



ROMÂNIA

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FORMAL OPINION

On the State aid scheme set up by the Law no. 88/2010 on the approval of certain financial measures aimed for the SMEs activating in the brewery industry

By analysing the following:

The text of the Law no. 88 of 21 May 2010 on the approval of certain financial measures aimed for the SMEs activating in the brewery industry, hereby named the *Law*

and

The standard notification form for the State aid measures enclosed by the *Law*, submitted by the Ministry of Agriculture and Rural Development by the address no. 53160/01.06.2010, registered at the Competition Council with no. RG 3847/02.06.2010, in order to receive a formal opinion, and

ascertaining that:

1. The Law setting up the financial measures, through published in the Official Journal, cannot be implemented in the absence of a decision issued by the European Commission, to authorise the State aid measures.
2. By the Law it is intended to implement a restructuring State aid scheme for the small and medium sized enterprises activating in the brewery industry.
3. By implementing the scheme it is aimed to support firms in difficulty, based on a feasible, coherent and long - range restructuring plan, which cannot exceed 3 years, in order to obtain their long term return to viability.
4. The State aid granted within the scheme consists in the exemption from the payment of the fiscal obligations overdue on 31 December, 2008, representing excises, tax on profit and VTA, with the exemption of the obligations with stoppage at the source and the VTA owed in custom, as well as the related accessory fiscal obligations representing interests, penalties and delay increments.
5. In order to benefit from the specific individual allocations within the scheme, the SMEs must cumulative fulfill the following eligibility criteria:

- To be considered firms in difficulty;
 - To submit a restructuring plan, for maximum 3 years, which should help the firm to reach its long term viability;
 - The contribution of the State aid beneficiary to the restructuring plan must be of at least 40% of its total financial value – for the medium sized enterprises – and at least 25% for the small enterprises;
 - The beneficiary enterprises will not be able to increase their production capacity over 200 thousand hl/year during the restructuring period;
 - At the date when the Law came into force they were not in bankruptcy procedure.
6. Granting the State aid is being conditioned by the approval, by the Ministry of Agriculture and Rural Development, of the restructuring plan for each applicant.
7. The State aid scheme does not fulfill the conditions stipulated in the *Communication from the Commission Community guidelines on State aid for rescuing and restructuring firms in difficulty*¹. Therefore, the following provisions are not stipulated in the legal basis and, therefore, in the notification:
- The limit of the requested State aid volume to the minimum necessary as far as the restructuring costs are concerned, in order to allow the restructuring in accordance with the existing financial resources of the firms, the shareholders or the group it belongs, also by taking into account any previously granted rescue aid;
 - The necessity that the restructuring plan is set up based on realistic forecasts on the firm's future functioning conditions and the improvement of the viability should mainly come from internal measures. This restructuring plan should be accompanied by a market study;
 - The possibility to impose certain compensatory measures which may include sale of assets, reduction of capacity or market presence and reduction of those specific barriers at the entrance, in order to avoid illegal distortions of competition;
 - The contribution of the State aid beneficiary to the restructuring plan should be from its own or drawn resources, excluding all future profits, such as capital flow;
 - Fulfilling the „first time – last time” principle;
 - Proportionality of the aid;
 - The undertakings should present proof according to which they have not benefited of State aid subject to an ongoing recovery order;
 - The total budget of the State aid scheme and its implementing period;
 - The State aid scheme's maximum number of beneficiaries;
 - The maximum amount of the individual specific allocations that can be granted to a beneficiary within the scheme and which, in order not to be necessary the elaboration of an individual notification cannot exceed the equivalent in RON of 10 million EURO.
8. The notification does not include all the information stipulated in the standard from enclosed in Annex I to the Regulation (EC) no. 794/2004 implementing Council Regulation (EC) no. 659/1999 laying down detailed rules for the

¹ Published in the Official Journal EC no. C 244/2004

application of Article 93 of the EC Treaty, with the subsequent modifications and completions. Therefore the European Commission will not be able to assess the compatibility of the State aid measures.

COMPETITION COUNCIL

Based on the *Competition Law no. 21/1996, republished* and on art. 8 recital (1) of the *Government Emergency Ordinance no. 117/2006 on the national procedures in the State aid field, approved with modifications and completions by the Law no. 137/2007*,

ISSUES FORMAL OPINION

On the State aid scheme enclosed in the *Law no. 88 of 21 May 2010 on the approval of certain financial measures aimed for the SMEs activating in the brewery industry*, suggesting that the Ministry of Agriculture and Rural Development should start the necessary measures to modify and complete the submitted documents, in order to meet the requests imposed by the *communautaire* legislation on the elaboration of State aid schemes, as mentioned at point 7.

The necessity of these amendments and completions is based on the *communautaire* legislation applicable for the restructuring State aid and the observations formulated by the European Commission within the informal consultations regarding the granting, by Romania, of restructuring State aid for the small and medium sized enterprises activating in the brewery industry (which were also brought to the knowledge of the Parliament, as a decisional forum, during the procedure of adoption of the Law).

We underline that, in accordance with the provisions of art. 12 in the EGO no.117/2006², within 10 days from receiving the Formal opinion, the Ministry of Agriculture and Rural Development may request to the Competition Council to submit the notification, to the European Commission, in the decided form. Otherwise, in accordance with art. 12 (5) in the EGO no. 117/2006, the Competition Council will consider that the Ministry of Agriculture and Rural Development has given up to its submission.

² On the national procedures in the State aid field, with the subsequent amendments and completions