



The Innovations of the Romanian Legislative Framework on Stimulating the Investments

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After long debates, in June 2008, the Romanian Government has enacted the Emergency Government Ordinance no. 85/2008 regarding the stimulation of investments (“**EGO 85/2008**”) which has replaced Law no. 332/2001 regarding promoting of direct investments with significant impact on the economy. EGO 85/2008 regulates the main principles in the area, on the basis of which subsequent regulations have been adopted. As opposed to the former Law no. 332/2001, EGO 85/2008 no longer makes any distinctions based upon the thresholds of the investment to be accomplished.

Pursuant to EGO 85/2008, the facilities that may be granted to the investors consist in (a) granting of non-refundable amounts for the acquisition of tangible and non-tangible assets; (b) granting of financial contributions from the state budget for new-created jobs and (c) granting of bonuses of interest when contracting credits, etc.

EGO 85/2008 provides that the facilities to be granted for the investments that ensure the development of priority areas (*e.g.* manufacturing industry, generation and supply of electricity and heat, stimulating the use of renewable sources for electricity generation, etc) shall be granted on the basis of individual state aid schemes approved through Government Decisions.

So far, pursuant to EGO 85/2008 two state aid schemes have been approved, namely a state aid scheme aimed at supporting the regional development approved through the Government Decision no. 753/2008 relating to the granting of state aid for the regional development (“**GD 753/2008**”) and a state aid scheme aimed at sustaining the economic growth approved through the Government Decision no. 1680/2008 relating to the granting of state aid for ensuring the sustainable economic growth (“**GD 1680/2008**”). The state aid is granted for specific investments accomplished in a wide range of economic domains, with rather strict exceptions.

Eligibility criteria of the investor/investment

The state aid schemes are granted to Romanian established enterprises for the performance of an initial investment. The initial investment must be an investment in fixed assets, either tangible or intangible, regarding: (i) the creation of a new establishment; (ii) the extension of an existing establishment; (iii) the diversification of the activity of an establishment by adding supplementary new products; or (iv) a fundamental change in the global production process of an existing establishment.

An enterprise may apply for state aid in case it meets the following main requirements: (i) it is registered in accordance with Law no. 31/1990 regarding commercial companies (GD 753/2008 only concerns large enterprises); (ii) it intends to perform investments in value exceeding the RON equivalent of Euro 30 million and creates no less than 300 new jobs or it intends to perform investments in value exceeding the RON equivalent of Euro 100 million and creates at

no less than 500 new jobs, following the performance of the initial investment; (iii) it does not have registered due debts to the budgets components of the general consolidated budget; etc.

An enterprise is expressly prohibited from benefiting from financial support under other regional state aid schemes for the same eligible expenditures pursuant to the scheme provided under GD 1680/2008, while GD 753/2008 does not contain a similar prohibition, but on the contrary it establishes that state aid granted in accordance therewith may be cumulated with aid granted from European Community funds.

Duration and value

The duration of each state aid scheme is of 5 years (respectively until 2013 for GD 753/2008 and 2009-2013 for GD 1680/2008).

During such periods an aggregated amount has been allocated as follows:

- (i) GD 753/2008 – a total amount of Euro 575 million for a total estimated number of 20 applicants (4 applicants per year);
- (ii) GD 1680/2008 – a total amount of Euro 1 billion for a total estimated number of 70 applicants (14 applicants per year).

The beneficiary must maintain its investment and the jobs thus created for a minimum period of 5 years from the date of the completion of the investment.

In addition to the above, to the extent the state aid is calculated based on the salary costs, supplementary conditions must be fulfilled, i.e. the jobs must be created directly by the investment project within 3 years as of the completion of the works and must be maintained for the period mentioned above.

Limits

Both state aid schemes provide for a certain amount to be covered by the beneficiary, as follows: (a) for GD 753/2008, the beneficiary must cover at least 25% of the eligible expenditures (provided that it does not use for this purpose another type of public aid granted for the same eligible expenditures) and (b) for GD 1680/2008, the applicant must cover at least 50% of the eligible expenditures, being prohibited, at the same time, from using another type of public aid granted for the same eligible expenditures for ensuring such coverage.

Procedure

The granting of financial support under these two state aid schemes is based on the principle of reimbursement of expenditures, according to which the project/investment must be approved in principle by the granting authority (i.e., the Ministry of Public Finance) pursuant to which the applicant shall begin the performance of the expenditures set forth as eligible through such approval in principle.

For this purpose, the applicant must submit to the Ministry of Public Finance a request joined by a complete documentation regarding the project. Should any works related to the project begin prior to the confirmation being issued, the whole project shall be considered as non-eligible for state aid. Therefore, no expenditure may be performed with respect to the projects for which financial support was requested prior to the receipt of the approval in principle from the Ministry of Public Finance.

Pursuant to the approval in principle being issued, the beneficiary may begin the performance of the initial investment and of the eligible expenditures.

The expenditures shall then be reimbursed in total or in part, depending on their eligibility and within the limits of the amount granted in accordance with the rules regarding the intensity of the state aid.

The state has a discretionary power in granting the state aid on the basis of each of these schemes. Therefore, the fact that an enterprise fulfills the eligibility criteria does not automatically entail such enterprise to be granted with the state aid.