

## **THE CROATIAN PARLIAMENT**

Pursuant to Article 88 of the Constitution of the Republic of Croatia, I hereby issue the

### **DECISION**

### **PROMULGATING THE STATE AID ACT**

I hereby promulgate the State Aid Act adopted by the Croatian Parliament in its session of 17 November 2005.

No.: 01-081-05-3422/2

Zagreb, 22 November 2005

President of the Republic of Croatia

**Stjepan Mesić**

## **STATE AID ACT**

### **I GENERAL PROVISIONS**

#### *Scope of the Act*

#### **Article 1**

(1) This Act shall set out general conditions and rules for the authorisation, monitoring the implementation and recovery of state aid for the purpose of the implementation of the international commitments undertaken by the Republic of Croatia, arising under the Stabilisation and Association Agreement between the Republic of Croatia and the European Communities and their Member States (*Official Gazette - International Treaties No 14/2001, 14/2002, 1/2005 and 7/2005*).

(2) State aid to agriculture and fisheries shall not be covered by this Act.

#### *Applicability of the Act*

#### **Article 2**

(1) Within the meaning of this Act, the providers of state aid (hereinafter: aid providers) shall be the Republic of Croatia through authorised legal entities and central public administration authorities, local and regional self-government units and any legal entity granting or administering state aid within the meaning of this Act.

(2) Within the meaning of this Act, the beneficiaries of state aid (hereinafter: aid beneficiaries) shall be legal and natural persons who perform an economic activity and thereby participate in the trade of goods and services and who receive some form of state aid.

II STATE AID  
*Definition of State Aid*

Article 3

(1) Within the meaning of this Act, state aid shall mean any actual and potential expenditures or decreased revenue of the state granted in any form whatsoever by the aid provider, which distorts or threatens to distort competition by favouring certain aid beneficiaries, insofar as it may affect the international commitments undertaken by the Republic of Croatia referred to in Article 1 hereof.

(2) Within the meaning of this Act, state aid scheme (hereinafter: aid scheme) shall mean any legal document on the basis of which, without any additional implementing measures required, individual aid may be granted to ex ante unspecified aid beneficiaries, and any legal document on the basis of which state aid which is not linked to a particular project may be awarded to one or more aid beneficiaries for an indefinite period of time and/or in an indefinite amount.

(3) Within the meaning of this Act, individual state aid (hereinafter: individual aid) referred to under paragraph (1) hereof shall mean any state aid which is not granted under the aid scheme, and any state aid granted under the aid scheme which is subject to additional authorisation.

*General prohibition and exemptions from general prohibition*

Article 4

(1) Save as otherwise provided by this Act, state aid in any form whatsoever, which distorts or threatens to distort competition by favouring certain aid beneficiaries, insofar as it may affect the international commitments undertaken by the Republic of Croatia referred to under Article 1 hereof, shall be incompatible with this Act.

(2) Without prejudice to paragraph (1) hereof, state aid to mitigate or make good the damage caused by natural disasters, exceptional or war occurrences shall be compatible with this Act, subject to prior authorisation referred to under Article 13 of this Act.

(3) Without prejudice to paragraph (1) hereof, subject to prior authorisation referred to under Article 13 of this Act and provided that it does not affect the international commitments undertaken by the Republic of Croatia referred to under Article 1 of this Act, the following state aid may be considered to be compatible with this Act:

a) state aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment;

b) state aid to promote culture and heritage conservation;

c) state aid to promote the execution of important international projects or to remedy a serious disturbance in the economy;

d) state aid to facilitate the development of certain economic activities or of certain economic areas;

e) state aid to legal and natural persons which are in accordance with special rules entrusted with the operation of services of general economic interest or granted special rights to perform tasks assigned to them in the public interest, where in the case of absence of such aid these persons would be obstructed in the performance of the particular tasks assigned to them and provided that the aid in question exclusively covers the compensation for the performance and implementation of the tasks concerned.

(4) The Government of the Republic of Croatia shall determine the content, procedure and necessary elements of assessment of compatibility of state aid referred to under paragraph (3) hereof with this Act.

#### *Authority of the Agency*

##### Article 5

The Croatian Competition Agency (hereinafter: the Agency) shall authorise and monitor the implementation of state aid and order the recovery of unlawfully granted state aid or aid used in contravention of the rules.

#### *Scope of the Agency concerning State Aid*

##### Article 6

(1) The Agency shall perform the following activities:

- a) assess and consider state aid proposals and aid schemes within annual and multi-annual state aid approval plans;
- b) monitor the implementation and effects of state aid granted and order the recovery of unlawfully granted state aid or aid used in contravention of the rules;
- c) collect, process and register the data on state aid;
- d) collect the data on the use and effects of state aid granted;
- e) keep the state aid register;
- f) cooperate with the authority responsible for state aid to agriculture and fisheries in the preparation of annual reports on state aid;
- g) cooperate in the budget preparation process with the authorities responsible for the preparation of the state budget and the budgets of regional and local self-government units, in compliance with the separate law;
- h) submit the annual report on state aid to the Croatian Parliament;
- i) cooperate with international authorities, in compliance with the international commitments undertaken by the Republic of Croatia;
- j) participate in the preparation of draft proposals for laws and other regulations concerning state aid, as well as promote and encourage improvements in the state aid system;
- k) perform other activities relating to the implementation of this Act.

(2) In the performance of the activities referred to under paragraph (1) hereof, the Agency shall be vested with public powers and shall cooperate with the financial supervision authorities responsible for financial transactions relating to state aid in the Republic of Croatia.

(3) For the purpose of the activities referred to under paragraph (1) hereof, the Agency

may establish expert and advisory bodies.

(4) In the performance of the activities referred to under paragraph (1) hereof, the Agency shall accordingly apply the criteria arising from the proper application of the state aid rules arising from Article 70 of the Stabilisation and Association Agreement between the Republic of Croatia and the European Communities and their Member States.

### III PROCEDURE FOR AUTHORISATION, MONITORING THE IMPLEMENTATION AND RECOVERY OF STATE AID

#### Article 7

Save as otherwise provided under this Act, in the procedure for granting state aid, monitoring the implementation of state aid and recovery of state aid which is granted in contravention of the rules, provisions of the Budget Act and the General Administrative Procedure Act, with the exception of Article 266 thereof, shall apply subordinately.

#### Article 8

Against the administrative decisions of the Agency by means of which the procedures under Article 7 hereof are closed no appeal is allowed, but it is possible to file an administrative dispute.

#### *Service of data and documents*

#### Article 9

(1) For the purposes of the procedure for authorisation of state aid, the Agency shall be empowered to request in writing all data and documents it deems necessary for the implementation of the procedure concerned from the aid provider and/or aid beneficiary.

(2) The aid provider and/or aid beneficiary concerned shall provide, in writing, all the requested data and documents under paragraph (1) hereof within the time period set by the Agency, which may not be shorter than 8 or exceed 30 days.

(3) Where the aid provider and/or aid beneficiary concerned does not provide the requested data and documents after the remainder of the request referred to under paragraph (1) hereof has been sent, the aid provider shall be deemed to have withdrawn the state aid proposal and the Agency shall pass a resolution thereon.

(4) Where the aid provider concerned does not provide the requested data and documents after the remainder of the request referred to under paragraph (1) hereof has been sent, but provides a written reasoned statement in which it considers the state aid proposal to be complete because the requested data and documents are not available or have already been provided, the Agency shall act within the time period set under Article 13 paragraph (1) hereof. That period shall begin on the day of the receipt of the statement concerned.

#### *Preliminary binding opinion of the Agency*

#### Article 10

(1) Before any draft proposals for laws which contain state aid are submitted to the Government of the Republic of Croatia, ministries and other public administration

authorities shall notify the state aid proposals to the Agency for a preliminary binding opinion.

(2) The opinion of the Agency referred to under paragraph (1) hereof shall be submitted to the Government of the Republic of Croatia and Croatian Parliament together with draft proposals for laws containing state aid.

(3) Any draft proposals for laws which contain state aid referred to under paragraph (1) submitted to the Government of the Republic of Croatia and Croatian Parliament without a positive opinion of the Agency referred to under paragraph (1) hereof, shall be returned to the sponsor for revision.

(4) Any draft proposals for laws which contain state aid referred to under paragraph (1) hereof may not be adopted by the Government of the Republic of Croatia without a positive opinion of the Agency.

(5) The Agency shall issue a preliminary binding opinion referred to under paragraph (1) hereof within 30 days from the receipt of the draft proposals for laws referred to under paragraph (1) of this Article. Where the Agency does not issue the opinion concerned within the prescribed period, the sponsor in question shall deem the Agency to have issued a positive opinion and shall give the Agency prior notice thereof. The sponsor may submit the draft proposal concerned to the Government of the Republic of Croatia together with the above mentioned notice, unless the Agency issues the opinion in question within a period of 15 working days following the receipt of the notice concerned.

#### *Prior authorisation of the Agency*

##### Article 11

(1) Before any legislative proposals, other than the proposals referred to under Article 10 thereof, which contain proposed state aid, are submitted to the Government of the Republic of Croatia for adoption, ministries and other public administration authorities shall notify the state aid proposals in question to the Agency for authorisation.

(2) The authorisation of the Agency referred to under paragraph (1) hereof shall be submitted to the Government of the Republic of Croatia together with the legislative proposal containing proposed state aid.

(3) Any legislative proposals referred to under paragraph (1) hereof which are submitted to the Government of the Republic of Croatia and Croatian Parliament without a prior decision of the Agency authorising state aid, shall be returned to the sponsor for revision.

(4) Any legislative proposals containing proposed state aid referred to under paragraph (1) hereof may not be adopted without a prior decision of the Agency authorising state aid.

##### Article 12

(1) Ministries and other public administration authorities, local and regional self-government units and any legal entity granting or administering state aid within the

meaning of this Act shall prior to the adoption of any legal document within their authority on the basis of which state aid may be awarded, notify the proposed state aid to the Agency for authorisation.

(2) Legal documents on the basis of which state aid may be awarded referred to under paragraph (1) hereof may not be adopted without a decision of the Agency authorising state aid.

#### *Authorisation procedure*

##### Article 13

(1) A decision authorising state aid referred to under Article 11 or Article 12 hereof shall be taken by the Agency at the latest within 90 days from the receipt of a complete notification of proposed state aid.

(2) The Agency shall take a decision authorising state aid referred to under paragraph (1) hereof, where it finds that the state aid proposal is fully compatible with the provisions of this Act. Where the Agency finds that the proposed state aid is not compatible with the provisions of this Act, it shall reject the authorisation within the time period prescribed under paragraph (1) hereof.

(3) The Agency may take a decision referred to under paragraph (1) hereof and lay down particular conditions and time limits subject to which the state aid in question may be implemented.

(4) Where the Agency finds that the proposed aid does not constitute state aid within the meaning of this Act, the Agency shall record that finding by way of a decision.

(5) Where the Agency within the time period prescribed under paragraph (1) hereof, does not take a decision referred to under paragraph (2), (3) or (4) hereof, or does not pass a resolution referred to under Article 9 paragraph (3) hereof, the aid provider in question shall deem the Agency to have taken a decision authorising proposed state aid and shall give the Agency prior notice thereof. The aid provider may grant the state aid in question unless the Agency takes the decision referred to under paragraph (2), (3) or (4) hereof or passes a resolution referred to under Article 9 paragraph (3) hereof within a period of 15 working days following the receipt of the notice concerned.

(6) Without authorisation of the Agency referred to under paragraph (1) hereof, state aid may not be awarded.

#### *Recovery and ex post authorisation of State Aid*

##### Article 14

(1) State aid which is granted without authorisation of the Agency referred to under Article 13 hereof is unlawful aid. If state aid is granted without authorisation of the Agency referred to under Article 13 hereof, the Agency shall order recovery of the state aid used, increased by statutory interest on arrears payable from the date on which the unlawful aid was first used.

(2) Without prejudice to paragraph (1) hereof, the Agency may in duly justified cases

grant an *ex post* authorisation of state aid if it finds that the state aid in question is compatible with the state aid rules. The *ex post* authorisation of the Agency may lay down particular conditions and time limits subject to which the state aid in question may be implemented.

#### *Monitoring the implementation and recovery of State Aid*

##### Article 15

(1) The Agency shall monitor the implementation of authorised state aid *ex officio* or upon the proposal of aid beneficiaries, aid providers and any legal or natural person having a legal interest.

(2) Where the Agency establishes any irregularities in monitoring the implementation of state aid referred to under Article 6, paragraph (1) item (b) hereof, it shall adopt a decision ordering the aid provider and/or aid beneficiary to remedy the irregularities in question within no longer than 3 months.

(3) Where the aid provider and/or aid beneficiary does not remedy the irregularities in question within the time limit set under paragraph (2) hereof, the Agency shall order the aid provider and/or aid beneficiary recovery of the awarded state aid in the part in which irregularities have been established, increased by statutory interest on arrears payable from the date on which the established irregularities occurred.

##### Article 16

(1) Where the Agency concludes that a particular authorised aid scheme is no longer compatible with the international commitments undertaken by the Republic of Croatia referred to under Article 1 hereof, it shall issue a recommendation proposing to the aid provider concerned substantive amendment of the aid scheme or abolition of the aid scheme.

(2) The aid provider concerned shall initiate the procedure for amending or abolishing the aid scheme in question within 90 days from the receipt of the proposal for appropriate measures referred to under paragraph (1) hereof, and it shall notify the Agency thereof.

(3) Where the aid provider concerned does not initiate the procedure in question within the time limit prescribed under paragraph (2) hereof, the Agency shall reinitiate procedure for authorisation of the aid scheme within the meaning of Article 13 hereof and it shall notify the aid provider thereof.

#### *State Aid data and State aid register*

##### Article 17

The Competition Council shall lay down the form and content of the notification and the method of data collection and keeping the State Aid register.

### *Publication*

#### Article 18

Opinions and decisions of the Agency referred to under Articles 10, 11, 12, 13, 14 and 15 hereof, and judgments rendered by the court of competent jurisdiction which are based on the opinions and decisions concerned shall be published in the Official Gazette.

### *Information Secrecy*

#### Article 19

(1) The president and the members of the Competition Council, members of expert teams and advisory bodies and employees of the Agency shall keep the official or business secret, irrespective of the way they came to know it, and the obligation of official or business secrecy shall also continue to be in effect after the expiry of their term of office or their employment with the Agency.

(2) Under the term official or business secret referred to in paragraph (1) hereof shall be considered in particular the following:

- a) all which is defined to be an official secret by law or other regulations;
- b) all which is defined to be an official or business secret in any internal acts of the aid beneficiary and indicated as such in the state aid proposal;
- c) all that aid beneficiaries have justifiably specified to be an official or business secret within the meaning of specific legislation;
- d) all correspondence received from the European Commission and other authorities of the European Communities.

(3) Without prejudice to the provisions of paragraphs (1) and (2) hereof, data and documents which have been made accessible in any way or published to be available to the general public pursuant to specific provisions, or decisions of the managing or administrative bodies of aid beneficiaries, shall not be considered an official secret.

### *Annual Reports*

#### Article 20

(1) By 30 June of the current year, the Agency shall submit to the Croatian Parliament the annual report on state aid for the previous year.

(2) The competent ministry and authorised legal entities shall cooperate with the Agency in the preparation of annual reports on state aid to agriculture and fisheries.

## IV TRANSITIONAL AND FINAL PROVISIONS

#### Article 21

The Agency shall draw up a list of the existing aid schemes and other legal documents on the basis of which state aid has been authorised or granted before the State Aid Act

(*Official Gazette No 47/2003 and 60/2004*) entered into force and it shall submit proposed conclusions on the compliance of the existing aid schemes and other legal documents on the basis of which state aid has been authorised or granted with the provisions of this Act to the Government of the Republic of Croatia at the latest by 1 January 2006.

#### Article 22

The Agency shall adopt amendments to its Statute and other internal acts for the purpose of bringing them into compliance with the provisions of this Act within 6 months following its entry into force.

#### Article 23

The Government of the Republic of Croatia shall adopt the regulation referred under Article 4 paragraph (4) hereof within 3 months following the entry into force of this Act.

#### Article 24

(1) The period of validity of the State Aid Act (*Official Gazette No 47/2003 and 60/2004*) shall expire on the date of the entry into force of this Act.

(2) Any subordinate legislation adopted pursuant to the State Aid Act (*Official Gazette No 47/2003 and 60/2004*) shall continue to be in force and remain applicable after the date of expiration of the period of validity of the State Aid Act in question, as long as the corresponding legislation in line with this Act is adopted, unless it contravenes the provisions of this Act.

(3) Investigation procedures regarding state aid which have been initiated before the entry into force of this Act shall be concluded pursuant to the legislation valid before the entry into force of this Act.

#### Article 25

Funds necessary for the operation of the Agency pursuant to the provisions of this Act shall be provided in the state budget.

#### Article 26

This Act shall enter into force on the eighth day after its publication in the *Official Gazette*.

Class: 421-01/05-01/01  
Zagreb, 17 November 2005

CROATIAN PARLIAMENT  
President of the Croatian Parliament  
**Vladimir Šeks**