

REGULATION ON THE FORM, CONTENT AND OTHER DETAILS PROVIDED IN THE COMPLAINT REGARDING AN ALLEGED UNLAWFUL AID

Under art. 28 pars. 1. and 3 of the Competition Law 21/1996, with subsequent modifications and completions, and under art. 22 par.1 of Law 143/1999 on State Aid, with subsequent modifications and completions,

The Competition Council adopts this Regulation,

Introduction

The drafting of a legal framework to regulate the state aid matter stands for the continuous harmonization of the Romanian legislation with the European legislation, which part of Romania's process of accession to the EU.

The aim of the notification and authorization of state aids granted by public authorities or bodies which administer financial sources is to set the extent in which the state aid is compatible with a normal competitive environment, in a market economy where prices and tariffs for services are regulated by supply and demand.

Any intention to grant a new state aid or to modify an existent state aid should be notified to the Competition Council. No state aid may be granted without the authorization of the Competition Council.

The natural and legal entities involved and affected by the award of an unlawful state aid may notify the Competition Council by submitting a complaint which should include the elements provided for in this regulation.

CHAPTER I

Article 1

General Provisions

Object and scope of complaints regarding the granting of an alleged unlawful aid

- (1) Any intention to grant a new state aid or modify an existent state aid shall be notified according to the law, by the state aid supplier and initiating party, to the Competition Council.
- (2) A new state aid may not be granted, and the modifications to an existent state aid may not be applied until the Competition Council takes a decision to authorize or until the state aid is considered to be authorized.
- (3) Under the provisions of Law 143 on State Aid, with subsequent modifications and completions, any state aid which was granted without authorization by the Competition Council or which was granted after notification but before the Competition Council issued a decision within the legal time period, is deemed unlawful.

CHAPTER II

Article 2

Procedure regarding complaints to the Competition Council on alleged unlawful aids

- (1) The Competition Council shall analyze with priority any intimation, complaint or information, regardless of its source, which regards an alleged unlawful aid.
- (2) Any natural or legal entity, including a company, central or local involved public authority, may inform the Competition Council with regard to an alleged unlawful aid or any alleged unlawful use of a state aid.
- (3) Upon receipt of an intimation or a complaint regarding an alleged unlawful aid, the Competition Council shall examine if this has sufficient factual and legal grounds to justify the start of an investigation.
- (4) The Competition Council shall analyze the complaints regarding an alleged unlawful aid on the basis of the provisions of Law 143/1999 on State Aid, with subsequent modifications and completions.
- (5) If the complaint does not provide sufficient grounds to trigger an investigation, the Competition Council shall communicate to the complainant the decision to reject, and shall state the reasons for this, within 30 days from the registration of the intimation or the complaint.
- (6) The decision to reject shall be preceded by the hearing of the complainant's arguments before the Competition Council.
- (7) In case the complaint is not subject to the law on state aid, within the legal time period, the Competition Council shall communicate this reason in written form to the author of the complaint or intimation.

Article 3

Exemptions

This regulation shall not apply to activities of production, development and marketing of agricultural products as listed in Annex I of the Regulation on the regional state aid enacted by Order of the president of the Competition Council no.55/23.03.2004, published in the Official Gazette of Romania, Part I, no. 340/19.04.2004.

CHAPTER III

Article 4

Final provisions

- (1) In case of complaining before the Competition Council on an alleged unlawful aid, the procedure of analysis and of decision-making shall apply, accordingly, the provisions of the Regulation on the organization, operation and procedure of the Competition Council, enacted by the Order of the President of the Competition Council no. 61/2004, published in the Official Gazette of Romania, Part I, n. 288/01, April 2004, with subsequent modifications and completions.

- (2) This regulation transposes the EC Form for the submission of complaints concerning alleged unlawful aid, published in the Official Journal of the European Union, C no. 116/3 of May 16, 2003.
- (3) This regulation shall be enacted by Order of the President of the Competition Council and shall be published in the Official Gazette of Romania, Part I.
- (4) Annex I is an integral part of this Regulation.

Annex I
FORM ON THE CONTENT OF COMPLAINT
REGARDING ALLEGED UNLAWFUL AID

CHAPTER I

1. General data and information

- 1.1. Involved party/authorities/any other persons who drafted the complaint;
- 1.2. Surname, forename, corporate name, contact persons, legal entity empowered by the alleged injured person to draft the complaint;
- 1.3. Address and registered office;
- 1.4. Telephone, fax, e-mail address;
- 1.5. If the complainant is an enterprise/company, the field of activity of the complainant
- 1.6. The complainant shall describe briefly how the alleged unlawful aid affects the complainant's interests.
- 1.7. The proxy or power of attorney to represent the injured party shall be attached.

2. Information regarding the beneficiary of the alleged unlawful aid

- 2.1. Identity data of the beneficiary.
- 2.2. The level the unlawful aid was granted:
 - central;
 - regional;
 - other cases.

CHAPTER II

1. Information included in the complaint

- 1.1. Is the complaint related to an aid scheme or an individual state aid;
- 1.2. When was the aid given or the aid scheme implemented, and what is the duration of the alleged aid scheme;
- 1.3. In which economic sector does the alleged aid apply;
- 1.4. What is the amount of the alleged aid;
- 1.5. In what form is the aid given (loans, guarantees, tax incentives, etc);
- 1.6. Indicate the beneficiaries/ In the case of an aid scheme, the eligible beneficiaries to receive state aid; it is useful to give as much information as possible, including a description of the main activities of the company, the firm benefiting from this unlawful aid.
- 1.7. Purpose/objective to give the state aid.

CHAPTER III

1. Grounds of complaint

- 1.1. Detail the grounds for the complaint, including the reasons why you have complained before the Competition Council;
- 1.2. State the legal provisions infringed by the granting of the unlawful aid in question;
- 1.3. How has the granting of the unlawful aid in question affected normal competitive environment or the International Accords between Romania and other states;
- 1.4. Prejudices caused by the granting of the state aid.

CHAPTER IV

1. *Information on other procedures*

- 1.1. Information on prior complaints made to other competent legal authorities in view of resolving the complaint.
- 1.2. Attach copies of correspondence with other authorities regarding the complaint at issue.

2. *Documents, acts and other information to support the complaint*

- 2.1. Attach any documents, acts, correspondence in support of the complaint.
- 2.2. Attach copies of laws, governmental decrees and other measures which provided the legal basis for the granting of the aid.

CHAPTER V

1. *Confidentiality*

- 1.1. In order to protect the rights of defence of the parties concerned, the Competition Council may disclose the identity of the complainant, as well as the supporting documents to the complaint.
- 1.2. If the complainant is not willing that his or her identity, and other documents should be disclosed, he or she should indicate this clearly, identify the confidential parts, and give reasons why they should not be disclosed.

Date and signature