

REGULATION ON STATE AID FOR RESEARCH AND DEVELOPMENT

Pursuant to Article 27 (1) of the Competition Law no 21/1996, subsequently completed and amended and Article 30 (1) of the Law no 143/1999 on State Aid, completed and amended, The Competition Council adopts the present regulation.

Introduction

Drafting a legal framework regulating the state aid discipline stands for the continuation of the harmonisation process of the 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 the state aims at assessing the compatibility of a state aid with a normal competitive environment within a market economy where 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.

The Competition Council's approach in the present regulation aims at setting the conditions under which state aid may be regarded necessary to ensure the extension or speeding up of the R & D activities, without significantly distorting the normal competitive environment and the economic growth.

CHAPTER I

Applicability of the State aid rules to aid for R& D

State aid incompatible with the competitive market

Art. 1 - (1) Any aid granted by the State through State resources, by public authorities or any other bodies administering resources on behalf of the State, in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings, the production of certain goods or services is, in so far as it affects the international agreements to which Romania is a party, incompatible with the competitive market.

(2) The closer the R& D is to the market, the more significant may be the distortive effect of the State aid. In order to establish the proximity degree towards the market of the research and development aid, the Competition Council distinguishes among the fundamental research activities, the industrial research and the pre-competitive development.

(3) The fundamental research activity is oriented towards the gaining of new specific knowledge, as well as to the formulation and checking of new hypothesis and theories, without an industrial or commercial purpose."

(4) The industrial research activity is oriented towards the enriching the knowledge, with the purpose of utilizing these knowledge for developing new products, processes or services, or for significantly improving the existing products, processes or services.

(5) The pre-competitive development activity is oriented towards shaping the results of the industrial research into plans, schemes or documentations for products, processes or services

that are new, altered or improved, even if these are designated for sale or use, including the manufacturing of the original prototype, that cannot be used for commercial purposes. It can comprise the conceptual formulation and the design of other products, processes or services and of the initial demonstration project or of the pilot-projects, provided that such projects cannot be used for industrial applications or commercial exploitation. The pre-competitive development activity does not include periodic changes made to products, production lines, manufacturing process, existing services and other operations in progress, even if such changes may represent improvements.”

Innovative activities benefit from state aid

Art.2. Innovation does not qualify as a separate category of R& D. Activities that could be regarded as innovative but do not correspond to the categories mentioned in Article 1(2) can benefit from state aid only if they conform with the Law no 143/1999 on State Aid and the “Regulation on national regional aid and aid for small and medium-sized enterprises”.

R & D activities developed by public non-profit-making-higher-education or research establishments

Art.3. (1) Public financing of R& D activities by public non-profit-making higher-education or research establishments is not qualified as state aid within the meaning of the Article 2 of the Law no 143/1999 on State Aid. Where the results of publicly on a non-discriminatory basis financed R& D projects carried out by such establishments are made available to the Romanian industry, state aid is not involved.

(2) Where R& D is carried out by public non-profit-making, higher-education or research establishments on behalf of or in collaboration with industry, State aid within the meaning of Article 2 of the Law no 143/1999 is not involved either:

- (a) where the public non-profit-making higher-education or research establishments contribute to research projects as a commercial firm would, e.g. in return for payment at the market rate for the services they provide;
- (b) where the industrial participants in the research bear the full cost of the project;
- (c) where the results which do not give rise to intellectual property rights may be widely disseminated;
- (d) any intellectual property rights to the R& D results are fully allocated to the public non-profit-making establishments;
- (e) where the public non-profit-making establishments receive from the industrial participants compensation equivalent to the market price for the intellectual property rights which result from the research project and which are held by those industrial participants.

Contracting of the R & D activities and of the results of these activities

Art. 4 (1). Public authorities may commission R& D from firms or buy the results of R& D directly from them. If there is no tender procedure, state aid within the meaning of Article 2 of the Law no.143/1999 might be involved.

(2) If these contracts are concluded under the market conditions, especially observing the rules applicable to the public purchases, they will not have to be considered on the basis of Art. 2 of the Law no. 143/1999, with the subsequent modifications and completions.

CHAPTER II

Compatibility of state aid for R& D activities

Approval of state aid

Art. 5 Aid granted for R& D activities may be approved by the Competition Council if it is compatible with the Law no. 143/1999 on state aid and the present regulation.

Factors influencing the evaluation of the state aid compatibility

Art. 6. When examining whether or not the notified aid is compatible with a competitive environment the Competition Council will pay special attention to the type of research carried out, the beneficiaries, the aid intensity, the accessibility to the results and other relevant factors as mentioned in Chapters IV and V.

CHAPTER III

Notification of state aid for R& D activities

Notification of state aid

Art. 7(1) State aid for R& D has to be notified to the Competition Council pursuant to Art. 6 of the Law no 143/1999. The notification should be made by means of the standard form set out in the Annex 1 of the “Regulation on the form, content and other details of the state aid notification”, enforced through the Order no 27/2000 of the President of Competition Council.
(2) The supplementary questionnaire on R& D, which is contained in Annex 2 has to be filled in by grantors and submitted to the Competition Council.

Transparency of aid schemes

Art. 8(1) The Competition Council aims to achieve the highest possible degree of transparency in the application of aid schemes. This means that there must be a clear statement of the objectives to be achieved, of the beneficiaries and other relevant aspects.
(2) The different categories of costs which the aid is designed to reduce must be specified and the aid must be granted in such a form that the intensity of the aid in relation to these costs, as listed in Annex 1, can be calculated.

Verifying of the grant equivalent

Art. 9 The grantor must provide sufficient information to enable the Competition Council to verify the calculation of the grant equivalent if the state aid is not paid in the form of an outright grant.

Modifying the annual budget of the aid schemes

Art. 10 (1) The notification of the increase in the annual budget of an authorized scheme is not necessary if it is not more than 100 % (in nominal terms) of the initial annual amount, provided that the scheme is of unlimited duration or that the increase takes place within the period of validity of a scheme of limited duration.
(2) Extensions with or without a budgetary increase (up to the abovementioned limit of 100 %), without changes in the conditions for implementing the previously approved aid schemes

and consistent with the new framework, need to be renotified only from the fifth year following the expiry of the validity of the original scheme.

(3) The grantors are obliged to inform the Competition Council of such refinancing/ extensions in advance and to continue to submit a report on state aid according to *Government Decision* no 599/2000 approving the reporting, monitoring and informing procedures in applying the Law no 143/1999 on State Aid.

The notification of individual grants

Art. 11(1) Individual grants of aid under an R& D scheme that was authorized by the Competition Council do not need to be notified, except of the case when the Competition Council expressly asked for such a notification in the decision approving the aid scheme.

(2) In order to allow the Competition Council to assess significant amounts of aid under approved schemes and the compatibility of such aid with the competitive environment, the Competition Council requires prior notification of any individual research project costing more than Euro 25 million (denominated in ROL) and for which it is proposed to provide aid with a gross grant equivalent of more than Euro 5 million (denominated in ROL).

(3) Individual grants of aid outside the scope of authorized R& D schemes are to be notified pursuant to Article 6 of the Law no 143/1999 on state aid, unless they constitute de minimis awards.

CHAPTER IV

Aid intensity

Determination of state aid intensity

Art.12. (1) The allowable intensity of aid will be determined by the Competition Council on a case-by-case basis.

(2) The Competition Council assessment in each case will take into consideration the nature of the project or programme, overall policy considerations relating to the competitiveness of industry, the risk of distorting competition and the infringement of the treaties to which Romania is a party.

(3) A general evaluation of such risks leads the Competition Council to consider that fundamental research and industrial research may qualify for higher levels of aid than precompetitive development activities, which are more closely related to the market introduction of R& D results and, if aided, could therefore more easily lead to distortions of competition and trade.

State aid intensity for fundamental research activity

Art. 13. (1) The public financing of fundamental research that is normally independently carried out by non-profit-making higher-education or research establishments does not constitute State aid within the meaning of Article 2 of the Law no. 143/1999 .

(2) In exceptional cases where fundamental research is carried out by or for firms, since this type of research is far from the market and its results are in principle widely available for exploitation on a non-discriminatory basis and at market rates, it may be awarded at a gross aid intensity of up to 100 %.

(3) To qualify as fundamental research, the work should not be linked to any industrial or commercial objectives of a particular enterprise, and a wide dissemination of the results of the research must be guaranteed.

State aid intensity for industrial research

Art. 14(1) As a general rule, the gross aid intensity for industrial research must not exceed 50 % of the eligible costs of the project, as defined in Annex I.

(2) Technical feasibility studies preparatory to industrial research activities may qualify for aid amounting to 75 % of study costs, while such studies preparatory to precompetitive development activities may qualify for support amounting to 50 % of study costs; these ceilings have been set in the light of the negligible impact of such aid on competition and trade conditions.

State aid intensity for industrial research

Art.15. Precompetitive development activities are close to the market and there is a greater risk that any such aid will distort competition and treaties of which Romania is a party. The permissible gross aid intensity for precompetitive development activities is 25 % of the eligible costs for the project, as defined in Annex I.

State aid intensity in case of repayable amounts

Art. 16(1) In the case of advances that are repayable only in the event of a successful outcome of research activities, the permissible aid intensity (in gross grant equivalent) is that stipulated by this Regulation for the various stages of research.

(2) In the event of failure of the research concerned, the Competition Council may allow a higher level of aid intensity since the project's failure reduces the risk of competition and trade being distorted, taking into consideration the legal level of intensity.

(3) When notifying reimbursable aid, the grantors are required to inform the Competition Council of the amounts and exact procedures for repayment, with the proposed conditions being assessed by the Competition Council on a case-by-case basis.

State aid for patent applications and renewals

Art. 17 With a view to encouraging dissemination of research results, aid in support of patent applications and renewals made by SME`s may be granted up to the same level as that for the research activities which first led to the patents concerned.

The level of State aid for an R& D project being carried out in collaboration between public research establishments and enterprises

Art. 18 In the case of State aid for an R& D project being carried out in collaboration between public research establishments and enterprises, the combined aid deriving from direct government support for a specific research project and, where they constitute aid according with Article 3 of this regulation, contributions from public research establishments to that project may not exceed the above mentioned aid ceilings.

State aid intensity for R & D activities which cover industrial and precompetitive development

Art. 19 In cases of R& D activity spanning industrial research and precompetitive development activities, the permissible aid intensity will not exceed the weighted average of the permissible aid intensities applicable to the two types of research.

Modification of state aid intensity

Art. 20(1) Without prejudice to the case-by-case assessment, the aid intensities specified in Article 14-18 of this Regulation may be exceeded in the situations mentioned in alins (2) - (6).

(2) Where the aid is to be given SMEs, the aid intensities may be exceeded with an extra 10 percentage points.

(3) Where the research project is carried out in an assisted region the aid intensities may be exceeded with an extra 10 percentage points. The Romanian regions are eligible for this bonus.

(4) The regional bonuses mentioned in alin.(3) may be exceeded, taking into account the ceilings applicable to regional investment aid and the need to stimulate intangible investment, without exceeding the limits set out in paragraph (8).

(5) Where the research project is in accordance with the objectives of a specific project or programme undertaken as part of the European Community's current framework programme for R& D, it will qualify for an extra 15 percentage points. That figure will rise to 25 percentage points where the project also involves effective cross-border cooperation between firms and public research bodies or between at least two independent partners, one from Romanian and one from the European Union and the European Economic Area Member States and the countries having concluded Europe agreements with the European Union and its Member States and where its results are widely disseminated and published, whilst observing intellectual and industrial property rights.

(6) Where the research project is not in accordance with the objectives of a specific project or programme undertaken as part of the European Community's current framework programme for R& D, the Competition Council will allow increases of up to 10 percentage points provided that at least one of the following conditions is satisfied:

(a) the project involves effective cross-border cooperation between at least two independent partners, one from Romania and one from the European Union and the European Economic Area Member States or the countries having concluded Europe agreements with the European Union and its Member States, particularly in the context of coordinating national R & D policies;

(b) the project involves effective cooperation between firms and public research bodies, particularly in the context of coordination of national R & D policies;

(c) the project's results are widely disseminated and published, patent licences are granted or other appropriate steps are taken under conditions similar to those for the dissemination of European Community R & D results.

(7) The grantors concerned must provide the Competition Council with sufficient information to enable it to assess whether these criteria are met.

(8) The cumulation of the increases described at paragraphs (2) – (6) with the percentages specified at Article 14 - Article 18 may not exceed a maximum gross intensity of 75 % for

industrial research and 50 % for precompetitive development activities. These limits must be respected in all cases.

Factors that influence the state aid for R & D activities evaluation

Art. 21. When examining R& D aid, the Competition Council must take into account the effect on competition and trade of a combination of State aid with Community financing. Where Community financing and State aid are combined, total support may not exceed 75 % in the case of industrial research and 50 % in the case of precompetitive development activities.

CHAPTER V

Incentive effect of R& D state aid

Incentive effect of state aid

Art. 22. State aid for R& D should serve as an incentive for firms to undertake R& D activities in addition to their normal day-to-day operations. It may also encourage firms not carrying out research and development to undertake such activities. Where this incentive effect is not evident, the Competition Council may consider such aid less favourably than it usually does.

Factors which influence the evaluation of the state aid incentive effect

Art. 23. (1) In order to verify that the planned aid will induce firms to pursue research which they would not otherwise have pursued, the Competition Council must take particular account of quantifiable factors (such as changes in R& D spending, in the number of people assigned to R& D activities and in R& D spending as a proportion of total turnover), market failures, additional costs connected with cross-border cooperation and other relevant factors indicated by the grantor that made the notification.

(2) Proposed aid may also be authorized if it contributes towards expanding the scope of research or speeding it up.

Necessity to demonstrate the state aid incentive effect

Art. 24.(1) The Competition Council calls on grantor, when notifying R& D aid to demonstrate that the aid is necessary as an incentive, and is on no account operational aid.

(2) Also, the Competition Council calls on grantor, when submitting annual reports on the implementation of approved aid schemes, to demonstrate that the aid is necessary as an incentive, and is on no account operational aid.

State aid for SMEs

Art. 25. It may assume that the aid provides a necessary incentive if the recipient is an SME.

Suplimentary provisions regarding Article 23 and 24

Art. 26. The Competition Council will attribute particular importance to the conditions at Article 23 and Article 24:

- a)** in the case of individual, close-to-the-market research projects to be undertaken by large firms,
- b)** in all cases in which a significant proportion of the R& D expenditure has already been made prior to the aid application.

CHAPTER VI Final provisions

Conditions to be met in the application of the present regulation

Art. 27 - (1). The provisions of this regulation will be implemented in accordance with the Regulation on the form, content and other details of the state aid notification and with the Regulation on the de minimis rule of State aid which is not covered by the notification obligation, that entered into force through the Order no 27/2000 by the President of the Competition Council.

(2) Annexes no 1 and 2 are part of the present regulation.

State aids falling under this regulation

Art. 28. This regulation applies to State aids granted for R & D activities, 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.

Entering into force

Art. 29. The present regulation is adopted through Order by the President of the Competition Council and enters into force after six mounths as of the date of publishing in the Romanian Official Gazette.