

## **Multisectoral Regulation on regional state aid for large investment projects**

### **INTRODUCTION**

The purpose of the state aid control exerted by the public authorities or any other bodies administering resources on behalf of state aid 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 unless the Competition Council authorizes it. Drafting a legal framework regulating 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.

On the 13<sup>th</sup> of February 2002, the European Commission has passed a major reform for establishing a faster, simpler and more rigorous control on the government support for the large investment projects in the European Union. The so called Multisectoral Framework on regional aid for large investment projects will lead to more transparency and will reduce the total level of the subsidy granted in the European Union, in the benefit of a healthy competition environment and of the contributor. The reform will raise the Member States' responsibility in implementing the regulations on state aid.

For Romania, the introduction of specific regulations in the field of regional aid for large investment projects is a necessary step, first in analyzing the impact of these projects, as well as concerning the need to establish rules which are concordant with the European norms in the field.

As the European Commission has drafted a new Multisectoral Framework on regional aid for large investment projects, conceived as a more flexible, simpler and more transparent instrument for analysis, it was necessary, for completing the legislative framework on state aid in our country, to elaborate two regulations concerning regional state aid for large investment projects, which apply differently depending on the moment in time and on the sector involved:

- Multisectoral Regulation on transitory rules applicable to regional state aid for large investment projects in unspecific industrial sectors – applicable from the date of publishing to 31.12.2003, with the exception of steel, motorvehicle and synthetic fibres sector;
- Multisectoral Regulation on regional state aid for big investment projects – applicable from the date of publication for the steel, motorvehicle and synthetic fibres until the 1<sup>st</sup> of January 2004 for the other sectors.

On the grounds of art. 28 paragraph (1) of the Competition Law no. 21/1996 and of art. 22 paragraph (1) of the Law no. 143/1999 on state aid,

The Competition Council adopts the present regulation.

## **Chapter 1**

### **General Provisions**

#### **Application Field**

**Art. 1 - (1)** The present regulation applies to regional state aid granted for large investment projects in industrial sectors, others than those foreseen in paragraph (2), starting with the 1<sup>st</sup> of January 2004 until the date of Romania's accession to the European Union.

**(2)** For the steel sector, as defined in Annex no. 1, motorvehicle sector, as defined in Annex no. 2, and synthetic fibres sector, as defined in Annex no. 3, the present regulation is applicable from the date of publication.

**Art. 2 -** The Regulation on regional state aid and state aid for SMEs represents the general framework applicable to regional state aid. As a consequence, the present regulation is completing it with particular rules applicable to the special category of regional state aid represented by regional state aid for large investment projects, others than those foreseen by art. 3 and 4.

**Art. 3 -** The specific sectors, such as: agriculture, fisheries, transports and coal, will be subject to specific regulations. Until the adoption of these regulations, the Competition Council will apply the provisions of Law no. 143/1999, with the ulterior completions, and of the regulations issued for enforcing this Law.

**Art. 4 -** The present Regulation will not apply to state aids for restructuring, which are regulated by the Regulation on state aid for rescue and restructuring of the firms in difficulty.

**Art. 5 -** The present regulation does not affect the enforcement of the following regulations:

- a) Regulation on state aid for research and development;
- b) Regulation for state aid for environment protection.

**Art. 6 -** The terms used in the present regulation are defined in art. 7-11.

#### **Investment project**

**Art. 7 -** "Investment project" means an initial investment within the sense of art. 5 of the Regulation on regional state aid and state aid for SMEs. An investment project should not be artificially divided into sub-projects in order to escape the provisions of this regulation. For the purpose of the present regulation an investment project includes all the fixed investments on a site, made by one or more undertakings, in a period of 3 years. For the purpose of the present regulation, a production site represents an economically indivisible series of fixed capital items fulfilling a precise technical function, linked by a physical or functional link and having clearly identified aims, such as the production of a defined product. Where two or more products are produced from the same raw materials, the production units of such products will be deemed to constitute a single production site.

Eligible expenditure

**Art. 8 -** "Eligible expenditure" shall be determined in accordance with the rules laid down in the Regulation on regional state aid and state aid for SMEs.

## **Regional aid ceiling**

**Art. 9** - “Regional aid ceiling” refers to the maximum aid intensity authorised for large companies in the moment of granting the aid. Maximum aid intensities are determined in accordance with the Regulation on regional state aid and state aid for SMEs and with the regional aid map approved by the European Commission.

Product concerned

**Art. 10** - “Product concerned” means the product envisaged by the investment project and, where appropriate, its substitutes, considered to be such, either by the consumer by reasons of the product’s characteristics, prices and intended use, or by the producer through flexibility of the production installations. When the project concerns an intermediate product and a significant part of the output is not sold on the market, the product concerned will be deemed to include the downstream products.

## **Apparent consumption**

**Art. 11 – (1)** “Apparent consumption” of the product concerned is production plus imports minus exports.

**(2)** Concerning the average annual growth of the apparent consumption of the product concerned, where appropriate, any significant change in that trend will be taken into consideration.

**(3)** Where the investment project concerns a service sector, and in order to determine the size and the evolution of the market, the Competition Council will, instead of using apparent consumption, use the turnover of the services concerned on the basis of the market segmentation generally accepted for the services concerned and for which statistical data are already available.

## **Chapter 2**

### **The notification requirements**

**Art. 12** - In the view of notification, the state aid grantors will observe the provisions of Law no. 143/1999, with the ulterior completions and of the Regulation on the form, content and other details regarding the state aid notification.

**Art. 13** - According to the present regulation, no prior notification of a state aid below some thresholds is required for large investment projects, on the condition that the aid is granted according to a state aid scheme approved by the Competition Council.

**Art. 14** - The intention to grant an individual state aid must be notified in each case, the evaluation being done on the basis of the rules foreseen in chapter III according to the general criteria of evaluation foreseen in the Regulation on regional state aid and aid for SMEs.

**Art. 15** - The projects cofinanced from pre-accession funds will be taken into consideration as the total amount of aid (from pre-accession funds plus co-financing funds).

**Art. 16** - For notifying the intention to grant state aids according to this regulation, the state aid grantors will use the specific notification formular, in Annex no. 4.

### Chapter 3

#### Levels for large investment projects

**Art. 17** - Without prejudice to the provisions of the Regulation on regional state aid and aid for SMEs and to the notification requirement stipulated in art. 19 or in the transitory provisions foreseen in chapter VII, regional state aids concerning investments involving eligible expenditure for the thresholds set out below shall be subject to an adjusted lower regional ceiling, on the basis of the following scale:

Eligible expenditure	Adjusted aid ceiling
Up to EUR 50 million	100% of regional ceiling
For the part between EUR 50 million and EUR 100 million	50% of regional ceiling
For the part exceeding EUR 100 million	34% of regional ceiling

**Art. 18 – (1)** Thus, the allowable aid amount for a project above 50 million will be calculated according to the formula:

$$\text{Maximum aid amount} = R \times (50 + 0,50 B + 0,34 C),$$

Where:

R is the unadjusted regional ceiling foreseen by the Regulation on regional state aid and aid for SMEs;

B is the eligible expenditure between the equivalent in ROL of EUR 50 million and the equivalent in ROL of EUR 100 million;

C is the eligible expenditure above the equivalent in ROL of EUR 100 million.

(2) By way of example, for a large company investing the equivalent in ROL of EUR 80 million in an area where the unadjusted regional aid ceiling is 50% net grant equivalent (nge), the maximum allowable aid amount would be the equivalent in ROL of EUR 32,5 million NGE, which corresponds to an aid intensity of 40,6% nge. For a large company investing the equivalent in ROL of EUR 160 million in the same area, the maximum allowable aid amount would be the equivalent in ROL of EUR 47,7 million nge, which corresponds to an aid intensity of 29,8% nge.

**Art. 19** - The state aid grantors are required to notify every case of regional investment aid if the aid proposed is more than the maximum allowable aid that an investment in amount of the equivalent in ROL of EUR 100 million can obtain under the scale and the rules laid down in art. 17.

**Art. 20 - (1)** Individually notifiable projects will not be eligible for investment in either of the following two situations:

a) the aid beneficiary accounts for more than 25% of the sales of the product concerned before or after the investment;

b) the capacity created by the investment project is more than 5% of the size of the market measured using apparent consumption data of the product concerned, unless the average annual growth rate of its apparent consumption over the last five years is above the annual growth rate of the European Economic Area's and candidate countries' GDP.

(2) The burden of proving that the situations to which points (a) and (b) of paragraph (1) refer do not obtain lies with the state aid grantor. If the state aid grantor proves that the state aid beneficiary creates, by real innovation, a market of a new product, the conditions established in points (a) and (b) of paragraph (1) are not applicable and the aid will be authorised according to the scale foreseen in art. 17.

**Art. 21 – (1)** The maximum allowable intensity that a notifiable project can receive under art. 17 may be increased by multiplying it by the factor 1,15 if the project is co-financed from structural funds resources (pre-accession funds, respectively).

**(2)** The rate of co-financing must be at least 25% of the total public expenditure.

**Art. 22 -** The aid increase resulting from art. 21 must not lead to an aid intensity higher than the maximum aid intensity allowed for an investment of the equivalent in ROL of EUR 100 million, i.e. 75% of the unadjusted regional ceiling.

## **Chapter 4**

### **An aid prohibition for investment projects in the steel industry**

**Art. 23 – (1)** The steel sector is defined in Annex no. 1 and includes the steel sector as defined in the Treaty instituting the European Coal and Steel Community (ECSC), as well as the sub-sectors seamless pipes si big welded pipes, which were not covered by ECSC, but which are part of an integrated process of production and which have similar characteristics with the steel sector.

**(2)** Given the specific features of the steel sector, especially its structure, the existing over-capacity at European and world level, its highly capital intensive nature, the location of the majority of steel plants in regions eligible for regional aid, the substantial amounts of public funds devoted to the restructuring of the steel sector, and the conversion of the steel areas, the aid for investment in this sector is forbidden, regardless of the size of the investment.

## **Chapter 5**

### **Investment projects in sectors with structural problems other than steel**

**Art. 24 – (1)** Sectors with structural problems may be specified on a list of specific sectors. No regional aid for investment subject to the provisions of this chapter will be authorised in the afore mentioned sectors.

**(2)** For the purpose of drawing up the list of sectors, serious structural problems will be measured on the basis of apparent consumption data, at the appropriate level of the CPA classification in the EEA, or, if such information is not available, on the basis of any other market segmentation generally accepted for the products concerned and for which statistical data are readily available. Serious structural problems will be deemed to exist when the sector concerned is declining; a relevant hint for the decline in the sector may appear if the average annual growth rate of apparent consumption in EEA, ove rthe last 5 years, is negative.

**(3)** The list of sectors shall be updated periodically, with a frequency to be determined at the time at which the list of sectors is decided.

**Art. 25 – (1)** As from 1 January 2004, and for sectors included in the list of sectors with serious structural problems, all regional investment aid concerning an investment project involving eligible expenditure above an amount to be determined at the time of drawing up the list of sectors, must be notified to the Competition Council. This level could in principle be the equivalent in ROL of EUR 25 million, but may vary from one sector to the other.

**(2)** The Competition Council will examine such notifications in accordance with the following rules: firstly, the aid project must comply with the general assessment criteria laid down in the regulation on regional state aid and aid for SMEs; secondly, the eligible expenditure as defined in art. 8 exceeding an amount to be determined at the time of drawing up the list of sectors will not be eligible for investment aid, except for the cases referred to in art. 26.

**Art. 26** - By way of derogation from art. 25, the Competition Council may authorize investment aid for sectors included in the list of sectors on the basis of the aid intensities established in art. 17-22, provided that the state aid grantor demonstrates that, although the sector is deemed to be in decline, the market for the product concerned is fast growing. The market for the product concerned will be deemed to be fast growing if apparent consumption over the last 5 years at the appropriate level of the Prodcom classification in the EEA, or, if such information is not available, on the basis of another market segmentation generally accepted for the products concerned and for which statistical data are readily available, is growing in value terms by an average rate equal to or above the average growth of the EEA's and candidate countries' GDP.

## **Chapter 6**

### **Monitoring**

**Art. 27 – (1)** The transparency of effective granting of state aid will be made according to the provisions of the legislation in force concerning the procedures of monitoring, inventorying and reporting of state aids, as well as with the attributions of the Competition Office in this field.

**(2)** The ex-post monitoring formular from Annex no. 5 will be filled in and submitted to the Competition Council if this is requested by Competition Council's decision of granting the state aid.

## **Chapter 7**

### **Transitory provisions**

**Art. 28 - (1)** Until the 31st of December, 2006, without prejudice to the application of the Regulation on state aid for small and medium sized-enterprises:

**(a)** The maximum aid intensity for regional aid for investment in the motor vehicle sector, as defined in Annex no. 2, for state aids exceeding the equivalent in ROL of EUR 5 million, expressed in NGE, is limited to 30% of the regional aid ceiling.

**(b)** No expense in the context of investment projects in the synthetic fibres sector, as defined in Annex no. 3, will be eligible for regional aid for investment

Art. 28 paragraph (2) is repealed.

**Art. 29 – (1)** The Multisectoral Regulation on the transitory rules applicable to regional state aid for large investment projects in unspecific industrial sectors will apply in the synthetic fibres sector, enforced by Order of the President of the Competition Council no. 252/2003, published in the Romanian Official Gazette no. 165/17.03.2003.

**(2)** For state aids exceeding the equivalent in ROL of EUR 5 million, expressed in NGE, the maximum intensity for regional state aid for investment in the motor vehicle sector, as defined in Annex no. 2, granted according to an existing state aid scheme, is limited to 30% of the regional aid ceiling.

**Art. 30** - Annexes no. 1-5 are part of this Regulation.

**Art. 31** - This Regulation transposes the Communication of the European Commission concerning the multisectoral framework on regional aid for large investment projects, published in the Official Journal of the European communities no. C 70/19.03.2002 and the Communication of the European Commission concerning the multisectoral framework on regional aid for large investment projects, published in the Official Journal of the European Communities no. C 263/1.11.2003.