

DECISION OF THE COMPETITION COUNCIL
no. 232 of 28.12.2005
regarding the state aid scheme applicable to the research &
development units

THE COMPETITION COUNCIL,

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 Competition Law no. 21/1996, republished in the Official Gazette no. 742, Part I, of 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, of 16.08.2005,

With regard to the provisions of the Regulation on regional State aid, published in the Official Gazette, Part I, no. 340, of 19.04.2004, with the subsequent amendments and completions, issued in application of the Law no. State aid Law no. 143/1999, republished,

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. 21046/04.11.2005, filed with the Competition Council no. RS-AS 100/04.11.2005, the Ministry of Education and Research – National Authority for Scientific Research - has notified, based on art. 15 from *Law no. 143/1999 on state aid, republished*, the State aid scheme for regional development provided by *Law no. 230/2004 for approving the GO no. 38/2004 for amending the GO no. 57/2002 regarding scientific research and technological development, with the subsequent amendments and completions*. The notification became effective as of 07.11.2005.

2. LEGAL BASE

(2) The Ministry of Education and Research, through the National Authority for Scientific Research, has notified the State aid scheme based on the following:

- *Law no. 230/2004 for approving the GO no. 38/2004 for amending the GO no. 57/2002 regarding scientific research and technological development, with the subsequent amendments and completions;*
- *Law no. 244/2005 for approving the EGO no. 26/2005 for annulling the legal provisions related to granting facilities at the payment of overdue budgetary obligations;*
- *The draft Methodological Norms on granting facilities at the payment of overdue budgetary obligations of the research & development units, in the form of State aid, on assessing and monitoring the investment programs of the beneficiary R&D units (hereinafter called Methodological Norms).*

3. DESCRIPTION OF THE FINANCIAL SUPPORT MEASURES

3.1. Objective of the scheme

(3) The fiscal incentives are granted to the R&D units to support these in carrying out investment programs that develop the research infrastructure, by purchasing modern equipment, IT&C systems necessary to increase the competitiveness of the products created.

3.2. Beneficiaries

(4) According to *Law no. 230/2004*, the State may grant financial support to the R&D units organized as national R&D institutes, public R&D institutes financed from own revenues, and as majority State-owned companies having as their main object of activity research-development-design (National Economic Activities Code 73 and 74).

(5) The maximum number of beneficiaries of specific State aid allocations within the scheme is 40.

3.3. The State aid forms and the granting criteria

(6) The State financial support will be granted under the form of payment facilities for the overdue fiscal obligations towards the State consolidated budget, as follows:

- Exemption from the payment of overdue fiscal obligations as of 31.12.2003, representing taxes, duties, contributions and other amounts due to the State budget, State social insurance budget, budget of the National Social Health Security fund, unemployment insurance budget;
- Exemption from the payment of delay penalties and any other penalties related to overdue fiscal obligations.

(7) The amounts exempted are set up within the fiscal obligations certificates issued according to the Law, based on control acts, by the territorial bodies of the Ministry of Public Finance and the local public administration authorities with fiscal responsibilities, as the case may be.

(8) According to the notification form submitted by the Ministry of Education and Research – National Authority for Scientific Research, the granting criteria for the R&D units covered by the State aid scheme are the following:

- The R&D units obtain profits and shall enforce investment programs in order to upgrade their research infrastructure;
- The R&D units specialize in areas of regional and national interest, and ensure an innovation potential to their home regions, by making practical use of the results of their research;
- The R&D units have drawn up individual strategies that shall lead to worthy research results with economic value.

3.4. Contribution of the support measures to regional development

(9) By granting the notified fiscal facilities, the R&D units are simulated to carry out investment projects that shall contribute directly to the sustainable development of the 8 development regions in Romania. Thus, the number of jobs will increase, by drawing young graduates to the research field, by supporting the setting up of spin-offs and innovative SMEs, and the results of research will be transferred to the SMEs and undertakings in the region.

3.5. Budget and duration of the project

(10) The scheme's total budget is in amount of RON 100 million. The fiscal incentives will be granted to the beneficiaries only once, following authorization by the Competition Council.

4. THE ASSESSMENT OF THE STATE AID SCHEME

4.1. The state aid character of the notified scheme

(11) The criteria, which allow to be established if a measure is State aid, are presented in art. 2 (1) of *Law no. 143/1999 on State aid, republished*.

(12) In order to qualify as State aid within the meaning of *Law no. 143/1999 on State aid, republished*, the financial support must fulfill simultaneously the four criteria foreseen in art. 2:

- a) to be granted by the State or from State resources,
- b) to be selective,
- c) to confer an economic advantage,
- d) to distort or threaten to distort competition or trade between Romania and the Member States of the European Union.

a) the support is granted from State resources

(13) The financial support is granted in the form of payment facilities for overdue fiscal obligations to the State's consolidate budget, therefore from State resources.

b) the support measure is selective

(14) The financial support measures notified only concern the eligible R&D units presented under point 3.2., and which fulfill the criteria mentioned under point 3.3. (9). Therefore, the financial support granted is selective.

c) the support measure confers an advantage to the beneficiaries

(15) The financial support measures granted confer an advantage to the R&D units selected within the Project, by favoring these as compared to their competitors.

d) the support measure distorts or threatens to distort competition and affect trade between Romania and the Member States of the European Union

(16) The State aid granted within the scheme can or could affect trade with the Member States of the European Union, since the beneficiaries of the financial support measures compete with undertakings in the EU that carry out the same types of activities.

(17) In conclusion, the financial support measures notified are considered State aids, as according with art. 2 (1) of the *State aid Law no. 143/1999 of the state aid, republished*.

4.2. Compatibility of the State aid scheme

(18) In assessing the scheme's compatibility, the Competition Council analyzes the fulfillment of the criteria foreseen in the State aid secondary legislation, from the point of view of the impact of the support measures over the normal competitive environment.

4.2.1. Applicability of the Regulation on regional State aid

(19) The beneficiaries of State aid support operate in the field of research.

(20) The Competition Council notes that the provisions of art. 1 (2) of the Regulation on regional State aid, with the subsequent amendments and completions (hereinafter called the Regulation) are observed. The Regulation provides that regional aid for investments is prohibited in the steel sector, while aids of a regional nature, granted in the fields of transport, ship building, cars and synthetic fibres are covered chiefly by the specific regulation.

(21) The Competition Council assesses the notified aid scheme based on the criteria foreseen in the Regulation.

4.2.2. State aid for initial investment

(22) According to art. 2 (2) of the Regulation, the State aid may be granted for an initial investment.

(23) Within the meaning of art. 5 of the Regulation, by initial investment it is understood an investment in tangible assets related to the creation of a new unit, extending an old one or starting an activity implying a fundamental change in the product or in the manufacturing process of the existing unit by its rationalization, diversification or modernization.

(24) The Competition Council notes the following:

- a) The investment projects to be implemented by the beneficiaries of specific allocations within the notified State aid scheme aim at upgrading the research infrastructure, by investing in tangible assets (purchasing modern equipment, IT&C systems) and in non-tangible assets (purchasing licenses for the use of complex design and simulation applications, software licenses, licenses and know-how). Therefore, the projects financed from State aids fulfill the eligibility criteria related to the initial investment, foreseen under Art. 5 (1) of the Regulation;
- b) The tangible and non-tangible assets acquired within the projects extend the material base of the beneficiaries, in view of increasing and diversifying their production capacity. According to the information provided in the notification form, these investments are not directed at replacing the existing assets. Therefore, the provisions of Art. 5 (2) a) of the Regulation, regarding the replacement investments, are observed;
- c) According to the information provided in the notification form, one of the selection criteria for the State aid beneficiaries is the economic and financial status of the unit, namely the profits achieved. Firms in difficulty may not benefit from State aid under the notified scheme, as foreseen under Art. 4 (2) of the Methodological Norms. Therefore, the provisions of Art. 5 (2) b) of the Regulation, regarding the exclusion from the category of initial investments of the financial restructuring measures for a firm in difficulty, are observed.

4.2.3. Eligible costs

(25) Granting the financial support within the Project aims to accomplish investments in tangible and non-tangible assets. Therefore, the assessment of the eligible costs shall be based on the provisions of art. 6 in the Regulation, related to costs for investments in tangible assets and art. 7 related to costs for investments in non-tangible assets.

(26) According to art. 6 (1) of the Regulation, the State aid for initial investment is calculated as percentage points of the investment's value. In accordance with art. 6 (2) of the Regulation, this value is established based on a set of costs, relating to the following categories of investments: lands, buildings and equipment forming the standard base provisioned in accordance with Annex 2 of the Regulation.

(27) According to art. 7 (1) of the Regulation, the eligible costs of the investment may also include certain categories of investments in non-tangible assets, if these do not

exceed 25% of the standard base for large enterprises. Investments in non-tangible assets should simultaneously fulfill the following criteria:

- a) To be exploited exclusively within the undertaking benefiting from the regional aid;
- b) To be considered as assets subject to depreciation;
- c) To be purchased by a third party under competitive market conditions;
- d) To show in the beneficiary's assets and stay in the beneficiary's patrimony for at least 5 years.

(28) According to Art. 4 (4) of the Methodological Norms, are considered eligible for granting State aid investments in lands, buildings and equipment, as well as the purchasing costs of utilization licenses for complex design and simulation applications, software licenses, licenses and know-how. Moreover, the Methodological Norms provide that non-tangible assets may not exceed 25% of the standard base for large enterprises.

(29) The Competition Council notes that all conditions provisioned at art. 6 and 7 of the Regulation, conditions referring to the eligible costs for tangible and non-tangible investments are observed.

4.2.4. The beneficiary's contribution

(30) The beneficiary must contribute to finance the investments with at least 25%, in accordance with the provisions of art. 8 (1) of the Regulation¹.

(31) Art. 4 (5) of the Methodological Norms provides that the beneficiaries will contribute to their investment projects by at least 25% of the costs relating to the initial investment, and that this contribution cannot be subject of any other State aid.

(32) The Competition Council considers that the provisions of art 8 (1) in the Regulation, regarding the minimum contribution of the regional State aid beneficiary to the investments' financing are fulfilled.

4.2.5. Aid intensity

(33) The State aid intensity foreseen under the notified scheme is of maximum 50% of the eligible costs of the investment projects that will be carried out by the beneficiaries of the specific allocations, in accordance with Art. 4 (7) of the Methodological Norms.

(34) The Competition Council considers that the provisions of Art. 9 of the Regulation on regional State aid, providing that the regional aid's gross intensity must not exceed 50% of the equivalent net subsidy, are observed.

¹ This minimum contribution of 25% cannot be subject of any other State aid (art. 8 (2) in the Regulation).

4.2.6. Maintaining the investment

(35) In accordance with art. 11 of the Regulation, the State aid for initial investment must be conditioned, by its allocation manner or by conditions related to its obtaining, on maintaining the investment for a minimum period of 5 years.

(36) In accordance with the facts mentioned at Art. 4 (6) of the Methodological Norms, the Competition Council notes that the granting of the allocations within the notified scheme is conditioned by maintaining the investment for a minimum period of 5 years, thus fulfilling the provisions of art. 11 of the Regulation.

4.2.7. The State aid's stimulating effect

(37) The Competition Council notes that the Ministry of Education and Research – National Authority for Scientific Research - has notified the State aid scheme for regional development applicable to R&D units, foreseen by the Law no. 230/2004, before granting any specific State aid allocations within this scheme. The Competition Council considers that the conditions relating to the State aid's stimulating effect is observed.

4.2.8. Cumulation

(38) In accordance with the provisions of art.16 of the Regulation, the ceilings for the aid intensity apply to the total aid. This also applies where the beneficiary received at the same time aid within other schemes, from different sources: local, regional, national or community.

(39) The Ministry of Education and Research, through the National Authority for Scientific Research, will monitor the activity of the undertakings benefiting from State aids within the scheme notified, shall ensure that the granted State aid, cumulated with other State aids granted for the same objective within other schemes, does not exceed the maximum allowed ceiling for the regional State aid's intensity, namely 50%. According to Art. 7 of the Methodological Norms, the R&D units benefiting from State aid report quarterly to the Ministry of Education and Research - the National Authority for Scientific Research – on the stage of implementation of the investment programs, until their completion. Art. 8 of the Methodological Norms foresees that the R&D units that do not observe the investment program at the end of a calendar year shall be reported to the Competition Council in order for the latter to issue the State aid recovery decisions.

5. CONCLUSIONS

(40) The information presented in the notification submitted to the Competition Council leads to the conclusion that the State aid scheme foreseen by the *Law no. 230/2004, with subsequent amendments and completions*, is not in any measure to unduly affect the competitive environment and does not infringe the proper application of the international treaties Romania is part of.

(41) After assessment, the Competition Council considers that the State aid, amounting to RON 100 billion, fulfills the granting criteria in accordance with the *Regulation on regional State aid*, with subsequent amendments and completions.

DECIDES

Art. 1. The fiscal incentives consisting in the exemption from the payment of overdue budgetary obligations foreseen by *Law no. 230/2004, with the subsequent amendments and completions*, notified by the Ministry of Education and Research, through the National Authority for Scientific Research, are considered a state aid scheme within the meaning of art. 2 (1) of *Law no. 143/1999 on the state aid*, republished.

Art. 2. Based on art. 21 (2) (c), corroborated with art. 23 (1) (f) of *Law no. 143/1999 on state aid, republished*, the state aid scheme for regional development foreseen by *Law no. 230/2004, with the subsequent amendments and completions*, is hereby authorized.

Art. 3. The total budget of the State aid scheme is in amount of RON 100 million.

Art. 4. The Ministry of Education and Research, through the National Authority for Scientific Research, shall monitor that the specific State aid allocations granted within the scheme will not exceed the maximum allowed intensity when cumulating the State aids for the same objective and beneficiary.

Art. 5. According to the provisions of art. 32 of *Law no.143/1999 on state aid, republished*, the Ministry of Education and Research, through the National Authority for Scientific Research, shall submit to the Competition Council information regarding the state aid scheme for inventorying and monitoring it.

Art. 6. According to the provisions of art. 46 of *Law no. 143/1999 on state aid, republished*, the present Decision may be appealed by concerned persons before the Bucharest Court of Appeals, the Administrative Litigation Section, in 30 days from its communication.

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

- The Ministry of Education and Research, through the National Authority for Scientific Research, 21-25 Mendelev str., Bucharest, sector 1.

PRESIDENT

MIHAI BERINDE

