

# LAW ON STATE AID

The Parliament adopts the present organic law

## CHAPTER I GENERAL PROVISIONS

### **Article 1 - Object and scope of the law**

- (1) The present law establishes the legal framework for the ways of authorization, monitoring and reporting of the state aid granted to beneficiaries from all the sectors of national economy, except for the agriculture sector, for the purpose of maintaining a regular competition environment.
- (2) In the event the international treaties regulating the state aid domain, and to which the Republic of Moldova takes part, set up other dispositions and provisions than those stipulated by the present law, the international treaty's dispositions and provisions shall apply.
- (3) The activities of monetary and exchange rate policy of the National Bank of Moldova shall be exempted from the scope of the present law.

### **Article 2 – The competent authority and its functions**

The National Agency for the Protection of Competition (hereinafter: the Competition Authority) is the authority entitled with functions of authorizing, monitoring, and reporting of the state aid.

### **Article 3 - Main definitions**

In the meaning of the present law, the definitions given below shall have the following meaning:

*State Aid* — any support measure which fulfils cumulatively the following conditions:

- a) is granted by the provider from the state resources or resources of administrative/territorial units, in any form;
- b) gives an economic advantage to its beneficiary which would not be possible to gain under normal market conditions;
- c) is given on a selective basis;
- d) distorts or is likely to distort competition;

*Existing aid* — state aid, respectively aid scheme or individual aid which complies with one of the following conditions:

- (a) was in effect prior to present law entering into force;
- (b) was authorized by the Competition Authority;
- (c) the Competition Authority has not adopted on it one of the decisions provided for in the present law within the time limit set up in the present law;
- (d) in the moment of enforcing it, the measure was not classified as an aid and become aid subsequently, due to the market development and without being amended;
- (e) the limitation period for it has expired;

*De Minimis aid* – state aid below the threshold of 2.000.000 MDL per beneficiary, granted to the same beneficiary within a maximum period of 3 years, regardless of its form and objective upon the condition that it is not related to export activities. The way of granting de minimis aid shall be set up through the Competition Authority enactment;

*Illegal aid* — any state aid, other than the existent aid or the one exempted from the obligation of notification pursuant the present law, which was granted without the Competition Authority's authorization or which was granted under the conditions in which the Competition Authority was notified but it has not adopted a decision on it within the legal time limit;

*The abusively used aid*- state aid used by the beneficiary with infringement of the Competition Authority's decision;

*Individual aid* - state aid which is not granted under a scheme of state aid or is granted under a scheme which has to be individually notified;

*State aid scheme* – any act on the grounds of which state aid may be granted to beneficiaries defined in the content of the act in a general or abstract form, without the need for additional enforcing measures, or any act which allows for the provision of state aid to one or more beneficiaries for an indefinite time period and/or in an indefinite amount which is not related to a specific project;

*New aid*- any aid, respectively any scheme of aid and any individual aid which is not existent aid, including the amendment of the existent aid;

*State aid provider* — any authority of central public administration or of an administrative-territorial unit, or any legal person managing directly or indirectly state's or administrative/territorial resources;

*State aid initiator*- the authority entitled to initiate drafts of legal acts involving granting some state aid;

*State aid beneficiary* — any independent legal or natural person, involved in an economic activity, consisting in provision of services or goods on a market, receiving state aid;

*Services of general economic interest* — the service offered under market conditions, for which there is an obligation imposed by public authorities regarding the non discrimination access for all consumers and/or other imposed obligations;

*Notification* — a provider's or/and initiator's request to the Competition Authority for the authorization of the state aid granting;

*Person involved*- the provider, the initiator, beneficiary of the state aid , as well any other person, whose interests may be affected by granting a state aid;

*State resources or resources of the administrative/territorial units*- the amount of the heritage, including in the shape of financial means, belonging to the state,

administrative/territorial units, including the autonomous administrative/territorial unit Gagauzia.

#### **Article 4 - Compatible state aid**

The following categories of state aid are considered compatible with the regular competition environment and are exempted from Competition Authority notification:

- a) State aid of a social character granted to individual consumers, upon the condition that the aid is granted without any discrimination related to the origin of goods or the services;
- b) The aid granted for the purpose of eliminating the consequences of natural disasters and exceptional situations.

#### **Article 5 - State aid which may be compatible**

(1) The following categories of state aid may be considered compatible with a regular competition environment:

- a) The aid aimed at the remediation of a severe economy disturbance;
- b) the aid granted for the employment and professional training of the staff;
- c) the aid granted to SMEs;
- d) the aid granted for the research, development and innovation;
- e) the aid granted for the environment protection;
- f) the aid granted to the beneficiaries providing services of general economic interest;
- g) State aid provided for the rescue of beneficiaries in difficulties;
- h) aid for starting enterprises by women entrepreneurs;
- i) sectoral aid, depending upon the activity domain in the national economy;
- j) regional development aid;

(2) The assessment of the compatibility with the regular competition environment, for each category of state aid, provided for in paragraph 1, is carried

out based on the normative acts of the Competition Authority, prepared pursuant to the observance of the provisions of the Law NO. 235-XVI as of 20 July 2006 on fundamental principles of regulating the entrepreneurial activity and refers to:

- a) The goal and the scope of the state aid;
- b) The conditions for granting aid;
- c) The categories of beneficiaries of the aid;
- d) The thresholds, expressed either as the intensity of the state aid in comparison with the total eligible costs, or a maximum value of the state aid;
- e) The conditions regulating the state aid accumulation;
- f) Monitoring conditions.

(3) granting a state aid, except for the derogations provided for in art. 4 and the present article, is deemed incompatible with the regular competition environment.

#### **Article 6.** The form of the state aid

(1) The state aid is expressed through the transmission of public goods, including in the form of financial means, to a beneficiary or through the renunciation on behalf of the provider to certain future or possible income which could have been obtained from a beneficiary.

(2) The following is deemed state aid:

- a) subventions and/or subsidies;
- b) cancellation or assumption of debts;
- c) exemptions, reductions, delays or rescheduling the payment of taxes;
- d) granting of loans with preferential interest rates;
- e) Granting guarantees under preferential conditions;
- f) Provider's investments, if the profit rate of these investments is smaller than the regular one, anticipated by a prudent private investor;
- g) The reductions to the price of the provided goods and services, including the selling of some movable and immovable property under the market price;

(3) The state aid may have the form of a state aid scheme or an individual aid.

#### **Article 7.** Support means which are not state aid

(1) The general support measures are not deemed state aid. The general means are deemed those means which are applied in all the sectors of the national economy without differentiation.

(2) Issuing of money by the National Bank of Moldova to a beneficiary shall not be deemed state aid in case the following conditions are cumulatively met:

- a) the beneficiary is creditworthy when ensuring the liquidity;
- b) the facility is integrally ensured through a guarantee to which a safety margin is applied depending its quality;
- c) The National Bank of Moldova charges from the beneficiary equal interests or interests higher than the basic rate;
- d) the measure is undertaken on the initiative of the National Bank of Moldova and is not supported by a guarantee on behalf of the state.

## **CHAPTER II**

### **PROCEDURAL REGULATIONS**

#### **Article 8 – The Notification and the authorization of state aid.**

- (1) Any intention to grant state aid or to modify an existent state aid based on a draft legal act shall be notified to the Competition Authority by the provider and/or initiator of the state aid, with the exception of de minimis aid and aid provided under Article 4.
- (2) The notification of a state aid shall contain exact and complete information in order to evaluate the compatibility of the state aid with the present law and the normative enactment adopted by the Competition Authority which shall set up the notification form, examination procedures and making decisions in the state aid domain.
- (3) The Competition Authority shall inform the provider and initiator of the state aid on the date of receipt of complete notification.
- (4) Where it is stated that the information contained in the notification is incomplete and/or incorrect, the Competition Authority shall notify the provider or/and the initiator of the state aid in written form on the need for the notification to be completed or corrected within a time limit of 15 working days from the moment of notification receipt;
- (5) Within 20 working days from the receipt of the Competition Authority's request provided for in par. (4), the state aid provider or/and initiator shall

complete or correct the information contained in the notification. This deadline may be extended upon the substantiated request of the state aid provider or/and initiator.

(6) A notification is deemed to be withdrawn in the event the requested information is not provided in the time limit set up

(7) A new state aid may not be granted unless the Competition Authority makes a decision of authorization or unless the aid is deemed authorized under the conditions of the present law.

### **Article 9 - Provision of specialized assistance in the preparation of state aid schemes**

Upon the request of the state aid provider or/and initiator, the Competition Authority shall provide specialized technical assistance in the preparation or modification of a state aid scheme.

### **Article 10 –The examination of the notification**

(1) The Competition Authority shall initiate the notification examination on the day of its receipt.

(2) At the end of the notification examination, the Competition Authority shall make one of the following decisions:

a) the decision stating that the notified measure shall not be deemed state aid;

b) decision of state aid authorization, where it is established that the notified measure does not raise doubts regarding its compatibility with the regular competition environment;

c) decision to initiate the procedure of examination of the competition legislation infringement case where the proposed measure raises doubts regarding its compatibility with a regular competition environment.

(3) The Competition Authority shall make one of the decisions provided for in par (2) within a time limit at most of 45 working days from the day of receiving the complete notification.

(4) The decision of authorization of the state aid granted by the National Bank of Moldova and/or Government for the remediation of the banks in difficulty shall be made on a time limit of 72 hours from the notification receipt, and in cases of extreme urgency- in a time limit of 24 hours. In such situations, the provider shall submit to the Competition Authority, within a time limit of 6 months, a plan of restructuration or liquidation.

(5) In the event the Competition Authority does not make any decision at the expiry of 45 working days, the state aid shall be deemed authorized.

(6) In extraordinary situations, upon the request of the state aid initiator and/or provider, the Competition Authority may suspend one time, for a determined time limit, the notification examination procedure, in case of need of amendment to notification or for the purpose of insuring the compliance of its draft with the norms on state aid.

#### **Article 11 – The procedure of examination of cases of infringing the competition protection legislation**

(1) The procedure of examination of cases of infringing the competition protection legislation shall be carried out in compliance with the Law no. 1103-XIV as of 30 June 2000 on protection of competition and shall not exceed the duration of 120 working days.

(2) Upon the completion of case examination, the Competition Authority shall make one of the following decisions:

a) decision stating that the notified measure shall not be deemed state aid;

b) decision of authorization of state aid where it is established that the notified measure does not raise doubts regarding its compatibility with the present law;

c) The decision of state aid authorization, imposing conditions or obligations intended to ensure that the state aid shall not significantly distort the regular competition environment and shall not affect the adequate enforcement of the international agreements to which the Republic Moldova takes part;

d) The decision stating that the state aid significantly distorts the regular competition environment and affects the adequate enforcement of the international agreements to which the Republic Moldova takes part (negative decision).

(3) The provider and / or initiator of the state aid may withdraw the notification within due time prior to the decision adoption by the Competition Authority. After the notification withdrawal, the Competition Authority shall terminate the notification examination procedures;

(4) In extraordinary circumstances, upon the request of the initiator and/or provider of state aid, the Competition Authority may suspend on a substantiated basis, one time, the procedure of examining the legislation infringement case, in order to ensure the compliance of its draft with the norms on state aid or in the event of carrying out before the court of an action whose result might have an impact on the case assessment.

#### **Article 12 - Measures on existing state aid**

If, as a result of the monitoring activity of the existing state aid, the Competition Authority establishes that the existing aid shall not be any more deemed compatible with the preset law, it shall request the state aid provider or/and initiator to undertake necessary measures in order to remove incompatibilities at issue.

#### **Article 13 – The procedures regarding the abusively used and illegal aid**

(1) If holding information regarding the granting of an illegal or abusively used aid, the Competition Authority shall initiate the procedure of examining the competition protection legislation infringement and shall request the state aid provider or/and initiator to submit all the necessary information in order to make a decision on the aid at issue.

(2) The Competition Authority may approve within a time limit of 30 working days a prescription by which requests the state aid provider and/or initiator to suspend granting the state aid at issue until the decision on its compliance with the present law is made.

(3) Where the Competition Authority issues a negative decision, the initiator or/and supplier, shall undertake the necessary measures regarding the

annulment/amendment of the act by which the state aid was granted, respectively regarding the recuperation or reimbursement of the granted state aid including the interest related to its sum;

#### **Article 14 - Recovery of illegal or abusively used aid**

(1) The initiator and/or provider of the state aid, as a result of the Competition Authority's decision, shall amend/repeal the legal act by which the illegal or abusively used state aid was granted, and respectively, shall decide upon the recovery of the granted state aid, as well the related interest, and the beneficiary shall be obliged to return the granted state aid.

(2) In the event the initiator or the provider shall not comply with the decision on the state aid recovery and the related interest, the Competition Authority is entitled to appeal to court.

#### **Article 15 - The recovery of the interest in case of an illegal or abusively used aid**

(1) The state aid which shall be recovered pursuant to a decision on recovery, includes the interest calculated on the grounds of basic rate (rounded up to the next whole percentage), established by the National Bank of Moldova in November of the previous managing year, applied to the operations of the short term monetary policy, increased by 5 points.

(2) The interest shall be paid on the account of the beneficiary of the illegal or abusively used aid, and is calculated from the day the aid at issued was granted to the beneficiary till the date of its entire recovery.

(3) Both the recovered state aid and related interest shall be transferred to the state budget, the budgets of the administrative-territorial units or other budgets components of the national public budget depending upon the provider's belonging.

#### **Article 16 - Limitation period**

- (1) The Competition Authority's right to decide on the recovery of abusively used or illegal aid shall be subject to a limitation period of 6 years.
- (2) The limitation period shall start on the day the abusively used or illegal aid became fully available to the beneficiary, and may be interrupted by any decision of the Competition Authority regarding the granting of the state aid at issue. Following each interruption a new limitation period shall run.
- (3) The limitation period shall be suspended during the period where the decision of the Competition Authority makes the object of an action brought before a court.

#### **Article 17 - Appeal of Competition Authority's decisions**

- (1) The decisions of the Competition Authority made in compliance with the present law can be appealed in court by the interested person pursuant to the Law on Administrative Contentious no. 793-XIV as of 10 February 2000.
- (2) The appeal of a decision does not suspend the obligation to comply with it unless the court decides otherwise.

#### **Article 18- The rights of the interested persons**

- (1) The Competition Authority shall publish on its web site inclusively, the information regarding the receipt of notifications and initiation of examination procedures and provides the interest persons with the requested information.
- (2) Any interested person may express its option on the support measure to which the examination procedure initiation was ordered.
- (3) Any interested person may inform the Competition Authority on any state aid alleged to be illegal or any state aid alleged to be abusively used. In the event it grounded on the information held, considers there are no adequate reasons to pronounce on the case, the Competition Authority, shall inform the interested persons about this fact.

(4) The person who transmitted the observations or informed the Competition Authority on any state aid alleged to be illegal or abusively used may keep the identity secret.

(5) Upon request, any interested person may get a copy of any decision issued by the Competition Authority, with the observance of the legislation on state secret and commercial secret.

#### **Article 19- State aid recording/inventory**

(1) The Competition Authority shall elaborate and observe the Register on state aid

(2) The observance of the Register on state aid shall be carried out in compliance with the provisions stipulated in the Law on registers No nr.71 -XVI as of 22.03.2007 and the Regulation on the Register on state aid approved by the Competition Authority.

(3) The provider of the state aid shall have the obligation to keep a strict recording of the granted or received aid, including the aid exempted from notification. The provider of the state aid shall transmit to the Competition Authority all the necessary information for the state aid Register, in compliance with enactment approved by the Competition Authority on the Register at issue.

#### **Article 20 - Monitoring and verification of the state aid**

(1) The Competition Authority has the obligation to monitor the existent ongoing state, in the view of verification of observance of the provisions set up in the legal enactments pursuant which they were granted, as well of the authorization decisions issued by the Competition Authority. The monitoring actions shall end up by drafting a monitoring report.

(2) The cases of infringement of the legislation on the state aid shall be examined by the Competition Authority at referral or ex officio, grounded on the materials it hold regarding the infringement of current legislative and normative enactments.

(3) In order to verify the observance of the legislation on state aid, the employees of the Competition Authority shall act pursuant to the provisions of the Law no. 1103-XIV as of 30 June 2000 on protection of competition.

### **Article 21 - Transparency of state aid granting**

(1) The conclusive part of Competition Authority decisions, made pursuant the present law, shall be published in the Official Gazette of the Republic of Moldova, taking account of the parties' interest and ensuring the protection of the information classified as state aid or commercial secret.

(2) The Competition Authority's employees, providers of the state aid, their employees, other public servant, as well the independent experts appointed by the Competition Authority, have the obligation not to disclose the information classified as professional secret which they learned within the activity of enforcement the present law.

(3) The Competition Authority shall prepare an annual report on the granted state aid, which shall be submitted to the Parliament and the Government.

(4) The annual report on the state aid granted shall be published in the Official Gazette of the Republic of Moldova;

### **Article 22. Liability for infringing the provisions of the present law**

(1) The infringement of the provisions of the present law and other enactments regulating the state aid domain entails liability in compliance with the current legislation.

(2) The examination of contraventions and applying contravention sanctions for non observance of the present law and other enactments regulating the state aid domain shall be carried out in compliance with the procedures and the tasks set up by the Contravention Code.

### **Article 23 - Final and transition provisions**

(1) The present law shall enter into force in 12 months after its publishing.

- (2) Within a period of 12 months after the entry into force of the present law, the state aid providers shall inform the Competition Authority about the state aid granted prior to the entry into force of the present law.
- (3) Within a period of 12 months after the entry into force of the present law, the state aid beneficiaries shall inform the Competition Authority about the state aid received prior to the entry into force of the present law.
- (4) In the event a state aid was not notified within the period provided for in paragraph (2), it shall be deemed as illegal aid.
- (5) Within 12 months from publishing the present law, the Competition Authority shall:
- a. submit proposals on bringing the current legislation in compliance with the present law;
  - b. bring its normative acts in compliance with the present law;
  - c. draft and adopt the normative enactments necessary for the enforcement of the present law;
  - d. establish structures necessary for the enforcement of the present law.
- (6) Without increasing the number of staff, the providers of state aid, shall ensure the enforcement of the provisions of the present law.

THE SPEAKER OF THE PARLIAMENT

MARIAN LUPU

**Chişinău, 15 June 2012.**

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