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More documents related to this discussion can be found at

<http://www.oecd.org/daf/competition/independent-sector-regulators.htm>

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## Romania

### 1. Introduction

1. Certain sectors require a high degree of expertise and a constant surveillance in order to prevent the possibility of infringing competition law. By establishing a specialised organism responsible for the supervision of the sector, one can ensure the compliance with legal standards and requirements. These regulators are the best placed authorities to safeguard the sector and to open a communication channel with all the actors that are present in those particular sectors, thus ensuring that legal norms are being met.
2. The existence of specific legal provisions for the exercise of activities in certain regulated sectors tailor the intervention of the competition authority on these markets. This intervention represents an ex-post action, considering the fact that competition authorities are mainly responsible with imposing penalties with reference to regulated sectors, while most of the times, regulators act as prevention authorities (ex-ante) in their particular domains.
3. All these regulators are independent in their decision-making processes and supervise their respective sectors without the intervention of another authority. However, the activity of all Government bodies and public authorities (including regulators) is subject to parliamentary scrutiny. Whenever there are sufficient grounds for suspecting that a certain event or action has produced negative effects, a parliamentary investigative committee will be established in order to clarify the causes and circumstances of such events and to reach conclusions, assign liability and to undertake the necessary measures.

### 2. The Railway Supervision National Council:

4. The Railway Supervision National Council (RSNC) is organised as a structure without legal personality within the Romanian Competition Council (RCC). RSNC fulfils the role of a single regulatory body.
5. Furthermore, RSNC is independent from an organisational, legal and decision-making point of view in relation to the rail infrastructure manager and rail-transport operators. It is also financially independent with reference to the entities abovementioned. Regarding its functions, RSNC is an organism that is functionally independent from any competent authority involved in the award of a public service contract.
6. RSNC's main mission is to ensure a non-discriminatory and transparent access to the railway infrastructure, to monitor the railway market and to adopt the necessary measures in order to facilitate the development of the market for railway services.
7. RSNC is involved in the following activities:
  - the monitoring of the competition on the rail service markets;
  - the ex officio review of the terms of legal compliance in order to assure the equal treatment of applicants;
  - the application of adequate measures in order to prevent discrimination of applicants and market distortions.

8. The activity of RSNC is performed by the Railway Surveillance Directorate (RSD). Although this particular directorate is part of the RCC, it is directly subordinate to RSNC with regard to the exercise of its statutory tasks.

9. The president of the RCC decides in organisational and staff matters. Additionally, the president of the RSNC is a member of the RCC's Plenum.

10. In order to achieve its policy objectives, the RSNC can cooperate with specialists from different areas of activity by concluding agreements, protocols, contracts or civil conventions.

11. For the purposes of achieving the objectives of the single European railway area, regulators cooperate in order to ensure a non-discriminatory access to the railway infrastructure. Moreover, in 2008, RSNC signed the "Memorandum of Understanding" for the accession to the Independent Regulators' Group-Rail (IRG). The IRG-Rail is a network comprised of independent rail Regulatory Bodies from 31 European countries. The mission of the IRG-Rail is to facilitate the creation of a single, competitive, efficient and sustainable internal railways market in Europe. The IRG-Rail acts as a platform for cooperation, information exchange and sharing of best practice between national railway regulators in order to face current and future regulatory challenges in railways and to promote a consistent application of the European regulatory framework.

12. At a national level, the RSD has participated in a working group comprised of the Romanian Railway undertaking, the Ministry of Transport and the Romanian Railway Licensing Body. The task of this group was to assist in the transposition of the Directive no. 2370/2016/UE into national law.

### 3. The Maritime Supervision Council:

13. Similar to RSNC, the Maritime Supervision Council (MSC) is organised as a structure without legal personality and it exists within the RCC's framework.

14. MSC is independent from an organisational, legal and decision-making point of view in relation to harbour administrations, waterborne transport infrastructure users and economic operators that carry out waterborne transport. It is also financially independent with reference to the entities abovementioned. In addition, MSC is independent in decision-making terms from any public authority.

15. It has an adequate organisational capacity with regards to human and material resources. Also, an organisational structure (Maritime Surveillance Service - MSS) has been established within RCC's framework in order to carry out MSC's activity.

16. Finally, MSC is involved in the following activities:

- it verifies whether or not harbour administrations ensure access to the waterborne transport infrastructure;
- it analyses and adopts decisions with reference to the complaints made in relation to a possible unequal treatment applied by the waterborne infrastructure manager;
- it formulates recommendations for the adoption of measures meant to facilitate the development of the waterborne transport domain;
- it cooperates with other public authorities (such as the Ministry of Transport) in order to fulfil its statutory tasks;

- it constantly analyses the compliance of the legal framework in its area of activity and it makes proposals for its improvement in accordance with provisions of European Union law;
- it exchanges information with similar supervisory bodies from Member States in relation to their activity, principles and decision-making practice in order to harmonize them.

#### 4. The independence of RSNC and MSC

17. Initially, RSNC was established in 2005 within the Ministry of Transport. However, this decision did not comply with the provisions of *Directive 2012/34/UE establishing a single European railway area* (the Directive 2012/34/EU) and consequently the European Commission has launched infringement procedures in order to eliminate any doubts regarding the independence of this particular regulator.

18. Directive 2012/34/EU removes the concerns regarding the independence of the regulatory body by stating that each Member State shall ensure that the regulators' decision-making is not affected by any other public authority that directly exert ownership rights over regulated undertakings. Additionally, the directive states that the regulatory body should have the necessary organisational capacity in terms of human and material resources, proportionate to the importance of the rail sector in the Member State.

19. Furthermore, the above-mentioned directive argues that the regulatory body for the rail sector may also be joined in organisational term with the national competition authority.

20. For these reasons, as an answer to the Commission's concerns, the duties and financial aspects have been modified in such a manner that the implication of the Ministry of Transport in establishing the regulator's composition was entirely eliminated.

21. Therefore, RSNC has been disjoined from the Ministry of Transport and it became an independent regulator that operates within the national competition authority.

22. Consequently, the requirements regarding the functional and decision-making independence have been met.

23. Similar to RSNC, the Maritime Supervision Council (MSC) is organised as a structure without legal personality and it exists within the RCC's framework since 2017.

24. It was established in the RCC in observance of the European provisions, which state that Member States shall ensure that effective mechanism are in place to handle complaints for all the maritime ports covered by this regulation and, to that and, Member States shall designate one or more bodies which shall be legally distinct from, and functionally independent of, any managing body of the port or providers of port services.

25. The independence of the MSC was also recommended by the OECD in its 2016 Competition Impact Assessment of legislation in force in three key sectors of the Romanian economy: freight transport, food processing and construction. At the time, the Naval Supervision Authority was part of the Ministry of Transport.

## 5. The relationship between RSNC/MSC and the Romanian Competition Council:

26. Beside the organisation of their activity within RCC's framework, the board of both RSNC and MSC is comprised of 5 members chosen from the RCC. Also, it is mandatory that the president of both regulators is a member of the RCC's Plenum.
27. In addition, the decisions, regulations and instructions adopted by RSNC and MSC are being applied by order of the President of the RCC.
28. Both RSD and MSC are part of the RCC's framework. These structures have been efficiently cooperating with structures of the RCC such as the Services Directorate, State Aid, the Legal and Research departments in order to achieve RSNC's and MSC's policy objectives.
29. Although both RSNC and MSC function within the national competition authority, their activity is complementary to RCC's policy objectives. These regulators (RSNC and MSC) have emerged for prevention reasons in their respective domains (railway and maritime), while the NCA is responsible for the detection and sanctioning of undertakings irrespective of the affected domain. In consequence, in case an operator or manager of the railway/maritime infrastructure infringes by engaging in a single illegal practice both the competition law and the provisions of the railway/maritime domain, that particular entity will be sanctioned according to both laws, receiving in the end, two separate sanctions.

## 6. The National Bank of Romania:

30. The National Bank of Romania (NBR) is the central bank of Romania. It is an independent public institution with legal personality. Its primary objective is to ensure and maintain financial stability. Also, it supports the general economic policy of Romania.
31. The main tasks of the NBR are the following:
- to define and implement the monetary policy and the exchange rate policy;
  - to conduct the authorisation, regulation and prudential supervision of credit institutions and to promote and oversee the smooth operation of payment systems with a view to ensuring financial stability;
  - to issue notes and coins to be used as legal tender on the territory of Romania;
  - to set the exchange rate regime and to supervise its observance;
  - to manage the official reserves of Romania.
32. In carrying out their tasks, the NBR staff and the members of its decision-making bodies do not seek or take instructions from public authorities or from any other institution or authority.

## 7. The relationship between the National Bank of Romania and the Romanian Competition Council:

33. The national competition authority and the NBR have signed and have an ongoing agreement (The Agreement) that lays out the particular framework with reference to which the two authorities will address State aid and competition matters.

34. On the 7th of June 2016, the Agreement between the NBR and the RCC entered into force in order to achieve an effective cooperation framework.

35. In order to fulfil the commitments arising from agreements, treaties and conventions to which Romania is part of, the NBR cooperates with domestic and foreign authorities by providing information and by taking any necessary steps.

36. The purpose of the Agreement is to ensure compliance with the competition legislation regarding the resolutions of the NBR whenever there is a threat to financial stability. It also applies when a credit institution is in difficulty, situation in which State aid is provided for the purpose of supporting the financial stability. The overall scope of the Agreement is to reduce the potential negative economic impact to the lowest cost.

37. Another objective of the Agreement is related to the relevant information exchange and inter-institutional consultations, provided that the confidentiality of data is ensured. These exchanges and consultations are the result of fulfilling the responsibilities of the two institutions to ensure the compliance with the applicable legal requirements of the competition and State aid sectors.

38. Another purpose of the present Agreement is the improvement of the level of readiness of both parties in relation to any possible concerns regarding the State aid that can be provided to a credit institution that is facing major difficulties or situations that require urgent interventions with reference to the resolution of a credit institution by means of granting State aid necessary to restore that particular credit institution.

39. The cooperation established between the National Bank of Romania and the Romanian Competition Council implies but it is not limited to the following aspects:

- the establishment of the various stages that will be undertaken in order to obtain the authorization by the European Commission regarding the procedure of granting State aid to credit institutions that are facing major difficulties. This endeavor will also be addressed by an inter-institutional working group;
- the process of preparing the necessary stages that will be undertaken for the purposes of notifying mergers that could appear as a result of applying a resolution by the NBR regarding a credit institution that faces major difficulties;
- the exchange of relevant information and inter-institutional consultation in order to provide the RCC with the necessary documentation for issuing notices and for its transmission to the European Commission;
- the establishment of emergency plans and simulation exercises;
- setting up common procedures.

40. An example of the way RCC and NBR cooperated under this Agreement is the one during the Grexit crisis from 2015. Under this context of financial uncertainty, several meetings between RCC and NBR representatives took place in order to set a procedure and the necessary step to be taken in case the Greek banks from Romania were severely affected.

41. Another example of efficient communication is the collaboration between NBR and RCC with reference to the sector investigation on the financial services in Romania. In this case, the national bank has provided valuable data to the RCC in its endeavor to analyze and comprehend all the relevant aspects related to financial services and their providers.

42. Also, the competition authority uses data provided by the NBR on its website, data such as survey results and statistics. These are used by the RCC to carry out its tasks in compliance with the national and European legislation. These tasks include *inter alia*: market definition, sector evolution and effect analysis in relation to a possible anti-competitive conduct.

## 8. The Financial Supervisory Authority:

43. The Financial Supervisory Authority (FSA) represents the regulator of the insurance sector in Romania. It is an autonomous, specialized, independent and self-financed administrative authority. The FSA exercises its duties by taking over and by reorganizing all attributes and prerogatives of the National Securities Commission, the Insurance Supervisory Commission (ISC, the former FSA) and the Private Pension System Supervisory Commission.

44. Some of the main current attributes of the FSA include: drawing up and/or endorsing draft regulatory acts regarding the insurance sector, authorizing the emergence of insurance and reinsurance brokers, approving the direct and indirect shareholders of the insurance and reinsurance brokers, taking any necessary measures to ensure the compliance of intermediation practices in the insurance sector with specific prudential rules and so on.

## 9. The relationship between the Romanian Competition Council and the Financial Supervisory Authority:

45. On the 5<sup>th</sup> of October 2004, the RCC and the FSA signed a protocol regarding the cooperation between the two parties for the promotion of competition in the insurance sector. This protocol is no longer in force due to regulatory changes.

46. Despite this, the RCC has continued the cooperation with the FSA outside the framework of a particular protocol, but in the spirit of good inter-institutional relations, in order to achieve the stability of the insurance sector on the basis of effective competition. On that note, the FSA has provided valuable data to the RCC for its analyses in two cases. In both cases, the Financial Supervisory Authority has provided valuable data to the national competition authority for analysis purposes.

47. The first case is related to an RCC study regarding the life insurance sector in Romania that was finalized in November 2014. Its objective was to achieve a better understanding of the insurance sector and, particularly, of the life insurance segment at a national level and to provide RCC recommendations regarding the development of the latter sector and the promotion of the Romanian consumers' interests.

48. The second case is the report regarding the sector investigation on the automotive insurance sector in Romania, which was finalized in December 2015. The FSA has also provided in this case valuable data to the RCC in its endeavor to analyze and comprehend all the relevant aspects related to different categories of automotive insurance, especially the third party liability insurance (TPLI). In this particular report, the RCC has issued a set of recommendations with reference to the latter insurance category, most of which have been taken into consideration by the FSA in its proposals for the national legislation regarding the insurance sector.

49. In both cases, there have been data exchanges between the two institutions and several bilateral meetings that helped RCC better understand those markets. The main recipient of the recommendations issued by the national competition authority has been the FSA.

## 10. Digital developments

50. The endeavors related to the transposition of the Payment Services Directive (PSD 2) – Directive 2015/2366/EU (the Directive) are an example of cooperation between different regulators in the interest of implementing new technologies that are meant to bring innovations into the supply of financial services. This will allow the entrance on the market of new actors (such as Fintechs). In addition, the transposition of the Directive 2014/92/EU<sup>1</sup> will increase market transparency and help customers take informed decisions.

51. According to the act for the transposition of PSD2 into national legislation, the competent authorities for enforcing this particular legal act are NBR, the National Authority for Consumer Protection and the National Agency for Fiscal Administration.

## 11. Conclusions:

52. Restricting competition is seldom an efficient instrument of a functional economy and whenever this is warranted, a thorough analysis is required in order to determine if this is in the best interest of the consumer. This cannot be the prerogative solely of the competition authority. It is necessary to have specialised regulators that can efficiently supervise their respective sectors and prevent the occurrence of infringements. In cooperation with the competition authority, they can ensure that efficient services are being provided in terms of quality and price.

53. The final purpose of the actions undertaken towards establishing a permanent cooperation framework between regulators in relation to supervised markets is promoting the best solutions for the pro-competitive, transparent and efficient functioning of the regulated sectors.

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<sup>1</sup> That comprises provisions in relation to price comparison websites.