

State Aid

Contributing editor
Ulrich Soltész



2018

GETTING THE
DEAL THROUGH

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Ulrich Soltész

Gleiss Lutz

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Preface

State Aid 2018

Fifth edition

Getting the Deal Through is delighted to publish the fifth edition of *State Aid*, which is available in print, as an e-book and online at www.gettingthedealthrough.com.

Getting the Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique **Getting the Deal Through** format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on Romania and Greece.

Getting the Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at www.gettingthedealthrough.com.

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Getting the Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editor, Ulrich Soltész of Gleiss Lutz, for his continued assistance with this volume.

GETTING THE
DEAL THROUGH 

London
July 2018

Romania

Alina Popescu and Magda Grigore

Maravela & Asociații

Overview

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

In view of its accession to the European Union in 2007, Romania has made efforts to reduce unlawful state aid, particularly where state financial support was deemed necessary to, among other things, foster investment and entrepreneurship and support certain state-owned companies and industry sectors, owing to social reasons and national or local interests. These efforts have consequently triggered clashes between state aid legislation and certain policies and measures of the central and local authorities, which have been, at times, inclined to offer aid in various forms.

Nonetheless, owing to the consistent efforts of the Romanian competition authority (the Competition Council) in educating and advising public authorities concerning the requirements and specific procedures pertaining to state aid and a very active dialogue with the European Commission, the number of negative decisions to date has been rather small (a total of three, all with recovery orders) despite the rather high number of investigations (19) formally launched by the Commission to date regarding Romanian aid measures (one-third of which are still ongoing). At the time of writing, Romania is in second position among Central and Eastern European states according to the number of formal investigations, following Poland (with 32 investigations) and followed closely by Hungary (with 16 investigations). To date, no infringement actions have been taken against Romania regarding recovery of aid.

A rather high number of aid schemes have been enacted over the years in keeping with the state aid legislation requirements. These have targeted both small and medium-sized enterprises and large investments alike (as well as various sectors of the economy, infrastructure and regional development, innovation, culture, etc), and have benefited from both state and European funding. Recently, an Inter-Ministry Council for the application of state aid policies has been established as an instrument aimed at obtaining greater efficiency of state aid granted by local Romanian authorities. This shows continued interest in the topic on the part of public authorities.

Romanian state aid measures are expected to further increase in terms of value. As per the Competition Council's annual report of 26 March 2018, in 2017 the Competition Council was involved in the elaboration of 101 state aid and de minimis measures, with a total budget of roughly 26 billion Romanian lei. The total value of state aid measures effectively granted in Romania in 2015 and 2016 was 10.42 billion Romanian lei (1.5 per cent of GDP) and 8.03 billion Romanian lei (1.06 per cent of GDP), respectively.

On the other hand, a noteworthy peculiarity of the Romanian jurisdiction is that, despite the rather high number of state aid measures granted or enacted by Romanian authorities, court practice on the matter remains rather scarce. This makes it difficult for one to anticipate the interpretation that Romanian courts would have regarding a large number of state aid specific topics, unless already settled by the European courts.

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

The Competition Council is the national authority entrusted with the primary responsibilities for dealing with the Commission.

At local level, the provider of each state aid measure monitors the measure and is invested with the power to conduct onsite inspections in order to verify the compliance of the beneficiaries with the conditions for granting state aid, as well as to impose all necessary measures should said conditions not be met.

The state aid providers are under an obligation to provide the Competition Council with all necessary information required for monitoring at state level, including information required for the reporting and notifications addressed to the Commission.

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

Any state-owned entity as well as any entity that manages state-owned resources, whether at local or national level, can be a state aid provider.

As a matter of practice, however, the Ministry of Finance, the Ministry for Economy and the Ministry for Agriculture and Rural Development as well as local public authorities are most frequently in charge of granting state aid and receiving aid applications.

By law, any project of a potential state aid should also contain a memorandum approved by the government with respect to the qualification of the project in the economic, budgetary and financial policies of the state (and usually initiated by the Ministry of Finance). Measures financed from European funds as well as those initiated by local public authorities do not require this memorandum; however, this must be brought to the attention of the relevant prefect and county council.

4 Describe the general procedural and substantive framework.

The main procedural and substantive framework for granting state aid measures is Emergency Ordinance No. 77 of 3 December 2014, on national procedures in the state aid field, as well as for the amendment and supplementation of the Law on competition No. 21/1996 (Emergency Ordinance No. 77/2014).

Apart from said enactment, there are various secondary enactments addressing certain categories of aid and aid providers.

In addition, the Competition Council may issue from time to time non-binding guidelines and manuals with respect to state aid legislation.

In Romania, aid measures are governed by public law.

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

The main enactment implementing European state aid rules is Emergency Ordinance No. 77/2014.

The enactment establishes the role of the Competition Council as the main national authority in charge of overseeing the implementation of state aid procedures, as well as procedures before the Competition Council with respect to any measure that may amount to state aid.

Furthermore, Emergency Ordinance No. 77/2014 details the notification and briefing information as well as the procedure for the de minimis state aid.

The national representation procedure before the Commission is also described, as well as, among other things, the monitoring procedure of state aid measures, the suspension and recovery of state aid and the obligations of the state aid provider.

Programmes

6 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?

In 2017, the Commission approved several state aid measures with respect to Romania, including:

- amendments to the scheme on insurance of short-term export credits, implemented by Eximbank (the amendments cover the extension of the scheme while the other conditions relating to the measure remain unchanged);
- state aid granted with respect to the establishment of new airlines (leaving from Tulcea airport); and
- extension of the state aid measure with respect to combined transportation type Ro-La.

Other relevant state aid measures approved by the Commission (or that are deemed to qualify for an exemption based on the General Block Exemption Regulation (GBER)) include:

- state aid with respect to the opening of new routes and airport operating frequencies at Cluj-Napoca International airport;
- state aid with respect to the exclusion of certain categories of end customers from the application of Law No. 220/2008 for the establishment of the promotion system of energy of renewable sources (not entered into force yet);
- state aid with respect to the organisation of film festivals in Romania;
- state aid with respect to support measures for investments in industrial parks;
- state aid with respect to research, development and innovation through the Competition Operation Project; and
- state aid with respect to the stimulation of investments with major economic impact.

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

Since the EU legislation (including the GBER) applies directly, no implementation rules have been adopted in Romania.

However, from a practical perspective, given its obligation to create a specially designated webpage, the Competition Council has created a dedicated section on its website for information on state aid measures in excess of €500,000 granted in Romania after 1 July 2016. Such information is imported from a national register on state aid. This register is an instrument aimed at tracking all state aid measures granted to all categories of beneficiaries, regardless of the objective of the state aid, the instrument, the category of used funds and the type or nature of the state aid provider. The register allows mainly:

- the prior verification of the eligibility of potential state aid beneficiaries;
- the identification and prompt reporting of potential infringements; and
- the quick generation of reports with respect to the implementation of state aid measures.

By the end of 2017, information on 351 state aid measures and 29,468 state aid granting deeds concluded with the state aid beneficiaries had been uploaded into the register.

Nonetheless, the Competition Council reckons that the completion level of the register is rather low.

Public ownership and services of general economic interest (SGEI)

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

State-owned companies have been the main recipients of measures potentially qualifying as state aid. As a result, there have been several investigations carried out by the Commission with respect to Romanian state-owned companies.

For example, a longstanding case concerned possible state aid granted to chemicals company Oltchim SA (the object of several investigations). Other cases involving state-owned companies refer to privatisations (eg, Mittal Steel Roman, Tractorul and Automobile Craiova); preferential tariffs (several cases regarding hydropower company Hidroelectrica); restructuring aid (energy company CE Hunedoara and, most recently, uranium producing company CNU); and airports (Timișoara, Cluj-Napoca and Tîrgu-Mureș airports).

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

The Romanian application of the concept of SGEI reflects consistently the EU views and has not been further developed.

The Competition Council has recently issued two guides relating to the notion of SGEI for the benefit and in support of local authorities, regarding the public service of thermal energy and the public transport of persons. Both guides are in line with the relevant EU concepts.

Considerations for aid recipients

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

Under Romanian law, there is no legal right to state aid.

In theory, however, an undertaking submitting an application for a state aid measure based on a state aid scheme, and meeting all requirements thereof could, under certain circumstances, challenge the administrative deed refusing to grant the aid or the lack of a response regarding the application, as the case may be.

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

There are several types of eligibility criteria based on which the award of state aid is customarily made, such as with respect to the relevant projects, activities, beneficiaries and expenses.

Eligibility criteria are usually quite numerous, being established by the state aid provider on a case-by-case basis, in keeping with the types of projects it wishes to finance, its own objectives and indicators as well as GBER requirements where needed, and other applicable EU rules.

For instance, recent state aid schemes encompassed criteria referring to, among other things, amount of investment, economic efficiency, job creation and amount of taxes generated for the budget.

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

The success of an application essentially depends on the fulfilment of all the conditions for the award of that specific state aid.

In terms of best practices, special attention should be paid to, among other things, the period when an application can be made, which is not always obvious from the terms of the relevant schemes. In addition, as criteria and procedures are not always clear, further explanations should be sought where needed from the relevant departments of the aid providers. Thus, any potential applicant should maintain close contact with the relevant department of the state aid provider and closely follow the relevant sources of information.

In addition, where a form of aid (advantage) from public sources that is not encompassed by a specific state aid scheme (approved by the Commission or exempted based on the GBER) is being sought, one should always assess whether the aid meets the conditions to be deemed as lawful (including where applicable the relevant prior notification to the Commission). This is because public authorities may not always know in detail the state aid rules and could potentially offer various forms of aid without first considering state aid compliance matters.

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

Challenges against state aid refusals are not frequent. There is also no generally applicable specific procedure with respect to the possibility for unsuccessful applicants to challenge a refusal to grant state aid.

Unsuccessful applicants may challenge such a decision according to the common rules of administrative litigation should they be able to prove that the administrative document granting the state aid (as the case may be) has prejudiced them.

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

The process with respect to the EU notification and investigation is coordinated by the Competition Council. State aid providers, state aid beneficiaries and the initiators of the state aid, as well as any other undertakings, are under obligation to provide the Competition Council with any information necessary for the proceedings before the Commission, in the time frame set by same. Also, in practice, the aid recipients are heavily involved in the relevant proceedings, to the extent required to provide the relevant information and to provide drafts of the relevant documents to be sent to the Commission. Where necessary, they can also be called on to attend meetings. Access to the actual file may, however, be denied on the grounds of confidentiality of exchanges with the Commission.

Strategic considerations for competitors

15 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?

Under Romanian law, undertakings affected by illegally granted state aid can seek a legal remedy against the provider of the state aid measure by bringing legal proceedings before the Bucharest Court of Appeal.

At the same time, petitions can be made to the Competition Council with respect to clarifications on any issues relating to state aid and with respect to potentially illegal *de minimis* state aid.

There are no other national entities to which competitors can address complaints about state aid.

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

The internet page of the Competition Council dedicated to state aid is the sole centralised internet page at national level for state aid with regard to the EU regulations. The Competition Council publishes on said page all information on state aid schemes in its possession. In view of the transparency requirement, a national state aid register has also been put in place, as described in question 7. The information in such a register largely depends, however, on the manner in which aid providers fill it in.

As a matter of principle, state aid adopted via enactments of central authorities will be published in the Official Gazette and potentially also published on the aid provider's website, whereas state aid adopted by the decision of local authorities will normally be uploaded on their respective websites.

Information regarding aid measures can also be demanded by interested parties directly from the aid providers, relying on the legislation granting access to information of public interest.

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

There are no specific legal provisions regarding competitors' direct access to documents on state aid granted to beneficiaries. Access to certain documents can be potentially obtained, as described in question 16.

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

Usually, the press follows information on beneficiaries of major aid, but this is a rather incomplete and unreliable source. Aid consisting of share capital contributions can be tracked using Trade Registry

records, which are by law publicly available. Aid in the form of guarantees or loans may become apparent from public registrations referring to real estate and movable securities pertaining thereto (eg, the Land Book, the Electronics Archive for Security Interests). Certain forms of aid to listed companies may also become public based on reporting obligations relevant to capital markets.

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

Complainants may counter illegal or incompatible state aid either by lodging a complaint with the Commission or, at national level, by seeking legal remedies in court.

Resorting to complaints addressed to third parties is also used in Romania. However, such an approach could potentially be deemed as an unfair practice if made under certain conditions (Romanian law prohibits the denigration of a competitor by communicating or broadcasting false information that may affect its interests).

Private enforcement in national courts

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

As a rule, national courts are to ensure the direct applicability of article 108(3) of the Treaty on the Functioning of the European Union (TFEU) by adopting any measures required.

The court may therefore rule on the suspension of state aid, reimbursement of same and interest, as well as compensation for any affected undertakings, among others.

The Competition Council or the Commission can intervene in the proceedings as *amicus curiae*.

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

As a rule, a private enforcement action can be brought against the aid provider on the specific ground provided by article 41¹ of Emergency Ordinance No. 77/2014. Conditions are as described in question 13.

This does not exclude the use of other grounds such as tort against the aid beneficiary or unfair competition to the extent to which the conditions for same are met.

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

Should an action be brought with respect to illegal state aid, the affected undertakings should primarily take legal action against the state aid provider in accordance with the special procedure provided by Emergency Ordinance No. 77/2014. Thus, it is up to the state aid provider to defend same. The Competition Council and the Commission may intervene in the proceedings as *amicus curiae* as per Emergency Ordinance No. 77/2014.

23 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?

In accordance with Emergency Ordinance No. 77/2014, national courts are to ensure the direct applicability of article 108(3) TFEU by adopting any measures required, in particular in relation to prevention of the payment of unlawful aid, recovery of unlawful aid, recovery of interest and payment of damages to the affected competitors.

To date we have not come across any noteworthy court decisions on the matter.

24 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?

There are no specific national provisions regarding articles 29(1) and (2) of the Procedural Regulation.

The *amicus curiae* institution itself is not a traditional Romanian civil procedure institution and courts may be reluctant in resorting to or accepting same.

Update and trends

The most recent national state aid schemes are the following:

- a project for a state aid scheme developed by the Ministry for Agriculture and Rural Development regarding the stimulation of regional development by investment, including in the fruit-growing sector, for the processing and the marketing of agricultural products in view of obtaining non-agricultural products;
- a project for a state aid measure regarding the approval of granting state aid aimed at facilitating the closing of non-competitive coal mines within Societatea Națională de Închideri Mine Valea Jiului S.A. Petroșani, for 2018; and
- a project for a state aid measure developed by the Ministry for Agriculture and Regional Development for a reduction of the excise tax for diesel fuel used in agriculture.

Also, there are several ongoing investigations being carried out by the Commission with respect to potential illegal state aid granted by Romanian authorities, as detailed in this chapter.

To our knowledge, the Commission has not intervened as an *amicus curiae* before a Romanian court. The Commission has, however, (unsuccessfully) intervened in an investment arbitration where the matter of state aid and the interplay thereof with investment treaties has been discussed (*Micula et al v Romania* ICSID nr. ARB/05/20).

This is without prejudice to the right of the Romanian courts to ask for a preliminary ruling in accordance with the procedure and conditions detailed in article 267 TFEU. The Romanian courts do use the procedure, there being no perceived reluctance or overuse.

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

Under Romanian law, the claimant usually bears the burden of proof. Thus, the claimant must bring evidence with respect to the illegality of the state aid. As per Emergency Ordinance No. 77/2014, should the measure be deemed as incompatible state aid by the Commission, national courts are bound by such findings.

Otherwise, the claimant would have to bring evidence showing that the aid may be deemed unlawful as per EU enactments and as construed by the European courts. There is no specific alleviation of the standard of proof.

Discovery procedures do not exist in Romanian law.

Should a document be in the possession of a public institution or authority, the court shall take measures, at the request of one of the parties or at its own initiative, to bring the document to court. The public institution or authority may refuse to present the document if it refers to national defence, public safety or diplomatic relations. Nonetheless, excerpts from such document may be made available should the disclosure of the entire document not be possible.

There is also a possibility to ask the opposing party to present a certain document in its possession, under certain conditions (such claims are approved by the court if the document belongs to both parties, if the opposing party has referred to it during the proceedings or if the opposing party is obliged by law to present same).

26 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?

Emergency Ordinance No. 77/2014 does not make a distinction between the obligations of a national court in case of a closed investigation and the obligations of a national court in case of a non-finalised investigation. Hence, a national court is enabled and at the same time under obligation to take all necessary measures regarding the protection of any third parties affected by such potential illegal state aid.

It is, however, plausible that the court may decide to stay the proceedings until the Commission's decision is made (as the national court could be bound by such a decision as regards the state aid qualification).

To date, we have not come across any relevant court decisions in this respect. However, it is only reasonable to assume that Romanian courts will closely follow the reasoning of the EU courts.

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

National courts will rule on whether a certain measure amounts to illegal state aid. In that sense, economic evidence may prove to be a necessary and useful tool, especially when it comes to establishing the existence of an economic advantage or for private investor tests.

Usually, economic evidence may be presented by means of expert testimony or an expert report.

Nonetheless, if a decision of the Commission regarding the same case is in place, the court will be bound by the Commission's findings regarding the existence of an aid measure. In this case, economic evidence will normally not be required or allowed.

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

Despite recent reforms regarding the organisation of courts, the time frame for court proceedings both at first instance and on appeal is usually quite long. However, this time frame depends on the specific court where the claim is lodged. On average, the time frame in administrative litigation is roughly six months at first instance and roughly one year on appeal.

Nevertheless, there are special procedures that are (at least theoretically) faster, when it comes to the award of interim relief measures.

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

Under the Romanian Civil Procedural Code, it is possible to obtain interim relief in certain conditions that apply to all civil proceedings (including state aid proceedings). Thus, as a general rule, it is possible to obtain interim relief during state aid proceedings brought before Romanian courts. Hence, a court order can be obtained in urgent cases, in order to preserve a right that may otherwise be prejudiced; to prevent imminent damage; as well as to eliminate any hindrance that may appear in the course of execution.

This option is also expressly provided by Emergency Ordinance No. 77/2014, which states that, in case the provider grants state aid by infringing the notification obligation or the standstill provision, the courts can take all necessary measures for the protection of the interested parties, including any interim relief measures.

There is also a possibility to obtain interim relief during the proceedings with respect to potential unfair competition infringements.

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

Should a court establish the presence of illegal aid, it is under obligation to take any necessary measures in accordance with the applicable procedural laws, in particular in relation to prevention of the payment of unlawful aid, recovery of unlawful aid, recovery of illegal interest and damages for affected competitors.

There have been no known noteworthy developments in relation to the *Residex* case law in Romania.

31 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?

In theory, aggrieved competitors can file for damages from the state aid provider or the beneficiary or both.

Any such claims shall be based on the general tort law requirements, based on infringement of state aid legislation (and potentially also unfair competition). Under Romanian civil law, a successful claim in tort should fulfil the following conditions: the existence of an infringement, the existence of damages, the guilt of the infringer as well as a causal link between the infringement and the damages.

State actions to recover incompatible aid**32 What is the relevant legislation for the recovery of incompatible aid and who enforces it?**

Under Romanian law, there are specific rules dealing with the recovery of incompatible state aid provided by articles 33 to 38 of Emergency Ordinance No. 77/2014.

In a nutshell, the Competition Council acts as an intermediary between the Commission and the state aid provider, in particular by sending the state aid provider a copy of the Commission's recovery decision. Afterwards, the state aid provider sends a copy thereof to the recipient of the state aid. In addition, the state aid provider has the obligation to take all necessary measures for the enforcement of the Commission's decision.

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

Grounds for recovery based on national law include:

- Emergency Ordinance No. 77/2014;
- the administrative deed granting the state aid; and
- Order No. 1133/2008 of the Ministry of Public Finance on the approval of the Methodological Norms for the application by the Ministry of Economy and Finance of article 18 of Government Emergency Ordinance on the national procedures regarding state aid, approved with amendments and supplementations by Law No. 137/2007 (Order No. 1133/2008).

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

No infringement procedures have been opened by the Commission against Romania to date with respect to the non-recovery of aid under article 108(2) TFEU.

35 How is recovery implemented?

The authorities are not under any obligation to go to court as the recovery of state aid can be done directly on the basis of a decision of the Commission or based on a decision of the state aid provider.

For example, under Order No. 1133/2008, the Ministry of Economy and Finance issues decisions on the recovery of state aid, said decision being an enforceable title (writ of execution).

If the state aid provider does not undertake all necessary steps for the recovery of the de minimis state aid, the Competition Council may issue recovery orders with respect thereto, said decisions also being enforceable titles (writs of execution).

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

A public body may invoke the nullity of a contract containing state aid before a court. Under Romanian law, given that such nullity will protect a general interest, absolute nullity may be invoked with respect to the state aid provisions of the contract (absolute nullity can be invoked at any time and by any implementing party). Should such a provision be considered an essential provision, the entire contract will be deemed as null. On the contrary, should the state aid provisions not be deemed as essential to the contract, the contract may only be partially annulled (ie, only with respect to the state aid provisions), while the remaining provisions may survive said annulment.

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

Principles arising from the decisions of the European courts will be applied – for example, legitimate expectations (the beneficiary's expectations that a certain state aid measure is legal, owing to the actions of the Commission).

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

As described in question 29, interim relief may be obtained under the Romanian Civil Procedural Code.

Thus, a court order may be obtained in urgent cases, in order to preserve a right that may otherwise be prejudiced or to prevent imminent damage.

This option is also expressly provided by the national legislation on state aid, Emergency Ordinance No. 77/2014.

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