

Dz.U.09.21.116

**ORDINANCE
OF THE MINISTER OF REGIONAL DEVELOPMENT¹⁾**

of 30 January 2009

on granting by the Polish Agency for Enterprise Development financial aid to support innovation centres under the Operational Programme Innovative Economy, 2007-2013²⁾

(Dz. U. of 10 February 2009)

Pursuant to Article 6b (10) of the Act of 9 November 2000 on the establishment of the Polish Agency of Enterprise Development (Dz.U. of 2007, No 42, item 275, and of 2008 No 116, item 730 and 732, and No 227, item 1505) it is hereby ordained:

Article 1. The Ordinance specifies detailed purpose, conditions and mode of granting by the Polish Agency of Enterprise Development, hereinafter referred to as the "Agency", financial aid to entrepreneurs making use of the services of innovation centres supported under the Measure 5.3 *Support for innovation centres* of the Operational Programme Innovative Economy, 2007-2013.

Article 2. 1. Financial aid shall be granted in form of non-returnable financial support, hereinafter referred to as "support", allotted to cover some part of costs eligible for support.

2. The support shall be granted under the agreement on granting support concluded between the Agency and an innovation centre.

Article 3. 1. An innovation centre shall mean a legal person or organisational unit without legal personality, which is granted legal capacity under separate regulations, or a self-government organisational unit, whose activity aims at providing favourable conditions for the establishment and development of entrepreneurs undertaking research, development or innovation activity.

2. Until the support settlement date, an innovation centre shall allocate, respectively, income or profit from its activity under the project covered by support solely to running that activity.

3. The activity of an innovation centre consists in:

- 1) providing research and development services;
- 2) providing training or consultancy services in terms of scientific research, development works or innovation activity;
- 3) providing training and consultancy services in terms of establishment and development of entrepreneurs undertaking scientific research, development works or innovation activity;
- 4) providing consultancy services in terms of technology transfer or intellectual property rights;
- 5) selling intangible assets;
- 6) lease, rental of real properties or technical infrastructure for scientific research, development works and innovation activity.

4. An innovation centre may rent, lease or lend for use no more than 20% of the net area of a building included in the project, to entities providing services related to the entrepreneur's current activity, in particular financial, legal, accounting, managing and consultancy services to entrepreneurs running research, development or innovation activity.

Article 4. 1. The support may not exceed 85% of expenditure eligible for support.

2. The value of expenditure eligible for support for the development of innovation centre shall amount to no less than PLN 40 million.

3. The support does not constitute State aid for an innovation centre.

Article 5. Agency may grant support to innovation centres for the implementation of individual projects referred to in Article 28 (1) (1) of the Act of 6 December 2006 on the principles of development policy (Dz. U. No 227, item 1658, of 2007 No 140, item 984, of 2008 No 216, item 1370 and of 2009 No

19, item 100).

Article 6. 1. Expenditure eligible for support is the expenditure referred to in paragraph 2, actually incurred and documented, directly related to the project and necessary for its implementation, decreased by the input value added tax, except if, pursuant to separate regulations, an innovation centre is not entitled to its return or deduction from the output value added tax.

2. Expenditure eligible for support includes expenditure incurred by an innovation centre in relation to:

- 1) covering costs of transfer of land ownership or land perpetual usufruct to the amount of 10% of the total expenditure eligible for support provided that:
 - a) the land is necessary for project implementation,
 - b) the innovation centre presents the opinion of property valuer confirming that the price of purchase does not exceed the market value of the land determined as of the day of purchase,
 - c) within the period of 7 years preceding the date of land purchase, it was not co-financed either by the Community funds or by national State aid or *de minimis* aid funds;
- 2) covering the cost of the transfer of the ownership title to a structure or a building provided that:
 - a) the property is necessary for project implementation,
 - b) the innovation centre presents the opinion of property valuer confirming that the price of purchase does not exceed the market value of the property determined, as of the day of purchase,
 - c) the innovation centre presents the opinion of construction valuer confirming that the property can be used for the project, or specifying the scope of necessary modifications or facilitations,
 - d) within the period of 7 years preceding the date of property purchase, it was not co-financed either by Community funds or by national State aid or *de minimis* aid funds,
 - e) property shall be used solely in accordance with the purposes of the project covered with support;
- 3) purchase of new or used fixed assets, within the meaning of provisions on accountancy, other than specified in points 1 and 2, provided that they are subject to depreciation pursuant to separate regulations. As regards the used fixed assets, the following conditions should be fulfilled:
 - a) they were purchased from third parties under market terms;
 - b) within the period of 7 years preceding the date of purchase, they were not co-financed either from the Community funds or national State aid or *de minimis* aid funds,
 - c) the cost of a used fixed asset shall be lower than the cost of similar new fixed asset,
 - d) an innovation centre shall include a statement from the seller of the used fixed asset determining a vendor, place and date of the purchase;
- 4) covering the costs of rental or lease of the fixed assets incurred until the day of project completion specified in the agreement on granting support;
- 5) manufacturing, development and activation of fixed assets;
- 6) adaptation of land, structures, buildings, machinery, devices, apparatus, equipment to specific needs of the project, including demolition, land recultivation, construction, renovation, modernisation, and adaptation works, construction, reconstruction, modernisation of technical infrastructure – in particular water, sewage, transport, power, gas, rain, and telecommunications infrastructure, modernisation of specialist networks, and technical and building supervision;
- 7) depreciations, calculated pursuant to the provisions on accounting and made until the day of project completion specified in the agreement on granting support, in relation to fixed assets that:
 - a) had not been purchased under the project,
 - b) within the period of 7 years preceding the date of purchase were not co-financed either by the Community funds or by national State aid or *de minimis* aid funds,
- 8) purchase of intangible assets in form of patents, licences, know-how or non-patented technical or technological knowledge, if such assets fulfil all of the following conditions:
 - a) they shall be used solely for the project covered by support,
 - b) they shall be subject to depreciation pursuant to separate provisions,
 - c) they were purchased from third parties under market terms;
 - d) for at least 5 years after the project completion they shall constitute the assets of the innovation centre that received support;
- 9) the innovation centre's instalments for the initial value of land, structures and buildings, due to the lessor under the lease agreement, excluding lease back, to the amount of their initial value as of the day of conclusion of the lease agreement incurred until the day of project completion, specified in the agreement on granting support;

- 10) payment of: the initial value of intangible assets due to the lessor under the lease agreement, provided that they fulfill all conditions referred to in point 8 (b)-(d), and fixed assets other than specified in point 9, within the meaning of the provisions on accounting due to the lessor under the lease agreement leading to transferring ownership of these assets on the innovation centre, excluding lease back;
- 11) purchase of consultancy, legal, financial and technical services;
- 12) purchase of training services directly linked to the project and used solely for the purpose of project implementation up to the amount of 10% of the total expenditure eligible for support;
- 13) covering the cost of preparing a construction design, business plan, the project's feasibility study, developing maps and drafts locating the project, environmental impact assessment, financial viability and project durability assessment, and other necessary technical documentation;
- 14) covering payments necessary for receiving final administrative decisions on the project preparation stage, along with the fees of Notary General;
- 15) covering overheads, including the costs of managing the project, up to the amount of 10% of the total expenditure eligible for support;
- 16) covering operational costs incurred by an innovation centre in relation to the implemented project within 3 years from the day of granting support;
- 17) covering costs of promotion of an innovation centre activity in terms of the project implementation up to the amount of 10% of the total expenditure eligible for support;
- 18) covering costs of external audit services as required by the Agency, provided that the audit is performed by certified auditors and its price corresponds with rates commonly used on the audit services market;
- 19) covering costs incurred in relation to the project's legal assistance, as required by the Agency;
- 20) covering costs of providing security for due performance of the agreement on granting support;
- 21) covering costs related to the opening and handling the project's sub-account on the bank account of the innovation centre or a separate bank account;
- 22) a non-monetary contribution not exceeding 50% of the total expenditure eligible for support, contributed by the innovation centre for the project implementation in the form of: real properties purchased in accordance with the conditions specified in point 1 and 2, devices, materials, raw materials, expertises or non-paid volunteers' work defined by the innovation centre as the amount of time spent on its performance, and the average hourly or daily rate for certain type of work specified by the innovation centre.

Article 7. 1. The Agency may provide support for the innovation centre that commits to:

- 1) provide equal access for entrepreneurs undertaking research, development and innovation activity, within the innovation centre, to services, trainings, intangible assets, fixed assets and equipment purchased under the project;
- 2) keep separate accounting records for the project covered by support and activities, referred to in point 4, until the support settlement date, referred to in point 6;
- 3) carry out activity, referred to in Article 3 (3), for at least 20 years following the day of completion of project implementation;
- 4) use, in the period of implementation of the project covered by support, of fixed assets, intangible assets, as well as services purchased with the use of support funds solely for the purposes related to the project implementation, and within the period of 20 years following the day of completion of the project implementation for activities related to further development of the innovation centre under the terms specified in point 1;
- 5) include in the support settlement only the data covered by separate accounting records, referred to in point 2, except for the final value of real property specified in accordance with the opinion of property valuer, no sooner, however, than 3 months before the settlement date;
- 6) support settlement, including transferring to the Agency amount of the reimbursement within the time limits set out in the agreement on granting support, no later than within 1 year after the expiry of 20 years following the day of completion of the project implementation, in accordance with the following formula:

$$Z = VD + V(PO - KO) + WK - VNI$$

where:

- Z - stands for the amount of reimbursement;
- $\sum VD$ - stands for indexed tranche for support that needs to be calculated as components of all tranches for support according to the principle $VD_1 + VD_2 + \dots + VD_x$, where VD_1 – stands for indexed value of the first tranche for support, VD_2 – stands for indexed value of the second tranche for support, VD_x – stands for indexed value of the last tranche for support paid under the project implementation;
- $\sum V (PO - KO)$ - stands for a sum of indexed financial results of the innovation centre operational activity, referred to in Article 3 (3), in successive years of activity until the day of the settlement with the Agency; the sum does not include either revenues or costs of the innovation centre financial activity, especially interest revenue in relation to the amount of support recurrently kept on a bank account or exceptional occurrences' results; the operational activity financial results shall be decreased by the amount of the received support and the amount of income tax, and increased by depreciation provided that fixed assets had been contributed to the project by the innovation centre, while:
PO – stands for operating income,
KO – stands for operating costs;
- $\sum WK$ - stands for a sum of final value of fixed assets, while:
a) the value of moveable fixed assets and intangible assets, as of the day of settlement, shall be considered as their accounting value calculated in accordance with the accounting records, referred to in point 2,
b) the value of real property, as of the settlement date, shall be considered as its value calculated in accordance with the opinion of property valuer, no sooner, however, than 3 months before the day of the settlement;
- VNI - stands for a sum of indexed investment costs incurred annually, calculated in accordance with the principle $VNI_1 + VNI_2 + \dots + VNI_x$, where VNI_1 stands for indexed value of investment costs in the first year of the project implementation, VNI_2 - indexed value of investment costs in the second year of the project implementation, VNI_x - indexed value of investment costs in the last year of the project implementation; in the case of the innovation centre's in-kind contribution of property, the incurred investment costs shall be considered as the value of this property, as of the day of its contribution to the project, calculated in accordance with the opinion of property valuer;
- 7) take into account, while specifying the rate of return, the change in the value of money over time, using base rate specified by the European Commission, published in the Official Journal of the European Commission, increased by 1 percentage point.

2. While accounting support granted for the purchase of land and purchase or constructing a building or a structure, an innovation centre may conclude an agreement with the Agency to continue the activity under the conditions specified in the Ordinance until the day of transferring to the entrepreneurs the amount, calculated pursuant to the formula referred to in paragraph 1 (6), in the form of State aid or *de minimis* aid. As regards selling the property purchased or built under the project or in the case of the activity completion under the conditions specified in the Ordinance before the day of transferring the amount, calculated pursuant to the formula referred to in paragraph 1 (6), in the form of State aid or *de minimis* aid to the entrepreneurs, an innovation centre shall be obliged to return this amount to the Agency within the time limits set out in the agreement, no later however than within 6 months following the day of selling the property or completion of activity referred to in Article 3 (3).

Article 8. 1. State aid and *de minimis* aid granted by an innovation centre to an entrepreneur is a difference between the cost of services on market terms and the actual payment made by an entrepreneur, while the State aid may not exceed the maximum intensity referred to in Article 10 (3) and in Article 11 (3)-(6), and *de minimis* aid may not exceed the amount referred to in Article 12 (3).

2. The certificate of *de minimis* aid granted to entrepreneurs running research, development or

innovation activity shall be issued by an innovation centre.

3. An innovation centre granting State aid to an entrepreneur shall inform the entrepreneur each time about aid scheme reference number issued by the European Commission.

4. State aid, except for *de minimis* aid in relation to the activity referred to in Article 3 (3), may be granted to a micro, small or medium-sized entrepreneur if the entrepreneur had submitted the application for co-financing before the day of the implementation of undertaking that is supposed to be aided.

5. State aid, except for *de minimis* aid in relation to the activity referred to in Article 3 (3), may be granted to a large entrepreneur if the entrepreneur had submitted the application for co-financing before the day of the implementation of undertaking that is supposed to be aided, and, therein, demonstrated the fact of incentive effect within the meaning of Article 8 (3) (a)-(d) of 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 of 9.08.2008, p. 3), hereinafter referred to as "Regulation No 800/2008".

6. The incentive effect, referred to in paragraph 5, shall be determined by a comparative analysis prepared by an entrepreneur indicating that there may be at least one of the following circumstances as compared to the situation of no aid being granted:

- 1) significant increase in the size of an undertaking;
- 2) significant increase in the scope of an undertaking;
- 3) significant increase in the speed of completion of an undertaking;
- 4) significant increase in a total amount spent by an entrepreneur on an undertaking.

7. Before granting State aid to a large entrepreneur, an innovation centre shall verify the fulfilment of conditions for determining the incentive effect referred to in paragraph 6.

Article 9. 1. Aid referred to in Article 8 (1) may not be granted for economic 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 of 21.01.2000, p. 22, as amended.; 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 Regulation No 800/2008;
- 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 quality of such products purchased from producers of raw materials or marketed by aided entrepreneurs, or
 - b) when granting of aid depends on providing it in part or entirely to producers of raw materials;
- 4) in the coal sector within the meaning of the Council Regulation (EC) No 1407/2002 of 23 July 2002 on State aid to the coal industry (OJ EU L 205 of 2.08.2002, p. 1 as amended; OJ EU Polish special edition, Chapter 8, Volume 2, p. 170).

2. Aid referred to in Article 8 (1) may not be granted and paid to:

- 1) a micro, small or medium-sized entrepreneur considered to be in difficulty within the meaning of Article 1 (7) of the Regulation No 800/2008;
- 2) an entrepreneur, other than specified in point 1, fulfilling the criteria of an entrepreneur in a difficult economic situation specified in Community provisions on State aid³⁾, or in the period of restructuring carried out with State aid;
- 3) an entrepreneur subject to an outstanding recovery order following the Commission decision declaring the aid illegal and incompatible with the common market;
- 4) an entrepreneur conducting economic activity within the scope of road freight for purchase of vehicles for such transport.

3. The provisions of the Ordinance shall not apply to financial aid:

- 1) granted for the activity related to export to third countries or to the European Union Member States, i.e. aid directly related to the quantity of the exported products, to 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.

Article 10. 1. Aid for consultancy services within the scope of the activity referred to in Article 3 (3)

(2)-(4) shall be granted by an innovation centre to:

- 1) a micro, small or medium-sized entrepreneur, in accordance with conditions specified in Chapter I, in Article 26 of Chapter II and in Chapter III of the Regulation No 800/2008;
- 2) an entrepreneur, other than specified in point 1, in accordance with 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 of 28.12.2006, p. 5), hereinafter referred to as "Regulation No 1998/2006".
 2. Aid, referred to in paragraph 1, may not be granted for permanent consultancy services in relation to the current operating activity of an entrepreneur, in particular for tax consultancy, permanent legal assistance or marketing consultancy.
 3. Aid intensity, referred to in paragraph 1, may not exceed 50% of eligible expenditure for consultancy services, while eligible expenditure is expenditure incurred for consultancy services provided by outside consultants.
 4. Aid, referred to in paragraph 1 (1), shall be summed with other forms of aid (including *de minimis* aid) in relation to the same eligible expenditure, regardless of its form and source of financing (including EU funds), and may not exceed the amount of 50% of that expenditure.
 5. Aid, referred to in paragraph 1 (2), may be granted provided that, including other *de minimis* aid received from various sources and in various forms in the same calendar year and over two preceding calendar years, it will not exceed the amount of EUR 200 000 per one entrepreneur, and in the case of an entrepreneur active in the road transport sector – EUR 100 000.
 6. Aid, referred to in paragraph 1 (2), shall not be granted if, including other forms of aid granted in relation to the same eligible expenditure, exceeds 50% of these expenditures.
 7. As regards the aid exceeding EUR 2 000 000 per one entrepreneur for one consultancy project, the aid referred to in paragraph 1 (1) is subject to individual notification to the European Commission.

Article 11. 1. Training aid within the scope of activity referred to in Article 3 (3) (2) and (3) shall be granted by an innovation centre in accordance with the conditions specified in Chapter I, in Section 8 of Chapter II and in Chapter III of the Regulation No 800/2008.

2. Expenditure eligible for support referred to in Article 8 (1) within the scope of training services includes expenditure referred to in Article 39 (4) of the Regulation No 800/2008.

3. In the case of large entrepreneur, the aid intensity, referred to in paragraph 1, may not exceed:

- 1) 25% of the eligible expenditure in the case of specific trainings referred to in Article 38 (1) of Regulation No 800/2008;
- 2) 60% of the eligible expenditure in the case of general trainings referred to in Article 38 (2) of Regulation No 800/2008.

4. If a training consists of elements of both specific and general trainings, that may not be separated in order to calculate State aid intensity referred to in paragraph 1, or if specific or general character of a training cannot be specified, State aid intensity for specific trainings, referred to in paragraph 3 (1), shall be applicable.

5. Aid intensity specified in paragraph 3 shall be increased by 10 percentage points as regards the aid for a medium-sized entrepreneur and by 20 percentage points as regards the aid for micro and small entrepreneur, while the aid intensity may not exceed 80% of eligible expenditure.

6. The aid intensity referred to in paragraph 3 shall be additionally increased by 10 percentage points as regards trainings for severely disadvantaged workers, referred to in Article 2 (18) of the Regulation No 800/2008, or disabled workers, referred to in Article 2 (20) of Regulation No 800/2008.

7. Aid, referred to in paragraph 1, shall be summed with other forms of aid (including *de minimis* aid) in relation to the same eligible expenditure referred to in paragraph 2, regardless of its form and source of financing (including EU funds), and may not exceed the maximum intensities referred to in paragraphs 3-5.

8. As regards the aid exceeding EUR 2 000 000 per one training project, the aid referred to in paragraph 1 shall be subject to individual notification to the European Commission.

Article 12. 1. *De minimis* aid within the scope of activity referred to in Article 3 (3) (1), (5) and (6) shall be granted by an innovation centre in accordance with the conditions specified in the Regulation No 1998/2006.

2. *De minimis* aid within the scope of services referred to in Article 3 (3) (6) may be granted to an

entrepreneur for no longer than 5 years from the day on which aid was granted by an innovation centre to the entrepreneur for the first time.

3. *De minimis* aid within the scope of services referred to in Article 3 (3) (1), (5) and (6), may be granted provided that, including other *de minimis* aid received from various sources and in various forms in the same calendar year and over two preceding calendar years, it does not exceed the amount of EUR 200 000 per one entrepreneur, and in the case of entrepreneur active in the road transport sector – EUR 100 000.

4. Aid, referred to in paragraph 1, granted to an entrepreneur in relation to the same eligible expenditures, shall be summed with any other aid, including *de minimis* aid, regardless of its form and source of financing, and may not exceed the maximum intensity specified for a given aid category in the European Union legislation.

Article 13. 1. The innovation centre referred to in Article 3 shall submit the application for co-financing to the Agency.

2. The Agency shall assess the application for co-financing on the basis of the valid selection criteria for Measure 5.3 Support for innovation centres of the Operational Programme Innovative Economy, 2007-2013 approved by the Monitoring Committee of the Operational Programme Innovative Economy, 2007-2013.

3. The Agency shall conclude the agreement on granting support with the innovation centre fulfilling the criteria referred to in paragraph 2.

Article 14. With regard to the procedure of granting support, Article 37 of the Act of 6 December 2006 on the principles of development policy shall be applicable.

Article 15. 1. Support for innovation centres shall be granted in accordance with the principles specified in the Ordinance until 31 December 2013.

2. State aid and *de minimis* aid shall be granted to entrepreneurs by an innovation centre in accordance with the principles specified in the Ordinance until 31 December 2013.

Article 16. The Ordinance shall enter into force on the day of its publication.

¹⁾ The Minister of Regional Development is in charge of regional development as a sector of government administration, pursuant to Article 1 (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 Regional Development (Dz. U. No 216, item 1600).

Pursuant to Article 25 (1) of the Act of 6 December 2006 on the principles of the development policy (Dz.U. No 227, item 1658, of 2007 No 140, item 984, of 2008 No 216, item 1370 and of 2009 No 19, item 100), the Minister competent for regional development is the Managing Authority for the Operational Programme Innovative Economy, 2007-2013.

²⁾ The text of Operational Programme Innovative Economy 2007-2013 has been approved by the decision of the European Commission no K(2007) of 1 October 2007 on the adoption of the Operational Programme Innovative Economy under Community aid from the European Regional Development Fund covered with the objective “convergence” in Poland and adopted by the Resolution of the Council of Ministers of 30 October 2007 on the adoption of Operational Programme Innovative Economy 2007-2013.

³⁾ The criteria are specified in points 9-11 of the Community guidelines on State aid for rescuing and restructuring firms in difficulty (OJ EU C 244, 1.10.2004, p. 2).