



Study on the enforcement of State aid rules and decisions by national courts

Country report Malta



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A description of the competent courts in cases concerning the public enforcement of State aid rules (from first to last instance)

The competent court in cases concerning the public enforcement of State aid rules is the First Hall Civil Court. This Court has competence to hear any and all claims of a civil and commercial nature, including money claims (in excess of EUR 15,000) and, thus, it would hear any public enforcement actions for the recovery of State aid. Following a judgment from the First Hall Civil Court, either party (including the Member State) may lodge an appeal within 20 days from the date of delivery of the judgment before the Court of Appeal (Superior Jurisdiction). The First Hall Civil Court is presided over by one judge, while the Court of Appeal is presided over by three judges (including the Chief of Justice). There is no specialised court to hear cases concerning the public enforcement of State aid rules.

A description of the procedural framework applicable in public enforcement of State aid rules

It must be said that there is no record of any recovery of State aid through the national courts. In theory, the relevant State entity would be responsible for recovery of the State aid, although it is likely that it will be assisted in the process by the State Aid Monitoring Board. The State Aid Monitoring Board consists of five members appointed by the Ministry of Finance under the Business Promotion Act (Chapter 325 of the Laws of Malta). The law (State Aid Monitoring Regulations, Subsidiary Legislation 325.07 of the Laws of Malta) does not specifically provide that the Board will be in any way responsible for recovery procedures; however, the law does state that the Board shall 'act as the pertinent body concerning State aid in Malta' (Article 58(1)(g) of the Business Promotion Act).

It must also be noted that there are no special procedural rules (which are available to the public) on the recovery of State aid. Therefore, general procedural rules on the recovery of debts owed to the Government apply. The process is initiated by the relevant State entity (government department and/or corporate body established by law) filing a declaration (confirmed on oath) before the First Hall Civil Court, stating the nature of the debt and the name of the debtor and confirming that the debt is due. This declaration is served to the debtor (the beneficiary of State aid) and unless the debtor opposes the claim within 20 days, the debt is deemed to be enforceable (by way of executive title). The opposition needs to be made by way of an application before the First Hall Civil Court, which effectively initiates judicial proceedings. The relevant State entity is entitled to file

a reply within 20 days. Both parties are then entitled to bring evidence and to make legal submissions.

Once there is a final and definitive judgment confirming that the debt is owed, the competent State entity may take a number of measures to enforce the debt, including, seizure and judicial sale of land and movable assets, and the freezing of bank accounts.

A description of the competent courts in cases concerning the private enforcement of State aid rules (from first to last instance)

The competent courts for cases concerning the private enforcement of State aid rules are the same as the competent courts for cases concerning the public enforcement of State aid rules (as described above).

There are other courts which may consider State aid issues as part of their assessment, including, the Public Contracts Review Board, which reviews public contracts (whether awarded by a competitive tender process or otherwise) and which is empowered to declare public contracts that were not awarded in line with Maltese public procurement legislation ineffective.

A description of the procedural framework applicable in private enforcement of State aid rules

For the private enforcement of State aid rules, the general procedural framework (as described above) is applicable and the plaintiff should initiate judicial proceedings before the First Hall Civil Court.

Main findings based on the case summaries

There is no record of public enforcement in Malta, and there are very few examples of judicial proceedings initiated by private entities relying on the State aid legal framework for a remedy.

This is not surprising as there is generally little or no understanding of State aid rules in Malta. State entities are frequently aware of it (mostly due to the active role of the State Aid Monitoring Board), but private parties engaging with State entities rarely are and so are competitors of those private parties. This want of understanding is also present among legal professionals and advisors and, therefore, private parties are not necessarily made aware of their rights and obligations.

We have observed that in the past few years there is an increasing awareness of State aid rules. However, this does not necessarily prompt the exercise of judicial remedies.

Qualitative assessment of the average time of court proceedings

We did not find a sufficient number of relevant rulings that could help us to make a material assessment on this point. However, the duration of judicial proceedings for the recovery of debts, generally, may vary between 1.5 and 3 years (at first instance) with another 2 to 3 years (at appeal).¹

¹ The statement is based on the author's professional knowledge and expertise.

Qualitative assessment of the remedies awarded by national courts

We did not find a sufficient number of relevant rulings that could help us to make a material assessment on this point.

Qualitative assessment of the application of the State aid *acquis*; preliminary references

We did not find a sufficient number of relevant rulings that could help us to make a material assessment on this point. However, if a reference for a request for a preliminary ruling is made, then the Court of Appeal (which is a 'court or tribunal of a Member State against whose decisions there is no judicial remedy under national law') would typically refer questions of Union law to the CJEU.

Qualitative assessment of any other relevant trends in State aid enforcement

We did not find a sufficient number of relevant rulings that could help us to make a material assessment on this point.

Qualitative assessment of whether the notion of State aid was conducted well or not; challenges

We did not find a sufficient number of relevant rulings that could help us to make a material assessment on this point.

Any other relevant comments or findings

Not applicable



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