

REGULATION CONCERNING STATE AID FOR EMPLOYMENT

Pursuant to Article 27 (1) of the Competition Law no. 21/1996 and to Article 30 (1) of the State Aid Law no. 143/1999 with the subsequent completions and modifications,

The Competition Council adopts this Regulation.

Introduction

Drafting a legal framework regulating the state aid discipline stands for the continuation of the harmonization 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 the supply and demand determine the prices of the goods and services.

Scope

Article 1 – (1) The present Regulation is applying to the state aids granted for creating jobs, for employing disfavored persons or handicapped persons, as well as state aids for covering the supplementary costs for employing handicapped persons.

(2) This Regulation shall apply to aid in all sectors, including the activities relating to the production, processing and marketing of products listed in Annex I of the Regulation on Regional State aid and State aid for small and medium-sized enterprises adopted through the Order by the President of the Competition Council no. 92/2002, published in the Official Gazette no. 470/2002.

(3) The Regulation shall not apply:

- a) to any aid granted in the coal or shipbuilding sectors;
- b) to any aid for the creation of employment, within the meaning of Article 4, granted in the transport sector; such aid shall remain subject to prior notification to the Competition Council in accordance with Article 6 paragraph (1) of the Law no. 143/1999;
- c) to aid to export-related activities, namely aid directly linked to the quantities exported, to the establishment and operation of a distribution network or to other current expenditure linked to the export activity;
- d) to aid contingent upon the use of domestic in preference to imported goods;

Definitions

Article 2 – (1) At the alignments (2)-(10) it is specified the meaning of the terms used within the present Regulation.

(2) *Gross aid intensity* means the aid amount expressed as a percentage of the relevant costs. All figures used shall be taken before any deduction for direct taxation. Where aid is awarded in a form other than a grant, the aid amount shall be the grant equivalent of the aid (ESN). Aid payable in several instalments shall be discounted to its value at the moment of granting. The interest rate to be used for discounting purposes and for calculating the aid amount in a soft loan shall be the reference rate applicable at the time of grant;

(3) *Net aid intensity* means the discounted aid amount net of tax expressed as a percentage of the relevant costs;

(4) *Number of employees* means the number of annual working units (NAUM), namely the number of persons employed full time in one year, part-time and seasonal work being NAUM fractions;

(5) *Socially marginalized person or person threatened with professional exclusion or person difficult to promote and admit to work* (named from now *disadvantaged worker*) means any person who belongs to a category which has difficulty entering the labour market without assistance, namely a person meeting at least one of the following criteria:

(a) any person who is under 25 or is within two years after completing full-time education and who has not previously obtained his or her first regular paid employment;

(b) any migrant worker who moves or has moved within the Romania or becomes resident in Romania to take up work;

(c) any person who is a member of an ethnic minority and who requires development of his or her linguistic, vocational training or work experience profile to enhance prospects of gaining access to stable employment;

(d) any person who wishes to enter or to re-enter working life and who has been absent both from work and from education for at least two years, and particularly any person who gave up work on account of the difficulty of reconciling his or her working life and family life;

(e) any person living as a single adult looking after a child or children;

(f) any person who has not attained an upper secondary educational qualification or its equivalent, who does not have a job or who is losing his or her job;

(g) any person older than 50, who does not have a job or who is losing his or her job;

(h) any long-term unemployed person, i.e. any person who has been unemployed for 12 of the previous 16 months, or six of the previous eight months in the case of persons under 25;

(i) any person recognised to be or to have been an addict in accordance with national law;

(j) any person who has not obtained his or her first regular paid employment since beginning a period of imprisonment or other penal measure;

(k) any woman in a development area where average unemployment has exceeded 100 % of the Community average for at least two calendar years and where female unemployment has exceeded 150 % of the male unemployment rate in the area concerned for at least two of the past three calendar years;

(5¹) In the notification, the supplier and initiator of state aid may present to the Competition Council arguments according to which other persons who will be employed are disfavoured. If this is proven, article 5 will be applied accordingly..

(6) *Disabled worker* means any person within the meaning of Emergency Order of The Govern no. 102/1999 on social protection and employment of disabled workers either;

(7) *Sheltered employment* means employment in an establishment where at least 50 % of the employees are disabled workers who are unable to take up work in the open labour market;

(8) *Wage cost* comprises the following components actually payable by the beneficiary of the State aid in respect of the employment concerned:

(a) the gross wage, i.e. before tax; and

(b) the compulsory social security contributions.

(9) A *job* is linked to the carrying-out of a project of investment if it concerns the activity to which the investment relates and if it is created within three years of the investment's completion. During this period, the jobs created following an increase in the utilization rate of the capacity created by the investment are also linked to the investment;

(10) *Investment in tangible assets* means an investment in fixed physical assets relating to the creation of a new establishment, the extension of an existing establishment, or the engagement in an activity involving a fundamental change in the product or production

process of an existing establishment (in particular through rationalizations, diversification or modernization). An investment in fixed assets undertaken in the form of the takeover of an establishment which has closed or which would have closed had it not been purchased shall also be regarded as tangible investment;

(11) *Investment in intangible assets* means investment in transfer of technology by the acquisition of patent rights, licenses, know-how or unpatented technical knowledge.

Conditions for Exemption from the Prior Notification of the State Aid Measures for Employment

Art. 3 is repealed.

Creation of Employment

Article 4 – (1) The state aids for creating jobs must accomplish the conditions foreseen under alignments (2), (3) and (4).

(2) The net aid intensity shall not exceed the corresponding ceiling of regional investment aid. In the case of small and medium-sized enterprises, and unless the map provides otherwise for such enterprises, this ceiling shall be increased by 15 percentage points gross, provided that the total net aid intensity does not exceed 75%.

(3) The higher regional aid ceilings shall only apply if the beneficiary's contribution to financing is at least 25% and if the employment is maintained within the qualifying region.

(4) When employment is created in the production, processing and marketing of products listed in Annex I of the Regulation on regional aid and aid for small and medium-sized enterprises, these higher aid ceilings or, if applicable, the higher aid ceilings of that Regulation, shall apply.

(5) The ceilings fixed in align. (2)- (4) shall apply to the intensity of the aid calculated as a percentage of the wage costs over a period of two years relating to the employment created under the following conditions:

(a) the employment created must represent a net increase in the number of employees, both in the establishment and in the enterprise concerned, compared with the average over the past 12 months;

(b) the employment created shall be maintained for a minimum period of three years, or two years in the case of SMEs; and

(c) the new workers employed as a result of the creation of employment must have never had a job or have lost or be losing their previous job.

(6) Where aid is granted for the creation of employment under the conditions of this Regulation, additional aid may be granted in case of recruitment of disadvantaged or disabled workers in accordance with the terms of Articles 5 or 6, respectively.

Recruitment of Disadvantaged and Disabled Workers

Article 5 –(1) The state aid for an economic agent to employ disfavored persons or handicapped persons must accomplish the conditions foreseen under align. (2) and (3).

(2) The gross intensity of all aid relating to the employment of the disadvantaged or disabled worker or workers concerned, calculated as a percentage of the wage costs over a period of one year following recruitment, shall not exceed 50 % for disadvantaged workers or 60 % for disabled workers.

(3) The following conditions shall apply:

- (a) where the recruitment does not represent a net increase in the number of employees in the establishment concerned, the post or posts must have fallen vacant following voluntary departure, retirement on grounds of age, voluntary reduction of working time or lawful dismissal for misconduct and not as a result of redundancy, and
- (b) except in the case of lawful dismissal for misconduct the worker or workers must be entitled to continuous employment for a minimum of 12 months.

Additional Costs of Employment of Disabled Workers

Article 6 – (1) State aid for the employment of disabled workers and any aid that could be awarded under such a scheme must fulfil the conditions of paragraphs (2) and (3).

(2) The aid shall not exceed the level needed to compensate for any reduced productivity resulting from the disabilities of the worker or workers, and for any of the following costs which are additional to those which the beneficiary would have incurred if employing workers who are not disabled, over any period for which the disabled worker or workers are actually employed:

- (a) costs of adapting premises;
- (b) costs of employing staff for time spent solely on the assistance of the disabled worker or workers;
- (c) costs of adapting or acquiring equipment for their use.

(3) Where the beneficiary provides “sheltered employment”, aid may in addition cover, but shall not exceed, the costs of constructing, installing or expanding the establishment concerned, and any costs of administration and transport, which result from the employment of disabled workers.

(4) **repeled**

The stimulating effect of the state aid”

Article 7 – (1) A state aid may be authorized according to this Regulation if, before the beginning of the project, one of the following conditions is accomplished:

- a) the beneficiary submitted to the supplier a request in order to receive a state aid;
- b) there are legal provisions in force that establish the right to grant state aids in conformity with objective criteria and without another discretionary exercise.

(2) In the following cases, when:

- a) creation of jobs is related to the execution of a project of investments in tangible or intangible assets; and/or
- b) the jobs are created in 3 years since the end of the investment, the state aids may be authorized on condition for the petition mentioned under align.. (1) letter a) or adopting the dispositions foreseen under align. (1) letter b) may have occurred before the beginning of the investment project.

Cumulation

Article 8 – (1) The aid ceilings fixed in Articles 4, 5 and 6 shall apply regardless of whether the support for the aided employment or recruitment is financed entirely from State resources or is partly financed by the European Union.

(2) Any state aid granted according to art. 4, 5 or 6 shall not be cumulated with any other State aid or with other Community funding, in relation to the same wage costs, if such cumulation would result in an aid intensity exceeding that fixed by this Regulation.

(3) Any state aid granted according to art. 4, 5 or 6 shall not be cumulated:

(a) with any other State aid or with other Community funding, in relation to costs of any investment to which the created employment is linked and which has not yet been completed at the time the employment is created, or which was completed in the three years before the employment is created; or

(b) with any such aid or funding in relation to the same wage costs or to other employment linked to the same investment, if such cumulation would result in an aid intensity exceeding the relevant ceiling of regional investment aid determined in the Regulation on regional aid and in the Regulation on aid for small and medium-sized enterprises, enforced by Order of the President of the Competition Council no. 55/23.03.2004, published in the Romanian Official Gazette no. 340/19.04.2004. Where the relevant ceiling has been adapted in a particular case, in particular by the application of State aid rules applying in a particular sector, or by the application of the State aid rules provided by the Multisectoral Regulation on State aid to large investment projects and by the Multisectoral Regulation to transitory rules on regional state aid to large investment projects for non-specific sectors, enforced by Order of the President of the Competition Council no. 252/23.12.2002, published in the Romanian Official Gazette no. 165/17.03.2003, the adapted ceiling shall apply for the purposes of this paragraph.

(4) By way of derogation from paragraphs 2 and 3, state aids provided by articles 5 and 6 may be cumulated with other state aid or with other Community funding, in relation to the same costs, including with aid under schemes exempted by article 4 of this Regulation which complies with paragraphs 2 and 3, provided that such cumulation does not result in a gross aid intensity exceeding 100 % of the wage costs over any period for which the worker or workers are employed.

(5) The ceilings fixed by align. (4) shall apply without prejudice to any lower limits on aid intensity provided by the Regulation on State aid for research and development, adopted through the Order by the President of the Competition Council no 92/2002, published in the Official Gazette no. 470/2002.

State aid to maintain jobs

Article 9 – (1) State aid for maintaining the employment is similar to operating aid.

(2) Under the reserve of the applicable sectorial rules, the aid for maintaining the jobs may be authorized by the Competition Council if this is supposed to be granted for the remedy of the damages caused by natural disasters or other exceptional events, or in case of accomplishing the conditions foreseen for the operation aid established in the *Regulation regarding the regional state aid*.

(3) The state aid for maintaining jobs may be granted in the context of the restructuring of a company in difficulty, complying with the dispositions of the *Regulation regarding the state aid for rescuing and restructuring the firms in difficulty*, put into application by the Order of the President of the Competition Council no. 92/2002, with further modifications.

(4) If the state aids designated for certain categories of employees apply without discrimination to the economic agents, they will be analyzed differently from the state aid granted to a branch.

State aids for the conversion of work contracts

Article 9¹- (1) The aid for converting the labor agreements on temporary or limited period, into labor agreements on unlimited period, will be authorized only if such a measure has positive effects on the labor force.

(2) In case of these state aids, there must exist the certainty that they are not granted simultaneously for creating new jobs and for converting the labor agreements, so that the limits of the state aids' intensity for the initial investment or for creating new jobs may not be exceeded.

State aids that may exceptionally be granted

Article 9² -(1) State aid schemes for employment on the basis of part-time work contracts, state aids for working parents and similar measures promoting employment, which do not have as a result a net increase in the number of jobs, an increase in the employment of disadvantaged persons or in the employment of disabled persons will be notified to the Competition Council in the view of authorisation.

(2) Other state aid measures whose objectives are linked to the labour market and the employment, such as measures encouraging early retirement will be notified to the Competition Council according to the provisions of art. 6 of Law no. 143/1999, with further amendments and extensions.

(3) Individual state aid for employment may be authorised by the Competition Council if it is compatible with the specific rules, in case these rules have been set for the sector in which the beneficiary operates and only if it can be proved that the effects of the state aid on the employment are offset with the impact that it has on the competition on the relevant market.

Transparency and monitoring

Art. 10 is repealed.

Anexes no. 1 and 2 are repealed.

Final provisions

Article 11 – (1) This Regulation applies to state aids granted for employment, which are notified after it enters into force, as well as 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.

(3) This Regulation transposes the European Commission Regulation no. 2204/2002 concerning the application of Art. 87 and 88 of the EC treaty on state aid for employment, published in the Official Journal of the European Communities no. L 337/13.12.2002.

Information communicated by the Supplier regarding State aid granted under Regulation concerning State aid for employment

The supplier:

Region:

Indicate the name of the region if the aid is granted by a local authority.

Title of aid scheme:

Indicate the name of the aid scheme.

Legal basis:

Indicate the precise national legal reference for the aid and a publication reference.

Annual expenditure planned under the scheme:

Amounts are to be given in ROL and EURO equivalent. Indicate the annual overall amount of the budget appropriation(s) or the estimated tax loss per year for all aid instruments contained in the scheme.

For guarantees, indicate the (maximum) amount of loans guaranteed.

Maximum aid intensity under:

- Article 4: creation of employment:
- Article 5: recruitment of disadvantaged and disabled workers:
- Article 6: additional costs of employment of disabled workers:

Indicate the maximum aid intensity distinguishing between aid under Articles 4, 5 and 6 of the Regulation.

Date of implementation:

Indicate the date from which aid may be granted under the scheme.

Duration of scheme:

Indicate the date (year and month) until which aid may be granted under the scheme.

Objective of aid:

- Article 4: creation of employment:
- Article 5: recruitment of disadvantaged and disabled workers:
- Article 6: employment of disabled workers:

The primary objective(s) of the measure should be identified from among the three options. This field also gives the opportunity to indicate further (secondary) objectives pursued.

Economic sector(s) concerned:

With the exception of the shipbuilding sector, and other sectors which are the subjects of special rules in regulations and directives governing all State aid within the sector

Name and address of the granting authority:

Other information:

If the scheme is co-financed by Community funds, please add the following sentence:

”The aid scheme is co-financed under [reference].”

Annex no. II

FORM OF THE PERIODIC PERIODIC REPORT
That must be submitted to the Competition Council

1. Title and No of aid scheme
2. Expenditure

Separate figures have to be provided for each aid instrument within a scheme (e.g. grant, soft loans, etc.) The figures have to be expressed in ROL, as well as their equivalent in euro. In the case of tax deductions, annual tax losses have to be reported. If precise figures are not available, such losses may be estimated.

These figures must be provided for the reporting year, for each state aid from a state aid scheme separately, by indicating:

- 2.1. Amounts estimated representing tax exemptions or other revenues to be cashed, data on guarantees etc., concerning the grant of new state aids.
- 2.2. Actual payments, estimated tax exemptions or other revenues to be cashed, data on guarantees etc., for new and current grants of aid. In the case of guarantee schemes, the following data should be provided: total amount of outstanding guarantees, premium incomes, recoveries, indemnities paid out, operating results of the scheme under the year under review.
- 2.3. Number of new specific allocations granted.
- 2.4. Estimated overall number of jobs created of disadvantaged or disabled workers recruited or employed under new decisions to grant state aid. State aid for the recruitment of disadvantaged workers should be broken down by the categories in Art. 2 paragraph (5) of the Regulation.
- 2.5. Regional breakdown of amounts, according to point 2.1
- 2.6. Sectoral breakdown of amounts, according to point 2.1, by beneficiaries' sectors of activity (if more than one sector is covered, indicate the amount for each):
 - coal mining;
 - one of the following production sectors:
 - o steel;
 - o shipbuilding;
 - o synthetic fibres;
 - o motor vehicles;
 - o others;
 - one of the following services:
 - o transport services;
 - o financial services;
 - o other services;
 - o other sectors.

3. Other information and remarks.