Support for Photovoltaic Power Plants – Czech Legislator's Dilemma from the perspective of both the EU and International law

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Summary: Czech subsidies on production of electricity from renewable energy sources represent a sensitive and highly discussed topic in the Czech Republic, in particular where photovoltaic power plants are concerned. The legal viewpoint is not necessarily limited to only the constitutional and criminal-law implications. The issue is also of great interest from the systemic and theoretical viewpoints, especially where assessed comprehensively in the context of the EU law and, simultaneously, in conjunction with the public international law. The protection of investments into photovoltaic power plants is often protected under international law by bilateral treaties. However, the subsidies itself may not be under certain occasions in accordance with the EU law which put the two in conflict that must be solved by the Czech legislator. This article tries to find a solution to this conflict. On the other hand, the validity of the Czech legislation or its substantive analysis are not in the centre of the interest of the article. Accordingly, the article does not deal with the question whether or not the Czech law complies with the EU law. The article rather focuses on the relation between the Czech, EU law and international and the implications for the EU law and, in particular, for public international law.

Keywords: Agreements on the protection of investments; state aid; relation between the EU and international law; photovoltaic power plants.

1. Introduction

The support for the production of electricity from renewable energy sources is a sensitive and highly discussed topic in the Czech Republic, in particular where photovoltaic power plants are concerned, with political, economic and legal

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implications. The legal viewpoint is not necessarily limited to only the constitutional and criminal-law implications. The issue is also of great interest from the systemic and theoretical viewpoints, especially where assessed comprehensively in the context of the EU law and, simultaneously, in conjunction with the public international law. The adoption of the Czech regulation on support for renewable sources of electricity has indeed created otherwise unprecedented legislative pattern. The reason is that the state of affairs caused by the Czech legislator has no truly correct legal solution. Any solution to be adopted now will necessarily involve more or less substantial violation of the law – either the EU law or the international law, depending on circumstances. What's more, even the legislator's inaction would have the same consequences. Having regard to the rather sensitive nature of the issue, where legal opinions are easily affected by personal interests, the author wishes to point out that he has never had any stake whatsoever in the issue of support for photovoltaic power plants. The author of this article is interested only and solely in the conflict of laws arising from three different legal systems.[1] The analysis presented in this article focuses on the possible solutions to the aforementioned conflict. Consequently, the article will in no way review the validity of the Czech legislation or offer its substantive analysis. Accordingly, the article will not offer any conclusions as to whether or not the provision of this kind of support complies with the EU law. The article rather focuses on the implications for the EU law and, in particular, for public international law. Indeed, the later makes the topic even more interesting. The reason is its twofold parallel effect, as it affects both the external obligations of the Czech Republic and the obligations of the European Union. This twofold effect of the public international law substantially influences the possible solutions to the issue at hand.

2. Description of the issue

Having regard to the relevance for the following analysis itself, this part first explains, or rather summarises, the facts and state of affairs in the Czech Republic that gave rise to the legal issues at hand. In simple terms, by the

[1] The author is aware that the concept of EU law and international law as two separate legal systems is problematic, to say the least. Nonetheless, the simplification may hopefully be tolerated for the purposes of this article. For the mutual relation between the two legal systems and the issue of independence and autonomy of the EU law, see Malenovský., J. Důvěřuj, ale prověřuj: prověrka principu přednosti unijního práva před vnitrostátními měřítky pramenů mezinárodního práva *(Trust, but verify: Review of the principle of priority of the EU law over the national rules concerning sources of international law)*, in Právník 8/2010, p. 778.

adoption of the Act on Support for the Use of Renewable Energy Sources[2], the Czech Republic granted support to individuals for their business under clear and concrete pre-defined conditions, specifically under Section 6 (1)(b) of the Act, which guarantees a 15-year period of return of investments; and under para. (4) of the cited provision, which stipulates the statutory mechanism of gradual price decrease for the same purpose. The legislation implied a unilateral obligation of the State that influenced the conduct of a number of individuals. In fact, the adopted legislation had such a great incentive effect that the entrepreneurs actually made use of the arrangements stipulated by the Act to an extent the legislator had neither considered nor anticipated. One could sarcastically describe what followed the adoption of the Act could as an extraordinary success; however, it was not as much the success of the legislation as the associated costs what truly astonished the legislator. Finding a solution to the resulting situation proved to be extremely complicated.[3] Indeed, once the legislator realised what has happened, it had to face a problem as difficult as sailing between Scylla and Charybdis. In this case, the legislator had to reconcile the requirements of the Czech constitutional law, on the one hand,[4] and the limits stipulated by the public international law, on the other hand. Indeed, rights once vested in individuals are subject to protection, which is guaranteed by the Constitution of the Czech Republic as well as by several international agreements.[5]

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2 Act No. 180/2005 Coll., on the support for production of electricity from renewable energy sources (Act on Support for Use of Renewable Sources).

3 Instead of directly amending the already implemented support arrangements, a new tax was imposed on the production of electricity. For more on this issue, see Kouba, S. Zdanění výroby elektřiny ze solárních elektráren *(Taxation of Production of Electricity from Photovoltaic Power Plants)* in Dávid, R. Sehnálek, D., Valdhans, J. Dny práva – 2010 – Days of Law [online]. Brno: Masaryk University, 2010, [retrieved on: 25. 2. 2016]. ISBN 978-80-210-5305-2 Available at: https://www.law.muni.cz/sborniky/dny_prava_2010/files/prispevky/03_ekonomicke_aspekty/Kouba_Stanislav_(4375).pdf

4 The national aspect of the issue was reviewed by the Constitutional Court, which expressed its opinion on the matter in its judgement of 15 May 2012, Pl.ÚS 17/11 ECLI:CZ:US:2012:Pl.US.17.11.2, concerning the introduction of levies and taxation of electricity generated by photovoltaic (solar) power plants. However, by definition, the judgement does not adequately deal with the aspects of international and EU laws.

5 This includes in particular agreements aimed to ensure protection of foreign investments under international law. The Czech Republic has concluded dozens of such agreements. See the list of applicable agreements concerning the reciprocal promotion and protection of investments prepared by the Ministry of Finance of the Czech Republic and available at http://www.mfcr.cz/cs/legislativa/dohody-o-podpore-a-ochrane-investic/prehled-platnych-dohod-o-podpore-a-ochra

2.1. Consequences of the Czech legislation for the public international law and EU law

As noted above, this article focuses exclusively on systemic issues, rather than on substantive solution of the issue within the scope of the Czech laws. Accordingly, regarding further analysis it suffices to say that any further measures the Czech legislator may adopt are substantially limited by the Czech Republic's international obligations. For this reason, an ill-advised amendment to the Czech legislation could have impact not only in terms of the Czech constitutional law, but also in terms of responsibility under public international law. Moreover, the agreements on the protection of investments, which are most likely to be affected, contain provisions allowing even certain affected individuals to invoke responsibility of the State for breach of its obligations where the persons concerned fall under the definition of an investor.[6] Therefore, the most appropriate solution seems to lie in retaining the *status quo* or amending its certain parameters within the limits respecting the rights of the investors guaranteed by the concluded agreements. [7]

However, the outlined solution is complicated by factors that could be described as external to the Czech law. The reason is that the support for the production of electricity from renewable sources provided by the Czech Republic could be qualified as unauthorised State aid.[8] While we admit that such interpretation of the concept of State aid is rather extensive, it nonetheless cannot be excluded.[9]

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[6] The investors from Cyprus and the Netherlands are of particular importance for the Czech Republic, considering the amount of their investments. The Czech Republic has concluded agreements on the protection of investments with both countries. The entitlement to sue the State is vested in the individuals (investors) under Article 8 (2) of the Agreement for the Promotion and Mutual Protection of Investments between the Czech Republic and the Kingdom of the Netherlands. The agreement with Cyprus, too, stipulates the right to sue the Czech Republic in court or arbitration proceedings in Article 8 (2) of the Agreement on the Promotion and Mutual Protection of Investments between the Czech Republic and the Republic of Cyprus. a summary of all such concluded agreements is available at the website of the Ministry of Finance of the Czech Republic at http://www.mfcr.cz/cs/legislativa/dohody-o-podpore-a-ochrane-investic/prehled-platnych-dohod-o-podpore-a-ochra.

[7] Having regard to the fact that this article is not intended to provide a legal analysis of the given situation, but merely strives to clarify and classify the individual relationships within the system of the international, EU and national laws, we refer to expert literature for a more detailed analysis of the mechanism of protection of the rights of individuals through agreements on the protection of investments. In the Czech literature, the topic is addressed *inter alia* by Bělohlávek, A. J. *Ochrana přímých zahraničních investic v energetice* (Protection of Direct Foreign Investments in the Energy Sector). 1st edition. Prague: C H. Beck, 2011, p. 199 *et seq*.

[8] See Article 107 (1) of the Treaty on the Functioning of the European Union.

[9] As noted above, this article does not focus on substantive issues and, consequently, the question of whether or not the support qualifies as State aid is not addressed either. Nonetheless,

Indeed, if this were the case, this would mean the whole issue would also have implications in the area of the EU law. However, under such circumstances, the requirements of the EU law would be in direct conflict with the Czech legislation, as well as the agreements binding on the Czech Republic; such a situation could hardly be acceptable, especially in the latter case.[10]

As mentioned above, in the relevant area the Czech Republic is bound both by the public international law as well as the EU law. The EU law takes precedence over the Czech law, as follows from the established case law of the Court of Justice of the EU.[11] Assuming that an international agreement binding on the Czech Republic has been concluded under the Czech laws and its effects are thus conveyed through the Czech legislation, the international agreement must, too, be subordinated to the EU law. Such an approach, however, is somewhat simplistic and, as will be demonstrated below, inaccurate because it fails to reflect the mutual systemic links among the individual legal systems. Moreover, while such solution might be applicable purely in the relation between the Czech Republic and the European Union, it cannot apply to any non-Member State, given its unilateral nature. However, non-Member States cannot be omitted as they are indeed counter-parties to the agreements on the protection of investments concluded with the Czech Republic. The external obligations of the Czech Republic therefore must be taken into account even in its otherwise internal relations with the European Union.

For the sake of clarity, we can thus change the perspective. From the viewpoint of a non-Member State, there is an obligation provided for by the public international law and stipulated in an international agreement on the protection of investments. The obligation consists in the rights and duties that both the Czech Republic and the non-Member State must comply with. However, the non-Member State has no direct relation towards the European Union. The requirements of the EU law can therefore be perceived as third-party requirements,

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the features of State aid might be indicative, as sufficiently explained in literature; see, e.g., Plender, R. Definition of Aid in Biondi, A., Eeckhout, P., Flynn, J. (eds.) The Law of State Aid in the European Union. Oxford University Press, 2004. ISBN 9780199265329. p. 5 *et al.;* in Czech literature, see e.g. Běhan, P. Státní podpory slučitelné se společným trhem*(Forms of State aid Compatible with the Common Market)* (Part I) . Právní fórum (Law Forum) 2005, No. 8, p. 297–301.

[10] The European Union is obliged to respect the public international law and this duty is also emphasised in the EU law in Article 3 (5) TEU. The author believes that this duty needs to be interpreted broadly in that it also includes respect for the obligations of the Member States following from international law.

[11] See e.g. the Judgment of the Court of Justice of 15 June 1964 in Flaminio Costa v E.N.E.L. Case 6-64. ECLI:EU:C:1964:66; or in SVOBODA, Pavel: K povaze práva Evropské unie. *(On the Nature of the European Union Law).* 1994, No. 11, p. 940 *et seq.*

which the relevant non-Member State does not have to respect, on account of there being no grounds under the public international law obliging non-Member States to comply with the EU law.[12]

Any consideration to the contrary would mean that the non-Member State would be bound, without its consent and perhaps even against it will, by a treaty to which it is not a party[13] and which was concluded by other subjects of the public international law. However, the public international law does not, in principle, allow such a situation, as is indeed confirmed by the two Vienna Conventions on the Law of Treaties. Pursuant to the Vienna Convention on the Law of Treaties (1969), a third State may be bound by a treaty concluded by other countries only where the third State assents thereto.[14] Similar solution was adopted by the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations (1987).[15,16] The EU regulation and prohibition of State aid therefore cannot serve as adequate argument to support non-application or even violation of international agreements on the protection of investments concluded by the Czech Republic. Indeed, an obligation of the Czech Republic following from such agreements may in no way be affected by the EU law in relations with non-Member States and therefore remains unchanged. This fact is also reflected to a certain degree by the EU law, which stipulates that the rights and obligations arising from

[12] Naturally, the conclusion above only applies provided that we consider the Czech Republic and the European Union to be two separate entities under the public international law. So far, there are no indications that this would not be the case. Other arrangements of mutual relationships and their effects under the public international law thus need not be reviewed.

[13] Reference is naturally made to the Treaty on the Functioning of the EU.

[14] The conditions are stipulated in Article 36 of the Vienna Convention on the Law of Treaties and are based on fulfilment of two conditions. The Signatory states must intend the treaty to establish an obligation and the third State concerned must expressly assent thereto in writing.

[15] The Convention has not yet come into force. Nonetheless, it is referenced even in the case law of the Court of Justice of the EU. See e.g. the judgment of the Court of Justice of 9 June 1994 in The French Republic v. the Commission of the European Communities. Case C-327/91. ECLI:EU:C:1994:305. In the cited judgement, the Court of Justice refers to the definition of an international treaty as provided in the Vienna Convention II, without mentioning that the Convention has not yet come into force.

[16] The argument based on the 1987 Vienna Convention would not apply only if the original wording of the draft treaty containing Article 36 bis were approved; the cited provision permitted the establishment of a consent to be bound towards a third party in case of an international organization. However, the wording of the aforementioned provision was considered controversial, did not reflect the then-current practice in the public international law and, simultaneously, was perceived as too progressive to be generally applied to all international organizations with the exception of the European Union. See Fitzmaurice, M. Third parties and the Law of Treaties. Max Planck Yearbook of United Nations Law Online, Volume 6, str. 65 [online], [cit. 25. 2. 2016], available athttp://www.mpil.de/files/pdf1/mpunyb_fitzmaurice_6.pdf.

agreements concluded before 1 January 1958 or, for acceding States, before the date of their accession, between one or more Member States on the one hand, and one or more non-Member States on the other, shall not be affected by the provisions of the EU law.[17]

Focusing again on the Czech legal environment, the Czech Republic is currently in a situation where if it complies with its obligations under the international law and actually provides the promised support, it will comply with the relevant binding international agreement but in doing so, it will violate the EU law prohibiting the provision of State aid, save for certain exemptions.

The situation would get even more interesting if the Czech Republic did not provide the support promised by the Act. The Czech Republic would thus comply with the EU law, but at the cost of breaching its obligations under the international law towards a non-Member State. Naturally, this could have legal consequences since, as a rule, agreements on the protection of investments envisage the possibility of protection of the individuals concerned through arbitration proceedings against the State.[18] If the State loses the arbitration, it could entail the obligation to pay to the affected investors a financial compensation for frustrated investment. However, where applying an extensive interpretation of the term "State aid"[19], such financial compensation, if provided, could also be hypothetically construed as a form of State aid.[20] Should this hypothesis be

[17] See Article 351 TFEU. However, this provision does not address the problem of a conflict between the EU legislation and an agreement concluded by a Member State with a non-Member State during the former's membership in the European Union, where this problem is caused by an amendment to the primary law and the transfer of competences from the Member State to the European Union. It is therefore necessary to anticipate and provide for this situation, where possible, for example in a protocol or at least a memorandum to the amending treaty, where the Member State concerned shall specify its international obligations that must not be affected by the transfer of competences resulting from the amendment to the primary law. However, the problem is that the possible consequences of a transfer of competences are often difficult to predict.

[18] By way of example, we can cite the provisions of Article 8 (2) of the Agreement for the Promotion and Mutual Protection of Investments between the Czech Republic and the Kingdom of the Netherlands; such a provision is indeed typical for BITs, as mentioned by Bělohlávek in his publication focused on the issue of investments . See Bělohlávek, A. J. Ochrana přímých zahraničních investic v energetice (Protection of Direct Foreign Investments in the Energy Sector). 1st edition. Prague: C H. Beck, 2011, p. 30 *et seq*.

[19] State aid is defined in very general terms as any public funds made available by the State, i.e. irrespective of the underlying legal title. From this point of view, a broader interpretation under which also funds paid following an unsuccessful arbitration would constitute State aid cannot be excluded.

[20] This would in fact involve funds selectively provided by the State or from public resources, the provision of which could potentially affect or distort competition and affect trade between the Member States. Although the aid would not be provided voluntarily by the State, from the viewpoint of the EU the fact alone that the State assumed such obligation could be interpreted

correct, the payment of the financial consideration would again violate the EU law.[21] The provision of such aid would therefore be impermissible, or any aid provided would have to be claimed back, on the grounds of non-compliance with the EU law. However, this results in a dilemma for the State that lacks any reasonable solutions since no matter what steps the State takes, it will violate the law – either the EU law, or international law. Any violation in this respect will have substantial financial consequences for the public budget of the Czech Republic. In the end, it is essentially irrelevant whether the State will be forced to compensate the investors, provided naturally that they succeed in the dispute, or to pay fines to the European Union.

2.2. (Non-) permitted solutions to the issue

This apparently no-win situation can only be resolved in co-operation with the European Union. In fact, the EU is involved in the matter more that could be apparent *prima facie* and more than the EU probably wished to be. The internal relations of the European Union and its Member States can also have consequences towards non-Member States in terms of public international law if these relations have effects outside the EU. This is exactly the case in the assessed situation. If the European Union requires the Czech Republic to comply with the EU regulations concerning State aid, this would have effects towards non-Member States, manifested already through the breach of the bilateral agreements on the protection of investments. The responsibility for such a breach would be borne not only by the Czech Republic, where the responsibility is apparent, but, under certain circumstances, also by the European Union.[22] For agreements concluded

as expression of the will of the State. In terms of international law, the payment would constitute compensation for frustrated investments; however, such qualification is irrelevant from the perspective of the EU regulations on State aid.

[21] Nonetheless, the author believes that such interpretation is supported neither by the current case law nor expert literature. Any thus-provided funds would indeed be provided by the State from public resources, but not on the basis of the State's own decision. The relevant decision would be issued by an arbitration tribunal, over which the Czech Republic exerts no control whatsoever. This at least follows, in our opinion, from the conclusions derived by the Court of Justice of the European Union in para. 35 of judgement Pearle BV. See judgment of the Court of Justice (Fifth Chamber) of 15 July 2004 in Pearle BV, Hans Prijs Optiek Franchise BV and Rinck Opticiëns BV v. Hoofdbedrijfschap Ambachten. Case C-345/02 Court Reports 2004 I-07139. ECLI:EU:C:2004:448. Possible ambiguities are pointed out on p. 71 in Hancher, L., Ottervanger, T., Slot, P., J., EU State Aids. 4th edition Sweet & Maxwell, 2012. ISBN 9780414046566

[22] For the responsibility of international organizations, see e.g. Scheu, H. Ch. Pojem odpovědnosti v mezinárodním právu *(The concept of responsibility in international law)* [online], [cit. 25. 2. 2016], available at http://www.pravnickeforum.cz/archiv/dokument/doc-d33488v42932-pojem-odpovednosti-v-mezinarodnim-pravu/.

before the accession to the European Union, the solution can be found in Article 351 TFEU, indicating that such agreements shall not be affected by the EU legislation. As concerns other agreements, the situation is more complicated and may have consequences in terms of responsibility.

The problem is that the issue of responsibility of international organizations has not yet been adequately addressed and codified in the public international law. Nonetheless, the Draft articles on the responsibility of international organizations prepared by the International Law Commission may provide guidelines for solution of possible problems. In this context, it is apparent that the European Union will be responsible in cases where it has itself, through the acts of its own bodies or employees, violated the public international law. However, the situation at hand is of a different nature. The Czech Republic would violate the international law, but only having been forced to do so based on the requirement of the European Union to comply with the EU law. Under the theory of the public international law, it is irrelevant in such a case who exercises effective control over the relevant act, whether the EU or the State.[23]

In this respect, the interpretation of the term "effective control" as such represents a rather complex legal issue, which is moreover usually addressed in relation to military or police missions, rather than situations such as the one analysed herein.[24] Nonetheless, the current state of affairs is probably best reflected in the approach placing responsibility on the person who in reality had direct influence on the violation of international law and who could effectively prevent the violation. In practice, this means that each situation has to be assessed separately and on the basis of different decisive aspects, which will under any circumstances include the consideration as to whether or not the State could have exerted its own discretion and acted in some other way. Nonetheless, having regard to the supranational law of the European Union and the control and sanction mechanisms available to the European Union against its Member States, all

[23] See Article 7 of the Draft articles on the responsibility of international organizations, which stipulates as follows: "The conduct of an organ of a State or an organ or agent of an international organization that is placed at the disposal of another international organization shall be considered under international law an act of the latter organization if the organization exercises effective control over that conduct."

[24] Based on an analysis of the current case law, Šturma, but also the commentaries on the Draft articles, come to the conclusion that the courts have not adopted a uniform approach towards interpretation of the term "effective control". They distinguish between the ultimate control and the operational control. See Šturma, P. Drawing a Line between the Responsibility of International Organization and its Member States under International Law in Czech Yearbook of Public & Private International Law (Vol.2) [online], p. 13 *et seq*. [cit. 25. 2. 2016], available at http://www.cyil.eu/contents-cyil-2011/ a Draft articles on the responsibility of international organizations, with commentaries – 2011 str. 23 [online], [cit. 25. 2. 2016], available at http://legal.un.org/ilc/texts/instruments/english/commentaries/9_11_2011.pdf

circumstances support the assumption that the European Union exercises, rather than not, effective control over its Member States.[25]

It follows from the above that if the European Union enforced its regulations on State aid against the Czech Republic in a manner leading to breach of a bilateral agreement, the European Union itself could be responsible for the breach of the agreement,[26]despite not being a party thereto. Its responsibility would follow from the international law and, accordingly, could be invoked only by the affected non-Member State and not by an individual, i.e. specifically the investor who actually incurred damage due to non-compliance with the original Czech legislation.

As a matter of fact, the potential arbitration proceedings and their outcome represent another variable. It is certainly questionable whether the arbitrators would even decide that the EU law must be taken into account in the case at hand.[27] If the EU law were taken into account, all the problems the Czech Republic faces would be satisfactorily resolved. However, as mentioned above, the relevant agreements on the protection of investments are not binding on the European Union and no direct obligations arise between the EU and the affected non-Member State. From the viewpoint of the latter, the EU law thus can be viewed merely as a special provision of the public international law with no implications for the non-Member State in question other than the ones mentioned earlier in this article. The arbitrators might interpret the circumstances similarly. Moreover, even from the substantive viewpoint, there is no reason for the application of the EU law in the arbitral proceedings unless the prohibition of the provision of State aid stipulated by the EU law could be subsumed under the EU public policy, which may in fact be possible.[28]

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[25] The overall situation is indeed complex in legal terms. The reason is that irrespective of their internal relations, the European Union and its Member States continue to act as separate entities towards non-Member States, both in the area concerning the State aid and in the area of direct foreign investments, despite the transfer of competences implemented through the Lisbon Treaty. The European Union thus has not implicitly entered into the obligations of its Member States, which would mean that the European Union would be solely responsible for any breaches and violations. See Šturma, P. Drawing a Line between the Responsibility of International Organization and its Member States under International Law in Czech Yearbook of Public & Private International Law (Vol.2) [online], p. 18 *et seq*. [cit. 26. 2. 2016], available at http://www.cyil.eu/contents-cyil-2011/

[26] This is not a responsibility under Article 340 TFEU, which is internal and governed by the EU law.

[27] The EU law naturally does not prevent this. It even appears that its approach might be benevolent, including the willingness to respond to a preliminary reference if submitted to the arbitrator. See Basedow, J. EU Law in International Arbitration: Referrals to the European Court of Justice. Max Planck Private Law Research Paper No. 15/16. pp. 72 and 73. [cit. 25. 2. 2016], available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2642805.

[28] According to Drličková, public policy includes the rules essential and fundamental for the functioning of the internal market; she mentions *inter alia* the rule for the protection of competition

3. Conclusion

This leads us to the final conclusion. The preceding text implies an unequivocal and absolute necessity to primarily respect the obligations of the Czech Republic under the international law, even on the part of the European Union. The State aid law must reflect this situation. This does not mean that no other solutions are possible. Nevertheless, it is apparent that the Czech Republic cannot rely on any simple and direct solution based on the EU law and the prohibition of State aid contained therein. In simple terms, the European Union cannot solve the current problem for the Czech Republic.

Nonetheless, the situation is not without solution. The easiest way seems to be to prefer the narrower interpretation of the concept of State aid in the EU law, which, however, the Czech Republic itself can hardly influence. Under any circumstances, the rights already vested in individuals must be respected both by the Czech law and the EU law. Consequently, the State may consider amending certain parameters of the current system to achieve the declared purpose of the Czech legislation while complying with its obligations under the EU and international law. However, should any of the outlined options be assessed to constitute unlawful State aid, the Czech Republic will be held responsible for a violation of the EU law, including potential penalties. The EU law as such does not provide any easy solutions to the problem and indeed makes the situation even more complex in legal terms.

under Article 101 TFEU. Following this logic, public policy would necessarily also include the provisions governing State aid. Cf. Drličková, K. Vliv legis arbitri na uznání a výkon cizího rozhodčího nálezu *(Effects of* legis arbitri *on recognition and enforcement of foreign arbitral awards)*. 1st ed. Brno: Masaryk University, 2013. 204 s. Edition S, Theoretical Series of the Faulty of Law of MU, No. 443. ISBN 978-80-210-6419-5. p. 66; or Kyselovská, T. Interakce rozhodčího řízení a evropského práva *(Interaction between arbitration proceedings and the EU law)*. In Dny Práva – 2009 – Days of Law: The Conference Proceedings. 1st ed. Brno: Brno: Masaryk University, 2009. ISBN 978-80-210-4990-1.