle, since the collected and analyzed information is stored in the State Aid Registry maintained by the AMC, which ensures its creation and maintenance and is the Holder of the registry. An interested party who submits information, objections, or issues to Authorized organ in connection with a state aid case may request that the grantor of such aid is not disclosed, so the AMC must ensure confidentiality and non-disclosure of such information in accordance with the law.

- protection of competition - the principle of state aid monitoring, which is in collecting, analyzing of information, on the basis of which a map of regional distribution of state aid is drawn up, this map captures and illustrates the intensity and degree of uniform distribution of state aid among the regions of the state, which can clearly be an additional source of information regarding adverse effect on competition to prevent the such effects of State aid on competition.

-public interest consideration - a principle of monitoring for state aid substantiated by the very principle of state aid provided to economic entities and having an aim to achieve socio-economic effect, interests of society (population) in general, in economic, social, spheres, both on state and local (regional) levels. Such public interest is exercised and secured by public administration at the expense of state and local resources and consists in their efficient utilization and preservation. On the other hand, it is the public duty of the state to monitor, analyze, control the compliance with the provisions of Law No. 1555-VII and decisions in the field of state aid, and report formulation.

IV. Conclusions

Formulation and disclosure of the principles of state aid to economic entities will enable the understanding of the state aid monitoring, distinguishing it from other related legal concepts, such as control and supervision, will allow to form an effective system of information support

for the activities of governing bodies and will facilitate the development of legal rules that will ensure the effectiveness of this activity.

REFERENCES

[1] Averyanov VB. Administrative law of Ukraine. Academic course: textbook. 2 volumes. By General. LLC Yurydychna Dumka; 2004: 583.

[2] Galunko V, Dikhtievsky P, Kuzmenko O, Stetsenko O. Administrative law of Ukraine. Full course: the textbook. Oldie-Plus; 2018: 446

[3]. Galunko VV, Kurilo VI, Koroed SO, Drozd OYu, Girenko IV, Yeshchuk OM, Ryzhenko IM, Ivanishchuk AA, Saunin RD, Yamkova IM. Administrative law of Ukraine. P.1. General administrative law: a textbook. By General. ed. V.V. Galunko: Grin D.S; 2015: 272.

[4] Administrative Law of Ukraine: Textbook By General. ed. Yu. P. Bityak: Yurinkom Inter; 2005: 544.

[5] Frolov YM. Classification of administrative procedures principles: Forum Prava. 2013; 4: 423-429.

[6] General Theory of Law: The Textbook By General. ed. Koziubra M.I. - Waite; 2015: 392

[7] General theory of the state and law. Academic course in 3 volumes. Ed. 2nd, remaking. and ext. By General ed. M.N. Marchenko: Zyertsalo; 2001, Vol. 2: 528.

[8] Kolpakov V, Kuzmenko O. Administrative Law of Ukraine: the textbook: Yurincom Inter; 2003: 544.

[9] Kravtsova TM. The executive power and problems of regulatory policy in Ukraine: Monograph: Mriya; 2007: 194.

[10] Kravtsova TM, Petrova NO. Administrative law regulation of state aid to business entities in Ukraine**.** Juridical scientific and electronic journal. [online]. 2017; 6: 227-229. Available from: http://lsej.org.ua/6_2017/6_2017.pdf#page=227

[11] Legal Encyclopedia: In 6 t. Y.S. Shemshuchenko (Chairman redkol.) Et al., 1998. [online]. Avaliable from: https://leksika.com.ua/16211205/legal/printsip

[12] Monitoring procedure for state aid to business entities is approved by the decree of the Antimonopoly Committee of Ukraine no. 43 12.28.2015 [online]. Available at: https://zakon.rada.gov.ua/laws/show/z0140-16

[13] On State aid to business entities: Law of Ukraine no. 1555-VII of July 1, 2014 [online]. Available at: https://zakon.rada.gov.ua/laws/show/1555-18#n149
[14] Pershin VG. Financial monitoring as an organizational and legal phenomenon: essence and principles: Porivnyalno-analitychne pravo. 2016; 5: 216 -218
[15] Petrova NO. Formation of administrative procedures in the field of state aid to economic entities. Law and Public Administration. 2019; 3 (36) Vol. 1: 186-191.
[16] Pogrebnyak SP. Basic principles of law (meaningful characteristic): monograph: Pravo; 2008: 240
[17] Procedure, forms and requirements for submission of information to the Antimonopoly Committee of Ukraine on current state aid to business entities: approved by the Antimonopoly Committee Decree no. 43; 12.28.2015 [online]. Available at: https://zakon.rada.gov.ua/laws/show/z0141-16
[18] Vedernikov Yu A, Papirna AV. Theory of State and Law. The Textbook: Znannya; 2008: 333.
[19] Vihrov OP, Vihrova IO. State and Law Theory. Lecture Course. Textbook: Desna Polygraph; 2015: 304.