

State aid: Commission refers Romania to Court for failure to recover illegal aid worth up to €92 million

An arbitral award of December 2013 (Micula v Romania) found that by revoking an investment incentive scheme in 2005, four years prior to its scheduled expiry in 2009, Romania had infringed a bilateral investment treaty between Romania and Sweden. Romania had abolished the scheme as part of the process of accession to the EU in order to comply with EU State aid rules in its national legislation.

The arbitral tribunal ordered Romania to compensate the claimants, Viorel and Ioan Micula, two investors with Swedish citizenship, for not having benefitted in full from the scheme.

However, following an in-depth investigation, on [30 March 2015](#) the Commission adopted a decision concluding that the compensation paid by Romania to the two investors and their companies was in breach of EU State aid rules and ordering Romania to recover the compensation from the beneficiaries.

In particular, the Commission found that by paying the compensation awarded to the claimants, Romania would grant them advantages equivalent to those provided for by the incompatible aid scheme.

As a matter of principle, EU State aid rules require that illegal State aid is recovered in order to remove the distortion of competition created by the aid.

The deadline for Romania to implement the Commission's decision was 31 July 2015 in line with standard procedures, i.e. four months from the official notification of the Commission decision. Until the illegal aid is fully recovered, the beneficiaries in question continue to benefit from an illegal competitive advantage, which is why recovery must happen as quickly as possible.

Romania has already recovered part of the illegal aid from the beneficiaries. However, more than three years after the Commission decision almost half of the original aid amount still remains to be recovered and there is still no prospect of an immediate full repayment of the outstanding aid.

The Commission has therefore decided to refer Romania to the Court of Justice for failure to implement the Commission decision, in accordance with [Article 108\(2\)](#) of the Treaty on the Functioning of the European Union (TFEU).

Background

Member States have to recover illegal State aid within the deadline set in the Commission decision, which is usually four months. Article 16(3) of Regulation (EU) [No 2015/1589](#) and the case-law provide that Member States

should immediately and effectively recover the aid from the beneficiary.

If a Member State does not implement a recovery decision, the Commission may refer the matter to the Court of Justice under Article 108(2) TFEU, which allows the Commission to directly refer cases to the Court for violations of EU State aid rules.

If a Member State does not comply with the judgment, the Commission may ask the Court to impose penalty payments under [Article 260 TFEU](#).

According to settled EU case law, a Commission decision is binding and enforceable also before national courts and recovery is governed by national law, provided this allows for immediate and effective recovery. In the present case, the recovery process has not advanced over the past years and Romanian courts have failed to comply with the Commission's recovery decision.