

REGULATION ON REGIONAL AID

Pursuant to Article 28 paragraph (1) of the Competition Law no. 21/1996 with the subsequent modifications and completions and to Article 14 paragraph 1(f) of the State Aid Law no. 143/1999 with the subsequent modifications and completions,

The Competition Council adopts this Regulation.

Introduction

Drafting a legal framework to regulate the state aid discipline stands for the continuation of the harmonization process of Romanian legislation with the European legislation, which is part of Romania's accession process to the European Union.

The purpose of the state aid control exerted by the public authorities or any other bodies administering resources on behalf of state aims at assessing the compatibility of a state aid with a normal competitive environment within a market economy where the supply and demand determine the prices of the goods and services.

Any intention to grant a new state aid or to alter an existing aid must be notified to the Competition Council. No state aid can be granted without Competition Council's authorization.

Regional aid is designed to develop the less-favoured regions by supporting investment and job creation in these regions. It promotes the expansion, modernization and diversification of the activities of establishments located in those regions and encourages new firms to settle there. In order to foster this development and reduce the potential negative effects of any relocation, it is necessary to make the granting of such aid conditional on the maintenance of the investment and the jobs created during a minimum period in the less-favoured region.

In exceptional cases, if the structural handicaps of the region concerned are too great, such aid may not be enough to trigger a process of regional development. Only in such cases may regional aid be supplemented by operating aid.

Chapter I GENERAL PROVISIONS

Scope

Art.1 - (1) This Regulation will apply to regional state aid schemes and individual aid granted in every sector of the economy apart from the production, processing and marketing of the agricultural products listed in Annex 1 of this Regulation, fisheries and the coal sector.

(2) In cases where regional aid is granted in transport, shipbuilding, motor vehicles, synthetic fibres, steel sectors, the specific regulations will take precedence. The regional state aid granted for investments in the siderurgical sector is prohibited

(3) Individual state aid granted to a single enterprise or state aid limited to a certain field of activity may have a major impact on competition on the relevant market and it is possible that

its effects on regional development be too limited. This kind of aid falls under the specific or sectoral industrial policies and it is often not in the spirit of the regional aid policies.

(4) *Ad hoc* state aid for firms in difficulty is subject to specific rules and is not treated as regional state aid *per se*. The Regulation on state aid for rescuing and restructuring firms in difficulty, published in the Romanian Official Gazette no. 470/02.07.2002, is applicable.

(5) In consequence, on the basis of this Regulation the state aid will be granted in a certain region only within multisectorial opened to all firm from those specific fields.

The object of regional aid

Art.2 – (1) The object of aid for regional development is to ensure undertakings in the area concerned equal economic footing with undertakings in other parts of the country, provided that this should not lead to an increased production capacity in sectors already suffering from problems of overcapacity.

(2) Regional development aid may be related to the initial investment or job creation, or may take the form of an aid of continuing character, designed to overcome regional or permanent disadvantages, or may exceptionally be related to reducing the current expenses of a company, in case of operating aid.

Modalities of granting regional aid

Art.3 - Regional state aid shall include: subsidies, exemptions from paying fiscal obligations which are linked to the carrying out of an investment project or job creation; foregoing of normal returns on public funds, including granting of loans with preferential interest rates; guarantees given by the State or public authorities on preferential terms; equity injections by the State or public bodies if the rate of return on such investments is less than the return normally expected by a prudent private investor; reduction in the price of goods supplied and services provided by public authorities or bodies administering state resources, including sales of publicly owned lands below market price.

Level of aid

Art.4 - The level of aid is defined in terms of intensity compared with eligible costs, pursuant to Article 6 (1), Article 7 (1) and Article 13 of this Regulation.

Chapter II AID FOR INITIAL INVESTMENT

The concept of initial investment

Art.5 - (1) *Initial investment* means an investment in fixed capital relating to the setting-up of a new establishment, the extension of an existing establishment, or the starting-up of an activity involving a fundamental change in the product or production process of an existing establishment through rationalization, diversification or modernization.

(2) The following are excluded from the concept of initial investment:

a) Replacement investment for preserving production potential which does not have as a result an income output but maintains it. Aid for this type of investment falls within the category of operating aid to which the rules described in the Chapter IV apply.

b) Measures for the financial restructuring of a firm in difficulty within the meaning of the provisions of „Regulation on state aid for rescuing and restructuring firms in difficulty”.

(3) An investment in fixed capital under the form of acquiring a unit that has been closed up or would have been closed up if it wouldn't have been acquiring, may be also considered initial investment

Eligible costs for tangible investments

Art.6 - (1) Aid for initial investment is calculated as a percentage of the investment's value.

(2) This value is established on the basis of a uniform set of items of expenditure corresponding to the elements of the investment, namely land, buildings and plant/machinery which represents the standard base defined in Annex 2. In the transport sector, except for railway rolling stock, expenditure on the purchase of transport means and transport equipment, movable assets, cannot be included in the uniform set of items of expenditure that form the standard base and, therefore, is not eligible for aid for initial investment.

(3) In the event of a purchase, only the costs of buying the three asset elements from the standard base should be taken into consideration, provided that the transaction is taking place under market conditions. Assets for whose acquisition aid has already been granted prior to the purchase should be deducted.

(4) Where a purchase is accompanied by other initial investment, the expenditure relating to the latter should be added to the cost of the purchase.

Eligible costs for intangible investments

Art.7 - (1) Eligible expenditure may also include certain categories of intangible investment up to a limit of 25% of the standard base in the case of large firms. Such expenditure must be confined to expenditure entailed by the transfer of technology through the acquisition of patents, operating or patented know-how licences, unpatented know-how.

(2) For ensuring that they remain associated with the recipient region eligible for the regional aid and, consequently, that they are not the subject of a transfer benefiting other regions, especially other regions not eligible for regional aid, eligible intangible assets will have to satisfy the following conditions in particular:

a) they must be used exclusively in the establishment receiving the regional aid;

b) they must be regarded as amortizable assets;

c) they must be purchased from third parties under market conditions;

d) they must be included in the assets of the firm and remain in the establishment receiving the regional aid for at least five years.

Contribution of the regional aid recipient

Art.8 - (1) To ensure that the productive investment benefiting from aid is viable and sound, the recipient's contribution to its financing must be at least 25%.

(2) This minimum contribution of 25% must not contain any aid.

Regional aid intensity

Art.9 - The gross intensity of regional aid must not exceed the rate of 50% Net Grant Equivalent provided for in Annex 2.

Maximum ceiling for SMEs

Art.10 – (1) The ceiling indicated in Article 9 may be raised for SMEs by 15 percentage points, provided that the total net aid intensity does not exceed 75%.

(2) The provisions in paragraph (1) do not apply to undertakings operating in transport sector.

Maintenance of the investment

Art.11 - Aid for initial investment must be made conditional, through its method of payment or through the conditions associated with its acquisition, on the maintenance of the investment in question for a minimum period of five years.

Chapter III AID FOR JOB CREATION

The concept of job creation

Art.12 - (1) *Job creation* means a net increase in the number of jobs in the beneficiary undertaking, compared with the average over a reference period of time, mainly the average of the previous 12 months. Any jobs lost during that period must therefore be deducted from the apparent number of jobs created during the same period.

(2) A job is deemed to be linked to the carrying out of an investment project if it concerns the activity to which the investment relates and if it is created within three years of the investment's completion.

Level of aid

Art.13 - (1) Aid for job creation must be adapted to the nature and intensity of the problems/difficulties it is meant to solve. This amount of aid is calculated as a percentage of the wage cost of the person hired over a period of two years. This percentage is equal to the regional investment aid.

(2) In order to establish the level of wage costs, the Competition Council shall use the statistics on the average wage costs in Romania as a reference. Wage cost comprises the gross wage, and the compulsory social security contributions.

Maintenance of the newly created jobs

Art.14 - Aid for job creation must be made conditional, through its method of payment or through the conditions associated with its acquisition, on the maintenance of the investment in question for a minimum period of five years.

Chapter IV OPERATING AID

Art.15 - (1) Operating aid aimed at reducing a company's current expenses is normally prohibited.

(2) Exceptionally, such aid may be granted in the beneficiary areas, provided that the following conditions are met cumulatively:

- (a) it is justified in terms of its contribution to regional development;
- (b) its level is proportional to the handicaps it seeks to alleviate.

(3) When notifying the intention to grant aid to the Competition Council, the grantor has to demonstrate the existence of any handicaps and gauge their importance.

(4) Operating aid must be both limited in time and progressively reduced.

Chapter V

GENERAL RULES ON THE CUMULATION OF AID

Art.16 - (1) The aid intensity ceilings laid down in Article 9 and Article 10 apply to the total aid for assistance granted concurrently under several regional schemes regardless of whether the aid comes from local, regional, national or Community sources.

(2) The investment aid provided under Chapter II and the job creation aid described in Chapter III may be cumulated, subject to the intensity ceiling laid down for the region in Regional Aid Map for Romania.

(3) The condition in paragraph (2) is deemed to be met if the sum of the aid for initial investment, expressed as a percentage of the investment, and of the job creation aid, expressed as a percentage of wage costs, does not exceed the most favourable amount resulting from application of either the ceiling under Articles 9 and 10, or the percentage provided under Article 13.

(4) Where the expenditure eligible for regional aid is eligible in whole or in part for aid for other purposes, the common portion will be subject to the most favourable ceiling under the schemes concerned.

(5) Where one state aid scheme is combined with aid under other schemes, the grantor must specify, for each and every scheme, the method by which compliance with cumulation rules will be assured.

Chapter VI

FINAL PROVISIONS

Art.17 - (1) Annexes 1 and 2 are part of this regulation.

(2) The provisions of this regulation will be implemented in accordance with the Regulation on the form, content and other details of state aid notification and with the Regulation on the minimis rule of State aid which is not covered by the notification obligation, that entered into force through the Order nr.27/2000 by the President of the Competition Council.

(3) The present regulation applies to state aid measures which will be notified after it enters into force. Also, the present regulation applies to state aids which were notified before its entering into force, but the Competition Council decision is subsequent to this date or the Competition Council has not issued a decision yet.

(4) This Regulation transposes the Guidelines on the regional state aid, published in OJC no. 74 of March 10, 1998 as well as the Amendments to these Guidelines and published by no. 258 of September 9, 2000.