

REPORT

on monitoring state aids granted to operators from Free Zones

Based on the responsibilities provided by item 4 – Competition Policy – from ANNEX VII of the **Treaty regarding the accession of Bulgaria Republic and Romania to the European Union**, approved by Law no. 157 / 2005¹, Romania has to inform the European Commission about the eligible costs of performed placements, effectively beared by the beneficiaries, as per Law no. 84 / 1992 on the Free Zones regime, with its subsequent amendments and completions, and about the total value of aids granted to the operators.

As a consequence the data presented in this report gives information regarding the situation valid up until 1st of January 2009 concerning the state aids granted to the economic agents operating in free zones, drawn up on the basis of data and information supplied by the grantor, respectively the Ministry of Economy and Finance.

The legal basis for granting the financial support to undertakings which develop activities within Free Zones, it was at first represented by the provisions of the Law no. 84 / 2008 regarding the Free Zones regime.

Later, the provisions of art. 14 of Law no. 84 / 1992 on the Free Zones regime, regarding the granted facilities, knew some amendments so that starting with the 2nd of January 2003 (the 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 carry on their activity in the free zones consists of:

- **reduction of the profit tax payment**, meaning that it is paid 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 31st of December 2004;**

- **exemption from the profit tax payment**, granted to the undertakings which realized 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 31st of December 2006;**

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

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.

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 within the Free Zone regime and that concluded **until the 1st July 2002** concession contracts with the Free Zones administrations.

The state aid intensity, as it was at first provided in G.D. no. 1900/2004 and subsequently in the Adherence Treaty, is calculated based on the state aids received by the economic agents starting with the date of 2nd of January 2003, and on the eligible costs afferent to the investments performed between 30th of July 1992 and the 1st of November 2004.

According to the provisions of art. 5 of G.D. no. 1998/2004² 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*, the overriding royalty payment to the Free Zone administration, afferent to the concession contract concluded with it, is made in the free convertible currency accepted by the National Bank of Romania. As a result, in order to calculate the state aids consisting of overriding royalty reduction, the grantor (Ministry of Economy and Finance – M.E.F.) **established the value of the eligible costs afferent to the investments, in USD or Euro** using the monthly or annual average course lei/USD (lei/Euro) afferent to the month or year during which the investment was realized.

Taking into account the above mentioned, as well as in order to ensure the data comparability, the values of the state aids consisting of reduction/exemption from the profit tax payment were converted into the free convertible currency (USD or Euro) using the annual average course communicated by N.B.R., in force for the year in which the undertaking benefited by the respective fiscal reduction/exemption. The state aids that can still be granted were calculated so that their level don't surpass the maximum admitted intensity, respectively 50% for large enterprises, 15% bonus for the small and medium sized enterprises and 30% in case that the undertaking carry on its activity in the motor vehicle sector³.

The quantum of the state aid consisting of the overriding royalty reduction, calculated by the grantor for each eligible undertaking, was communicated to the Free Zones administrations.

In order to benefit from state aid consisting of overriding royalty reduction, the undertakings had renegotiated their concession contracts concluded with the Free Zones administrations under the coordination of the central or local authorities, under whose authority operate the Free Zones administrations.

Based on these provisions, the grantor transmitted to the Competition Council a list of **33 undertakings which fulfill the conditions provided by the G.D. no. 1900/2004** as well as the quantum of the state aid of which they can still benefit, measure valid until the end of 2011.

As a result, monitoring the state aids also included the verification of the eligibility for the economic agents to continue to receive state aids consisting of overriding royalty reduction, as

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

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)

well as if there were observed the conditions provided by Annex VII of the Adherence Treaty of Romania and Bulgaria to the European Union⁴, hereby pursuing for every economic agent:

- the category of the operating economic agents (Small and Medium Sized Enterprises or large enterprises);
- the value of the investment realized until the 1st of November 2004 and its maintaining for a period of 5 years;
- the value of the state aid that the economic agents benefited of, consisting of exemption or reduction of the profit tax, as well as the value of the overriding royalty reduction, starting with the 2nd of January 2003;
- intensity of the state aid.

As for the overriding royalty reduction, out of the 33 economic agents eligible for still benefiting of the state aids, only a number of 28 economic agents had re-negotiated their concession contracts in order to comply with the conditions of benefiting of the state aids, the rest of 5 entities having disclaimed this type of aid.

As it was also stated in the previous reports, for an economic agent which develops its activity in Constanta Sud Free Zone (S.C. ROMNED COMPANY S.R.L.), the Competition Council had 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. In conformity with the grantor notification, respectively M.E.F., the illegal state aid has been integrally recovered together with the afferent interest.

Out of the 27 economic agents that benefited from state aids consisting of overriding royalty reduction, 2 undertakings from Curtici-Arad Free Zone (S.C. PREZIOSA Com S.R.L. and S.C. Lackner&Schwartz S.R.L.) have reached in 2006 the maximum admissible level of state aid intensity and 1 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 and, as a result, they don't benefit from state aid anymore.

The 24 economic agents still eligible for state aids (the most of them being Small and Medium Sized Enterprises, only 5 of them being Large Sized Enterprises) have benefited during 2003-2004 of state aids consisting of exemption from the profit tax payment, equivalent to the sum of 700,358 USD and 3,548 Euros, and during 2005 – 2008 the state aids took the form of reducing / exemption from the overriding royalty with a total amount value of 3,512,114 USD and 271,849 Euros.

A more relaxed regime of the tax payment in these zones, granted until the end of 2004, as well as the reduction/exemption from the overriding royalty payment represented premises favorable to encouraging the investments.

So that, the total value of eligible costs afferent to the investments performed up until the date of 01.11.2004 by the undertakings from the Free Zones that benefited of state aids, and maintained until the date of the information registration, reaches the level of approximately 14 millions USD. The performed investments consist of buildings, platforms, equipments and

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 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.

devices necessary for developing activities. These activities performed by the economic agents from the Free Zones that benefited of state aids consist of: manufacture of computers and other equipments, consultancy services and purveyance of IT programs, storage, handling, building construction, electrical installation activities, rentals, manufacture of wood packing and commercial activities.

The data transmitted until this moment leads to the registration of a medium intensity for state aids granted to the examined economic agents, equivalent to 28%. In other respects, and in conformity with the provider's notification, these economic agents are still eligible for state aids in a total quantum of 2,722,838 USD and 212,751 Euros.

Pursuant to the Adherence Treaty, state aids granted to the economic agents operating in Free Zones will be monitored until the end of December 2011, at the same time verifying the compliance with valid conditions settled for granting state aids.