

Decision No 224
Of 29.07.2004

Decision on modifying the state aid scheme to incentivize employment “reimbursable credits with preferential interest rate for job creation” under article 86 of the draft project to modify and complete Law 76/2002 on the unemployment insurance system and employment incentives

COMPETITION COUNCIL,

Having regard to the provisions of the Competition Law no. 21/1996, published in the Official Gazette no. 88/30.04.1996, Part I, with subsequent amendments and completions,
Having regard to the provisions of the Law no. 143/1999 on State aid, published in the Official Gazette no. 370/3.08.1999, Part I, with subsequent amendments and completions,
Having regard to the provisions of the Europe Agreement, establishing an association between the European Communities and their Member States on one hand and Romania on the other hand, ratified by Law no. 20/1993, published in the Official Gazette no. 73/12.04.1993, Part I,

BASED ON THE FOLLOWING:

I. PROCEDURE

(1) Under note no.423/07.04.2004, registered at the Competition Council as RS-AS39/09.04.2004, the Ministry of Labour, Social Solidarity and Family notified, based on article 6 of Law no. 143/1999 on State Aid with the subsequent and completions, the state aid scheme included in the Draft Decision for amending and completing the Law no.76/2002 on the unemployment insurance system and employment stimulation (named the Project).

(2) For completing the notification of the state aid scheme, the Ministry of Labour, Social Solidarity and Family submitted under note no. 494/28.04.2004, registered at the Competition Council as RG/1805/30.04.2004, The Joint Enforcement Guidelines of MLSSF and the National Bank of Romania, regarding the grant of loans from the unemployment insurance budget under favourable conditions, non-reimbursable funds to SME's, cooperate units, family associations and individual persons independently performing economic activities.

II. DESCRIPTION OF THE MEASURE

By Decision 160/04/2002, the Competition Council authorized the scheme under article 86.1. of Law 76/2002 of the Law no. 76/2002 on the unemployment insurance system and employment stimulation.

3. As the scheme, mentioned at paragraph 1, had effects after the Regulation on regional state aid and the Regulation on employment aid entered into force, it was necessary to make the scheme compatible with the new state aid regulations and Law no. 143/1999 on State aid, with subsequent amendments and completions.
4. Through the measures to incentivize employment under article 86 of the Draft Project, a state aid scheme for job creations is being created, related to investments in tangible and intangible fixed assets, for 3-year credits. Also, the conditions under article 4 of the *Regulation on employment aid* are met, which enables the

conclusion that a job creation scheme is created which is not related to an investment for 1-year credits.

5. State aid schemes under article 86 of the Draft Project are established in view of creating new jobs by setting up or developing small and medium-size enterprises, cooperative units, family associations, and independent businesses by authorized individuals.
6. State aid is granted under credits with preferential interest rates from the unemployment insurance budget with a 50% interest rate of the Romanian National Bank benchmark rate. In the counties where the annual average unemployment rate is above the national average, as determined by the National Agency for Employment, credits are granted, in the next calendar year, with a 25% interest rate of the Romanian National Bank benchmark rate.
7. Approval and granting of each credit shall be done based on a report drafted by the credit officer of the bank or of the authorized credit agency, appointed by the manager of the credit department and the manager of the financing and accounting division. The report must comprise, if the case may be, all or more than the following elements:
 - a) identification data of the requesting party: name, business address, excerpts from the articles of association regarding the business line;
 - b) assessment of the requestor's capacity to reimburse the credit upon due date and to pay the relative interest rate, based on the analysis of the data in the cash flow report;
 - c) information on the creditworthiness of the requesting party. The following indices shall be computed based on the last accounting balance and the last checking balance: current cash flow, patrimony credit-standing, coverage of the interest rate, rate of return, rotation of the outstanding shares.
8. The State aid beneficiaries shall be the undertakings meeting the following conditions:
 - a) they have more than 249 employees and/or cooperative members in work or job relation;
 - b) their main business activity is production, service or tourism;
 - c) at least 50% of the number of new jobs created by setting up or developing small and medium size enterprises or cooperative units are occupied by formerly unemployed staff registered with the employment agencies;
 - d) they maintain the activity of the staff for at least 3 years
 - e) to maintain the newly-created jobs for at least 5 years.
 - f) the jobs considered upon granting the credits are not the vacancies resulted from ceasing work relationships by several employees during the 12 months prior to signing the credit contract. Unemployed persons who bind themselves to set up small and medium-size enterprises, cooperative units, family associations or perform an independent economic business as authorized individuals have priority over obtaining credits under preferential terms.
9. Family associations are another category of beneficiaries who may receive credits under preferential terms in proportion to the number of their members, as well as authorized individuals performing independent businesses to finance their own job. Other beneficiaries of state aid are persons aged below 30 who are students for the first time, and attend day-courses in a higher education institution and who set up or develop small and medium-size enterprises, cooperative units, family associations or perform and independent businesses as authorized individuals. The

interest rate charged for the credits which may be obtained by students is 25% of the Romanian National Bank benchmark rate.

III. ANALYSIS OF THE STATE AID SCHEMES

III.1. The state aid schemes “Investments credits under preferential terms granted for a 3-year period”.

10. Credits are obtained under feasibility reports, for investments in tangible and intangible fixed assets, in proportion to the number of jobs to be created, for no longer than 3 years, including the 6-month grace period, with a 50% interest rate of the Romanian National Bank benchmark rate for the beneficiaries in the counties where the annual rate of unemployment was above the national annual unemployment rate as determined by the National Agency for Employment.
11. The maximum credit which may be granted to a newly-hired person is Lei 100 million. The credit shall not exceed ROL 10 billion lei per undertaking.
12. The state aid scheme analysis was carried out under the criteria to authorize provided under the Regulation on regional aid.
13. Credits to undertakings in the coal, steel and shipbuilding may not be granted.
14. Eligible costs are the gross average wage costs for the newly-employed persons for a period of 2 years. Wage costs incurred for an employed person, related to the years 2004 and 2005, including the gross average salary and the mandatory social security contributions are ROL 258.488.160. When establishing the level of wage costs, the statistics related to the average wage costs in Romania between 2004-2005 shall be taken into account, as set by the National Statistics Institute.
15. The state aid is the difference between the benchmark rate of the National Bank of Romania and the interest rate charged for the preferential term credits.
16. The state aid granted for job creation is deemed to be ROL 20.000.000 for credits with a 50% interest rate of the National Bank of Romania benchmark rate and ROL 25.000.000 for credits with a 25% interest rate of the National Bank of Romania benchmark rate.
18. ***The aid intensity to perform investments for job creation does not exceed 9.7% of the total eligible costs***; thus, the criteria on aid intensity are observed as provided under articles 9, 10 and 13.(1) and (2) of the Regulation on regional state aid which states that the intensity of the regional state aid, calculated as a percentage of gross medium wages costs, may not exceed 50%.
19. Under article 86 (7) (e) of the Draft Project, the jobs taken into consideration when granting credits are not vacancies which resulted from ceasing work relationship by employees hired in the 12 months prior to entering the credit contract. Under article 88. (1) and (2) of the Draft Project, if the persons employed on the newly-created jobs cease their work relations prior to meeting the three-year period, the employer is bound to hire unemployed persons on the jobs remained vacant within no more than 30 calendar days as of ceasing the working relations.

Under article 88(4) of the Draft Project, if one of the existing jobs, upon the date credits are granted, becomes vacant, the employer is bound to hire another person on the vacancy, within no more than 30 calendar days as of the date the job becomes vacant. If these obligations are not met, the employer shall bear penalties, under article 89 of the Draft Project. The condition on the actual increase of jobs, as provided under article 12 of the Regulation on regional aid is thus fulfilled.

20. Under article 86.(2) (3) of the Draft Project, the credit beneficiaries under article 86 are bound to maintain the newly-created jobs for at least 5 years, and thus the

- condition for authorization regarding the maintenance of the number of the newly-created jobs under article 14 of the Regulation on regional aid is met.
21. Under article 86.2.1. of the Draft Project, the beneficiary's financial contribution is of at least 25% of the value of the submitted feasibility report, and the jobs are maintained within the region. The Ministry of Labor shall monitor the implementation of the project. Granting of the state aid shall be conditional on observance of the authorization criteria under article 8.2. of the Regulation on regional aid. *The beneficiary's contribution of 25% of the value of the submitted feasibility report shall not be the subject of another state aid.*
 22. No other state aid related to the same wage costs may be granted by the Romanian state aid grantors where the cumulation reaches an intensity of aid higher than the one authorized by this decision.

III.2. The state aid scheme "Credits under preferential terms to ensure production, granted for a 1-year period"

23. Credits are obtained under feasibility report, to ensure production, in proportion to the number of jobs to be created, with an interest rate 50% of the National Bank of Romania benchmark rate or with an interest rate of 25% of the National Bank of Romania benchmark rate for the beneficiaries in the counties where the annual average unemployment rate was above the national annual average unemployment rate, as set by the National Agency for Employment.
24. The maximum credit to be granted to a newly-employed person is ROL 100 million.
25. **The state aid scheme analysis was carried out under the criteria to authorize provided under the Regulation on employment aid.**
26. The state aid is the difference between the benchmark rate of the National Bank of Romania and the interest rate charged for the preferential term credits.
27. Credits to undertakings in the coal and shipbuilding industry may not be granted.
28. Eligible costs are the gross average wage costs for the newly-employed persons for a period of 2 years. The minimum wage costs for a newly-employed person, for a 2-year period, including the gross minimum wage and the social security contributions are deemed to be ROL 89,040,000.
29. The aid intensity, calculated as a percentage of the minimum wage costs related to the jobs created, for a 2-year period, is of 11.3% maximum. Thus, the conditions stipulating that the intensity of the employment aid shall not exceed 50% of the wage costs for newly hires persons, under article 4.2. of the Regulation on employment aid are met.
30. Under article 86 (7) (e) of the Draft Project, the jobs taken into consideration when granting credits are not vacancies which resulted from ceasing work relationship by employees hired in the 12 months prior to entering the credit contract.
31. Under article 88. (1) and (2) of the Draft Project, if the persons employed on the newly-created jobs cease their working relations prior to meeting the 3-year period, the employer is bound to hire unemployed persons on the jobs remained vacant within no more than 30 calendar days as of ceasing the work relations.
32. Under article 88(4) of the Draft Project, if one of the existing jobs, upon the date credits are granted, becomes vacant, the employer is bound to hire other persons on the vacancy, within no more than 30 calendar days as of the date the job becomes vacant.

33. If these obligations are not met, the employer shall bear penalties, under article 89 of the Draft Project.
34. Since preferential term credits are granted for job creation, and the Draft Project contains penalties for the employer for failure to fulfil the obligations, the state aid schemes provided under article 86 meets the condition on the actual increase of jobs, as provided under article 4.5.a of the Regulation on employment aid.
35. Under article 86.(2) (3) of the Draft Project, the credit beneficiaries under article 86 are bound to maintain the newly-created jobs for at least 3 years, and thus the condition to authorize under article 4.5.b. of the Regulation on employment aid is met.
36. Under article 86.2.1. of the Draft Project, the beneficiary's financial contribution is of at least 25% of the value of the submitted feasibility report, and the jobs are maintained within the region. Thus, the conditions to authorize as regards the beneficiary's contribution and the maintenance of the created jobs are met as provided under art.4.3. of the Regulation on employment aid.

IV. CONCLUSION

37. The state aid schemes "Credits under preferential terms for investments granted on a 3-year period", and "Credits under preferential terms to ensure production, granted for a 1-year period" are compatible with Law 143/1999 on State aid and the regulations issued in its application.
38. By implementing them, a significantly large number of jobs for unemployed persons will be created, either by investments in tangible and intangible fixed assets, or by employing persons who did not have a job, persons who lost their job or are about to lose their job.

Under 13.1. of Law 143/1999 on State aid, with subsequent amendments and completions, the Competition Council shall permanently monitor existing aids. If it is found out that schemes significantly distort the normal competitive environment and the trade between Romania and the EU Member States, the Competition Council shall require the grantor to take appropriate measures in order to eliminate its incompatibility with Law 143 on State aid, with subsequent amendments and completions.

DECIDES

Art.1. Under article 12.2.c., read in conjunction with article 14.1.f. of Law 143/1999 on State aid, with subsequent amendments and completions, to authorize with conditions the scheme **"Credits under preferential terms for investments granted on a 3-year period"**, as regional aid. Granting the state aid is conditional upon observing the criteria to authorize as provided under article 1. (1) and (2) from the Regulation on regional aid.

Art.2. In order to meet the condition, the *Joint Enforcement Guidelines of the Ministry of Labor and of the BNR* shall be completed as below:

"Undertakings carrying out activities in coal industry, steel industry, synthetic fibres, motor-car industry and shipbuilding industry may not benefit from credits under this state aid scheme.

Art.3. Under art. 12.2.c., read in conjunction with art. 14.1.d. of Law 143/1999 on State aid, with subsequent amendments and completions, to authorize the scheme **"Credits under preferential terms to ensure production, granted for a 1-year period"**, as aid

for employment. Granting the aid is conditional upon observance of the authorization criteria under article 4.5.c. of the Regulation on employment aid.

Art.4. In order to meet the condition, *the Joint Enforcement Guidelines of the Ministry of Labor and the BNR* shall be competed as below:

The beneficiaries of credits under preferential terms, to ensure production, must hire on the newly-created jobs only persons who have never had a job or lost their job, or are about to lose their job.

Art.5. The present Decision becomes effective at the date of its communication.

Art. 6. Under art. 29 of Law 143/1999 on State aid, with subsequent amendments and completions, the present Decision may appealed by concerned persons before the Bucharest Court of Appeal, Contencious-Administrative Division.

Art. 7. The present Decision shall be communicated by the Secretariat General of the Competition Council to:

- the Ministry of Labour, Social Solidarity and Family, the National Agency for Employment, 3 Sf. Dumitru Street, Sector 3, Bucharest

Art. 8. The Secretariat General and the Directorate for State Aid Authorisation of the Competition Council shall pursue the fulfillment of the present Decision.

PRESIDENT,

MIHAI BERINDE