

REGULATION
on the de minimis rule of the State Aid which is not covered by the notification obligation

INTRODUCTION

Law no.143/1999 on state aid, hereinafter referred to as the *Law*, states that any state aid, in any form whatsoever and regardless of its recipient, must be authorized by the Competition Council from the point of view of its effects on competition, save as otherwise provided by the *Law*.

For this purpose, in cases where the amount of aid involved is relatively small, it shall be deemed that the aid does not affect neither competition between undertakings nor the international agreements to which Romania is a party, and that is why it can be excepted from the notification obligation. Art.20 of the *Law* states that state aid granted to an undertaking over a three-year period amounting to a total amount of 1 (one) billion lei is deemed to be authorized and is not subject to the notification obligation. This ceiling may be updated through an order of the Competition Council President.

However, when the recipient obtains many state aids under the *de minimis* rule, even if from different grantors, competition and international agreements to which Romania is a party may be affected.

That is why, verification of how *de minimis* ceiling is met will be done to the total of all amount considered to be the *de minimis* aid and will not affect the possibility of the recipient obtaining other aid under schemes approved by the Competition Council. The ceiling will apply to aid of all kinds, irrespective of the form it takes or the objectives pursued, with the exception of the situations under arts. 21 and 22 of the *Law*.

The amounts granted under the *de minimis* rule may proceed from any public authorities or other bodies from national, local or regional level.

The present Regulation also clarify other practical aspects which are not covered by the *Law*, such as the moment when the three-year period begins, the possibility to receive state aid under an authorized scheme, besides the *de minimis* aid, and the conversion of the received aid in any form, otherwise than as a grant.

The grantor shall inform the recipient about the *de minimis* character of the aid, which means that the aid may be exempted from the notification obligation. The explanation for this obligation is the fact that the recipient of the aid might not know whether the aid measure is not covered by the *Law*, whether it is an authorized state aid or an aid under the *de minimis* ceiling. Moreover, it seems natural that the state aid recipients should verify if it meets the laws in force, especially since, otherwise, they may be bound to reimburse the aid. Also, the recipient must confirm the grantor that the new aid- by cumulating of potential existing aids- does not exceed the *de minimis* ceiling provided for by the *Law*.

The Regulation stresses that the public authorities or other bodies granting the *de minimis* aid have the obligation to keep records of all the information, in order to be able to provide it at the request of the Competition Council and Competition Office, aiming at observing the *Law*.

ARTICLE 1

DE MINIMIS AID

- (1) The state aid granted to an undertaking over a three-year period amounting at 1 (one) billion lei total is deemed to be authorized and is not subject to the notification obligation. This ceiling may be updated through an order of the Competition Council President.
- (2) The *de minimis* ceiling will apply to the total amounts considered to be the *de minimis* aid and will not affect the possibility of the recipient obtaining other aid under schemes approved by the Competition Council.
- (3) The *de minimis* ceiling will apply to aid of all kinds, irrespective of the form it takes or the objectives pursued.
- (4) The *de minimis* rule will not apply in cases where the Competition Council under art.21 of the *Law*, adopts a regulation on block exemptions which sets the categories deemed to be authorized, and which are consequently excepted from the notification obligation, nor in cases where according to art. 22 of the *Law*, it adopts and enforces regulations and guidelines defining the main criteria needed to authorize the state aid, especially for certain economic sectors or specific objectives of the state aid.
- (5) The three-year period begins from the date on which the recipient receives the first *de minimis* aid.

ARTICLE 2

CASH GRANT EQUIVALENT

- (1) In cases where aid assistance is not a cash grant, in order to verify the *de minimis* ceiling, it has to be converted in lei.

ARTICLE 3

CUMULATION AND MONITORING

- (1) Where a public authority or other bodies grant state aid under the *de minimis* rule, the grantor shall inform the recipient about the *de minimis* character of the aid, which means that the aid may be excepted from the notification obligation. Moreover, the grantor shall obtain a written statement from the recipient that the new aid does not raise the total amount of the *de minimis* aid received to a level above this ceiling.
- (2) The grantor is under an obligation to establish a machinery to ensure that, where aid is given to the same recipient under separate measures all of which are covered by the *de minimis* rule, the total amount of the aid does not exceed 1(one) billion lei over a three-year period.

ARTICLE 4

THE METHOD FOR CALCULATING THE CASH GRANT EQUIVALENT FOR CERTAIN STATE AID TYPES

- (1) The cash grant equivalent should be calculated gross, i.e. before tax, if the aid is taxable.

(2) All aid receivable in the future should be discounted to its present value...A cash grant equivalent is to be counted as a single sum even if it is to be paid in instalments.

(3) The discount rate and the reference rate used for calculating the aid amount of a soft loan should be the commercial average interest rate which applies at the time the aid is granted.

(4) The cash grant equivalent of a soft loan in a given year is the difference between the interest due at the reference interest rate and that actually paid. All the interest that will be saved until the loan has been fully repaid should be discounted to its value at the time the loan is granted and added together.

(5) The cash grant equivalent of a tax allowance is the saving in tax payments in the year concerned. Similarly, tax savings which are to be obtained in the future should be discounted to their present value using the reference interest rate.

(6) For loan guarantees, the cash grant equivalent in a given year can be either:

- calculated in the same way as the cash grant equivalent of a soft loan, once the premiums paid have been deducted, the interest subsidy representing the difference between the reference interest rate and the rate obtained thanks to the state guarantee, or
- taken to be the difference between the outstanding sum guaranteed, multiplied by the risk factor (the probability of default) and any premium paid.

(7) The risk factor should reflect the experience of default on loans extended in similar circumstances (sector, economic branch, size of firm, level of general economic activity). Discounting to present value should be carried out in the same way as before.

ARTICLE 5

INFORMATION REQUIREMENT

(1) The public authorities or other bodies granting the *de minimis* aid have the obligation to record all information so that to provide it to the Competition Council for the purpose of applying the present Regulation, and to the Competition Office for monitoring and reporting the state aid.

(2) Records regarding an individual aid shall be maintained for 10 years from the date on which it was granted and regarding an aid scheme, for 10 years from the date on which the last specific allocation was granted under such scheme.

(3) At the grantor's request, Competition Council and Competition Office may provide assistance on the method of calculating the cash grant equivalent.

(4) When the grantor of the state aid has doubts regarding whether the calculation of the cash grant equivalent is correct or not, the Competition Council or Competition Office may provide additional clarifications.