

**887****ORDINANCE OF THE MINISTER OF SPORT AND TOURISM<sup>1</sup>**

of 15 July 2010

**on detailed purpose, conditions and mode of granting State aid for the support of investments in tourism products of supra-regional significance in the scope of support for culture and cultural heritage under the Operational Programme Innovative Economy, 2007-2013**

Pursuant to Article 21 (3) of the Act of 6 December 2006 on the principles of the development policy making (Dz.U. of 2009 No 84, item 712 and No 157, item 1241) it is hereby ordained:

## Chapter 1

**General provisions**

The Ordinance specifies the detailed purpose, conditions and mode of granting State aid for the support of investments in tourism products of supra-regional significance in the scope of culture and cultural heritage as part of Measure 6.4 "Investments in tourism products of supra-regional importance" of the Operational Programme Innovative Economy, 2007-2013, hereinafter referred to as "aid".

§ 2. Terms used throughout this Ordinance shall mean:

(1) tourist attraction – any tourist value in the natural state or state adjusted to tourists' use, which may be subject of tourists' interest;

(2) large enterprise – enterprise failing to meet the micro-enterprise, small or medium-sized enterprise criteria within the meaning of the provisions of Annex I to the Commission Regulation (EC) No 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty (General block exemption Regulation) (OJ EU L 214, 09.08.2008, p. 3), hereinafter referred to as the "block exemption Regulation";

(3) historic heritage - natural or physical resources contributing to understanding history and culture, related to archaeology, architecture, culture, history, science and technology;

(4) cultural heritage – cultural heritage within the meaning of the Convention concerning the protection of the world cultural and natural heritage (OJ of 1976 No 32, item 190), covering:

(a) monuments: architectural works, works of painting and monumental sculpture, elements or structures of an archaeological nature, inscriptions, cave dwellings and combinations of features, which are of outstanding universal value from the point of view of history, art or science,

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<sup>1</sup> Minister of Sport and Tourism manages the government administration branch – tourism, pursuant to Article 1 (2) (2) of the Ordinance of the President of the Council of Ministers of 16 November 2007 on the detailed scope of activity of the Minister of Sport and Tourism (Dz.U. No 216, item 1602 and of 2008 No 24, item 146).

(b) groups of buildings: groups of separate or connected buildings which, because of their architecture, their homogeneity or their place in the landscape, are of outstanding universal value from the point of view of history, art or science,

(c) sites: works of man or the combined works of nature and of man, and areas including archaeological sites which are of outstanding universal value from the historical, aesthetic, ethnological or anthropological points of view;

(5) small and medium-sized enterprise – enterprise meeting the criteria referred to in Annex I to the block exemption Regulation;

(6) marketing of agricultural products – marketing within the meaning of Article 2 (24) of the block exemption Regulation;

(7) tourism product – package of material and immaterial elements facilitating the implementation of the objective of tourist trip and of meeting various needs and objectives determining the decision to go on a trip; the package involves natural and man-made tourism goods, goods and services facilitating the arrival, stay and use of tourist values as well as attractive ways to spend time;

(8) tourism product of supra-regional importance – tourism product located within at least two regions or tourism product with the potential to attract tourists from the neighbouring regions, from the whole country and abroad;

(9) entrepreneur – small, medium-sized or large enterprise;

(10) processing of agricultural products – processing within the meaning of Article 2 (23) of the block exemption Regulation.

Article 3.1. The provisions of the Regulation shall not apply to aid:

(1) granted for activity directly related to the quantity of products exported, with the establishment and functioning of the distribution network or with other current expenditure related to running export activity;

(2) determined by priority of use of national production goods with respect to goods imported from abroad.

2. Aid cannot be granted and provided to entrepreneurs:

(1) obliged to recover aid in relation to the European Commission Decision declaring an aid illegal and incompatible with the common market;

(2) being small or medium-sized enterprises, meeting the criteria of undertaking in difficulty, within the meaning of Article 1 (7) of the block exemption Regulation;

(3) other than small or medium-sized enterprises, meeting the criteria of firm in difficulty or subject to restructuring with State aid, specified in 9-11 of the Communication from the Commission Community guidelines on State aid for rescuing and restructuring firms in difficulty (OJ EU C 244, 01.10.2004, p. 2).

3. Expenditure eligible for aid shall mean expenditure determined in the Regulation, directly related to the project and necessary for its implementation, decreased by the calculated goods and services tax, except if the provisions on the goods and services tax provide that entities referred to in Paragraph 2 shall have no right to its recovery or deduction from due goods and services tax.

Article 4.1. Aid shall be granted in form of non-repayable financial support to cover the part of expenditure eligible for aid.

2. The scope of investment as part of aid must directly relate to supporting culture or cultural heritage. Aid may be granted for investments in tangible assets or intangible assets, in particular relating to restoration, renovation, reconstruction works regarding historic or cultural heritage structures.

3. Aid shall be granted pursuant to an agreement on granting aid, concluded between the aid granting entity and the beneficiary implementing an individual project referred to in Article 28 (1) (1) of the Act of 6 December 2006 on the principles of development policy making.

4. Aid may be granted for the implementation of projects that are unique tourist attractions, including projects to support investments in structures that are unique tourist attractions:

(1) on the United Nations Educational, Scientific and Cultural Organization's (UNESCO) List of the World Cultural and Natural Heritage, or

(2) recognised by the President of the Republic of Poland as history monuments, or

(3) included in the register of monuments, with the development of the surrounding area necessary for the functioning of the tourism product and investments in structures used for cultural purposes.

## Chapter 2

### **Detailed purpose and conditions of granting support in the area of culture and cultural heritage**

Article 5.1. Aid as part of Measure 6.4 "Investments in tourism products of supra-regional importance" in the scope regarding culture and cultural heritage shall be State aid and be granted pursuant to the provisions of Article 107 (3) (d) of the Treaty on the Functioning of the European Union.

2. Aid may be granted to small, medium-sized or large enterprises meeting the total of the following criteria:

(1) implementing the project referred to in Article 4 (4);

(2) undertaking to maintain the outcome of project implementation for the period of at least 5 years, and in the case of a small or medium-sized enterprises – at least 3 years from the day of conclusion of project implementation, where at least 15% of expenditure eligible for support is reimbursed by the entrepreneur's funds.

3. The requirement to maintain project sustainability shall have no impact on the possibility to introduce economically viable modifications in the project in the scope of services provided and their main recipients, on the condition that they shall not be significant modifications referred to in Article 57 (1) of the Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on

the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999 (OJ EU L 210, 31.07.2006, p. 25, as amended).

4. Aid cannot be granted for investments in accommodation and catering infrastructure.

5. Projects may be implemented in form of partnerships. Partners shall have the right to incur eligible expenditure pursuant to contracts concluded with beneficiaries.

Article 6.1. Aid cannot be granted for the implementation of projects in the scope of business activity:

(1) in the fisheries and aquaculture sectors covered by the Council Regulation (EC) No 104/2000 of 17 December 1999 on the common organisation of the markets in fishery and aquaculture products OJ EC L 17, 21.01.2000, p. 22, OJ EU Polish special edition, Chapter 4, Volume 4, p. 198);

(2) related to primary production of agricultural products within the meaning of Article 2 (22) of the block exemption Regulation;

(3) related to processing and marketing of agricultural products in the following cases:

(a) when the amount of aid is determined on the basis of the price or quantity of such products purchased from producers of raw materials or marketed by enterprises covered by aid, or

(b) when granting of aid depends on providing it in part or entirely to producers of raw materials;

(4) in the mining sector within the meaning of the Council Regulation (EC) No 1407/2002 of 23 July 2002 on State aid to the coal industry (OJ EC L 205, 02.08.2002, p. 1, as amended; OJ EU Polish special edition, Chapter 8, Volume 2, p. 170);

(5) in the iron and steel processing sector;

(6) in the shipbuilding sector;

(7) in the synthetic fibres sector.

2. The period of eligibility of expenditure on projects covered by aid shall start on the day of conclusion of contract regarding the drawing up of individual project, excluding expenditure referred to in Paragraph 3 (1) – (5), for which the period of eligibility shall start on 1 January 2007.

3. Expenditure eligible for support shall cover expenditure on:

(1) studies forming parts of the feasibility study, environmental impact assessment;

(2) study works, experts' opinions, including restoration and archaeological works, research, including archaeological and geological research as well as technical analyses;

(3) works of designers, architects, property experts, construction experts, including the drawing up of opinions, investors' costs estimates, architectural concepts, building documentation, contractor's documentation, functional and practical programme, development of maps or local drafts locating the project;

(4) entering into ownership rights to property consisting of land or rights of perpetual usufruct of property consisting of land, to the amount not exceeding 10% of total eligible expenditure, on the condition that:

(a) land is necessary for project implementation,

(b) entrepreneur presents the property expert's opinion confirming the price of purchase not exceeding the market value of land as of the day of purchase,

(c) within 7 years preceding the date of purchase the property had not been purchased with *de minimis* aid or national State aid funds or aid originating from European Union funds;

(5) entering into the ownership right to property consisting in built-up land or ownership right to property consisting in land with buildings or parts thereof constituting object of ownership separate from land or rights of perpetual usufruct of property consisting in land with buildings, parts thereof or other facilities constituting object of ownership separate from land, to the amount not exceeding 25% of total eligible expenditure, on the condition that:

(a) property is necessary for project implementation,

(b) entrepreneur presents the property expert's opinion confirming the price of purchase not exceeding the market value of property as of the day of purchase,

(c) entrepreneur presents the construction expert's opinion confirming the possibility to use the property for a given purpose concordant with the purposes of project covered by support, or specifying the scope of necessary modifications and facilitations,

(d) within 7 years preceding the date of purchase the property had not been purchased with *de minimis* aid or national State aid funds or originating from European Union funds,

(e) property shall be used solely in accordance with the purposes of project covered by support,

(6) purchase, replacement due to technological progress and fitting of fixed assets, in particular machines, devices, technical equipment and structure fittings, on the condition that they are necessary to implement the project;

(7) adjustment of areas, structures and surroundings thereof as well as rooms to provide project-related services, in particular including the costs of preparation of land for investment – demolitions, dismantlement, repairs, reclamation with geodetic works, costs of construction, repair, adaptation work, including restoration works with finishing works;

(8) costs of construction, reconstruction and repair of necessary technical infrastructure, in particular plumbing, sewage, transport, power, gas, rain drain, telecommunications, specialist networks;

(9) purchase of tangible and intangible assets in form of patents, licences, know-how or non-patented technical knowledge, if the tangible and intangible assets meet the total of the following conditions:

(a) shall be used by the entrepreneur receiving regional aid solely in the enterprise for which he receives aid,

(b) shall be subject to depreciation pursuant to the provisions on accounting,

(c) shall be purchased from the third parties on market conditions and at the same time the purchaser shall not control the seller within the meaning of Article 3 of the Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) (OJ EC L 24, 29.01.2004, p. 1; OJ EU Polish special edition, Chapter 8, Volume 3, p. 40) and vice versa,

(d) shall be the assets of entrepreneur who obtained aid and shall remain in his enterprise for at least 5 years, and in the case of a small and medium-sized enterprise for at least 3 years from the day of project completion;

(10) performance of works related to water roads maintenance, including costs of routes deepening and cleaning, on the condition that they are necessary to implement the project;

(11) construction, repair and reconstruction of infrastructure facilitating the accessibility to cultural heritage structures, including the facilitations for the disabled;

(12) construction, repair and reconstruction of infrastructure accompanying cultural heritage structures, including small architecture structures;

(13) marking the tourist routes, including costs of route delineation, draft traffic management and the necessary facilitations, purchase of materials and performance of marking, development, publication and distribution of route promotional materials;

(14) publicity and information measures related to the project and the results thereof, including publicity campaigns relating to tourism products forming objects of the project;

(15) carrying out research or analyses justifying the need for a specific tourism product forming object of the project, including compatibility of measures planned with the needs of the target group;

(16) carrying out project effectiveness studies, including the effectiveness of publicity measures;

(17) covering costs incurred on behalf of the investor in the scope of regularities of investment implementation, including restoration and archaeological supervision and supervision of works performed by a person with appropriate professional qualifications;

(18) having a bank account related to the project, expenditure on handling the instruments securing the implementation of contract for aid;

(19) carrying out the public invitation to tender, including the drawing up of tender documentation and publication notices of public invitation to tender;

(20) remuneration with non-wage labour costs, including obligatory social security charges, of persons involved in project preparation and implementation;

(21) services in the scope of external audit in the case of projects for which the total value of co-financing exceeds PLN 2,000,000, inasmuch as the audit is required by the managing authority, legal service, administration fees, on the condition that they are necessary to prepare and implement the project;

(22) repayment by the beneficiary of instalments of the initial value of land, buildings and structures, machines, devices, technical equipment and room equipment, irrespective of the leasing contract to the amount of their initial value as of the day of the leasing contract conclusion, borne to the day of project completion, on the condition that the leasing contract is concluded for at least 5 years, and in the case of small and medium-sized enterprises for at least 3 years from the assumed day of project completion;

(23) repayment of the initial value of tangible and intangible assets on account of the leasing contract, on the condition that they meet the total of conditions referred to in 9 (b) – (d) and fixed assets within the meaning of the provisions on accounting, other than specified in 20, due on account of the leasing contract leading to transferring ownership of these assets on the beneficiary, excluding lease back.

4. In the case of small and medium-sized enterprises the costs of purchase of tangible and intangible assets are eligible in their entirety, whereas in the case of other enterprises solely to 50% of the total eligible expenditure as part of a given project, referred to in Paragraph 3.

5. In the case of a beneficiary carrying out business activity within the road or air transport, eligible expenditure shall not cover expenditure on the purchase of the means of transport.

6. The purchase price and cost of fixed assets production as well as the value of tangible and intangible assets are agreed on pursuant to the provisions on accounting.

Article 7.1. Maximum intensity of aid granted to the beneficiary shall be 85% of eligible expenditure as part of the project.

2. Aid shall be summed up with any other aid granted in any form and from any source as regards the same expenditure eligible for aid as a part of a given project, irrespective of its form and origin, including from the funds from the European Union budget. The total value of aid cannot exceed the maximum intensity of aid for a given aid purpose in the European Union provisions.

3. The aid granting entity shall notify the beneficiary of the reference number of the aid programme.

### Chapter 3

#### **Aid granting mode**

Article 8.1. The entrepreneur concludes contract with the aid granting entity, concerning the project drawing up. Within the contract the entrepreneur undertakes to submit the application for project co-financing within a specified period.

2. The entrepreneur submits an application for project co-financing to the aid granting entity, by the deadline specified under 1.

3. The application for co-financing is evaluated on the basis of the valid criteria for Measure 6.4 “Investments in tourism products of supra-regional importance” of the Operational Programme Innovative Economy, 2007-2013, approved by the Operational Programme Innovative Economy, 2007-2013, Monitoring Committee.

4. The aid granting entity concludes the contract for granting aid with the beneficiary whose project meets the criteria referred to in Paragraph 3.

#### Chapter 4

#### **Final provisions**

Article 9. The Ordinance shall be valid until 31 December 2013.

Article 10. The Ordinance shall enter into force on the day of its publication.

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