

Approved by the Decision of the  
Plenum of the Competition Council  
nr.12 of August 30, 2013

## **REGULATION**

### **on state aid intended to remedy a serious disturbance in the economy**

The present Regulation transposes the art.17 paragraph (3) point b) of the Treaty on the Functioning of the European Union and partially transposes the Communication from the Commission on the treatment of impaired assets in the Community banking sector (2009/C 72/01), published in the Official Journal C 72 of March 26, 2009, Communication from the Commission on the Recapitalization of financial institutions in the current financial crisis: limitation of aid to the minimum necessary and safeguards against undue distortions of competition (2000/C 10/03), published in the Official Journal of the European Union C 10 of January 15, 2009, Communication from the Commission on the Temporary framework for State aid measures to support access to finance in the current financial and economic crisis (2009/C 83/01), Communication from the Commission on the return to viability and the assessment of restructuring measures in the financial sector in the current crisis under the State aid rules (2009/C 195/04) and Communication from the Commission on the application of State aid rules to measures taken in relation to financial institutions in the context of the current global financial crisis (2008/C 270/02), published in the Official Journal of the European Union C 270 of October 25, 2008.

### **Section 1**

#### **General Provisions**

- 1.** The present Regulation is applied on the state aid intended to remedy a serious disturbance in the economy declared by the Parliament, President, Government of the Republic of Moldova or by the National Committee for the Financial Stability.
- 2.** State aids intended to remedy a serious disturbance in the economy can be considered compatible with a normal competitive environment according to art.5 paragraph (1) point a) of the Law nr.139 of June 15, 2012 on State aid if they meet the conditions provided by the present Regulation.
- 3.** Serious disturbance in the economy is a crisis situation, a state of difficulty of economic activities, a sudden change of the economic activity embodied in a breaking economic equilibrium, manifested especially between production and consumption, supply and demand, with direct effects on the prices, level of the use of the factors of production, the disorder of the country's financial system etc.
- 4.** State aids intended to remedy a serious disturbance in the economy can be considered compatible with a normal competitive environment only if a serious disturbances of the economy affects the entire economy of the state, not only the

economy of a region or a part of the territory.

5. State aids intended to remedy a serious disturbance in the economy can be directed to a sector of the economy, if there is a risk that the crisis in this sector due to the high degree of interdependence, can have an immediate impact on the national economy.

6. State aids intended to remedy a serious disturbance in the economy, must meet the following principles:

a) carefully determine the beneficiaries, in order to achieve effectively the objective of the remedying a serious disturbance in the economy,

b) to be proportional to the challenge faced by the beneficiaries, without adoption of the other measures than those which are required for the achievement of the objective, and

c) be designed in such a way as to minimize negative side effects on competitors, other sectors or compliance with international agreements.

7. State support under this Regulation shall be made for a limited period of time necessary to remedy the serious disturbance in the economy.

8. State aids intended to remedy a serious disturbance in the economy is usually ordinarily granted in the form of aid scheme. Individual aids intended to remedy a serious disturbance in the economy are given if there is a systemic relevance.

9. Individual aid for undertakings in difficulty, which resulted from serious disturbance in the economy, is granted in compliance with the Regulation on State aid for rescuing distressed beneficiaries.

## **Section 2**

### **State aid granted to the financial sector in order to remedy serious disturbances of the economy**

10. In order to remedy a serious disturbance in the economy, the beneficiaries in the financial sector, registered in the Republic of Moldova can benefit from support measures more favorable than those granted under the normal circumstances.

11. State aid shall not exceed the necessary minimum and should not allow the beneficiary to get engaged in aggressive commercial strategies or to develop its own business and must not be used for other purposes that would lead to excessive distortions of competition. Beneficiaries should make a considerable contribution, where it is possible, by using their own resources, including participation in the private sector.

12. In general, the less the initial contribution is, the more it is necessary for the shareholders to make a greater contribution on the later stage, either in the form of conversion of the state contribution into beneficiary's shares of the financial sector and / or in the form of some additional compensatory measures, which will limit the distortions of competition.

13. When a beneficiary in the financial sector has benefited from state aid, the supplier must submit a viability plan or a restructuring plan in order to confirm or

restore long-term viability of the beneficiary in the financial sector and cannot continue to rely on the state aid.

**14.** During the assessment of restructuring plans, the Competition Council will take into the consideration the abidance by the following requirements:

- a) to ensure the restoration of long-term viability of the beneficiary in the financial sector in question,
- b) to ensure the maintenance of a minimum level of aid as well as the substantial private participation in restructuring costs,
- c) to ensure the fact in which such aid granted by the state will not cause the excessive distortion of competition and unjustified benefits.

**15.** The Granting of State aid must be accompanied, where it is possible, by the adequate sharing of obligations and measures intended to minimize distortions of competition which in long term will fundamentally weaken the structure and functioning of the relevant market.

**16.** Competition Council will examine state aids for restructuring of the beneficiary from the financial sector under conditions of serious disturbances of the economy, taking into account the systemic role of financial sector in the whole economy, under the following conditions :

- a) restructuring plan should include a thorough diagnosis of the problems of the beneficiary in the financial sector. In order to develop sustainable strategies for viability, the beneficiaries of the financial sector should therefore simulate crisis situation. Also the beneficiaries from the financial sector will have to, if there is the case, notify about the impaired assets;
- b) taking into consideration the ultimate aim of achieving financial stability, special attention will be given to development of a restructuring plan, and in particular, ensuring a sufficiently flexible and realistic schedule of the necessary implementation steps. If the immediate implementation of structural measures is not possible due to market circumstances, the intermediate behavioral safeguards will be taken into account.
- c) The Competition Council will apply the basic principle of appropriate burden sharing between providers and beneficiaries, taking into account the overall situation of the financial sector. Where burden sharing is not immediately possible due to market circumstances at the time of recovery, this should be made in a later stage of implementation of the restructuring plan;
- d) measures to limit distortions of competition by a beneficiary should be developed in a way that limits the production of any disadvantage to other financial institutions , taking into account the systemic nature of the crisis that may require Large-scale intervention in this sector;
- e) the provision of additional aid during the restructuring period should remain a possibility in case it is justified by the reasons of the financial stability. Any additional aid will be limited to the minimum necessary in order to ensure viability.

**17.** Beneficiaries from financial sector may apply for structural measures, such as:

- a) to divest subsidiaries or branches, portfolios of customers or business units or undertake other similar measures;

b) to impose of a certain limit on the extension of the beneficiary from the financial sector in some business spheres or geographical area.

**18.** If finding a buyer for subsidiaries or other activities or assets proves to be objectively difficult, the Competition Council will extend the implementation period of those measures, if there is a compulsory calendar of the reduction of the activities volume. The period for the implementation of structural measures must not exceed five years.

**19.** State aid should not be used to the detriment of competitors, who do not benefit from the similar support measures, and for a period ranging between three years and for the duration of the restructuring period should remain in force the following restrictions:

a) financial institutions should not use State aid for acquisition of competing undertakings;

b) where the imposition of divestitures and/or the prohibition of acquisitions are not appropriate, it may be accepted the imposition by the supplier of a recovery mechanism of a part of aid after it has returned to viability;

c) state aid cannot be used to offer terms (for example as regards rates or collateral) which cannot be matched by competitors which are not in receipt of State aid;

d) financial institutions must not invoke State aid as a competitive advantage when they advertise their financial bids.

**20.** In order to verify the correct application of the restructuring plan supplier will submit regular detailed reports. The first report must be submitted to the Competition Council no later than six months after the approval of the restructuring plan.

### **Section 3**

#### **State aid granted to undertakings in the real economy in the context of serious disturbance in the economy**

**21.** In order to overcome a serious disturbance in the economy, undertakings in real economy could benefit from support measures more favorable than those provided under normal conditions with the following requirements:

a) the aid is granted in the form of a aid scheme ;

b) the aid is granted to undertakings which were not in difficulty on a date declared as a start of serious disturbance in the economy;

c) the aid is not an export aid or aid that favors domestic products over imported ones;

d) the aid is granted before a specified date ;

e) before aid granting the supplier obtains a written or electronic declaration from the concerned undertaking about of any de minimis aid , and any aid granted under this measure;

f) the aid scheme does not apply to undertakings which are engaged in the primary production of agricultural products defined in Annex 1 to the Regulation on the notification form, the procedure for examining and taking decisions on state aid. This can apply to undertakings engaged in the processing and marketing of

agricultural products, except the cases when the amount of aid is determined on the basis of price or quantity of such products purchased from primary producers or put on the market by the undertakings concerned or, except the cases when the aid is conditional on the partial or total transfer of it to primary producers; g) the aid is necessary for the launch of a new project of significant importance , for existing projects, aid may be granted if it becomes necessary to continue the project because of the new economic situation.

**22.** Aid measures provided in this Regulation will not be cumulated with aid falling within Regulation on de minimis aid for the same eligible costs.

**23.** The aid measures granted under the present Regulation may be cumulated with other types of compatible aid or with other forms of financing, on condition that they comply with the intensities of maximum aid indicated in the pieces of legislations of the Plenum of Competition Council on categories of aid adopted under Art. 5 of Law No. 139 of June ,15 2012 on State aid.

## **Section 4**

### **Final Provisions**

**24.** Decisions on notifications submitted for state aid intended to remedy a serious disturbance in the economy shall be adopted by the Plenum of the Competition Council within restricted period of time.

**25.** The record of the granted state aids in accordance with the provisions of the present Regulation shall be carried out in accordance with the requirements of the Regulation on the State aid Register. Every six months aid provider will submit to the Competition Council report on state aid intended to remedy a serious disturbance in the economy.

**26.** Decisions of the Plenum of the Competition Council on National Bank of Moldova notifications will be made public in the terms and way coordinated with the National Bank of Moldova.