

ORDINANCE OF THE MINISTER OF SPORT AND TOURISM¹

of 30 June 2009

on detailed purpose, conditions and mode of granting State aid for the support of investments in tourism products of supra-regional importance as part of regional investment aid and *de minimis* aid 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) it is hereby ordained:

Chapter 1

General provisions

Article 1. The Ordinance specifies the detailed purpose, conditions and mode of granting State aid for the support of investments in tourism products of supra-regional importance as part of regional investment aid and *de minimis* aid under Measure 6.4 “Investments in tourism products of supra-regional importance” of the Operational Programme Innovative Economy, 2007-2013, hereinafter referred to as “aid”.

Article 2. Terms used in this Ordinance shall mean:

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

(2) large investment project – investment in fixed assets, whose eligible costs exceed EUR 50,000,000 calculated based on the average exchange rate of the National Bank of Poland, valid on the day of aid granting;

(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”;

(4) investment – investment in fixed assets or intangible and tangible assets, related to the establishment and extension of enterprise, as well as enterprise production diversification by introducing new additional products or significant modifications of the production process in the existing enterprise; investment carried out solely to regenerate production capacities shall not be recognised as investment;

¹ 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).

(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 tangible and intangible assets facilitating the implementation of the objective of a tourist trip and allowing the purchaser to meet various needs and objectives determining the decision to go on the trip; the package is 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 from abroad;

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

(10) processing of agricultural product – 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 the priority to use rather nationally produced goods than 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 enterprise, 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 enterprise 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 input goods and services tax (VAT), except if the provisions on the goods and services tax provide that entities referred to in Article 5 (2) shall have no right to its recovery or deduction from the goods and services tax due.

Article 4. The provisions of the Regulation shall not apply to aid:

(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 entirety to producers of raw materials;

(4) in the coal 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.

Article 5.1. Aid shall be granted in the form of non-repayable financial support to cover the part of expenditure eligible for aid.

2. 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.

3. Obtaining aid does not infringe the possibility of the beneficiary to obtain state aid, approved by the European Commission or covered by the Block Exemption Regulation, in relation to the same eligible costs, on condition that the total value of aid does not exceed the acceptable level of aid provided for in a given block exemption or individual decision of the European Commission.

4. Aid may be granted for the implementation of project with the following purposes:

(1) investments in tourism products of supra-regional importance, in particular investments implemented in the form of partnership of several entities;

(2) investments in structures that are unique tourist attractions on the United Nations Educational, Scientific and Cultural Organization's (UNESCO) List of the World Cultural and Natural Heritage, or recognised by the President of the Republic of Poland as historical monuments or entered 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.

5. Aid granted pursuant to the Ordinance shall be an aid to which the provisions of the Block Exemption Regulation apply.

Chapter 2

Regional Investment Aid

Article 6.1. Aid as part of Measure 6.4 “Investments in tourism products on supra-regional importance” in the scope of investment shall be State aid and be granted pursuant to the provisions of Chapter 1 Article 13 and Chapter 3 of the Block Exemption Regulation.

2. Aid may be granted to entrepreneur who meets all of the following conditions:

(1) makes an investment;

(2) undertakes to maintain investment in a voivodeship in which it was implemented, and in case of implementation of project within the capital city of Warsaw – in this city, for at least 5 years, and in the case of a small or medium-sized entrepreneur – at least 3 years from the project completion, and at the same time replacement of old installations or equipment as a result of a fast technological development shall comply with the condition to maintain investment, upon condition that the business activity is maintained in a given region for the minimum period required;

(3) undertakes to ensure financing of the investment in the part not covered by aid, and at the same time at least 25% of expenditure eligible for aid shall be covered by the entrepreneur’s own means originating from other sources than State aid or support from public funds.

3. The requirement to maintain project sustainability shall have no impact on the possibility to introduce economically viable modifications in the project in relation to the services provided and their main recipients, on the condition that these modifications 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 infrastructures.

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

Article 7.1. Regional investment aid consists in co-financing the part of eligible expenditure incurred by the beneficiary.

2. Expenditure eligible for aid shall cover expenditure to cover the costs of:

(1) entering into ownership rights to property consisting of non-built-up land or rights of perpetual usufruct of property consisting of land, up to the amount of 10% of the total project eligible costs, 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 at the day of purchase,

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

(2) 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, up to the amount of 25% of total project's eligible costs, 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 land as at 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 improvements,

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

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

(3) 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;

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

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

(6) 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 aid beneficiary 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;

(7) 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;

(8) construction and extension of infrastructure facilitating the accessibility to structures and tourism attractions, including the facilitations for the disabled;

(9) construction and extension of infrastructure accompanying tourist structures, including small architecture structures;

(10) supervision on behalf of the investor related to any irregularities of investment implementation, including restoration and archaeological supervision and supervision of works performed by a person with appropriate professional qualifications;

(11) repayment by the beneficiary of instalments of the initial value of land, buildings and structures, due on account of the leasing contract up to the amount of their initial value as at the day of the leasing contract conclusion, borne until 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;

(12) repayment of the initial value of tangible and intangible assets on account of the leasing contract, on the condition that they meet all of the conditions referred to in 6 (b) – (d) and fixed assets within the meaning of the provisions on accounting, other than specified in 11, due on account of the leasing contract leading to transferring ownership of these assets on the beneficiary, excluding lease back.

3. In the case of beneficiaries other than small and medium-sized enterprises, the assets purchased must be new.

4. In the case of small and medium-sized enterprises expenditure on the purchase of intangible and tangible assets are eligible in their entirety, whereas in the case of other enterprises expenditure on the purchase of intangible and tangible assets are covered by expenditure eligible for aid up to the amount of 50% of expenditure eligible for aid referred to in Paragraph 2.

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

7. The eligible expenditure is decreased by the goods and services tax, if, pursuant to the provisions on the goods and services tax, the beneficiary has the right to its recovery of deduction.

Article 8.1. Works related to investment implementation in the case of small and medium-sized enterprises may be initiated after the day of conclusion of the contract on project drafting.

2. Expenditure related to the investment implementation, incurred after the day of conclusion of the contract for project preparation shall be recognised eligible, excluding expenditure specified in Article 7 (2) (1) and (2), whose eligibility starts on 1 October 2007.

3. In the case of large enterprise, next to meeting the condition referred to in Paragraph 1, it additionally must demonstrate meeting at least one of the criteria referred to in Article 8 (3) of the Block Exemption Regulation.

4. Initiation of investment implementation works shall be understood as taking on the first legally binding obligation in order to perform construction works or order movable fixed assets, excluding expenditure covered by *de minimis* aid.

Article 9.1. Intensity of aid for investment in part regarding expenditure referred to in Article 7 (2) cannot exceed:

(1) 50% - within the areas of lubelskie, podkarpackie, warmińsko-mazurskie, podlaskie, świętokrzyskie, opolskie, małopolskie, lubuskie, łódzkie, kujawsko-pomorskie voivodeships;

(2) 40% - within the areas of pomorskie, zachodniopomorskie, dolnośląskie, wielkopolskie, śląskie voivodeships, and from 1 January 2007 to 31 December 2010 – within the area of mazowieckie voivodeship, excluding the capital city of Warsaw;

(3) 30% - within the areas of the capital city of Warsaw and from 1 January 2011 to 31 December 2013 – within the area of mazowieckie voivodeship.

2. Intensity of support granted to small and medium-sized enterprises, excluding enterprises carrying out activity within the transport sector, shall be increased by 20 percentage points in the case of a small enterprise and by 10 percentage points in the case of medium-sized enterprise.

3. The aid is summed up with any other aid granted in respect of the same eligible expenditure for the implementation of the same project, including *de minimis* aid and public funds aid obtained to create new jobs related to the project, irrespective of its forms and sources, including from the European Union budget funds. The total value of aid cannot exceed the maximum intensity of aid specified for a given purpose of aid in the European Union provisions.

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

Article 10.1. Aid concerning large investment projects shall be subject to European Commission notification, where the total value of aid allocated from all the sources exceeds 75% of the maximum amount of aid which can be allocated for investment which costs are eligible for aid to the amount of EUR 100,000,000, assuming aid intensity specified in Article 9 (1).

2. The maximum value of regional investment aid granted for the implementation of the large investment project shall be calculated on the basis of the following formula:

$$I = R \times (50\,000\,000 \text{ euro} + 0,5 \times B + 0,34 \times C),$$

where the respective symbols shall mean:

I — maximum value of aid for a given large investment project,

R — intensity of aid referred to in Article 9 (1) – depending on the area on which the investment is to be located,

B — amount of costs eligible for aid exceeding the equivalent of EUR 50,000,000 – not exceeding the equivalent of EUR 100,000,000,

C — amount of costs eligible for aid exceeding the equivalent of EUR 100,000,000.

Chapter 3

De minimis aid

Article 11.1. *De minimis aid* shall be granted pursuant to the provisions of the Commission Regulation (EC) No 1998/2006 of 15 December 2006 on the application of Articles 87 and 88 of the Treaty to *de minimis aid* (OJ EU L 379, 28.12.2006, p. 5).

2. *De minimis aid* cannot be granted to entrepreneur carrying out business activity within the road freight transport for the purchase of vehicles intended for such transport.

3. *De minimis aid* may be intended for reimbursement of eligible expenditure incurred after 1 January 2007, related to carrying out works concerning:

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

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

(3) works of designers, architects, property, 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) 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;

(5) 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 the project;

(6) VAT which cannot be recovered by the beneficiary on the basis of the provisions on the goods and services tax;

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

(8) costs of domestic business trips of persons involved in project implementation;

(9) costs of running a bank account related to the project, expenditure on handling the instruments securing the implementation of contract for granting aid;

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

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

(12) 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;

(13) costs of carrying out project effectiveness studies, including the effectiveness of publicity measures, if settled pursuant to the provisions on accounting.

4. *De minimis* aid cannot be granted to beneficiary who received *de minimis* aid from various sources and in various forms in the period of the current calendar year and in the period of two calendar years preceding it, where the total gross value with *de minimis* aid applied for would exceed the PLN equivalent of EUR 200,000, and in the case of beneficiary carrying out activity within the road transport sector – the PLN equivalent of EUR 100,000, calculated according to the average exchange rate of the National Bank of Poland, valid on the day of aid granting.

5. Registration of activity carried out by the entrepreneur on the list of codes of Polish Classification of Activity shall constitute the determinant of whether the entrepreneur operates within the transport sector.

6. The total value of *de minimis* aid obtained by the beneficiary is evaluated pursuant to the copies of certificates of *de minimis* aid obtained, the beneficiary is obliged to submit to the aid granting entity.

7. The beneficiary shall submit declaration of obtaining *de minimis* aid from the day of submitting the application for co-financing or shall submit copy of certificates, if the beneficiary obtained *de minimis* aid from other sources within this period.

8. Once the contract for granting aid is concluded with the beneficiary, the entity granting aid shall issue a certificate of *de minimis* aid granted, pursuant to the provisions based on Article 5 (4) of the Act of 30 April 2004 on the procedural issues concerning state aid (Dz.U. of 2007 No 59, item 404 and of 2008 No 93, item 585).

9. *De minimis* aid granted to entrepreneur in respect of the same expenditure eligible for aid shall be summed up with any other aid, including *de minimis* aid, irrespective of its form and origin and shall not exceed the maximum intensity of aid specified for a given purpose of aid in the European Union provisions.

Chapter 4

Aid granting mode

Article 12.1. The entrepreneur concludes contract with the aid granting entity concerning the project preparation. Under the contract the entrepreneur undertakes to submit the application for project co-financing within a specified period.

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

3. The application for project co-financing is evaluated on the basis of the valid criteria for Measure 6.4 "Investments in tourism products on 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.

Charter 5

Final provisions

Article 13. The Ordinance shall be valid until 31 December 2013.

Article 14. The Ordinance shall enter into force on the day of its publication.

Minister of Sport and Tourism: *M. Drzewiecki*