State aid in the Field of Healthcare

Abstract

Health care in modern welfare states of the European Union member countries requires financing from public sources. However, member states also prohibit most forms of state aid in the Treaty on the Functioning of the European Union. The interpretation of the primary law in the decisional practice has confirmed in a long-term, that in the healthcare sector the competitive environment clashes with the public financing aspect. The Court of Justice and European Commission have repeatedly found ways how to deal with such a conflict. This thesis analyses court's case-law and the practice and soft law documents of European Commission, to establish which solutions are functional for the healthcare field, and which questions remain opened. For that purpose, it especially focuses on the exception for services of general economic interest according to Article 106 Paragraph 2 of the TFEU and on the interpretations of the term undertaking and the terms favouring and distortion of competition, contained in the definition of prohibited state aid. In the explored cases, the decision practice differentiates social funds lead by the principle of solidarity from the undertakings, which are subjected to EU competition law regulation. The traits of a social fund are mandatory participation, establishing by law, under state supervision and providing social benefits according to the principle of solidarity. The interpretation of the degree to which the solidarity principle must be present are, however, not completely established, as was shown in the case of *Dôvera*. The case law, especially in the case of *Altmark*, also specified the circumstances in which a compensatory payment for the provider of services of general economic interest isn't a favouring, therefore doesn't meet the definition of prohibited state aid. These criteria have nevertheless applied differently on financing health care in the *BUPA* case, as the social character of the healthcare system didn't meet the highly competitive environment, in which the *Altmark* test was originally created. Case law of the Court of Justice therefore constructed independent category of providers of services of general economic interest in the field of healthcare financing. It also abandoned the original exception in the Article 106 Paragraph 2 TFEU, which is at the same time preferred by the European Commission and its soft law documents. The competition law of the European union by their approach in the area of state aids greatly respects the sensitivity and importance of healthcare financing by the member states. However, the cost for this are also concessions by unity, consistency, and predictability of the decision-making practice.