

**DECISION OF THE COMPETITION COUNCIL**  
**no. 230 as of 23.12.2005**

**regarding the state aid scheme contained in the CEEX Excellency  
Research Program**

**THE COMPETITION COUNCIL,**

With regard to the provisions of the Competition Law no. 21/1996, republished in the Official Gazette, Part I, no. 742 from 16.08.2005,

With regard to the provisions of the State Aid Law no. 143/1999, republished in the Official Gazette, Part I, no. 744 from 16.08.2005,

With regard to the provisions of the European Agreement establishing an association between Romania, on one hand, and the European Communities and their Member States, on the other hand, ratified by Law no. 20/1993, published in the Romanian Official Gazette no. 73, Part I, of 12.04.1993,

With regard to the provisions of the Regulation on state aid for research and development, published in the Official Gazette, Part I, no. 850 of 16.03.2004,

With regard to the provisions of the Decree no. 57/2004 on the appointment of the Competition Council's members,

**Based on the following,**

**1. PROCEDURE**

- (1) By address no. 1552/16.08.2005, filed with the Competition Council no. RS-AS 79/17.08.2005, the Ministry of Education and Research – the National Authority for Scientific Research notified based on art. 15 from Law no. 143/1999 regarding the state aid, republished, the

state aid scheme contained in the CEEX Excellency Research Program.

- (2) After analysing the received information, the Competition Council requested further clarifications by address no. DAAS/1005/31.08.2005. The Ministry of Education and Research responded by address no. 21/01/08.09.2005, filed with the Competition Council no. RG 6937/08.09.2005.

## **2. DESCRIPTION OF THE SCHEME**

### **2.1. Objective**

- (3) The CEEX Excellency Research Program institutes a state aid scheme giving non-reimbursable grants to projects in the field of research and development involving colaboration between research and development units and institutions, universities and undertakings.

### **2.2. Duration, scope, budget and form of the aid**

- (4) The scheme will operate for four years from the date of the Competition Council's approval (from 2005 to 2008).
- (5) The scheme covers all sectors and beneficiaries can be located in any area of the country provided they engage in research and development as either core and/or ancillary activity.
- (6) The CEEX Excellency Research Program is financed from the state budget through allocations, within the ceiling approved annually in the budget of the State authority for research and development.
- (7) The total budget foreseen for the whole period is 6,200 bln. ROL. In accordance with the provisions of *Law no. 511/2004 of the state budget for 2005*, the scheme is provided with the following financing levels:
- ROL 1,300 bln./ RON 130 mln. in 2005;
  - ROL 1,400 bln./RON 140 mln. in 2006;
  - ROL 1,500 bln./RON 150 mln. in 2007;
  - ROL 2,000 bln./RON 200 mln. in 2008.

- (8) The scheme is financing projects with a value up to ROL 15 billion and the maximum duration for a project will be 36 months.
- (9) State aid allocations within the scheme are given in the form of non-reimbursable grants.

### **2.3 The legal basis**

- (10) The legal basis of the scheme is GD no. 368/2005 to approve the CEEX Excellency Research Program. The contracting, financing and valuation of the projects realized within the Program are realized according to provisions of methodological norms approved through GD no. 1.265/2004. The eligible costs within the scheme are provided in GD no. 1579/2002 for the approval of methodological norms regarding the expenditures for research and development and stimulation of innovation financed from the state budget and in GD no. 327/2003 regarding the ceilings based on which direct salary costs are calculated for financing contracts concluded from budgetary funds.
- (11) The CEEX Excellency Research Program information package was approved by Order no. 4.168/2005 of the Ministry of Education and Research, and models of financing agreements and allocation of budgetary funds by specific objectives of the Excellency Research Program and its management were approved by Order no. 4.370/2005 of the Minister of Education and Research.

### **2.4. Beneficiaries**

- (12) Beneficiaries of specific allocations within the scheme are provided in art. 7 and art. 8 from the Law on research no. 324/2003. These can be:
  - a) Research and development institutions or centers organized within national companies and under central or local public administration;
  - b) Research and development units organized as commercial companies;
  - c) Commercial companies as well their structures having research and development as their core and/or ancillary activity;
  - d) Certified higher education institutions public/private or their structures;

- e) Non-governmental organizations private/public with research and development as their core and/or ancillary activity;
  - f) Research institutes, centers or stations of the Romanian Academy and of sectoral academies;
  - g) National research and development institutes;
  - h) Research and development institutes, centers or stations organized as public institutions;
  - i) International research and development centers established based on international agreements;
  - j) Other public institutions or structures of these having research and development as their activity.
- (13) In order to participate in the Program beneficiaries must fulfill certain eligibility criteria established by GD no. 1265/2004, respectively to be Romanian legal persons which:
- Are not insolvent according to the law;
  - Do not have payments/bank accounts seized according to a court order;
  - Do not present inaccurate statements to contracting authorities regarding information requested in order to select contracting parties;
  - Have not infringed the provisions of another financing previously concluded with a contracting authority.
- (14) Projects can be achieved individually or by cooperation.
- (15) The number of the scheme beneficiaries foreseen by the state aid grantor is between 500 and 1,500.

## **2.5. Description of the scheme**

- (16) Projects which will be financed within the scheme are structured in 4 modules, as follows:
- (i) *The complex research and development projects module*
- (17) This module supports significant research projects in order to develop the research activity, human resources and research infrastructure carried out within national, regional and international partnerships. The projects should aim:

1. to increase the competitiveness of the national economy;
  2. to achieve strategic objectives in the development of high technologies and high end applications in order to connect to the specific priorities and objectives of the European Research Area;
  3. to achieve integrated technology networks in specific areas allowing the integration into appropriate European technology platforms;
  4. to develop research and development activities and infrastructures at regional level with a social and economic impact.
- (18) Projects will promote research projects focused on the similar topics and scientific and technological fields specific to the European Research Area and the seventh Framework Programme for research, technological development activities for 2007 to 2013 (FP7), supporting the increase of competitiveness and the development of the knowledge-based economy and society in the European space.
- (ii) *The development of the human resources for research module*
- (19) The projects for the development of human resources are meant to:
- support the training of Romanian highly competent scientific researchers;
  - increase the attractiveness of career opportunities for research carried out in the country;
  - develop domestic and international collaboration of highly skilled research groups (teams).
- (20) The following types of projects are supported:
- a. projects for doctoral or post-doctoral programmes;
  - b. projects for human resource attraction and development for research activity;
  - c. projects to increase and support intra- and inter-sector mobility of researchers and specialists both between R&D organizations and academic institutions, and the research sector and the manufacturing sector;
  - d. projects for training and development in research programme/project management;
  - e. projects for training and development of the research managers.

**(iii) The module for the promotion of participation in European and international research programmes**

**(21)** This module aims at increasing the international visibility of the Romanian scientific community and the Romanian research programmes, in order to facilitate correlation and integration into the European and international research programmes. The major objective is to strengthen long-term scientific and technical co-operation in the thematic area/ specific research fields with a view to:

- develop the research networks at European level in the respective thematic areas/fields;
- correlate specific national programmes of the partner countries including diffusion, dissemination and transfer of research results and S/T knowledge;
- extension of joint R&D activity, including preparation of joint research projects for the next FP 7 of the European Union.

**(22)** In this respect, projects will contain activities from the following categories:

- organization of scientific or promotional meetings attended by world renown personalities of the scientific community;
- working visits and long-term stages of foreign scientists for training, research or teaching purposes;
- organization/participation in support actions meant to network national research programmes in ERA-NET-type projects at European level or in European technology platforms.

**(iv) Module – Development of the research infrastructure for conformity assessment and certification of the implementation of EU specific legislation, transposed in the national legislation**

**(23)** Projects in this module are aimed at providing services of conformity assessment in accordance with the provisions of the national directives or standards harmonized with the European directives or standards necessary to both public authorities in the market surveillance process and also to manufacturers in order to meet the requirements resulting from the provisions of the directives. Particular focus is to be on:

- CE marking;
- Agricultural products and food;

- Noxious substances and compounds, medicines, cosmetics, detergents;
- metrology;
- environmental protection.

(24) This module accepts projects for the extension and improvement of the research infrastructure and the services provided by certified research entities or whose certification is in progress or which are to be re-certified: experimentation and testing laboratories, gauging laboratories, certification bodies.

## 2.6. Eligible R&D stages

(25) R&D activities eligible for aid within the scheme are activities of fundamental, applicative and precompetitive research.

(26) *The fundamental research* aims at devising new concepts, methods, procedures and solutions for phenomena, substances, processes, systems, etc. This research type is allowed in the following project categories:

- complex research projects,
- projects for the development of the human resources for research.

(27) Within these project categories, support activities can be carried out, which are assimilated to fundamental research activities, as indicated below:

- participation to/organizing the training of human resources ;
- participation to technical and scientific events in areas specific to the project;
- access to installations of national interest;
- connection to national and international information networks;
- project management activities.

(28) *The applicative research activity* is focused on enhancing the knowledge base with the purpose of using them to develop new products, processes or services or to significantly improve the existing ones. Thus, activities falling under industrial research carried out within the Program are the following:

- studies<sup>1</sup>, analyses;
- drafting, designing and achieving experimental models, functional models, laboratory technology for product/ method/ system/technology/ service etc.;
- laboratory experiments, field experiments and protected areas regarding products and technologies;
- drafting presentation manuals/use of the model/proposed solution;
- presentation and demonstration of model functionality and utility /proposed solution in order to be promoted;
- promotion on a large scale of project related information and provision of consulting and technical assistance in the application/ use of results, activities which can be assimilated with the technological transfer, for example:
  - drafting and editing of information material: books, magazines, catalogue, webpage, etc;
  - communication and publication of results, drafting course materials, organizing training courses for users of the research results;
  - consulting and technical assistance;
  - realizing R&D related to the promotion of use results.

**(29)** The applicative research can be found within the following project categories:

- a) complex research projects,
- b) human resources development projects, post-doctoral type research programs, research projects for young researchers,
- c) projects for the development of conformity assessment and certification for:
  - assimilation and implementation of testing methods (generic term covering experiments, tests, analyses) or sampling provided by directives or harmonized European standards related to directives and can not be carried out currently in the country;
  - developing conformity certification services in areas regulated by European directives.

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<sup>1</sup> Other than feasibility studies which are not allowed for financing within the scheme.



- (30) ***Pre-competitive research activity*** is focused on the transformation of the applicative research activity in plans, schemes or product documentation, processes or new services, modified or improved, even if these are designed for sale or utilization, including the manufacturing of the initial prototype, which can not be utilized for commercial purposes. This can include the concept drafting and diagrams for other products, processes or services and the demonstrative project or pilot projects, provided such projects are not utilized for industrial applications or in commercial purposes. The pre-competitive research activity does not include periodic changes of the product, product lines, manufacturing process, existing services and other ongoing operations, even if these changes represent improvements.
- (31) Within the scheme the following activities fall under pre-competitive research:
- a) activities to draft technical and economic documents;
  - b) realizing, experimenting and homologation of prototype/pilot installation/service.
- (32) This research type can be met for the following project categories:
- complex research projects;
  - projects to develop the conformity assessment and certification conformity.

## **2.7. Eligible costs**

- (33) Eligible costs must be directly attributable to the specific projects quoted and can include:
- personnel costs (researchers, technicians and other supporting staff employed solely on the research activity);
  - equipment costs (depending on the individual undertaking's circumstances and only when required exclusively for the research activity);
  - costs of consultancy and equivalent services exclusively used for research activity, including research, technical knowledge and patents and other similar, purchased from third parties;
  - supplementary overhead costs resulted directly from the research activity;

- other operating expenses (material costs, equipments and similar products resulted directly from the research activity).

## 2.8. Aid intensity

(34) The aid intensities allowed by the scheme are expressed as a percentage of the eligible costs of the projects, presented in table no. 1.

Table no. 1

<b>Eligible R&amp;D activities</b>	<b>Aid intensity (% of eligible costs)</b>
Fundamental research	Up to 100%
Applicative research (technology development, innovation)	Up to 50%
Precompetitive research	Up to 25%

(35) The scheme provides the application of the following bonuses:

Tabel no. 2

	<b>Bonuses (%)</b>
Where the aid is given to SMEs	10%
Where the aid is given to R&D activities located in the assisted areas <sup>2</sup>	10%
Where the research project is in accordance with the objectives of a specific project or programme undertaken as part of the Community's framework programme for R&D. Where, in addition, the project also involves effective cross-border cooperation between firms and public research bodies or between at least two independent partners, one from Romania and one from the EU member states and of the EEA or from countries which have concluded Accession agreements instituting the association between EU and the member states on one hand, and the respective countries, on the other hand, and if results are widely disseminated and published, observing the intellectual and industrial property rights.	15%  Up to 25%
Where a) the project involves effective cross-border cooperation between at least two independent partners, one from Romania and one from the EU member states and of the EEA or from countries which have concluded Accession agreements instituting the association between EU and the member states on one hand, and the respective countries, on the other hand, especially in the context of coordinating	10%

<sup>2</sup> All regions across Romania are considered assisted areas.

the national R&D policies; b) the project involves effective cooperation between firms and public research bodies, particularly in the context of the coordination of national R&D policies; c) the project's results are widely disseminated and published, patent licenses are granted or other appropriate steps are taken under conditions similar to those for the dissemination of Community R&D results.	
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Source: Notification form

- (36) In any event, the maximum aid intensity allowable within the scheme will not be higher than 75% for applicative research and 50% for precompetitive research activities.
- (37) In the case the projects involve both applicative as well as precompetitive research activities, the maximum aid intensity allowable will not be higher than the weighted average of allowed intensities for aids applicable to both research activities.

## **2.9. Cumulation of aid**

- (38) Other forms of public funding will not normally be involved in a project that is being supported under the scheme. In order to avoid the double financing of the research projects within the scheme, the Ministry of Education and Research will require each beneficiary to declare that the project is not in receipt of other public financing. The provisions of the scheme state that in the case of aids granted for the same project by a single or several authorities (central, regional and/or local), the Ministry of Education and Research will monitor the cumulated intensity of the state aids to be lower than the maximum limits provided by the scheme.

## **2.10. Incentive effects**

- (39) In order to obtain the aid the beneficiaries must demonstrate additionality i.e. the aid must be essential for the project to succeed and the project would not have gone ahead without the aid or would only have gone ahead on a significantly longer timescale, on a small scale or have been of a significantly low quality. The Ministry of Education and Research will monitor and evaluate all aid given out to verify the incentive effects of the aid.

- (40) In the financing agreement concluded between the beneficiary and the Ministry of Education and Research it is provided the beneficiary's obligation that within the final project report to present in a concrete manner the way the results of the research projects were transferred, the way they are capitalized, and to submit a report on the economic effects obtained.
- (41) The Ministry of Education and Research has undertaken not to grant any aid under the scheme for operational purposes.

#### **2.11. Access to results**

- (42) According to provisions of the *G.O. no. 57/2002, approved by Law no. 324/2003, with the subsequent modifications and completions*, the results of research obtained based on an agreement financed from public funds belong to the executing legal persons and the commissioner, to an equal extent, if not otherwise provided. The way the intellectual and/or industrial property rights are allotted between the project partners is provided in the project proposal, according to legislation in force.

### **3. ASSESSMENT OF THE NOTIFIED SCHEME**

- (43) Taking into consideration the purpose of the notified measure, the Competition Council is assessing the state aid scheme according to the criteria presented in the Regulation regarding the state aid for research and development.

#### **3.1. The state aid character of the scheme**

- (44) The collaborative research scheme is financed from public sources and may give advantage to certain undertakings and strengthen their position compared with that of competitors in other member states. It must therefore be regarded as potentially affecting trade and distorting competition. In the opinion of the Competition Council such support falls under the application of Law no. 143/1999 republished.
- (45) Of course, state aid is not present where public funding is granted to non-profit making public institutions of higher education or research.

(46) However, it must be emphasized that when the research and development activity is carried out by public non-profit institutions, of higher education or research institutions, on behalf or in collaboration with industrial companies, the state aid, within the meaning of art. 2 from Law no. 143/1999, republished, is not involved in the following cases:

a) where the public non-profit making higher education or research institution 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) where the intellectual property rights to the results of research and development activity are fully allocated to the public non-profit making institutions;

e) where the public non-profit making institutions 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 the respective industrial companies.

### **3.2. Compatibility of the state aid scheme**

(47) Article 2 from *Law no. 143/1999 on state aid, republished*, provides that aid granted by the state or from state resources which distorts or threaten to distort competition and affect trade with the member states of the European Union is incompatible with the normal competitive environment.

(48) State aids can be considered compatible and can be authorized by the Competition Council if they are granted observing the criteria provided in the regulations and guidelines issued for the application of the Law no. 143/1999. In this case, the Competition Council analyses the compatibility of the state aid scheme for research and development, notified by the Ministry of Education and Research, according to provisions of the *Regulation on state aid for research and development*, hereafter called the Regulation.

- (49) The Competition Council, based on those mentioned in point 2.6, notes that research activities (fundamental, applicative and precompetitive) financed within the scheme, fall under research and development activities provided at art. 1 from the Regulation. Intensities provided for each category of research and development observe the provisions of art. 13, 14 and 15 from the Regulation.
- (50) Eligible costs within the scheme, mentioned at point 2.7, are in accordance with those provided in Annex no. 1 to the Regulation.
- (51) As specified in point 2.10 from the current decision, the Ministry of Education and Research will take all necessary measures to ensure the incentive effect of granting the state aid, according to provisions of Chapter 5 from the Regulation.
- (52) The requirement regarding the maximum aid intensity provided by art. 20(8) from the Regulation, is observed, as resulting from points (36) and (37) from the present decision.
- (53) The Competition Council notes, according to those mentioned in point 2.9, that the Ministry of Education and Research will monitor the beneficiaries of specific state aid allocations within the scheme, in order to assure that the granted state aid, cumulated with state aids granted for the same objective within other schemes are not higher than the maximum allowed intensities.
- (54) The Ministry of Education and Research will submit annually to the Competition Council a report on the implementation of the scheme.
- (55) Competition Council notes that the Ministry of Education and Research respected the provisions of art. 14 and 15 of the *Law no. 143/1999 on state aid, republished*, notifying the scheme contained by the Program before of its application.

#### **4. CONCLUSIONS**

- (57) Given the above the Competition Council notes that the state aid scheme contained by the Program meets the Regulation criteria. As a result, the scheme is compatible with the normal competitive

environment and does not affect significantly trade with the member states of the European Union.

## **DECIDES**

- Art. 1.** The financial support granted within the Excellency Research Program - CEEEX to entities, other than non-profit public institutions of higher education or research, is considered state aid and falls under *Law no. 143/1999 on state aid, republished*.
- Art. 2.** Based on art. 21(2)c) collaborated with art. 23(1)a) from *Law no. 143/1999, republished*, the research and development Excellency Research Program - CEEEX scheme is authorized, with the observance of art. 3 from the current Decision.
- Art. 3.** The Ministry of Education and Research will monitor state aid allocations within the scheme, in order to assure that the granted state aid, cumulated with state aids granted for the same objective within other schemes, are not higher than the maximum allowed intensities for the same objective and beneficiary.
- Art. 4.** The Ministry of Education and Research will take all the necessary measures to ensure the incentive effect of granting the state aid in the case of large companies and will inform accordingly the Competition Council.
- Art. 5.** According to provisions of art. 32 from *Law no. 143/1999, republished*, the Ministry of Education and Research will submit to the Competition Council information regarding the application of the state aid scheme in order to be inventoried and monitored.
- Art. 6.** According to provisions of art. 46 from *Law no. 143/1999 on state aid, republished*, the present Decision can be appealed by interested persons to the Court of Appeals, Administrative Litigation Section, within 30 days from its communication.
- Art. 7.** The present Decision will be communicated by the Secretariat General of the Competition Council to the Ministry of Education

and Research – the National Authority for Scientific Research,  
Mendeleev Street no. 21-25, District 1, Bucuresti.

**Art. 8.** The Secretariat General and the State Aid Authorization Department of the Competition Council will follow the fulfillment of the present Decision.