

**REPORT
on monitoring state aids granted to undertakings operating in free zones**

According to the provisions of item 4 – Competition Policy – within ANNEX VII to the **Treaty regarding the accession to the European Union of the Republic of Bulgaria and Romania**, approved by Law no. 157/2005¹, Romania has to inform the European Commission about the eligible costs of the investments made, effectively supported by the beneficiaries, according to Law no. 84/1992 on the free zones regime, with its subsequent amendments and completions, and also the total value of aids granted to the operators.

Consequently, this report presents the situation until the 31st of December 2009 concerning the state aids granted to the undertakings operating in the free zones, situation drawn from the data and information submitted by the grantor, respectively the Ministry of Public Finance.

The legal basis for granting the financial support to undertakings which operate in the free zones, was initially ensured by the provisions of Law no. 84/1992 on the free zones regime.

Subsequently, the provisions of art. 14 within Law no. 84/1992 on the free zones regime, regarding the facilities granted, suffered a series of modifications so that starting with the 2nd of January 2003 (date from which the state aids granted within the free zones are taken into consideration, according to the Treaty), the state aid granted to the undertakings that operate in the free zones consists of:

¹ Law no. 157 / 24th of May 2005 for ratifying the Treaty between Belgium Kingdom, Czech Republic, Kingdom of Denmark, Federal Republic of Germany, Republic of Estonia, Republic of Greece, Kingdom of Spain, French Republic, Ireland, Republic of Italy, Republic of Cyprus, Republic of Lithuania, Great Duchy of Luxemburg, Republic of Hungary, Republic of Malta, Kingdom of Netherlands, Republic of Austria, Republic of Poland, Republic of Portugal, Republic of Slovenia, Republic of Slovakia, Republic of Finland, Kingdom of Sweden, United Kingdom of Great Britain and Northern Ireland (member states of European Union) and Republic of Bulgaria and of Romania regarding the accession of Republic of Bulgaria and of Romania to the European Union, signed by Romania in Luxemburg on April, 25, 2005, published in O.J. no. 465 / 1.06.2005.

- **reduction of the profit tax payment**, in the sense of paying a reduced quota of 5% for the taxable profit which corresponds to the incomes obtained from the activities performed based on a license (according to the provisions of art. 2(3) of Law no. 414/2002, abolished and replaced by the provisions of art. 38(4) of Law no. 571/2003 on the Fiscal Code), **measure valid until the 31st of December 2004;**

- **profit tax exemptions**, granted to the undertakings that have made until the 1st of July 2002 investments in corporal redeemable assets in a total amount of at least 1.000.000 USD (according to the provisions of art. 35(5) of Law no. 414/2002 abolished and replaced by the provisions of art. 38(3) of the Fiscal Code, with its subsequent amendments and completions), **measure valid until the 31st of December 2006;**

- **reduction of the royalties** that undertakings pay to the free zones administrations based on the concession contracts concluded with them until the 1st of July 2002 (according to the provisions of art. 5(2) of G.D. no. 1900/2004 regarding the making compatible of the existing state aids, granted according to Law no. 84/1992 on the free zones regime), **measure valid until the 31st of December 2011.**

The beneficiaries of the support measures set up by Law no. 84/1992 on the free zones regime, with its subsequent amendments and completions, are the undertakings that operate in a free zone regime and that signed concession contracts with the free zones administrations **until the 1st of July 2002.**

The state aid intensity, as it was initially provided in G.D. no. 1900/2004 and subsequently in the Treaty of Accession, is calculated based on the state aids granted to the undertakings starting with the 2nd of January 2003, and the eligible costs afferent to the investments made between the 30th of July 1992 and the 1st of November 2004.

According to the provisions of art. 5 within G.D. no. 1998/2004² on the approval of the *Methodological Norms on the concession of goods that are public or private state property or the administrative-territorial units, as well as the concession of the public activities/services of national or local interest, that are administered by the free zones*, the royalty payment to the administration of the free zone, afferent

² G.D. no. 1998 from the 16th of November 2004 on the approval of the Methodological Norms on the concession of the goods that are public or private state property or the administrative territorial bodies property, as well as on the concession of the activities/public services of national or local interest, that are administered by the Free Zones, published in the Romanian Official Journal no. 1166 from the 9th of December 2004

to the concession contract signed with it, is made in the free convertible currency accepted by the National Bank of Romania. Therefore, in order to calculate the state aids that were to be granted consisting of reduction/exemptions in royalties, the grantor (the Ministry of Public Finance – M.P.F.) **determined the value of the eligible costs afferent to the investments, in USD or in Euro** using the monthly or annual average course lei/USD (lei/Euro) afferent to the month or year during which the investment was made.

Taking into account the above mentioned, as well as in order to ensure the data comparability, the values of the state aids consisting of reductions/exemptions from profit tax payments were converted into the free convertible currency (USD or Euro) using the annual average exchange rate communicated by the National Bank of Romania, valid in the year during which the undertaking benefitted by the respective fiscal reduction/exemption. The state aids that can further be granted were calculated so that their level doesn't surpass the maximum admissible intensity, respectively 50% for large enterprises, 15% bonus for small and medium sized enterprises and 30% in case that the undertaking operates in the motor vehicle sector³.

The amount of state aid granted as royalty reduction, calculated by the grantor for each eligible undertaking, was communicated to the administrations of the free zones.

In order to benefit from state aid consisting of royalty reductions, undertakings have renegotiated their concession contracts concluded with the administrations of the free zones under the coordination of the central or local authorities, under whose authority operate the administrations of the free zones.

Based on these provisions, the grantor submitted a list of **33 undertakings which meet the conditions provided by G.D. no. 1900/2004** as well as the amount of state aid of which they can further benefit by, measure valid until the end of 2011.

Therefore, monitoring the state aids also included the verification of the eligibility of the undertakings to continue to be granted state aids consisting in royalty reductions, as well as respecting the conditions provided by Annex VII of the Accession Treaty of Romania and Bulgaria to the European Union⁴, thus monitoring for each undertaking:

³ Within the meaning of annex C of the Commission Communication – The Multisectorial Framework on the regional State Aid for large investments projects (OJ C 70/19.03.2008)

⁴ Law no. 157 / 2005 for ratifying the Treaty between Belgium Kingdom, Czech Republic, Kingdom of Denmark, Federal Republic of Germany, Republic of Estonia, Republic of Greece, Kingdom of Spain, French Republic, Ireland, Republic of Italy, Republic of Cyprus, Republic of Lithuania, Great Duchy of Luxemburg, Republic of Hungary, Republic of Malta, Kingdom of Netherlands, Republic of Austria, Republic of Poland, Republic of Portugal, Republic of Slovenia, Republic of Slovakia, Republic of Finland, Kingdom of Sweden, United Kingdom

- the classification category for the beneficiaries (SMEs or large enterprises);
- the value of the investment made until the 1st of November 2004 and its maintaining for a period of 5 years;
- the value of the state aid that the undertakings benefitted by, consisting of profit tax exemptions or reductions as well as royalty reductions, starting with the 2nd of January 2003;
- state aid intensity.

As for royalty reductions, out of the 33 undertakings eligible to further benefit by state aids, only 28 of them have renegotiated their concession contracts in order to benefit by state aid, the rest of 5 renouncing at this type of aid.

As it was stated in the previous reports, for an undertaking which operates in the Constanta South Free Zone (S.C. ROMNED COMPANY S.R.L.), the Competition Council issued in 2006 a decision in order to recover the illegal state aid (84.265,27 lei), representing the amount that exceeded the maximum admissible level of state aid intensity. According to the grantor's notification, respectively the M.P.F., the illegal state aid has been completely recovered together with the afferent interest.

Out of the 27 undertakings that benefitted by state aids consisting in royalty reductions, 2 undertakings within the Curtici-Arad Free Zone (S.C. PREZIOSA Com S.R.L. and S.C. Lackner&Schwartz S.R.L.) have reached the maximum admissible level of state aid intensity in 2006, one undertaking from the Giurgiu Free Zone (S.C. YMX IMPORT-EXPORT S.R.L.) has reached the maximum admissible level of state aid intensity in 2007, another undertaking from the Giurgiu Free Zone (S.C. FLORET SOFT S.R.L.) has reached the maximum admissible level of state aid intensity in 2009, and as a result, they won't be benefitting by state aid any further.

The 23 undertakings that continue to receive state aids (most of them are SMEs, only 5 of them being Large Enterprises) have benefitted during 2003-2004 by state aids consisting of reductions from profit tax payments, in total amount of 669.482 USD and 3.548 Euro, and between 2005-2008 by royalty exemptions/reductions in total amount of 4.112.144 USD and 276.915 Euro.

A more unstrained regime concerning tax payments in the zone, granted until the end of 2004, as well as the reduction/exemption from royalty payment represented favorable premises to encourage the investments.

Therefore, the total value of eligible costs afferent to the investments made until the 1st of November 2004 by the undertakings from the free zones that had benefitted by state aids, investments maintained until the information has been registered, is approximately 14 million USD. The investments made consisted of buildings, platforms, equipments and devices necessary for developing the activity. The activities performed by the undertakings that were granted state aid based in the free zones consist of: manufacturing computers and other equipments, consulting services and supplying IT programs, storage, handling, building constructions, electrical installation activities, rentals, manufacturing of wood packing and commercial activities.

The data submitted until now leads to a medium intensity for state aids granted to the undertakings analyzed of approximately 28%. Moreover, according to the grantor's notification, these undertakings are still eligible to receive state aid up to 2.111.271 USD and 207.685 Euro.

According to the provisions within the Accession Treaty, state aids granted to the undertakings operating in free zones will be monitored until the end of December 2011, thus verifying the fulfillment of the granting conditions that have been set.