



The Republic of Serbia

**THE COMMISSION FOR  
STATE AID CONTROL**

Number: 110-00-00010/1/2016-01

Belgrade, 2<sup>nd</sup> of February, 2017

Pursuant to Article 9 points 2) and 3) and Article 16(1) of the Law on State Aid Control ("Official Gazette of the RS" No. 51/09) and Article 192 of the Law on General Administrative Procedure ("Official Journal of FRY" No. 33/97 and 31/01 and "Official Gazette of the RS" No. 30/10), in the procedure of ex post control, launched on the basis of the state aid notification of the Ministry of Economy, seated in Belgrade, 20 Kneza Miloša Street,

the Commission for State Aid Control, on its 81<sup>th</sup> session held on 2<sup>nd</sup> of February, 2017,  
adopts

**DECISION**

1. State aid granted on the basis of the Regulation on terms and conditions of attracting direct investments ("Official Gazette of the RS", No: 110/16) is hereby approved.
2. It shall not be particularly required to notify individual state aids granted in accordance with The Regulation on terms and conditions of attracting direct investments ("Official Gazette of the RS", No: 110/16) to the Commission for State Aid Control.
3. This Decision shall be published on the website of the Commission for State Aid Control.

**Justification**

1. The Applicant and the subject matter of the state aid notification:

By Letter No: 110-00-182/2016-10 of 27<sup>th</sup> of December, 2016 the Ministry of Economy submitted to the Commission for State Aid Control (hereinafter referred to as: "the Commission") a Proposal for the Regulation on terms and conditions of attracting direct investments with a Standard notification form and a Specific notification form for the notification of the regional investment state aid (hereinafter referred to as: "the Notification"), pursuant to Article 3(2) of the Regulation On Rules And Procedure For State Aid Notification ("Official Gazette of the RS" No. 13/10).

At the 29<sup>th</sup> Government session, held on 29<sup>th</sup> of December, 2016, the Regulation on terms and conditions of attracting direct investments (hereinafter referred to as: "the Regulation") was adopted and published in the "Official Gazette of the RS", No: 110/16 of 30<sup>th</sup> of December, 2016.

Having regard to the cited, the Commission considered the Regulation as the basis for the state aid granting.

2. The Regulation description:

The Regulation specifically regulates the criteria, terms and conditions and way of attracting direct investments and investments of special importance, in accordance with the regulations governing investment and the provision of state aid, monitoring and control of implementation of investment projects for which funding incentives are granted, the procedure, amount and the deadline for achieving the relief and exemption from customs and other duties on the import of equipment of foreign investors, excluding value added tax, as well as other issues of importance for grants of incentives and realization of

investment projects in order to encourage direct investment for employment growth and to strengthen economic development and overall economic growth.

2.1. The legal basis for the adoption of the Regulation:

The legal basis for the adoption of the Regulation is contained in Article 12(2), Article 13(3) and Article 14(2) of the Law on Investments ("Official Gazette of RS", No. 89/15) and Article 17(1) and Article 42(1) of the Law on Government ("Official Gazette of the RS", No. 55/05, 71/05 – corr., 101/07, 65/08, 16/11, 68/12- CC, 72/12, 7/14-CC and 44/14).

2.2. The state aid grantor:

The state aid grantor shall be the Republic of Serbia and the proponent of the regulation which constitutes the legal basis for the granting of state aid shall be the Ministry of Economy.

2.3. State aid beneficiaries:

Beneficiaries of state aid shall be investors, i.e. domestic or foreign economic entities applying for the granting of incentives funds in order to implement the investment project (Article 2 point 3) of the Regulation).

Article 2 point 4) of the Regulation specifies that the beneficiary of funds shall be an economic entity registered in accordance with regulations of the Republic of Serbia, and, where the beneficiary of funds awarded to receive funding incentives has been founded as a company, this company shall be investor's direct or indirect subsidiary company.

2.4. The estimated number of state aid beneficiaries:

The estimated number of state aid beneficiaries shall range from 101 to 500.

2.5. The instruments of state aid allocation:

The instruments of state aid allocation shall be subsidies and exemption from customs and other duties on the import of equipment.

2.6. The amount planned for state aid:

The amount planned for state aid in 2017, in accordance with the Law on Budget of the Republic of Serbia for 2017 ("Official Gazette of the RS" No. 99/16), shall be 11,103,000,000.00 (eleven billion one hundred and three million dinars).

2.7. The amount (intensity) of state aid:

The amount (intensity) of state aid shall be up to 50% of eligible costs of investment for large economic entities, up to 60% for medium-sized and up to 70% for small economic entities (Article 8(2) and (3) of the Regulation).

The amount (intensity) of state aid which may be granted for investments exceeding 50 million euros shall not exceed 25% of eligible costs of investment, and for investments exceeding the amount of 100 million euros this percentage shall not exceed 17% of eligible costs of investment and shall be determined as follows:

- 1) for the part of eligible costs of investment exceeding 50 million euros - up to 25% of these costs,
- 2) for the part of eligible costs of investment exceeding the amount of 100 million euros - up to 17% of these costs (Article 8(5) of the Regulation).

#### 2.8. The funds award procedure:

Funds can be allocated for investment projects in the sector of production with which eligible costs of investment amount to at least 100,000.00 euros and which ensure employment of at least 10 new permanent employees, i.e. the creation of at least 10 new jobs associated with the investment project in local self-government units which have been classified as devastated areas according to the level of development (i.e. at least 200,000.00 euros and at least 20 new employees in local self-government units which have been classified into the fourth group according to the level of development, at least 300,000.00 euros and at least 30 new employees, in local self-government units which have been classified into the third group, at least 400,000.00 euros and at least 40 new employees, in local self-government units which have been classified into the second group and at least 500,000.00 euros and at least 50 new employees in local self-government units which have been classified into the first group according to the level of development).

##### 2.8.1. Subsidy allocation:

Article 18 of the Regulation stipulates that the allocation of funds shall be performed through the call for proposals announced following the decision of the Ministry of Economy, with the prior approval of the Ministry responsible for finance, while the decision on the award of funds for investments of special interest shall be adopted without a call for proposals.

The text of the call for proposals shall be drafted by the Ministry of Economy and published on its website as well as on the website of the Development Agency of Serbia (hereinafter: Agency).

The call for proposals shall particularly contain criteria for the allocation of funds and all other information of relevance and interest for investors and beneficiaries of funds.

Article 19(1) and (2) of the Regulation provides for the investor to submit to the Agency a Letter of Intention on the implementation of the investment project, which shall particularly contain data on the investor, activity, prior investment activities, planned amount of investments in fixed assets, number of new employees, i.e. number of new jobs associated with the investment project, planned expenditure of gross salaries for new jobs related to the investment project in the two-year period after reaching full employment, as well as other required information.

On the basis of the data in the Letter of Intentions the Agency shall submit a notification to the investor on a potential level of incentives, leaving them a deadline of 30 days to comment (Article 19 (4) of the Regulation) and after this commenting, the investor shall submit to the Agency an application for the award of incentives on a prescribed form with an attached business plan for the investment project in relation to which funds are awarded through the call for proposals as well as supporting documentation (Article 20 (1) of the Regulation).

The Agency shall establish the fulfilment of formal requirements for the award of funds (Article 22(1) of the Regulation) and shall forward applications which are timely, complete, allowed and permitted to the Economic Development Council (hereinafter: Council) within 30 days of receipt (Article 22(7) of the Regulation).

Thereafter, the Council shall adopt a decision on the award of funds, and, whereas Article 27 of the Regulation specifies that mutual rights and obligations of the Ministry of Economy and the beneficiaries of funds shall be governed by an agreement on the allocation of incentives (hereinafter: Agreement) concluded by the Ministry and the beneficiary of funds, the Agency shall draft an agreement on the allocation of incentives (hereinafter referred to as: the Draft Agreement).

The Ministry of Economy shall submit the Council's decision and the Draft Agreement to the Commission with a view to establishing the permissibility of the award of funds, and, prior to placing them before the Government, to obtaining a prior consent on the Draft Agreement (Article 24(2) of the Regulation).

The Agreement shall contain: the subject matter, amount and the dynamics of investments and the number of new jobs associated with the investment project, planned expenditure of gross salaries for new jobs associated with the investment project in the two-year period after reaching full employment, the obligation to pay contract salaries, deadline for the investment project implementation, the amount of awarded funds, the dynamics of the payment of awarded funds as well as information on financial securities, the obligation to report, control of the execution of agreement obligations, the Agreement termination, force majeure, environmental protection and occupational protection, dispute settlement and other issues with relevance to the Agreement implementation.

The component part of the Agreement shall be a part of the business plan relating to the amount, structure and the dynamics of investments, plan and dynamics of employment and projected gross salaries and the envisaged share of domestic suppliers in basic material.

#### 2.8.2. Exemption from customs and other duties on the import of equipment

Articles 32 - 34 of the Regulation impose the terms and conditions and the procedure for exemption from customs and other duties on the import of equipment which is imported on the basis of the investment of a foreign investor, and therefore they shall be achieved:

1) in accordance with the rules for the award of regional state aid, for economic entities being beneficiaries of funds under the Agreement;

2) in accordance with the rules for the award of *de minimis* state aid, for economic entities not being beneficiaries of funds under the Agreement.

Exemption from customs and other duties on the import of equipment referred to in Article 2(1)(16) of this Regulation (equipment which is imported on the basis of foreign investments, i.e. the equipment not older than three years and which is imported by the foreign investor and invested as an investment in the economic entity, while the equipment imported by the large economic entity on the basis of the investment of the foreign investor, who is the beneficiary of funds under the Agreement on the allocation of incentives, must be new) may be used up to the amount of the subscribed non-pecuniary foreign investment in the economic entity if:

1) the total amount of incentives does not exceed the amount referred to in Article 8(2) and (3) of this Regulation (up to 50% of eligible costs of investment for large economic entities, up to 60% for medium-sized and up to 70% for small economic entities, for economic entities being beneficiaries of funds under the Agreement);

2) the amount of exemption from customs and other duties on the import of equipment referred to in Article 2(1)(16) shall not exceed the upper limit of *de minimis* state aid in the amount of 23,000,000.00 dinars per one foreign investor within any period during the three consecutive fiscal years, in accordance with the regulations governing the award of state aid.

#### 2.9. The objective of the adoption of the Regulation:

The objective of the adoption of the Regulation is the provision of environment for the continuation of a series of activities undertaken by the Republic of Serbia to enable rapid economic growth by direct investments for building new capacities, creating new jobs, introducing new technologies and new knowledge with favourable influence on balanced regional development, but also the enhancement of competitiveness of the Republic of Serbia through the enhancement of export capacities.

### 3. Commission Decision:

On its 80<sup>th</sup> session held on 18<sup>th</sup> of January, 2017, the Commission launched the procedure of the ex post control of the permissibility of state aid granted according to the Regulation, whereas it established that:

- funds shall be allocated from the budget of the Republic of Serbia, section 20 — the Ministry of Economy, which means public expenditure is concerned,
- funds shall be allocated only to certain beneficiaries, i.e. investors – domestic or foreign economic entities applying for the award of incentives for investment projects, which means the cited measure is selective,
- this way, the above beneficiaries shall be enabled to acquire a more favourable position on the market in relation to competitors, which distorts or threatens to distort competition on the market.

Having regard to the cited, the Commission established that the Regulation constitutes the basis for the granting of state aid, pursuant to Article 2 point 1) of the Law on State Aid Control ("Official Gazette of the RS" No. 51/09 – hereinafter referred to as: "the Law"), which stipulates that state aid shall be any actual or potential public expenditure or realised decrease in public revenue which confers to state aid beneficiary a more favourable market position in respect to the competitors and as a result causes or threatens to cause distortion of the market competition.

Whereas funds are granted to beneficiaries that are not predetermined (known), the Commission established that this is the case of a state aid scheme, pursuant to Article 12 (2) of the Law.

Then, on its 81<sup>st</sup> session held on 2<sup>nd</sup> of February, 2017, the Commission decided on the permissibility of state aid granted on the basis of the Regulation.

Having analysed whether the rules for the granting of state aid, contained in the Regulation, are in line with the rules imposed by the Regulation on Rules for State Aid Granting ("Official Gazette of the RS", No. 13/10, 100/11, 91/12, 37/13, 97/13 and 119/14 – hereinafter referred to as: the Regulation on Rules for State Aid Granting), the Commission, firstly, established that the Regulation is consistent with Article 4 of the Regulation on Rules for State Aid Granting, i.e. the state aid concerned is not state aid intended for export in the sense that state aid is applied on the scope of export, administration and management of the goods distribution network and running costs of the economic entity directly related to export activities.

The Commission considers that the Regulation also meets the provisions of Article 5 of the Regulation on Rules for State Aid Granting governing the rule of state aid cumulation, since it stipulates that:

- the cumulation with the previously granted state aid shall be taken into account when establishing the amount of funds which can be awarded, in accordance with the regulations for the state aid granting (Article 8(4) of the Regulation);
- the total amount of funds which can be granted in accordance with this Regulation and other incentives shall be determined as an absolute amount, whereby it shall not exceed the upper limit up to which it is permitted to award the total amount of state aid in accordance with regulations governing the rules for the state aid granting (Article 13(6), Article 14(6) and Article 15(5) of the Regulation);
- supporting documentation attached to the Notification Form for the award of funds must cover a written declaration stating that for the implementation of the same investment project, i.e. for the same eligible costs, no state aid from the budget of the Republic of Serbia, Autonomous Province or local self-government unit has been granted, and if it has, based on which grounds and in which form and amount (Article 21(2)(5) of the Regulation).

- exemption from customs and other duties on the import of equipment may be used up to the amount of the subscribed non-pecuniary foreign investment in the economic entity if the total amount of incentives does not exceed the amount referred to in Article 8(2) and (3) of this Regulation (i.e. up to 50% of eligible costs of investment for large economic entities, up to 60% for medium and up to 70% for small economic entities).

By adopting the decision on the type of state aid awarded in the specific case, the Commission established that the Regulation provided for the allocation of state aid for initial investments, whereby:

- investments shall be defined as tangible and intangible fixed assets of economic entities for the commencement of new business activities, expansion of existing capacities or expanding the existing production on new products and new production processes, as well as acquiring assets directly associated with the economic entity which has ceased to exist or would cease to operate if it were not purchased from a third party under market conditions, and which would ensure new employment, while the acquisition of shares and stocks in the economic entity shall not be regarded as a direct investment (Article 2 point 1) of the Regulation), which is in line with Article 2 point 10) and Article 7(1) (1) of the Regulation on Rules for State Aid Granting;

- investments in tangible fixed assets shall be investments in land, buildings, production facilities, machinery and equipment, in accordance with the regulations governing state aid, which shall be recognized as eligible costs of investments if they are used exclusively by the beneficiary of funds (*greenfield* or *brownfield* investments) (Article 2 point 8) of the Regulation), which is in line with Article 2 point 11) of the Regulation on Rules for State Aid Granting;

- investments in intangible fixed assets shall be investments in patents and licenses, in accordance with the regulations governing state aid, and which as eligible costs of investments are provided if they are subject to depreciation, used exclusively by the beneficiary of funds, stated in the income balance of the beneficiary of funds for at least five years, or at least three years for small and medium-sized economic entities, and purchased at market conditions from third parties (Article 2 point 9) of the Regulation), which is in line with Article 2 point 12) of the Regulation on Rules for State Aid Granting;

- eligible staff costs shall be gross salaries for new employees associated with the investment project in the two-year period after achieving full employment (Article 3(1)(2) of the Regulation), which is in line with Article 2 point 13) of the Regulation on Rules for State Aid Granting.

The Commission analysed other definitions in Article 2 of the Regulation, specifying the terms of: small, medium-sized and large economic entities, new employees associated with the investment project, unique investment project, and similar, and established that the cited definitions are in line with the same definitions contained in the Regulation on Rules for State Aid Granting.

Taking into account the abovementioned, i.e. that funds shall be granted with a view to promote direct investments, the Commission established that state aid in question is the regional investment state aid and then analysed whether all terms and conditions for the award of this type of state aid are met, which are stipulated in Articles 7-14 of the Regulation on the Rules for State Aid Granting.

The Commission firstly established that funds shall be granted for initial investments and the creation of new jobs associated with the initial investment which is in line with Article 7(1)(1) of the Regulation on Rules for State Aid Granting, and that Article 4(3) stipulates that funds cannot be used to finance investment projects in the transport sector, software development, hospitality, game of chance, trade, production of synthetic fibres, coal and steel, tobacco and tobacco products, weapons and ammunition, shipbuilding, airports, utilities sector and the energy sector, broadband networks, as well that funds cannot be allocated to business entities in difficulties, which is in line with Article 7(2) of the Regulation on Rules for State Aid Granting.

Whereas Article 8(2) and (3) of the Regulation stipulates that the maximum permitted amount of incentives for large economic entities shall be up to 50% of eligible costs, for medium-sized economic entities up to 60% of eligible costs and for small economic entities up to 70% of eligible costs for the investment project implementation, the Commission noted that terms and conditions prescribed by

Article 8 of the Regulation on Rules for State Aid Granting are met as well. Considering the consistency of the Regulation with regard to Article 9 of the Regulation on Rules for State Aid Granting, the Commission established that the Regulation meets all terms and conditions prescribed by this Article, since:

- Article 3(1) of the Regulation defines eligible costs as:
  - 1) investments in tangible and intangible assets or
  - 2) gross salaries for new employees associated with the investment project in the two-year period after achieving full employment (pursuant to Article 9(1) of the Regulation on the Rules for State Aid Granting);
    - in case of purchasing assets of the economic entity which has ceased to operate, or would cease to operate if it were not purchased, eligible costs shall be the costs of the purchase of assets by the third party at market conditions (Article 3(4) of the Regulation, pursuant to Article 9(3) of the Regulation on Rules for State Aid Granting);
    - assets acquired by the economic entity on the grounds of investments after applying for the award of incentives, other than land and buildings, must be new, while this limitation shall not apply for small and medium-sized economic entities nor to the case of purchasing the economic entity which has ceased to operate or would cease to operate if it were not purchased by the third party at market conditions (Article 3(7) and (8) of the Regulation, pursuant to Article 9(4) of the Regulation on Rules for State Aid Granting);
    - the costs of leasing business premises in which the investment project is implemented shall also be taken into account as eligible investment costs provided that the lease period from the date of expiry of the period for the investment project implementation is not shorter than five years for large economic entities, i.e. shorter than three years for small and medium-sized economic entities (Article 3(2) of the Regulation) and costs related to the acquisition of assets under lease, other than land and buildings, shall be taken into consideration only if the lease takes the form of financial leasing and contains an obligation to purchase the property at the end of the lease period, which must be concluded before the expiry of the period of guaranteed investments and employment (Article 3(3) of the Regulation), which is in line with Article 9(5) of the Regulation on Rules for State Aid Granting and
    - Article 3(6) of the Regulation is in line with Article 9(6) of the Regulation on Rules for State Aid Granting, whereas costs related to the procurement of passenger cars and means of transportation shall not be regarded as eligible costs of investment.

Furthermore, the Commission established that the Regulation is also in line with Article 10 of the Regulation on Rules for State Aid Granting stipulating terms and conditions for the award of state aid intended for investing in intangible assets having in mind that:

- Article 2 point 9) of the Regulation provides that investments in intangible fixed assets shall be investments in patents and licenses, in accordance with the regulations regarding state aid, and which as eligible costs of investments are provided if they are subject to depreciation, used exclusively by the beneficiary of funds, stated in the income balance of the beneficiary of funds for at least five years, or at least three years for small and medium-sized economic entities, and purchased at market conditions from third parties, which is in line with Article 10(1) of the Regulation on Rules for State Aid Granting and
- eligible costs of investing into intangible assets for large economic entities may be granted in the amount of up to 50% of the total amount of eligible costs of investments, and for small and medium-sized economic entities in the amount of up to 100% of eligible costs of investments (Article 3(5) of the Regulation, which is in line with Article 10(2) of the Regulation on Rules for State Aid Granting.

By assessing compliance with terms and conditions referred to in Article 11 of the Regulation on Rules for State Aid Granting, relating to the case when the amount of state aid is calculated according to estimated staff costs for the creation of new jobs, the Commission established consistency in this part as well, since the Regulation provides that:

- new employees associated with the investment project shall represent net increase in the number of employees, nationals, permanently full-time employed with the beneficiary of funds during the period of the implementation of the investment project, compared to the total number of employees,

nationals, with permanent or fixed-term employment, on the day of applying for the award of incentives (Article 2 point 10) of the Regulation);

- eligible costs of investment in the creation of new jobs shall be - gross salaries for new employees associated with the investment project in the two-year period after achieving full employment;

- costs of gross salaries - the total amount which the beneficiary of funds actually pays for the work of an employee (Article 3(9) of the Regulation), and include gross salaries, i.e. salaries inclusive of taxes and contributions for compulsory social security paid out of salaries and contributions paid on salaries (Article 3(1)(2) of the Regulation, which is in line with Article 2 point 13 of the Regulation on Rules for State Aid Granting);

- the achieved number of employees at the fund beneficiaries after the implementation of the investment project does not reduce for the period of five years for large economic entities, and three years for small and medium-sized economic entities (Article 10(1)(2) of the Regulation).

The Commission considers that on the basis of the Regulation, pursuant to Article 12 of the Regulation on Rules for State Aid Granting, stipulating the method for the calculation of the total amount of regional investment state aid, it is possible to determine the total amount of state aid for an individual beneficiary taking into account permitted eligible costs and the purpose of funds.

Further, Article 8(5) and (6) of the Regulation stipulates that the maximum permitted amount which may be awarded for investments exceeding 50 million euros shall not exceed 25% of eligible costs of investment, and for investments exceeding the amount of 100 million euros this percentage shall not exceed 17% of eligible costs of investment and shall be determined as follows:

- 1) for the part of eligible costs of investment exceeding 50 million euros - up to 25% of these costs,

- 2) for the part of eligible costs of investment exceeding the amount of 100 million euros - up to 17% of these costs,

as well as that for the direct investment regarded as a unique investment project, the maximum permitted amount of funds which may be granted to beneficiaries of funds or their associated entity shall be determined up to the percentage referred to in paragraph 5 points 1) and 2) of this Article.

It is cited partly in accordance with the rules prescribed in Article 13 of the Regulation on Rules for State Aid Granting. Namely, a unique investment project defined as “any direct investment realized by means of beneficiary or his direct or indirect subsidiary for a period of three years from the date of the start of the implementation of the previous investment project for which incentives were granted, in accordance with the previously concluded agreement on the award of incentives in the territory of the same or a neighbouring local self-government unit” (Article 2 point 11 of the Regulation) shall not necessarily mean to constitute a large investment project. Therefore, this method of the calculation of the permitted intensity of state aid shall be valid only in the case where such a project represents a large investment project, i.e. exceeding the amount of 50 million euros in dinar equivalent. Conversely, for unique investment projects whose value does not exceed the amount of 50 million euros in dinar equivalent, the permitted intensity of state aid should be calculated according to the method prescribed by Article 8(2) and (3) of the Regulation.

By assessing the consistency of the Regulation with Article 14 of the Regulation on Rules for State Aid Granting, the Commission established that terms and conditions prescribed by this Article are also met since Article 5 of the Regulation provides that:

- those investors who register investment projects and which before the start of the implementation of the investment project have submitted application for the allocation of funds in the manner and under terms and conditions provided in this Regulation shall have the right to participate in the procedure of the allocation of funds;

- for the implementation of the investment project the beneficiary of funds shall be required to provide a minimum of 25% participation in eligible costs from their own resources or from other sources, which do not contain state aid;



- funds for a large economic entity cannot be allocated before the examination of documents has demonstrated that the allocation of funds has an effective incentive effect, i.e. it affects:

- 1) significant increase of the project size, or
- 2) significant increase in the total amount of funds which the beneficiary invests in the project,

or

- 3) significant increase in the rate of the project implementation, or
- 4) the project implementation which could not be achieved without the award of funds,

but also taking into account:

- Article 2 point 14) of the Regulation specifying the period of guaranteed investment and employment as the period of three and/or five years after the implementation of the investment project, during which the beneficiary is obliged not to reduce the value of fixed assets attained by the realization of the investment project, as well as the achieved number of employees and

- Article 10 (1) of the Regulation stipulating that funds can be allocated solely under following conditions:

- 1) the direct investment should be maintained on the same location in the local self-government unit within the period of at least five years after the implementation of the investment project for large investment projects, i.e. at least three years for small and medium-sized economic entities and

- 2) the achieved number of employees at the fund beneficiaries after the implementation of the investment project should not be reduced for the period of five years for large economic entities and/or three years for small and medium-sized economic entities.

Furthermore, the Commission assessed the consistency of the Regulation with the Regulation on Rules for State Aid Granting in the part relating to exemption from customs and other duties on the import of foreign investor equipment, more precisely to terms and conditions for the achievement of benefits referred to in Article 32 of the Regulation.

Namely, Article 32 of the Regulation imposes that exemption from customs and other duties on the import of equipment which is imported on the basis of the investment of the foreign investor shall be achieved:

- 1) in accordance with the rules for the award of regional state aid, for economic entities that are beneficiaries of funds under the Agreement, and the total amount of incentives shall not exceed the amount referred to in Article 8(2) and (3) of this Regulation (i.e. up to 50% of eligible costs of investment for large economic entities, up to 60% for medium-sized and up to 70% for small economic entities, for economic entities being beneficiaries of funds under Agreement);

- 2) in accordance with the rules for the award of *de minimis* state aid, for economic entities that are not beneficiaries of funds under the Agreement and the amount of exemption from customs and other duties on the import of equipment shall not exceed the upper limit of *de minimis* state aid in the amount of 23,000,000.00 dinars per one foreign investor within any period during the three consecutive fiscal years, in accordance with the regulations governing the award of state aid.

Whereas the same rules apply for the award of regional state aid, as in the case of subsidies, for economic entities that are beneficiaries of funds under the Agreement for exemption from customs and other duties on the import of equipment, which represent instruments of the state aid allocation, the Commission considers that the Regulation is consistent with the rules for granting state aid in this part as well.

However, the Commission also notes that the condition under which exemption from customs and other duties may only be achieved in the case of import of foreign investor equipment is discriminatory vis-à-vis domestic investors and may lead to the distortion of competition, so the cited exemption from customs and other duties should be applied for all beneficiaries and/or investors, i.e. for both domestic and foreign investors.

The award of *de minimis* state aid by exemption from customs and other duties for the import of foreign investor equipment, for economic entities that are not beneficiaries of funds under the

Agreement, shall not be the subject of Commission's consideration whereas *de minimis* state aid shall not be notified to the Commission to be decided on the permissibility pursuant to Articles 95-97 of the Regulation on Rules for State Aid Granting which prescribe that the Decision on the justification of the award of *de minimis* state aid shall be adopted by the state aid grantor.

Finally, considering that the Regulation meets all prescribed terms and conditions for the award of state aid contained in the Regulation on Rules for State Aid Granting, in particular the provisions of Articles 7-14 of this Regulation, the Commission shall permit the award of regional investment state aid which shall be granted according to the Regulation.

In addition, in point 2 of the enacting clause of this Decision the Commission emphasizes that it shall not be required to particularly notify individual state aids, awarded in accordance with the Regulation, to the Commission which decides on permissibility.

Namely, the provision of Article 24(2) of the regulation stipulates that the Ministry of Economy shall submit the decision of the Council and the Draft Agreement to the Commission with a view to establish the permissibility of the award of funds, prior to their referral to the Government to obtain a prior consent on the Draft Agreement.

In this respect, we inform you that insofar as the Commission adopts a decision permitting the award of state aid according to the state aid scheme, specified in Article 12(2) of the Law, any state aid granted according to this scheme of state aid and which meets all terms and conditions prescribed in the state aid scheme shall constitute a permitted state aid and it shall not be required to notify each individual state aid to the Commission which decides on permissibility.

Whereas the Commission hereby permits state aid awarded according to the Regulation, it shall not be required to notify individual draft agreements on the award of funds to concrete beneficiaries to the Commission which decides on permissibility, insofar as all terms and conditions contained in the Regulation, as a state aid scheme, are met at the moment of granting.

Accordingly, the Commission adopted the Decision as stated in the enacting clause.

**Instruction of legal remedy:** This decision is final in the administrative procedure and administrative dispute proceedings may be brought against it within 30 days from the date of referral.

Stamp affixed

The President of the Commission

Andrijana Ćurčić (signature)

Delivered to:

- the Ministry of Economy
- Archive file