

EMERGENCY ORDINANCE

Regarding national procedures in the state aid field

Having regard to

- the major public interest to continue granting state aid after the date of accession to the EU, according to the Government's economic policies,
- the abolishment of Law no. 143/1999 regarding state aid at December 31st, 2006, since it contravenes to the EC Treaty,
- the fact that the competences for State aid authorization will be transferred from the Competition Council to the European Commission, and the community legislation in the state aid field will be directly applicable in Romania,

Whereas the reasons shown above grant an exceptional character to this Emergency Ordinance and underline the urgency to enact the national procedures on state aid at the date of accession, in order to fulfill the Member State obligations that are demandable two months from this date, when the first report regarding the fulfillment of conditions set for state aid in deprived areas and free zones benefiting from transition periods must be transmitted

Based on art. 115 (4) of the Romanian Constitution, republished The Government of Romania adopts the present emergency ordinance.

CHAPTER I - General provisions

Art. 1

(1) The present emergency ordinance aims at regulating the national procedures on state aid, for the application of art. 87-89 of the EC Treaty and the secondary legislation adopted based on art 87-89 EC.

(2) The provisions of the present emergency ordinance do not apply to state aid in agriculture and fisheries, granted according to the provisions of art. 32 of the EC Treaty.

Art. 2

In the present emergency ordinance, the terms specific to the state aid field are used according to Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Art. 93 of the EC Treaty, published in O.J. L 83/27.03.1999 with subsequent amendments, hereinafter referred to as EC Regulation 659/1999, to the Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty, published in O.J. L 140/30.04.2004 with subsequent amendments, and to the other regulations in the field.

Art. 3

- (1) The new aid, subject to the obligation to be notified, shall be granted only after it has been authorized by the European Commission or after it is considered to be authorized.
- (2) State aid which is not subject to the obligation to be notified shall be granted only with the observance of the conditions provided by legislation in force.

Art. 4

The specific allocations within a state aid scheme authorized by the European Commission, according to Art. 88 of the EC Treaty, shall be granted only with the observance of the conditions provided by the scheme and no other normative acts setting supplementary conditions in this regard must be issued.

Art. 5

- (1) regional state aid shall be granted according to the regulations in the field and to the regional state aid map.
- (2) The regional state aid map shall be adopted by Governmental Decision and shall be notified to the European Commission, in order to be authorized according to the procedure provided by Art. 88(3) of the EC Treaty.

Art.6

In 15 days from their adoption, the de minimis aid schemes shall be transmitted to the Competition Council for its information.

Art. 7

- (1) The Competition Council shall be the contact point in the relations between the European Commission and public authorities and institutions, including public institutions involved in the privatization process, hereinafter referred to as authorities, other state aid grantors and beneficiaries involved in the state aid procedures.
- (2) The Competition Council shall grant specialized assistance in the state aid field to the authorities, to other state aid grantors and beneficiaries, in order to ensure the fulfillment of the obligations assumed by Romania as Member State of EU, including assistance in the process for the elaboration of normative or administrative acts establishing state aid measures.
- (3) The Competition Council shall inform the authorities, other state aid grantors and beneficiaries and the public on the community state aid regulations, by publishing guides, monthly bulletins, case law and legislative syntheses, other informational materials and by organizing seminars, roundtables, conferences etc.
- (4) The Competition Council shall cooperate with the authorities and other state aid grantors and beneficiaries, and shall support them towards a adequate implementation of the *acquis communautaire*.

(5) The Competition Council shall cooperate with the authority empowered to represent Romania at the European Court of Justice in state aid cases.

CHAPTER II - Procedure regarding the preparation of notification and information sheet

Art. 8

(1) The notification regarding state aid measures, hereinafter referred to as notification, and the information sheet for the exempted state aid measures, hereinafter referred to as information sheet, shall be transmitted to the Competition Council. The Competition Council shall give advisory opinion on it.

(2) The Competition Council shall cooperate with the solicitant to complete and improve the content of the notification or information sheet in order to observe the *acquis communautaire*.

(3) If the notification or the information sheet is being modified following the Competition Council's advisory opinion, but before sending the notification or the information sheet to the European Commission, the modification shall be transmitted to the Competition Council to give advisory opinion on it.

Art. 9

The solicitant, who may be any authorities in the meaning of this Government Emergency Ordinance, shall request advisory opinion from the Competition Council.

Art. 10

(1) The Competition Council may request supplementary data and information from the solicitant.

(2) If the requested information is not sent to the Competition Council, in the period set by it, the Competition Council shall issue the advisory opinion on the data available.

Art. 11

The Competition Council shall issue the advisory opinion in maximum 30 days from the moment when it was requested, except for the cases when the solicitant requests, in written form a prolongation of the terms in order to complete the notification or the information sheet.

Art. 12

(1) If there were no modification proposed through the advisory opinion, after transmitting the advisory opinion to the solicitant, the Competition Council shall send, as soon as possible, the notification or the information sheet to the European Commission in the assented form.

(2) If through the advisory opinion the Competition Council proposes some modifications

and if the solicitant agrees with them, in 10 days from the moment when the solicitant has received the advisory opinion, it shall transmit to the Competition Council the notification or information sheet modified according to the advisory opinion, in order to be transmitted to the European Commission.

(3) If the solicitant does not agree with the modification proposed by the Competition Council based on the *acquis communautaire*, the solicitant can ask, in 10 days from the moment when it has received the advisory opinion, for the notification or the information sheet to be transmitted in a form decided by it.

(4) In the cases mentioned in paragraph 1-3, the notification or the information sheet shall be transmitted to the Commission by the Permanent Representative of Romania.

(5) If the solicitant does not request for the notification or the information sheet to be send, according to the provisions of paragraph 3, or does not transmit to the Competition Council the notification or the information sheet, according to paragraph 2, it shall be considered that the solicitant has waived on it.

CHAPTER III - Procedure before the European Commission

Art. 13

(1) The Competition Council shall represent Romania before the European Commission in the field of State aid, in the framework of the European procedures.

(2) The Competition Council is the authority empowered to forward to the European Commission the notifications, the information sheets and the reports drawn up according to this Government Emergency Ordinance.

(3) The Competition Council with the authorities represents Romania within the framework of the Advisory Committee on State Aid and in relations with other communitarian institutions or bodies with attributions in this field.

Art. 14

(1) The State aid initiator, grantor or beneficiary or other interested parties, as the case may be, have the obligation to submit to the Competition Council, within the set deadlines, all the necessary information for the procedures before the European Commission.

(2) The deadline set by the Competition Council according to paragraph 1 can not be less than 30 days, except for the situation when the data, information and documents relating to the state aid are being request by the European Commission or by the communitarian legislation in a shorter period.

(3) The Competition Council consults with the authorities or other grantor, as the case may be, for the elaboration of answers, explanations, statements of position or other acts, in view of submitting them to the European Commission, through the Mission of Romania to the European Union.

(4) In the allegation of the notification before the European Commission, the Competition Council shall be assisted by the authority that has drawn up the notification.

Art. 15

(1) The Competition Council informs without delay the authorities and other grantors, as the case may be, regarding the decisions taken by the European Commission on the basis of article 4, 7, 10 (3) and 11 of the Regulation, received through the Mission of Romania to the European Union, and also submitting a copy of the relevant decision.

(2) In line with article 18 of the Regulation, the provisions of paragraph (1) shall apply accordingly when the European Commission adopts a recommendation for appropriate measures to be taken.

(3) The Competition Council shall publish on its website, that becomes the national point of information, the information regarding the adoption by the European Commission of the decisions in the state aid field.

Art. 16

At the request of the solicitant, the Competition Council may withdraw the notification before the Commission has taken a decision, at the demand submitted in due time by the interested party. The withdrawal request shall be communicated by the Competition Council to the European Commission through the Mission of Romania to the European Union.

CHAPTER IV - State aid monitoring

Art. 17

The Competition Council shall monitor State aid, according to the communitarian regulation on monitoring activities, on the basis of the reports, information and data submitted by the grantors, that can be authorities and other state aid grantors.

Art. 18

(1) The State aid grantors must observe the way the granted State aid is used and submit to the Competition Council, in the format set by this institution, all the necessary data and information for completing the State aid monitoring at national level and for drafting the reports and information papers required to ensure the fulfillment of the obligations for Romania as a Member State of the European Union.

(2) The State aid beneficiaries have the obligation to submit to the grantor regular reports according to the legal provisions in force, as well as other information regarding the State aid following the grantor's request, otherwise they will be sanctioned according to the law.

Art. 19

(1) The Competition Council draws up and updates the State aid inventory on the basis of the reports, data and information received from the grantors according to the provisions of the present government emergency ordinance.

(2) Based on the State aid inventory, the grantors' reports and the answers to the information requests, the Competition Council elaborates the annual report on the State aid granted in Romania, the State aid registry and other necessary reports in view of fulfilling the obligations set for Romania as a Member State.

(3) The data and information required to elaborate and update the inventory and to elaborate the specific reports shall be submitted by the State aid grantors, according to the procedures established through the Competition Council Regulation.

Art. 20

The State aid inventory shall be updated, especially with data regarding the new State aid schemes and the new individual aid authorized, as well as with data regarding the aids exempted from the notification obligation.

Art. 21

The beneficiaries of state aid shall keep a specific record of the State aid received.

Art. 22 The State aid initiators, grantors and beneficiaries are responsible, according to the law, for the accuracy of the data and information submitted to the Competition Council.

Art. 23

(1) The Competition Council elaborates the annual report on the State aid granted in Romania, which is submitted for approval to the Government. The report is published in the Romanian Official Gazette, Part I, in order to ensure transparency in this field and is submitted to the European Commission.

(2) The annual report on State aid comprises data and information regarding the State aid granted in the last three years, including the year for which the report is elaborated, especially concerning the State aid value, objective, type and granting procedures.

Art. 24 The deadline set by the Competition Council and by the grantors for receiving reports, data and information in the monitoring process can not be less than 30 day in the Competition Council's case and 20 days in the grantor's case, except for the case when the data and information are requested by the European Commission or by the regulation in force in a shorter period.

Art. 25

(1) The Competition Council together with the state aid grantors shall authorize officials to assist the European Commission on the on-site monitoring visits.

(2) Where the European Commission undertake on-site monitoring visits, according to article 22 of the Regulation, the Competition Council and the authorities can object to the officials authorized by the European Commission.

(3) The Competition Council, authorities, other state aid grantors and beneficiaries shall collaborate with the officials authorized by the European Commission for the on-site monitoring visits.

CHAPTER V - Recovery, suspension or the provisionally recovery of the illegal State aid and the misuse State aid

Art. 26

(1) The State aid beneficiary has the obligation to reimburse the amount representing the equivalent of the State aid whose recovery was requested by the European Commission, except for the case when the enforcement of the European Commission's decision was suspended, in accordance with the European rules. The State aid to be reimbursed or recovered shall also include the related interest due from the date when the aid was paid until the date of its recovery or reimbursement.

(2) The applicable interest rate shall be determined according to the provisions of the Regulation.

(3) The beneficiary cannot receive any other State aid until the obligation stipulated at paragraph (1) is fulfilled.

Art. 27

(1) The Competition Council shall submit, without delay, to the State aid grantor, a copy of the European Commission's decision through which the recovery of the illegal or misuse State aid was disposed, decision received through the Mission of Romania to the European Union.

(2) The State aid grantor shall submit delay, to the State aid beneficiary, a copy of the European Commission's decision.

(3) The State aid grantor shall take, without delay, all necessary measures to implement the European Commission's decision, in view of fulfilling the Member State obligations.

Art. 28

The State aid grantor shall inform the State aid beneficiary with regard to the obligation to reimburse/recover the illegal or misuse State aid that results from the European Commission's decision.

Art. 29

(1) If the beneficiary does not reimburse the aid, the State aid grantor, based on the Commission's decision, shall address to the Bucharest Court of Appeal in order for this

Court to dispose the cancellation of the act through which the State aid was granted and, as a consequence, the recovery of the aid and the related interest.

(2) The Court of Appeal' decision can be appealed. The appeal is to be judge by the High Court of Cassation and Justice. The provisions of law 554/2004 with subsequent amendments, is to be applied *mutatis mutandis*.

Art. 30

(1) The Competition Council fulfils the role of a contact authority between the European Commission and the State aid grantor in relation to the procedure for adopting the decisions on the suspension or provisionally recovery of the State aid, in accordance with the provisions of article 11 of the Regulation.

(2) The Competition Council shall submit, without delay, to the State aid grantor a copy of the decision through which the suspension or the provisionally recovery of the State aid was disposed. The State aid grantor shall take all necessary measures to implement the European Commission's decision.

(3) Where the European Commission has decided the provisionally recovery of the State aid, the provisions laid down at article 29 shall apply accordingly.

Art. 31

Where the European Commission has decided the suspension of the State aid pursuant to article 11, paragraph (1) of the Regulation, the State aid grantor shall suspend the aid granting from the date of receiving the European Commission's decision, received through the Mission of Romania to the European Union. The act through which the State aid grantor disposes the State aid suspension has as effect the immediate cease of its granting, until the compatibility of the financial support measure with the Common market is established.

Art. 32

(1) The State aid grantors and the State aid beneficiaries shall submit to the Competition Council information regarding the evolution of the recovery, the provisionally recovery or the suspension of the State aid.

(2) In order for the provisions on illegal and missed use state aid, to be applied, the state aid grantors shall issue their own procedures.

CHAPTER VI - Infringements and penalties

Art. 33

(1) The following deeds committed by the beneficiaries are considered to be infringements and they shall be penalized with warning or fines between RON 5,000 and 40,000:

(a) the provision of incorrect or incomplete information and documents, as well as non-

supplying the information and documents requested within the deadlines imposed by the Competition Council or others grantors public authorities;

(b) the refusal to be subject to a control action carried out according to the provisions of the present ordinance;

(c) the refusal to provide the explanations requested according to the present ordinance;

(d) the non-fulfillment of the obligation to organize specific evidence of the State aid received.

(2) The following deeds committed by the state aid grantors are considered to be infringements, if they are not considered to be criminal offence according to the penal law, and they shall be penalized with warning or fines between RON 5,000 and 40,000:

(a) the provision of incorrect or incomplete information and documents, as well as non-supplying the information and documents requested in accordance with the provisions of the present Law, within the deadlines imposed by the Competition Council, except for the situation provided by article 10 (1) and 12;

(b) the refusal to provide the explanations requested according to the present ordinance;

(c) the non-fulfillment of the obligation mentioned on art. 6 and 27 (3).

(3) The infringements provided at paragraph 1 shall be ascertained and penalized by the Competition Council and grantors public authorities, as the case may be, through the authorized officials.

(4) The infringements provided at paragraph 2 shall be ascertained and penalized by the Competition Council, through the competition inspectors.

(5) When requested, the personnel empowered by the Competition Council benefits of protection from the qualified state bodies.

(6) To the infringements provided at paragraph 1 it shall be applicable the provisions of G.O. no 2/2001 on juridical regime of contraventions, approved with changes and completions by Law no. 180/2002, with subsequent completions and modifications.

CHAPTER VII - Final and transitional provisions

Art. 34

(1) In view of the enforcing the present ordinance, the Competition Council shall adopt Regulations and Guidelines.

(2) The Regulations, the Guidelines and their modification require the opinion of the Legislative Council, in order to be adopted by the Competition Council Plenum, following to be published in the Official Gazette of Romania, Part I, through the order of the Competition Council's President.

Art. 35

(1) The information concerning the State aid beneficiaries, having business secrecy character represents professional secrecy and shall follow the legal regime provided by the regulation in the field.

(2) The professional secrecy is not infringed when transmitting reports/information/documents required for enforcing the national and Community procedures in the State aid field and when reports, summaries and other documents are published in accordance with the present ordinance.

Art. 36 The equivalent in EUR of the State aid shall be established taking into consideration the exchange rate fixed by the Romanian National Bank at the date of granting the aid.

Art. 37

(1) The present Law shall enter into force at January 1st, 2007.

(2) At the date of entry into force of this law, Law no. 143/1999 on State aid, republished shall be repealed.

(3) The notifications registered at the Competition Council and for which a decision has not been reached by the date of entering into force of the present law are considered to be ceased at that day.

(4) The on-going investigations according to Law no. 143/1999 on State aid, republished, shall cease at the date of the entry into force of the present ordinance.

(5) The Competition Council's decisions shall continue to produce their effects.

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