

## **REGULATION**

### **on the transparency of financial relations between public authorities and public undertakings and on financial transparency within certain undertakings**

According to the provisions of the Article 28 par. (1) of the Competition Law no. 21/1996 on state aid with subsequent modifications and completions, the Competition Council adopts this regulation:

#### **CHAPTER I**

##### **General provisions**

**Article 1.** – This regulation regulates the procedures of the transparency of financial relations between public authorities and public undertakings, and the financial transparency within certain undertakings.

##### **Definitions**

**Article 2.** - For the purpose of this Regulation, the following terms and expressions shall mean:

- a) "*public authorities*" means the Parliament, the President of Romania, the government, the specialized central and local public administration authorities, other public authorities provided in the Constitution;
- b) "*undertaking*" means any individual or legal person, irrespectively their organizational form, carrying out total or partial lucrative activities.
- c) "*public undertakings*" means any undertaking over which the public authorities may exercise directly or indirectly a dominant influence by virtue of their ownership of it, their financial participation therein, or the rules which govern its activity;
- d) "*dominant influence on the part of the public authorities*" - the influence which might be exercised directly or indirectly in relation to an undertaking in which these authorities hold the major part of the undertaking's subscribed capital or may exercise the majority of the voting rights attached to the issued shares or can appoint more than half of the members of the undertaking's administrative, managerial or supervisory body;
- e) "*public undertakings operating in the manufacturing sector*" are undertakings whose main activity field, representing at least 50 % of the total annual turnover developed in the manufacturing sector. The activities that are included in the manufacturing sector are those included in the classification of the national economy activities (CAEN), Section D – Manufacturing industry with the subsections DA up to DN included;
- f) "*service of general economic interest*" means that service performed under market conditions, for which there are obligations imposed by public authorities regarding the non-discriminatory access of the consumers and/or other imposed obligations;
- g) "*different activities*" means, on the one hand, all products or services in respect of which a special or exclusive right was granted to an undertaking or all services of general economic interest which an undertaking perform and, on the other hand, any other product or service in respect of which the undertaking is active;
- h) "*exclusive rights*" means rights granted by a public authority to a single one undertaking, through any legislative, regulatory or administrative instrument, to perform a service or develop an activity within a given geographical area;

i) "*special rights*" means rights granted by a public authority to a limited number of undertakings, through any legislative, regulatory or administrative instrument, which, within a given geographical area:

- limits to two or more the number of the undertakings that are authorized to perform a service or develop an activity, otherwise than according to objective, proportional and non-discriminatory criteria;
- designates, otherwise than according to such criteria, several competing undertakings, as being authorized to perform a service or develop an activity;
- confers advantages to any undertaking or undertakings, otherwise than according to such criteria, which substantially affect the ability of any other undertaking to perform the same service or to develop the same activity in the same geographical area under substantially equivalent conditions;

j) "*net turnover*" includes the amounts resulted from the selling of goods and services that enter into the "current activities" category of an undertaking, after the deduction of the commercial reductions, the Value Added Tax and other related;

k) "*undertaking required to maintain separate accounts*" means any undertaking that benefit of a special or exclusive right granted through government statutes or that is entrusted to perform services of general economic interest for which it receives State aid in any form whatsoever, including any grant, support or compensation and which carries on other activities as well.

**Article 3.** - The financial relations between public authorities and public undertakings shall be transparent, so that the following emerge clearly:

- a) public funds made available by public authorities directly to the public undertakings concerned;
- b) public funds made available by public authorities through the intermediary of other public undertakings or financial institutions;
- c) the use to which the public funds received by public undertakings are actually put.

## **CHAPTER II**

### **Scope**

**Article 4.** – This Regulation applies to the following financial relations between public authorities and public undertakings:

- a) the compensation of operating losses from the current activity, mainly allocating free amounts to undertakings for current financing or compensation of current losses by public authorities;
- b) the provision of capital by the State, respectively allocating free amounts to public undertakings as provision of capital;
- c) the allocation to public undertakings of non-refundable grants, or loans on privileged terms by the public authorities;
- d) the granting of financial advantages to public undertakings by forgoing profits or recovery of any due sums;
- e) compensations for financial burdens imposed by public authorities.

**Article 5.** - This Regulation shall not apply to financial relations between the public authorities and

- a) Romanian National Bank, liable for drafting and implementing the monetary, currency policy;

- b)** public credit institutions, as regards deposits of public funds placed by public authorities on normal commercial terms;
- c)** public undertakings whose total annual turnover over the period of the two last financial years preceding that in which the public funds are made available or used, has been less than the equivalent in ROL of EUR 40 million. For public credit institutions the corresponding threshold shall be a balance sheet total of the equivalent in ROL of EUR 800 million.
- d)** public undertakings which are active in the manufacturing sector and whose net turnover is less than EUR 250 million at the end of the last financial year.

**Article 6.** - This Regulation shall not apply:

- a)** to undertakings enjoying special and/or exclusive rights or entrusted with the operation of a service of general economic interest, whose total annual turnover over the period of the two last financial years prior to the year they were granted the above-mentioned rights or they were entrusted with the operation of a service of general economic interest, was less than the equivalent in ROL of EUR 40 million. For public credit institutions, this threshold shall be a balance sheet total of the equivalent in ROL of EUR 800 million for the cumulated annual financial structure;
- b)** to undertakings which have been entrusted with the operation of services of general economic interest according to the Law, if the State aid in any form whatsoever, including any grant, support or compensation they received is set for an appropriate period following an open, transparent and non-discriminatory procedure.

### **CHAPTER III**

**Article 7. (1)** – In order to ensure the transparency of financial relations, public authorities have the obligation:

- a)** to organize the evidence of financial relations between them and public undertakings, as well as the evidence of the amounts granted for each public undertaking, so as to fulfill the obligations provided under the Article 3 a) and b);
- b)** to provide information regarding the financial relations between them and public undertakings, within 15 working days as of the date of receiving the request of the Competition Council.

**(2)** – Public authorities shall organize a separate department in order to enforce the provisions of this regulation.

**Article 8.** In order to ensure the transparency of the financial relations, public undertakings have the obligation:

- a)** to organize the accounting of the financial relations that exist between them and public authorities, so as to fulfill the requests provided under article 3;
- b)** to keep the information for a 5-year period as of the end of the financial year in which the public funds were made available to public undertakings; these information refer to the financial relations between them and the public authorities; if the public funds granting was developed for several years, then the 5-year time limit starts from the last financial year in which public funds were received.
- c)** to supply information within maximum 15 working days as of the date of receiving the request of the Competition Council, related to the financial relations between them and the public authorities;
- d)** to convey to the Competition Council, within 60 days from the end of the financial year, the fulfillment of the conditions to qualify as public undertaking, under this regulation.

## **Obligations of public undertakings operating in the manufacturing sector**

**Article 9. (1)** - In order to ensure the transparency of the financial relations, public undertakings which operate in the manufacturing sector and, whose net turnover is higher than the equivalent in ROL of EUR 250 million at the end of the last financial year, have the following obligations:

- a)** to organize the evidence of their financial relations with public authorities, in order to meet the provisions under Article 3;
- b)** to keep the information related to the financial relations between them and the public authorities; if the public funds granting was developed for several years, then the 5-year time limit starts from the last financial year in which public funds were received.
- c)** to forward to the Competition Office, in maximum 15 working days from the date of receiving the request, a report;
- d)** to provide to the Competition Office, in maximum 15 working days from the date of receiving the request, supplementary information necessary to ensure the transparency of the financial relations between them and the public authorities.
- e)** to convey to the Competition Council, within 60 days from the end of the financial year, the fulfillment of the conditions to qualify as public undertaking, under this regulation.

**(2)** The provisions under par. (1) (c) shall also include the following information:

- a)** the annual accounts;
- b)** decisions and minutes of the general meetings of the shareholders and of the meetings of the board of administration;
- c)** the provision of any share capital funds, specifying the modality of their realization (in kind or cash);
- d)** destination of the dividends paid out and profits retained;
- e)** non-redeemable grants or subsidies and the circumstances in which they have been received and used;
- f)** the award of loans, with specification of terms of the loan, interest rates and guarantees;
- g)** guarantees granted by public authorities for loans;
- h)** the membership to a group of undertakings;
- i)** State forgosings of amounts due, such as: repayment of loans, return of subsidies used not according to the provisions imposed by the public authorities, payment of taxes or any similar charges, etc;
- j)** the amounts and actual use of donations and sponsorships.

**(3)** Provisions under par. (1) and (2) shall also apply to public undertakings operating in the manufacturing sector and which have subsidiaries, Romanian or foreign legal entities, as defined in the regulations on account consolidation. In this case, the report under par. (1) (c) must include, in addition, details on:

- a)** all the transactions within the same group, with other groups of public undertakings or direct transactions between public undertakings within the group or their subsidiaries and public authorities;
- b)** capital shares, including direct contributions of public authorities or any other contributions of a group of public undertakings or of public undertakings, within or outside the group.

### **Obligations of undertakings which benefit from special or exclusive rights or which provide services of general economic interest**

**Article 10.** – (1) In order to ensure financial transparency, undertakings benefiting from special or exclusive rights, or which provide services of general economic interest have the following obligations:

a) to establish an organizational and financial structure to ensure separate accounts, so that the following may result clearly: costs and revenues related to the different activities; full details on the methods through which costs and revenues are redistributed/allocated to the different activities; accounting principles and any other information related to the way separate accounts are held;

b) to keep the information on the financial and organizational structure for a period of 5 years and to convey them to the Competition Council within maximum 15 working days as of the date of receiving the request;

c) to keep for a period of 5 years the information related to the financial relations between them and the public authorities, if the case may be; if the award of public funds was performed during several years, the 5-year time limit starts from the last financial year in which public funds were received.

d) to convey to the Competition Council, within 60 days from the end of the financial year, the fulfilment of the conditions to qualify as undertakings benefiting from special or exclusive rights, or which services of general economic interest, under this regulation.

(2) The provisions under par. (1) shall not apply to undertakings provided in it when they submit to special provisions of other government statutes, nor to those for which Romania undertook obligations before the European Communities and the Member States through the treaties it signed.

## **CHAPTER IV**

**Article 11.** (1) The first reporting on exceeding the thresholds provided for under arts. 5 and 6 shall take into account the total net turnover achieved during the two preceding financial years.

(2) The transformation in EUR of the net turnover shall be made at the average annual exchange rate LEI/EUR, as published by the National Bank of Romania.

**Article 12** – (1) The Competition Council shall not disclose the information or documents obtained for the purposes of enforcing this regulations which are classified information and were granted by their holder under Law no. 182/2002 on protection of classified information.

(2) Enforcing the provisions of par. (1) does not prevent publication of general information or analyses which do not contain classified information.

**Article 13** - The Competition Council shall convey to the European Commission, upon request, information regarding financial relations between public authorities and undertakings, and on the financial transparency of certain undertakings.

**Entry into force of this regulation**

**Article 14** - This Regulation shall be enforced by order of the president of the Competition Council and shall enter into force as of the date of its publication in the Official Gazette of Romania, Part I.