

Competition related extracts from the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Moldova, of the other part

Signed on 27.06.2014; OJ L 260, 30.08.2014, p. 4-738

[...]

CHAPTER 10

COMPETITION

SECTION 1

ANTITRUST AND MERGERS

ARTICLE 333

Definitions

For the purposes of this Section:

- (1) "competition authority" means for the Union, the European Commission, and for the Republic of Moldova, the Competition Council;
- (2) "competition laws" means:
 - (a) for the Union, Articles 101, 102 and 106 of the Treaty on the Functioning of the European Union, Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation), and their implementing regulations or amendments;
 - (b) for the Republic of Moldova, Competition Law N° 183 of 11 July 2012 and its implementing regulations or amendments; and
 - (c) any changes that the instruments referred to in points (a) and (b) may undergo after the entry into force of this Agreement.

ARTICLE 334

Principles

The Parties recognise the importance of free and undistorted competition in their trade relations. The Parties acknowledge that anti-competitive business practices have the potential to distort the proper functioning of markets and undermine the benefits of trade liberalisation.

ARTICLE 335

Implementation

1. Each Party shall maintain in its respective territory comprehensive competition laws which effectively address anti-competitive agreements, concerted practices and anti-competitive unilateral conduct of undertakings with dominant market power and provide effective control of concentrations.
2. Each Party shall maintain an operationally independent authority with adequate human and financial resources in order to effectively enforce the competition laws referred to in Article 333(2).
3. The Parties recognise the importance of applying their respective competition laws in a transparent and non-discriminatory manner, respecting the principles of procedural fairness and rights of defence of the undertakings concerned.

ARTICLE 336

State monopolies, public undertakings and undertakings entrusted with special or exclusive rights

1. Nothing in this Chapter prevents a Party from designating or maintaining state monopolies or public undertakings or entrusting undertakings with special or exclusive rights according to their respective laws.
2. With regard to state monopolies of a commercial character, public undertakings and undertakings entrusted with special or exclusive rights, each Party shall ensure that such undertakings are subject to the competition laws referred to in Article 333(2), in so far as the application of those laws does not obstruct the performance, in law or in fact, of the particular tasks of public interest assigned to the undertakings in question.

ARTICLE 337

Cooperation and exchange of information

1. The Parties recognise the importance of cooperation and coordination between their respective competition authorities to enhance effective competition law enforcement, and to fulfil the objectives of this Agreement through the promotion of competition and the curtailment of anti-competitive business conduct or anti-competitive transactions.
2. To that end, each competition authority may inform the other competition authority of its willingness to cooperate with respect to the enforcement activity of any of the Parties. Neither Party shall be prevented from taking autonomous decisions on the matters subject to the cooperation.
3. With a view to facilitating the effective enforcement of their respective competition laws, the competition authorities may exchange non-confidential information. All exchange of information shall be subject to the standards of confidentiality applicable in each Party. Whenever the Parties exchange information under this Article, they shall take into account the limitations imposed by the requirements of professional and business secrecy in their

respective jurisdictions.

ARTICLE 338

Dispute settlement

The provisions on the dispute settlement mechanism in Chapter 14 (Dispute Settlement) of Title V (Trade and Trade-related Matters) of this Agreement shall not apply to this Section.

SECTION 2

STATE AID

ARTICLE 339

General principles and scope

1. State aid granted by the Union or the Republic of Moldova, or through the resources of one of the Parties, in any form whatsoever, which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods and services and which affects trade between the Parties, shall be incompatible with this Agreement.
2. This Chapter shall not apply to state aid related to fisheries, products covered by Annex 1 to the Agreement on Agriculture or other aids covered by the Agreement on Agriculture.

ARTICLE 340

Assessment of state aid

1. State aid shall be assessed on the basis of the criteria arising from the application of the competition rules applicable in the EU, in particular Article 107 of the Treaty on the Functioning of the European Union and interpretative instruments adopted by the EU institutions, including the relevant jurisprudence of the Court of Justice of the European Union.
2. The obligations deriving from this Article shall apply within five years from the date of entry into force of this Agreement.

ARTICLE 341

State aid legislation and authority

1. The Parties shall adopt or maintain, as appropriate, legislation for the control of state aid. They shall also establish or maintain, as appropriate, an operationally independent authority entrusted with the powers necessary for the control of state aid. That authority shall have, *inter alia*, the powers to authorise state aid schemes and individual state aid measures, as well as the powers to order the recovery of state aid that has been unlawfully granted.
2. The obligations deriving from this Article shall be fulfilled within two years from the

date of entry into force of this Agreement.

3. Any state aid schemes instituted before the establishment of the state aid authority shall be aligned within a period of eight years from the date of entry into force of this Agreement. Without prejudice to other Chapters of this Agreement, the alignment period shall be extended for a maximum period of up to ten years from the date of entry into force of this Agreement with regard to state aid schemes instituted under the Law of the Republic of Moldova on Free Economic Zones No 440-XV of 27 July 2001.

ARTICLE 342

Transparency

1. Each Party shall ensure transparency in the area of state aid. To that end, each Party shall, as of 1 January 2016, report every two years to the other Party, following the methodology and the presentation of the EU annual survey on state aid. That report is deemed to have been provided if the relevant information is made available by the Parties or on their behalf on a publicly accessible website.

2. Whenever a Party considers its trade relations to be affected by an individual case of state aid granted by the other Party, the Party concerned may request the other Party to provide information on the individual case of state aid.

ARTICLE 343

Confidentiality

When exchanging information under this Chapter, the Parties shall take into account the limitations imposed by the requirements of professional and business secrecy.

ARTICLE 344

Review clause

The Parties shall keep under constant review the matters to which reference is made in this Chapter. Each Party may refer such matters to the Association Committee in Trade configuration, as set out in Article 438(4) of this Agreement. The Parties agree to review progress in implementing this Chapter every two years after the entry into force of this Agreement, unless both Parties agree otherwise.