

## **ORDINANCE No. 6**

**of 25 July 2002**

### **on the procedure for monitoring and ensuring transparency of state aid**

Chapter One

#### **GENERAL**

##### *Article 1*

This Ordinance shall lay down the procedure for monitoring and ensuring transparency of state aid in the Republic of Bulgaria.

Chapter Two

#### **STATE AID MONITORING AND COORDINATION SYSTEM**

Section I

##### **State Aid Monitoring**

##### *Article 2*

The Minister of Finance shall monitor and analyse the process of state aid granting at central, regional and municipal level and shall perform overall coordination of the activities related to the state aid policy.

##### *Article 3*

(1) Any authority granting state aid shall monitor and shall at regular intervals inform the Minister of Finance on all projects for amendments in the EU legislation and practice affecting state aid in the field of its respective responsibility (steel industry, automotive industry, regional aid, etc.).

(2) Where the authority granting state aid establishes that the proposed amendments in the EU legislation and practice affect or may affect important national interests in the field of its responsibility, it shall, within one month from the publication of or the receipt of information on such amendments, send to the Ministry of Finance a written opinion on the problem, including:

1. the whole information on the proposed amendments in the EU legislation and practice;
2. description of the specific interests affected and/or any contradictions with the Bulgarian legislation in the process of its harmonization;
3. specific proposals for solving the problem and what should be the position of the Bulgarian party.

(3) Following the receipt of the opinion referred to in paragraph (2), the Minister of Finance shall consult the European Commission, where appropriate, in accordance with Article 7 and 8 of the Rules on the application of the provisions relating to state aid (published, State Gazette No. 77/2001) in view of finding a mutually acceptable solution.

##### *Article 4*

The Ministry of Finance, jointly with the European Commission, shall assess the maximum aid intensity and the specific local coverage of the regions in the Republic of Bulgaria, as defined in § 1, item 9 of the Additional Provision of the Rules on the Application of the Law on State Aid (published, SG No. 68/2002), that are eligible for national regional aid. For the purpose the Ministry of Finance shall elaborate a state aid regional map, which shall be approved first by the Council of Ministers and then by the Association Council governing the relations between Bulgaria and the European Union.

## Section II

### **INFORMATION SYSTEM FOR STATE AID MONITORING**

#### *Article 5*

(1) The information system for state aid monitoring at central, regional and municipal level shall constitute a computerised network, including computer and network equipment, standardised forms, standard and special software, data protection measures, specialised Internet site, trained personnel, etc. Real time monitoring, registration and information exchange in regard with newly arisen or amended type of state aid, irrespective of the place of arising thereof, shall be performed through that system.

(2) The Ministry of Finance shall use the information obtained through the system for the purposes of performing constant state aid monitoring, preparing the state aid consolidated annual report, current updating the State Aid Register, drafting specific reports and expert opinions on specific cases of state aid that may be required by the Bulgarian Government and the European Commission.

#### *Article 6*

Registration and an immediate information exchange between the Ministry of Finance and the Commission on Competition Protection shall be carried out through the system with respect to state aid notifications, decisions of the Commission on Competition Protection, amendments in legislation and practice, as well as reference and any other information ensuring improvement of state aid transparency at all levels.

## Section III

### **COORDINATION OF THE ACTIVITIES RELATED TO STATE AID MONITORING**

#### *Article 7*

(1) The Minister of Finance shall be responsible for the overall coordination of all activities related to state aid policy, monitoring and control at national, regional and municipal level.

(2) The Minister of Finance shall coordinate the activities related to all matters concerning the state aid granted either in Bulgaria or in the EU Member States, and shall consult the European Commission in view of solving thereof.

(3) Any authority granting or administrating state aid shall submit to the Minister of Finance any information required by the latter and shall provide him/her an access to its state aid register, as well as shall build the required administrative capacity and shall undertake all necessary actions enabling the Minister of Finance to perform efficient state aid monitoring and coordination.

## Section IV

### **PROCEDURE FOR PROVIDING METHODOLOGICAL ASSISTANCE**

#### *Article 8*

Any authority intending to grant, change or administrate state aid may seek methodological advice and assistance from the State Aid Department of the Ministry of Finance.

#### *Article 9*

The request for methodological assistance shall be made in writing and must contain all necessary information related to the specific case, as well as a clearly stated question or problem accompanied by relevant evidence.

#### *Article 10*

Anyone considering that certain aid scheme or individual aid awarded by the European Commission in a EU Member State affects or may affect important interests may call on the European Commission through the State Aid

Department of the Ministry of Finance, which shall provided him/her with methodological assistance for solving the problem before the European Commission.

Section V

**APPLICATION OF 'DE MINIMIS' RULE**

*Article 11*

(1) Any authority granting new or amending an existing aid scheme or individual aid scheme meeting the criteria for 'de minimis' aid within the meaning of Article 1, paragraph (6) of the Law on State Aid (published, SG No. 28/2002), and for which no prior notification to the Commission on Competition Protection is required shall, within 5 days from the date of granting such aid, inform the Minister of Finance, providing all necessary information.

(2) The information referred to in paragraph (1) shall be submitted to the Minister of Finance in view of tracing the aid accumulation over a 3-year period and the fulfilment of the conditions under which the said aid has been made available.

(3) Any authority granting 'de minimis' aid shall be responsible for ensuring the data reliability, keeping them in its state aid register for a period of up to 10 years from the date of the last payment of the aid concerned.

Chapter Three

**STATE AID TRANSPARENCY**

Section I

**CENTRAL STATE AID REGISTER**

*Article 12*

(1) The Central State Aid Register shall constitute an electronic database, which shall be maintained, stored and updated by the Ministry of Finance through its State Aid Department based on the information collected through the state aid monitoring system.

(2) The information referred to in paragraph (1) shall be kept for a period of up to 10 years from the date of the last payment made under an aid scheme or individual aid, including 'de minimis' aid.

*Article 13*

Any authority granting or administrating state aid shall draw up and maintain its own state aid register. Such register must be methodologically and technically compatible with the Central State Aid Register kept by the Ministry of Finance.

*Article 14*

The Minister of Finance shall provide methodological guidance on the initial drawing and updating of the state aid registers maintained by the institutions and persons granting state aid.

*Article 15*

Any authority granting and administrating state aid shall be responsible for ensuring the proper keeping and reliability of the data contained in its register and, where appropriate, shall provide the Ministry of Finance with an access to that register.

Section II

**STATE AID CONSOLIDATED ANNUAL REPORT**

*Article 16*

(1) By 30 June of each year the Minister of Finance shall submit a State Aid Consolidated Annual Report to the National Assembly, the Council of Ministers, the European Commission and the Commission on Competition Protection.

(2) The report referred to in paragraph (1) shall be drawn up following the method applied by the European Commission for its annual surveys on state aid granted in the EU Member States so that comparability of data is ensured.

#### *Article 17*

(1) Any authority that has granted, amended or administrated state aid shall, by 31 March of the current year, submit to the Minister of Finance a state aid annual report.

(2) The report referred to in paragraph (1) shall be drawn up in accordance with the specific methodological instructions given by the Minister of Finance, and shall be in the form approved by Annex No. 7 relating to Article 48, paragraph (1) of the Rules on the Application of the Law on State Aid.

(3) The report shall contain also data for any 'de minimis' aid granted, indicating also the specific recipients of 'de minimis' aid.

(4) The persons referred to in paragraph (1) shall, at the request of the Minister of Finance, also submit any additional information on all state aid granted or administrated by them.

#### Section III

### **ENSURING TRANSPARENCY OF FINANCIAL RELATIONS BETWEEN THE AUTHORITIES GRANTING STATE AID AND THE AID RECIPIENT UNDERTAKINGS**

#### *Article 18*

Any authority granting or intending to grant, amend or administrate existing state aid shall ensure transparency of its financial relations with the state aid recipient undertakings.

#### *Article 19*

(1) Any state aid recipient shall prepare additional financial reports and the required information thereto, as provided for in the accounting legislation, on the state aid obtained in any form whatsoever in regard with:

1. the funds made available directly to the state aid recipient undertakings concerned;
2. the funds made available through the intermediary of public undertakings or financial institutions;
3. the amount of funds actually used.

(2) The additional financial reports and the information referred to in paragraph (1) shall be required also with respect to the financial relations between each state aid granting authority and the recipient undertakings in regard with:

1. the setting-off of operating losses;
2. the provision of capital;
3. non-refundable grants or loans on privileged terms;
4. the granting of financial advantages by forgoing profits or the recovery of sums due;
5. the forgoing of a normal return on public funds used;
6. compensation for financial burdens imposed by public authorities.

#### *Article 20*

Any authority granting or administrating state aid shall require the aid recipients to ensure the necessary financial and organisational structure allowing the preparation of the additional reports and the submission of information on state aid in accordance with the legislation in force relating to:

1. the revenue and expenditure specifically related to the activities funded through state resources;
2. the method of funds' spending and receipt;
3. the volume of state assisted activities as compared to the overall activities of the undertaking concerned.

### *Article 21*

The provisions of Article 19 and 20 shall not apply to the financial relations between the state aid granting authorities and:

1. undertakings whose activities are not liable to affect trade between the Republic of Bulgaria and the EU Member States to an appreciable extent;
2. the Bulgarian National Bank;
3. public credit institutions, as regards the public funds deposited with them by public authorities under ordinary commercial conditions;
4. undertakings whose total net annual turnover during the two financial years preceding the year in which the funds referred to in Article 19 are made available or used has not reached the equivalent of 40 million EUR in Bulgarian national currency. For public credit institutions, the relevant threshold shall be the total balance value being less than the equivalent of 800 million EUR in Bulgarian national currency;
5. undertakings whose total net annual turnover during the two financial years preceding the year in which the undertaking concerned has enjoyed any special or exclusive right awarded by the state, or in which it has been entrusted with the provision of a service of general economic interest, as provided for in Article 1, paragraph (4) of the Law on State Aid, has not reached the equivalent of 40 million EUR in Bulgarian national currency. For public credit institutions, the relevant threshold shall be the total balance value being less than the equivalent of 800 million EUR in Bulgarian national currency;
6. undertakings which have been entrusted with the provision of services of general economic interest in accordance with Article 1, paragraph (4) of the Law on State Aid, where the state aid that they receive in any form whatsoever, including grants, support or compensation, has been defined for the relevant period following an open, transparent and non-discriminatory procedure.

### *Article 22*

The funds received by undertakings in the form of state aid as a compensation for the provision of services of general economic interest or enjoying special or exclusive rights, shall not be used for covering expenditure arising from the production of other goods or the provision of other services.

### *Article 23*

The total expenditure arising during the provision of services of general economic interest (or when enjoying special and exclusive rights), as well as during the production of goods or the provision of services under market conditions, must be allocated proportionately among the various activities related to the production of goods or the provision of services, taking in account the total production capacity and the relative share of the activity concerned.

## **ADDITIONAL PROVISIONS**

§ 1. Any authority granting or intending to grant or amend existing state aid scheme shall keep all the available information and documents pertaining to the state aid concerned for a period of 10 years as of the end of the financial year in which the public funds have been made available to the undertaking concerned.

§ 2. Any authority obtaining, processing or storing state aid information constituting official, trade or other secret, as defined by law, shall be bound by the confidentiality obligation so that protection of the interests of the parties concerned is ensured.

§ 3. The Ministry of Finance shall not provide information, where the Bulgarian law imposes a ban on the disclosure of such information.

## **FINAL PROVISION**

§ 4. This Ordinance shall be issued pursuant to Article 21, paragraph (1) of the Law on State Aid.

THE MINISTER