

**ACT**

of 30 July 2008

**on some forms of support for innovative activity<sup>1)</sup>**

(Dz. U. of 2 July 2008)

**Chapter 1**

**General provisions**

**Article 1.** The Act shall determine the rules of providing support for innovative activity by:

- 1) awarding a technological credit by crediting banks and technological premium by Bank Gospodarstwa Krajowego;
- 2) awarding the status of research and development centre to an entrepreneur.

**Article 2.** 1. The terms used in the Act shall have the following meaning:

- 1) research – scientific research within the meaning of Article 2 point 2 of the Act of 8 October 2004 on principles of science financing (Dz. U. No 238, item 2390, as amended<sup>2)</sup>);
- 2) crediting bank – a bank awarding a technological credit in relation to the agreement concluded with Bank Gospodarstwa Krajowego;
- 3) innovative activity – activity consisting in development of a new technology and launching on its basis the production of new or significantly improved goods, processes or services;
- 4) technological investment – an investment consisting in:
  - a) purchase of a new technology, its implementation and launching on its basis the production of new or significantly improved goods, processes or services; or
  - b) implementation of own new technology and launching on its basis the production of new or significantly improved goods, processes or services;
- 5) scientific entity – scientific entity within the meaning of Article 2 point 9 (a)-(f) of the Act of 8 October 2004 on principles of science financing;
- 6) technological credit – credit awarded to an entrepreneur by a crediting bank for the implementation of a technological investment, which is partially repaid from the resources of the Technological Credit Fund in a form of a technological premium to the amount set out in the Act and in line with the conditions set out therein;
- 7) small entrepreneur – small enterprise within the meaning of the Annex I of the Commission Regulation (EC) No 70/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises (OJ L 10 of 13.01.2001) in the wording provided in the Commission Regulation (EC) No 364/2004 of 25 February 2004 amending Regulation (EC) No 70/2001 as regards the extension of its scope to include aid for research and development (OJ L 63 of 28.02.2004);
- 8) micro-entrepreneur – micro-enterprise within the meaning of Annex I of the Commission Regulation (EC) No 70/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises (OJ L 10 of 13.01.2001) in the wording provided in the Commission Regulation (EC) No 364/2004 of 25 February 2004 amending Regulation (EC) No 70/2001 as regards the extension of its scope to include aid for research and development (OJ L 63 of 28.02.2004);
- 9) new technology – technology in the form of industrial property right or research and development service (within the meaning of Polish Classification of Products and Services), which enables creation of new or significantly improved goods, processes or services which is not applied all over the world for a longer period than 5 years;

- 10) development works – development works within the meaning of Article 2 point 3 of the Act of 8 October 2004 on principles of science financing;
  - 11) technological premium – amount awarded to an entrepreneur from the resources of the Technological Credit Fund by the Bank Gospodarstwa Krajowego in line with the rules determined in the Act for the repayment of some part of the capital of the technological credit;
  - 12) entrepreneur – enterprise within the meaning of Annex I of the Commission Regulation (EC) No 70/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises (OJ L 10 of 13.01.2001) in the wording provided in the Commission Regulation (EC) No 364/2004 of 25 February 2004 amending Regulation (EC) No 70/2001 as regards the extension of its scope to include aid for research and development (OJ L 63 of 28.02.2004);
  - 13) medium-sized entrepreneur – medium-sized enterprise within the meaning of Annex I of the Commission Regulation (EC) No 70/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises (OJ L 10 of 13.01.2001) in the wording provided in the Commission Regulation (EC) No 364/2004 of 25 February 2004 amending Regulation (EC) No 70/2001 as regards the extension of its scope to include aid for research and development (OJ L 63 of 28.02.2004);
  - 14) own contribution – the contribution of the entrepreneur in the technological investment financing coming from other resources than the technological credit resources or the resources obtained by the entrepreneur in relation to the awarded State aid, in particular, in the form of a credit, guarantees and sureties, under more favourable conditions than the market conditions;
  - 15) used fixed assets – fixed assets consisting of:
    - a) buildings and structures and parts thereof – if at least 5 years elapsed from the end of the year, in which the construction of these facilities was completed;
    - b) other fixed assets, excluding land, which have been used by the entrepreneur delivering them for a period of at least 6 months;
 - which were not purchased or created with the use of State aid;
  - 16) completion of technological investment – payment, by the entrepreneur implementing the technological investment, of all invoices documenting expenditure incurred for the implementation of the technological investment.
2. All references to the invoices shall be understood also as other accounting documents of equivalent probative value.

## Chapter 2

### Awarding a technological credit and technological premium

**Article 3.** 1. The technological credit shall be awarded by a crediting bank to micro-entrepreneur, small entrepreneur or medium-sized entrepreneur showing creditworthiness.

2. The technological credit and technological premium shall be awarded in line with the provisions of the Commission Regulation (EC) No 1628/2006 of 24 October 2006 on the application of Articles 87 and 88 of the Treaty to national regional investment aid (OJ L 302 of 01.11.2006), hereinafter referred to “Commission Regulation (EC) No 1628/2006” and pursuant to the provisions concerning disbursement of resources from the European Union budget.

3. The technological credit cannot be awarded for the implementation of:

- 1) large investment project within the meaning of the provisions issued on the basis of Article 10(2) 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);
- 2) investments in steel industry, the synthetic fibres sector, coal mining industry, shipbuilding sector, fisheries and aquaculture sector;
- 3) investment consisting in manufacture and marketing of products which imitate or substitute for milk and milk products, as referred to in Article 3(2) of Council Regulation (EEC) No 1898/87 of 2 July 1987 on the protection of designations used in marketing of milk and milk products (OJ L 182 of 03.07.1987, p. 36; OJ Polish Special Edition, Chapter 3, Volume 7, p. 247);
- 4) investment consisting in primary production (cultivation, breeding) of products listed in Annex I to the Treaty establishing the European Community.

4. The technological credit cannot be awarded for the purchase, leasing or rental of a fixed asset, in which the new technology was implemented that is the object of the technological investment financed by the technological credit.

5. The crediting bank cannot make the award of the technological credit conditional on the fact of conducting by the entrepreneur export activity related to goods and services created as a result of the technological investment or on establishment by the entrepreneur a foreign distribution network or on operation of such a network or on preference of domestic goods to imported goods.

6. The interest rate of the technological credit cannot be higher than the average interest rate of other investment credits awarded by the crediting bank.

7. Conditions for awarding the technological credit, in particular commissions and charges, cannot be less favourable than conditions proposed in the case of awarding other investment credits by the crediting bank.

8. The crediting bank can conclude agreements for granting of technological credit until 31 October 2013.

**Article 4.** 1. The own contribution in financing of the technological investment made by the entrepreneur implementing this investment cannot amount to less than 25% of the expenditure referred to in Article 10(5) and (6).

2. Start of technological investment implementation financed by the technological credit can take place after awarding by Bank Gospodarstwa Krajowego a technological premium promise.

3. Bank Gospodarstwa Krajowego can grant a technological premium promise until 15 September 2013.

4. Manufacturing of goods or provision of services following from the implementation of the technological investment has to be continued in the voivodeship, in which the technological investment was implemented or in the Capital City of Warsaw if the technological investment was implemented in the Capital City of Warsaw for at least 3 years following the day of completion of the technological investment, on pain of the entrepreneur having to repay the paid technological premium with interest, referred to in Article 14(2) of the Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ L 83 of 27.03.1999).

**Article 5.** 1. Application for technological credit shall be submitted by the entrepreneur to the crediting bank.

2. Within 60 days from the date of submitting the application referred to in Paragraph 1, the crediting bank shall conclude with the entrepreneur a conditional agreement for granting of technological credit or award a technological credit promise. The crediting bank shall make the conditional agreement for granting of technological credit or issuance of technological credit promise dependent on showing by the entrepreneur creditworthiness for the purposes of the technological credit.

3. The entrepreneur, with the intermediation of the crediting bank, shall submit to Bank Gospodarstwa Krajowego an application for technological premium to which the conditional agreement for granting of technological credit or technological credit promise shall be annexed together with the following documents:

- 1) an opinion drawn up on the request of the entrepreneur by the scientific entity or a research and development centre, which are not related to the entrepreneur or an association of science and technology of nation-wide renown, whose scope of activity is related to the technological investment, for which the technological credit is to be granted, declaring that the technology, which will be implemented following the implementation of the technological investment financed by the technological credit is a new technology;
- 2) information elaborated in cooperation with the entrepreneur by the entity drawing up the opinion on the basis of point 1, covering:
  - a) characteristic features of the technology and presentation of its properties providing for the possibility of its implementation in order to produce new or significantly improved goods, processes or services;
  - b) description of the manner of the technology implementation as regards production of new or significantly improved goods, processes or services that are to follow from the implementation of the technological investment financed by the technological credit;
  - c) list and justification of the application of fixed assets and intangible assets necessary to implement

the technology in order to produce new or significantly improved goods, processes or services that are to follow from the implementation of the technological investment financed by the technological credit;

- d) description of the goods, processes or services that are to follow from the technological investment financed by the technological credit;
- 3) declaration on not using the support provided by the public resources to finance the applicant's own contribution;
- 4) information on aid obtained for the financing of expenditure referred to in Article 10(5) and (6) taking into account Article 10(2);
- 5) copies of documents making it possible to recognise an entrepreneur as micro-entrepreneur, small or medium-sized entrepreneur, which can cover, in particular: approved financial statement, profit and loss account, proof of payment of contributions for social and health insurance of a worker for the last 2 financial years, up-to-date excerpt from the register of entrepreneurs, binding agreement or the articles of association of the company, entry to the register of economic activity;
- 6) business plan of the technological investment containing the material and financial schedule and list of expenditure, referred to in Article 10(5) and (6) and taking into account Article 10(2);
- 7) an obligation to transfer to the Bank Gospodarstwa Krajowego information about the technological investment within the scope necessary to implement the commitments imposed on Bank Gospodarstwa Krajowego on the basis of the Act.

**Article 6.** 1. The crediting bank shall check the application, referred to in Article 5(3) in respect to formal aspects. In case of gaps in or incompleteness of the application, the crediting bank shall request that the entrepreneur removes them. The complete application shall be forwarded by the crediting bank to Bank Gospodarstwa Krajowego along with the technological credit promise or a conditional agreement for granting of technological credit.

2. If documents, referred to in Article 5(3) are incorrectly drawn up, Bank Gospodarstwa Krajowego through the crediting bank requests the applicant to remove the irregularities within 14 days following the date of receipt of the request on pain of refusal to process the application.

3. The applicant shall submit the correctly prepared documents to Bank Gospodarstwa Krajowego through the crediting bank. The date of submitting the completed application to the crediting bank shall be used to check if the deadline referred to in Paragraph 2 was met.

**Article 7.** 1 Bank Gospodarstwa Krajowego shall consider the compliance of the application for technological premium with the provisions of the Act on the basis of documents referred to in Article 5(3).

2. Bank Gospodarstwa Krajowego shall assess the applications for technological premium in the order that complete applications were submitted.

3. Bank Gospodarstwa Krajowego shall assess the applications for technological premium until using up the resources foreseen for the payment of the technological premium established in the financial plan of the Technological Credit Fund and transferred in the form of advance payment to the account of the Technological Credit Fund.

4. Bank Gospodarstwa Krajowego shall award a technological premium promise no later than by the end of the month following the month, in which the complete application was submitted or the month, in which the irregularities were removed.

**Article 8.** 1 The crediting bank shall sign with the entrepreneur to whom it granted the technological credit promise, an agreement for granting of technological credit within 30 days following the day of receiving information from Bank Gospodarstwa Krajowego on obtaining by the entrepreneur a technological credit promise on pain of expiry of the validity of the technological credit promise.

2. The crediting bank shall send a copy of the agreement for granting of technological credit to Bank Gospodarstwa Krajowego within 7 days from the day of signing the agreement for granting of technological credit or shall inform Bank Gospodarstwa Krajowego that the entrepreneur meets other conditions than the award of the technological premium promise set out in the conditional agreement for granting of technological credit within 7 days following the fulfilment of these conditions by the entrepreneur.

3. Bank Gospodarstwa Krajowego shall conclude the agreement for the payment of technological premium within 30 days following the day of:

- 1) receipt of a copy of the agreement for granting of technological credit, or
- 2) receipt of a notification referred to in Paragraph 2 or award of a technological premium promise depending on which of the two occurs later – if the award of the promise was one of the conditions set out in the conditional agreement for granting of technological credit, or
- 3) award of a technological premium promise – if the award of the promise was the only condition set out in the conditional agreement for granting of technological credit.

4. Bank Gospodarstwa Krajowego can control the entrepreneur within the scope of authenticity of declarations, information, copies of documents submitted to Bank Gospodarstwa Krajowego, as well as implementation of commitments and technological investment.

5. Bank Gospodarstwa Krajowego shall inform the entrepreneur by fax, mail or by electronic means on the time of the planned control not later than 5 days before the planned control date.

6. Control referred to in Paragraph 4 can be conducted only by persons having a written personal authorisation which contains designation of the controlled entrepreneur, issued by the President of Bank Gospodarstwa Krajowego or authorised person.

7. The entrepreneur shall be obliged to provide to the controllers:

- 1) free access to devices and rooms, which are used for the purpose of implementing the technological investment;
- 2) insight into documents related to the object of the control, in particular accounting and tax records, at the same time observing the provisions concerning protection of secrets covered with statutory protection;
- 3) provision of oral and written explanations.

8. Bank Gospodarstwa Krajowego shall present the results of the performed control in the post-control information containing a description of the status quo identified during the control of the entrepreneur and forwards the post-control information to the entrepreneur within the time limits not exceeding 30 days following the completion of the control.

9. The entrepreneur can notify in writing any objections to the post-control information within 14 days following its receipt.

10. Bank Gospodarstwa Krajowego shall take an attitude towards the objections referred to in Paragraph 9 within 14 days following the day of their receipt and shall forward the copy of the final post-control information to the crediting bank and the entrepreneur.

11. The entrepreneur is obliged to repay the awarded technological premium in the amount corresponding to the share of the amount of the technological credit used contrary to its purpose in the total amount of the technological credit determined in the final post-control information together with interest referred to in Article 14(2) of the Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ L 83 of 27.03.1999).

**Article 9.** 1. Bank Gospodarstwa Krajowego can pay a technological premium until 31 December 2015.

2. The technological credit shall be partly repaid in the form of a technological premium awarded from the Technical Credit Fund under the rules established in this Act.

3. Payment of the technological premium shall be made in a form of one-off payment or in instalments depending on the volume of sales referred to in Paragraph 6.

4. Payment of the technological premium or the instalments of the technological premium shall be executed upon the application of the entrepreneur submitted through the crediting bank to Bank Gospodarstwa Krajowego.

5. Application for payment of an instalment of the technological premium can be submitted to Bank Gospodarstwa Krajowego not more frequently than once every 3 months.

6. The technological premium or an instalment of the technological premium shall be paid to the crediting bank up to the amount corresponding to the net value (exclusive of VAT) of sales of goods or services following from the technological investment confirmed with paid invoices for the period from the day of completion of the technological investment to the day of submitting the application for the payment of technological premium or first instalment thereof or the period between the date of the last accepted application for payment of an instalment of the technological premium and the date of the next application for payment of an instalment of the technological premium. The value of sales in foreign currencies shall be calculated into PLN according to the average currency exchange rate announced by the National Bank of Poland on the date of making the payment, and if on that day such an exchange rate was not

announced, according to the last announced exchange rate before that day.

7. The technological premium for the needs of the corporate income tax and personal income tax shall be treated as reimbursement of expenditure to the entrepreneur incurred on purchase or production within the entrepreneur's own scope of the fixed assets and intangible assets referred to in Article 10(5) point 6.

**Article 10.** 1. The level of the technological premium shall not exceed:

- 1) amount of PLN 4 million;
- 2) limits of State aid awarded for investment to a micro-entrepreneur or small or medium-sized entrepreneur established in the provisions issued on the basis of Article 10(2) of the Act of 30 April 2004 on the procedural issues concerning State aid as regards expenditure referred to in Paragraph 5 and 50% of the value of expenditure referred to in Paragraph 6 notwithstanding the provisions of Paragraph 2.

2. The technological premium can cover expenditure referred to in Paragraph 5 and Paragraph 6 less value added tax and excise tax documented with paid invoices and financed by the technological credit, which was incurred after the date of awarding a technological credit premium by Bank Gospodarstwa Krajowego.

3. The technological premium intended to cover the expenditure referred to in Paragraph 5 along with all other aid, including *de minimis* aid, awarded to cover the same expenditure and aid for job creation within the framework of technological investment, shall not exceed the limits of State aid for investment which were set out for micro-entrepreneurs, small or medium-sized entrepreneurs in provisions issued on the basis of Article 10(2) of the Act of 30 April 2004 on the procedural issues concerning State aid.

4. The technological premium intended to cover the expenditure referred to in Paragraph 6 along with other aid, including *de minimis* aid, awarded to cover the same expenditure shall not exceed 50% of the value of that expenditure.

5. The expenditure incurred for the implementation of the technological investment shall cover expenditure incurred by the entrepreneurs implementing this investment on:

- 1) purchase under market terms of new or used fixed assets, excluding means of transport, purchased by the entrepreneur carrying out activity in the transport sector;
- 2) rental, tenancy or leasing of fixed assets other than land, buildings or structures, if the rental, tenancy or leasing agreement provides for an obligation to purchase by the borrower the property right to the fixed asset on expiry of the rental, tenancy or leasing period;
- 3) rental, tenancy or leasing of land, buildings or structures, if the rental, tenancy or leasing will last at least for 3 years following the date of completion of technological investment;
- 4) extension of the existing structures, buildings, machines and devices constituting fixed assets;
- 5) installation and start-up of the machines and devices constituting fixed assets;
- 6) purchase or leasing if the leasing agreement provides for an obligation to purchase on expiry of the leasing period the intangible assets within the meaning of Commission Regulation (EC) No 1628/2006 of 24 October 2006 on the application of Articles 87 and 88 of the Treaty to national regional investment aid, which:
  - a) are assets within the meaning of the Act of 29 September 1994 on accounting (Dz.U. of 2002 No 76, item 694, as amended<sup>3)</sup>) of the entrepreneur and shall be used by the entrepreneur and will remain only in the establishment, in which the technological investment financed by the technological credit was implemented, for at least 3 years from the date of completion of the technological investment;
  - b) were purchased from third persons at a price corresponding to their market value;
  - c) are subject to depreciation pursuant to the provisions of the Act of 29 September 1994 on accounting.

6. The expenditure on implementation of the technological investment shall also cover expenditure on pre-implementation works, studies, experts' opinions, concepts and technical projects performed by external advisors, which are necessary for implementation of the new technology within the framework of technological investment in line with the Commission Regulation (EC) No 70/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises (OJ L 10 of 13.01.2001).

7. Fixed assets, referred to in Paragraph 5 points 1-5 have to be functionally connected with each other and used for the purpose of implementation of the objective set out in the agreement for granting of

technological credit.

**Article 11.** 1. Bank Gospodarstwa Krajowego shall transfer the technological premium for the purpose of the repayment of a part of the capital of the technological credit to the bank account in the crediting bank, indicated in the agreement for the payment of technological premium, after paying the last tranche of the technological credit.

2. Bank Gospodarstwa Krajowego shall transfer the whole technological premium or first instalment of the technological premium to the bank account referred to in Paragraph 1 after the entrepreneur submits the following documents through the crediting bank:

- 1) copies of invoices and evidence of their payment documenting expenditure referred to in Article 10(5) and (6);
- 2) copies of rental, tenancy or leasing agreements if the invoices referred to in point 1 concern expenditure referred to in Article 10(5) point 2 or 3 or 6;
- 3) declaration on the volume of sales, referred to in Article 9(6) for the period from the day of completion of the technological investment implementation to the day of submitting the application for the payment of the entire technological premium or first instalment thereof;
- 4) opinion drawn up on the request of the entrepreneur by the entity listed in Article 5(3) point 1 stating that the new technology was implemented within the framework of the technological investment financed by the technological credit and that the production of goods or provision of services referred to in Article 9(6) has begun on the basis of the observations of the implementation process and analysis of the implementation process documentation;
- 5) information on aid obtained for the implementation of the technological investment by each entrepreneur implementing this investment, specifying the aid obtained for financing of expenditure referred to in Article 10(5) and (6);
- 6) an obligation that manufacturing of goods or provision of services following from the technological investment shall be continued in the voivodeship in which the technological investment was implemented or in the Capital City of Warsaw if the technological investment was implemented in the Capital City of Warsaw, for at least 3 years following the day of completion of the technological investment on pain of the entrepreneur having to repay the paid technological premium;
- 7) declaration on no arrears in the payment of income tax for the financial year preceding the year in which the application for payment of the entire technological premium or first instalment thereof was submitted;
- 8) declaration on no arrears in the payment of VAT at the end of the month preceding the month in which the application for payment of the entire technological premium or first instalment thereof was submitted;
- 9) declaration on no arrears in the payment of excise tax at the end of the month preceding the month in which the application for payment of the entire technological premium or first instalment thereof was submitted;
- 10) declaration on no arrears in the payment of local taxes and charges at the end of the month preceding the month in which the application for payment of the entire technological premium or first instalment thereof was submitted;
- 11) declaration on no arrears in the payment of contributions to the social and health insurance at the end of the month preceding the month in which the application for payment of the entire technological premium or first instalment thereof was submitted.

3. Bank Gospodarstwa Krajowego shall transfer an instalment of the technological premium to the bank account referred to in Paragraph 1 after the entrepreneur submits the following documents through the crediting bank:

- 1) declaration on the volume of sales, referred to in Article 9(6) for the period from the day of submitting the last accepted application for payment of an instalment of the technological premium to the day of submitting the application for the payment of this instalment of the technological premium;
- 2) declaration on no arrears in the payment of income tax for the financial year preceding the year in which the application for payment of this instalment of the technological premium was submitted;
- 3) declaration on no arrears in the payment of VAT at the end of the month preceding the month in which the application for payment of this instalment of the technological premium was submitted;
- 4) declaration on no arrears in the payment of excise tax at the end of the month preceding the month in which the application for payment of this instalment of the technological premium was submitted;

- 5) declaration on no arrears in the payment of local taxes and charges at the end of the month preceding the month in which the application for payment of this instalment of the technological premium was submitted;
- 6) declaration on no arrears in the payment of contributions to the social and health insurance at the end of the month preceding the month in which the application for payment of this instalment of the technological premium was submitted.

**Article 12.** 1. Bank Gospodarstwa Krajowego shall conclude an agreement with the crediting bank establishing the rules of cooperation in line with the standard agreement approved by the Minister competent for economy, within 30 days following its receipt.

2. Agreement referred to in Paragraph 1 shall provide, in particular, for the obligation to transfer by the crediting bank the information and documents necessary for the Bank Gospodarstwa Krajowego to fulfil its reporting and control obligations following from the provisions on awarding State aid and provisions concerning the disbursement of resources from the European Union budget.

**Article 13.** In the case of issues not regulated in this chapter, the provisions of the Banking Act of 29 August 1997 (Dz. U. of 2002 No 72, item 665, as amended<sup>4)</sup>) shall apply to awarding technological credit and performing activities related to the implementation of the agreement for granting of technological credit, including establishment of securities.

### Chapter 3

#### Technological Credit Fund

**Article 14.** 1. A State special purpose fund shall be established in the form of a bank account under the name "Technological Credit Fund", hereinafter referred to as "the Fund".

2. The Minister competent for economy shall be the administrator of the Fund.

3. Bank Gospodarstwa Krajowego shall perform bank servicing for the Fund.

4. The Fund administrator shall conclude an agreement with the Bank Gospodarstwa Krajowego establishing the scope of activities performed by the Bank Gospodarstwa Krajowego and remuneration for the Fund servicing.

5. The remuneration referred to in Paragraph 4 shall be determined in an agreement with the Minister competent for public finance.

**Article 15.** 1. The Fund resources shall consist of:

- 1) subsidies from the State budget in the amount established in the Budgetary Act;
- 2) interest on deposit accounts of the Fund's resources in banks;
- 3) income from investment of Fund's resources in securities issued by the Treasury or money market funds shares/units referred to in Article 178 of the Act of 27 May 2004 on investment funds (Dz. U. No 146, item 1546, as amended<sup>5)</sup>);
- 4) other income.

2. The resources of the Fund shall be allocated to:

- 1) payment of the technological premium;
- 2) remuneration for Bank Gospodarstwa Krajowego for bank services concerning the Fund.

**Article 16.** 1. The basis of Fund's financial economy is an annual financial plan drawn up for each financial year.

2. The annual financial plan, in particular, shall establish:

- 1) revenue and expenditure;
- 2) the standing of the working capital of the Fund at the beginning and at the end of a financial year;
- 3) liabilities and commitments.

3. The draft of the annual financial plan shall be drawn up by the Fund's administrator.

4. The expenditure of the Fund following from the financial plan shall be made under the owned financial resources covering the current income and the resources remaining after previous periods.

5. Report on execution of the annual financial plan of the Fund shall be drawn up by the Fund's administrator within time limits and under the rules established in separate provisions of law.



6. If the resources accumulated by the Fund are not periodically used for the purposes indicated in Article 15(2), the administrator of the Fund can make long-term interest-bearing deposits in banks and invest the resources of the Fund in securities issued by the Treasury or money market funds shares/units referred to in Article 178 of the Act of 27 May 2004 on investment funds.

7. Long-term interest-bearing deposits in banks and investments of the resources of the Fund in securities issued by the Treasury or money market funds shares/units shall not prejudice timely payment of resources for the purposes referred to in Article 15(2).

8. Bank Gospodarstwa Krajowego shall submit to the Minister competent for economy until the end of the month following after each quarter, a report on execution of the financial plan of the Fund.

9. Minister competent for economy shall submit the report referred to in Paragraph 8 to the Minister competent for public finance within a month from its receipt.

## Chapter 4

### Status of research and development centre

**Article 17, 1.** An entrepreneur, who is not a research and development entity and does not have the status of research and development entity within the meaning of the Act of 25 July 1985 on research and development entities (Dz. U. of 2001 No 33, item 388, as amended<sup>6)</sup>) and carries out research or development works can be awarded the status of a research and development centre, notwithstanding the provisions of Paragraph 2.

2. The status of research and development centre can be awarded to an entrepreneur referred to in Paragraph 1, hereinafter referred to as "the entrepreneur":

- 1) whose net income (exclusive of VAT) from sales of goods, products and financial operations for the previous financial year amounted to at least the equivalent of the amount set out in the provisions on accounting as a minimum net income from sales of goods, products and financial operations for the previous financial year of natural persons, private partnerships of natural persons, general partnerships of natural persons and partnerships, to which the provisions on accounting apply;
- 2) whose net income (exclusive of VAT) from sales of its own research and development services within the meaning of provisions on Polish Classification of Products and Services, or industrial property rights awarded to an entrepreneur by the office competent for industrial property constitute at least 20% of income referred to in point 1.
- 3) that does not have arrears in the payment of contributions to the social and health insurance.

3. The meeting of the criteria referred to in Paragraph 2 point 1 and 2 shall be established on the basis of the financial statement for the financial year preceding the year of submitting the application referred to in Paragraph 5, examined by a certified auditor and provided with his opinion, as well as approved by an authorizing body.

4. The Minister competent for economy shall act as the entity entitled to award to the entrepreneur the status of research and development centre.

5. The entrepreneur applying for the status of research and development centre shall submit an application to the Minister competent for economy. The application shall include:

- 1) name of the company, its registered office and address of the entrepreneur;
- 2) identification of the legal form of the entrepreneur;
- 3) tax identification number (NIP);
- 4) National Official Business Register Number (REGON);
- 5) data concerning net income referred to in Paragraph 2 point 1 and 2;
- 6) description of the research or development works conducted by the entrepreneur, including a description of the research and development tasks implemented in the last financial year and their results, as well as a list of obtained accreditations, patents and practical applications.

6. The following documents shall be attached by the entrepreneur to the application referred to in Paragraph 5:

- 1) up-to-date excerpt from the register of entrepreneurs;
- 2) financial statement of the entrepreneur approved in line with separate provisions of law, for the financial year preceding the submission of the application along with a specification of the net income (exclusive of VAT) from sales of the entrepreneur's own research and development services within the meaning of provisions on Polish Classification of Products and Services or industrial property

- rights awarded to an entrepreneur by the office competent for industrial property;
- 3) report from the examination of the financial statement, referred to in point 2, together with an opinion of a certified auditor;
  - 4) declaration on no arrears in the payment of income tax for the financial year preceding the year in which the application was submitted;
  - 5) declaration on no arrears in the payment of excise tax at the end of the month preceding the month in which the application was submitted;
  - 6) declaration on no arrears in the payment of contributions to the social and health insurance at the end of the month preceding the month in which the application was submitted;
  - 7) declaration on no arrears in the payment of local taxes and charges at the end of the month preceding the month in which the application was submitted;
  - 8) in case of a commercial company established as a result of commercialisation or privatisation of a research and development entity – information about the level of tax deductions to which this research and development entity is entitled in the last financial year of this company's activity.

**Article 18.** The Minister competent for economy shall refuse by way of an administrative decision to award the status of research and development centre if the entrepreneur does not meet the requirements referred to in Article 17(2).

**Article 19.** 1. The entrepreneur, who has been awarded the status of the research and development Centre shall submit to the Minister competent for economy the following documents within 14 days after approval of the financial statement for the given reporting year:

- 1) documents referred to in Article 17 (6) points 4-8;
- 2) financial statement of the entrepreneur approved in line with separate provisions of law, for the last financial year specifying:
  - a) net income (exclusive of VAT) from sales of research and development services referred to in Article 17(2);
  - b) difference as compared to the previous financial year within the scope of: income, referred to in (a), expenditure on conducting research and development works, rate of employment in work posts related to carrying out of research and development works;
  - c) amount which was deducted from the income tax for the use of resources of the innovation fund;
- 3) report from the examination of the statement referred to in point 2;
- 4) description of the research or development works conducted by the entrepreneur, including a description of the research and development tasks implemented in the last financial year and their results, as well as a list of obtained accreditations, patents and practical applications.

2. The Minister competent for economy shall transfer the information referred to in Paragraph 1 point 2 to the President of the Office of Competition and Consumer Protection within one month from the day of their receipt.

**Article 20.** 1. The Minister competent for economy shall issue a decision on withdrawing the status of research and development centre if:

- 1) the entrepreneur fails to meet the obligation referred to in Article 19(1);
- 2) analysis of documents submitted on the basis of Article 19(1) demonstrates that the entrepreneur fails to meet the conditions referred to in Article 17(2).

2. The Minister competent for economy shall announce in the Official Journal of the Republic of Poland "Monitor Polski" the communications on the issued decisions concerning the award to an entrepreneur the status of the research and development centre or withdrawal thereof.

**Article 21.** 1. The research and development centre can establish an innovation fund.

2. The innovation fund shall be set up from the monthly allowance amounting to not more than 20% of income generated by the research and development centre in a given month.

3. The allowance referred to in Paragraph 2 shall charge the costs of the operation of the research and development centre.

4. The resources of the innovation fund shall be accumulated on a separate bank account.

5. The equivalent of the allowances made in line with Paragraph 2 shall be transferred by the research and development centre to the bank account of the innovation fund until 15th day of the month

following the month in which the allowance was made.

6. The amount of resources transferred to the bank account referred to in Paragraph 4 shall not be lower than the sum of allowances made in line with Paragraph 2.

7. The resources of the innovation fund accumulated on a bank account referred to in Paragraph 4 shall be used to cover the costs of conducting research and development works, as well as costs related to obtaining a patent for an invention.

8. The Minister competent for economy shall define by way of an Ordinance the types of costs referred to in Paragraph 7, manner and conditions of using the resources of the innovation funds and the information obligations of the entrepreneur and State bodies, taking into account the Community framework for State aid for research and development and innovation.

9. (repealed).

10. (repealed).

## Chapter 5

### Changes in the applicable provisions, transitional and final provisions

**Article 22.** In the Act of 15 November 1984 on agricultural tax (Dz. U. of 2006 No 136, item 969, as amended<sup>7)</sup>) Article 12:

1) Paragraph 2 point 5a shall read as follows:

"5a) entrepreneurs having the status of a research and development centre awarded under the rules established in the provisions on some forms of support for innovative activity as regards taxable items taken over for the purpose of conducting research and development works;"

2) Paragraph 12 shall read as follows:

"12. Agricultural tax exemption referred to in Paragraph 2 point 5a shall constitute de minimis aid referred to in 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 L 379 of 28.12.2006)."

**Article 23.** In the Act of 25 July 1985 on research and development entities (Dz. U. of 2001 No 33, item 388, as amended<sup>8)</sup>) Paragraph 5 from Article 10 shall be repealed.

**Article 24.** In the Act of 12 January 1991 on local taxes and charges (Dz. U. of 2006 No 121, item 844, as amended<sup>9)</sup>) Article 7:

1) Paragraph 2 point 5a shall read as follows:

"5a) entrepreneurs having the status of a research and development centre awarded under the rules established in the provisions on some forms of support for innovative activity as regards taxable items taken over for the purpose of conducting research and development works;"

2) Paragraph 6a shall read as follows:

"6a. Real estate tax exemption referred to in Paragraph 2 point 5a shall constitute de minimis aid referred to in 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 L 379 of 28.12.2006)."

**Article 25.** In the Act of 9 November 2000 on the establishment of the Polish Agency of Enterprise Development (Dz.U. of 2007, No 42, item 275) the followings amendments shall be introduced:

1) Article 4 Paragraph 1 point 4 shall read as follows:

"4) innovative activity within the meaning of provisions on support for some forms of innovative activity;"

2) Article 6 Paragraph 1 point 11 shall read as follows:

"11) undertaking, supporting and financing of projects within the scope of transfer of new technologies within the meaning of provisions on support for some forms of innovative activity."

**Article 26.** In the Act of 30 October 2002 on forestry tax (Dz. U. No 200, item 1682, as amended<sup>10)</sup>) Article 7:

1) Paragraph 2 point 6 shall read as follows:

"6) entrepreneurs having the status of a research and development centre awarded under the rules

established in the provisions on some forms of support for innovative activity as regards taxable items taken over for the purpose of conducting research and development works.”;

2) Paragraph 6 shall read as follows:

“6. Forestry tax exemption referred to in Paragraph 2 point 6 shall constitute de minimis aid referred to in 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 L 379 of 28.12.2006).”.

**Article 27.** In the Act of 8 October 2004 on principles of science financing (Dz. U. No 238, item 2390, as amended<sup>11)</sup>) Article 2 point 9 (g) shall read as follows:

“g) other organisational units not listed in (a)-(f) but having legal personality and the registered office in the Republic of Poland, including entrepreneurs having the status of the research and development centre awarded on the basis of provisions on some forms of support for innovative activity;”.

**Article 28.** In the Act of 29 July 2005 on some forms of support for innovative activity (Dz. U. No 179, item 1484 and of 2006, No 107, item 723) Article 10(2) point 1 shall read as follows:

“1) payment of the technological premium;”.

**Article 29.** Cash resources accumulated on the bank account of the Technological Credit Fund established on the basis of the Act of 29 July 2005 on some forms of support for innovative activity shall constitute the cash resources of the Technological Credit Fund set up on the basis of Article 14(1) of this Act.

**Article 30.** The Technological Credit Fund established on the basis of the Article 14(1) of this Act shall take over the assets and obligations of the Technological Credit Fund set up on the basis of the Act of 29 July 2005 on some form of support for innovative activity.

**Article 31.** 1. Repayment of the capital instalments, interest on the awarded technological credits, interest on deposit accounts of the Fund’s resources in banks and other income constituting the resources of the Technological Credit Fund established on the basis of the Act of 29 July 2005 on some forms of support for innovative activity shall constitute the revenue of the Technological Credit Fund set up on the basis of Article 14(1) of this Act.

2. The expenditure determined for the Technological Credit Fund established on the basis of the Act of 29 July 2005 on some forms of support for innovative activity shall constitute the income and expenditure of the Technological Credit Fund set up on the basis of Article 14(1) of this Act.

**Article 32.** Bank Gospodarstwa Krajowego shall write off, on behalf of the Minister competent for economy, the technological credit awarded by Bank Gospodarstwa Krajowego until the day of entry into force of the Act from the resources of the Technological Credit Fund operating on the basis of the Act of 29 July 2005 on some forms of support for innovative activity. The write-offs shall be made in line with the rules set out in Articles 33 and 34.

**Article 33.** 1. Bank Gospodarstwa Krajowego shall write off some part of the technological credit in instalments to the amount corresponding to 20% of the net value declared in invoices submitted not more than twice a year by the debtor which document the sales of goods or services created as a result of the technological investment financed by the technological credit together with the confirmation of making the payment.

2. The total amount of the technological credit write-off shall not exceed:

- 1) equivalent in PLN of EUR 1 million calculated according to the average currency exchange rate announced by the National Bank of Poland on the date of the write-off;
- 2) 50% of the amount of the used capital of the technological credit;
- 3) in a given calendar year - the ratio of 10% of the amount of the capital of the used technological credit and number of years, which elapsed from the day of granting the technological credit to the entrepreneur;
- 4) 30% of expenditure referred to in Paragraph 7 in case of technological investment implemented in Warsaw or Poznań, notwithstanding Paragraphs 3-6;

- 5) 40% of expenditure referred to in Paragraph 7 in case of technological investment implemented in Wrocław, Kraków or Gdańsk-Gdynia-Sopot, notwithstanding Paragraphs 3-6;
- 6) 50% of expenditure referred to in Paragraph 7 in case of technological investment implemented on the areas not listed in points 4 and 5, notwithstanding Paragraphs 3-6.

3. Aid in the form of write-off referred to in Paragraph 1 shall be subject to summing up with other State aid obtained by the entrepreneur in other forms and from other sources allocated to a technological investment being the object of the technological credit or to creation of new jobs related to this investment and it cannot exceed in total the limits referred to in Paragraph 2 points 4-6 and in Paragraphs 4-6;

4. In the case of a write-off concerning a technological credit granted to a technological investment in the automotive sector the maximum level of State aid amounts to 30% of the limits referred to in Paragraph 2 points 4-6 if the value of the total gross State aid referred to in Paragraph 3 exceeds the equivalent of EUR 5 million.

5. In the case of a write-off concerning a technological credit granted to a technological investment in the shipbuilding sector the maximum level of State aid amounts to 22.5% of the expenditure referred to in Paragraph 7.

6. If the write-off of the technological investment concerns a micro-entrepreneur, small or medium-sized entrepreneur within the meaning of the Commission Regulation (EC) No 70/2001/EC of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises (OJ L 10 of 13.01.2001) amended with the Regulation No 364/2004/EC of 25 February 2004 (OJ L 63 of 28.02.2004), hereinafter referred to as "Regulation No 70/2001" the maximum level of the limits referred to in Paragraph 2 points 4-6 shall be increased by 15 percentage points gross, excluding entrepreneurs operating in the transport sector.

7. The write-off can cover the following expenditure incurred in relation to the technological investment less relevant VAT and excise tax, which are documented with paid invoices:

- 1) for purchase under market terms of new or used fixed assets, excluding means of transport, for entrepreneurs carrying out activity within the scope of transport;
- 2) for extension or modernisation of the existing fixed assets;
- 3) for installation and start up of the fixed assets;
- 4) for pre-implementation works, including the necessary studies, experts' opinions, concepts and technical projects directly and exclusively related to the implementation of a new technology, which forms the basis for the implementation of the technological investment financed by the technological credit and production costs necessary for the technological legalisation of the product (good or service) created as a result of this investment;
- 5) for purchase of intangible assets in the form of: patents, licences, non-patented technical, technological knowledge or knowledge within the scope of organisation and management, which in case of an entrepreneur who is not a micro-entrepreneur, small or medium-sized entrepreneur within the meaning of Regulation No 70/2001 cannot exceed 25% of expenditure, referred to in point 1 and 2 on condition that:
  - a) they will constitute the property of the debtor and will be used by the debtor only in the sub-region within the meaning of the Nomenclature of Territorial Units for Statistics (NTS), in which the technological investment financed by the technological credit was implemented for a period of at least 5 years from the day of completing the investment;
  - b) they were purchased from third parties under market terms;
  - c) they are subject to depreciation pursuant to the provisions on accounting.

8. The write-off of a part of the technological credit for the needs of income tax shall be treated as reimbursement of expenditure to the entrepreneur incurred on purchase or production within their own scope of the fixed assets and intangible assets referred to in Paragraph 7 point 5.

**Article 34.** The write-off shall be made provided that the debtor submits the following documents:

- 1) invoices documenting expenditure referred to in Article 33(7);
- 2) invoices documenting sales of goods or services created as a result of the technological investment financed by the technological credit respectively for the period from completing this investment until the day of the write-off or the period from the last write-off until the day of the next write-off;
- 3) an opinion drawn up by the scientific entity, a research and development centre or an association of science and technology of nation-wide range, whose scope of activity is related to the technological investment financed by the technological credit, confirming the use of the new technology for which

the technological credit was granted;

- 4) information about State aid awarded for the implementation of the technological investment financed by the technological credit respectively for the period until the day of the first write-off or the period from the day of the last write-off until the day of the next write-off;
- 5) an obligation that the economic activity related to the technological investment financed by the technological credit will be conducted for at least 5 years following the day of its completion on pain of repayment of the written off amount of the technological credit;
- 6) declaration issued by the head of a relevant fiscal office on no arrears in the payment of taxes respectively for the period from completing this investment until the day of the write-off or the period from the last write-off until the day of the next write-off;
- 7) declaration of a relevant voivode (mayor, president of the city) on no arrears in payment of taxes and local charges;
- 8) declaration of a relevant local branch of the Social Insurance Institution on no arrears in the payment of contributions to the social and health insurance respectively for the period from completing this investment until the day of the write-off or the period from the last write-off until the day of the next write-off.

**Article 35.** 1. A commercial company established as a result of commercialisation or privatisation of a research and development entity shall be awarded the status of the research and development centre for the period until the day of processing its application for awarding this status, without the need to meet the conditions established in Article 17(2).

2. The provision included in Paragraph 1 shall apply provided that the company submits an application within 15 months from the day of its transformation. If the application is not taken into account, the company is obliged to pay taxes and charges payable for the period of exemption within a month from the day on which the decision on the application comes into force.

3. The entrepreneurs who have been awarded the status of the research and development centre on the basis of the Act of 29 July 2005 on some forms of support for innovative activity shall keep the status of the research and development centre on the basis of the Act.

**Article 36.** For cases that were launched and not completed, including applications for awarding the status of a research and development centre, submitted before the day of entry into force of the Act and not processed, the provisions of this Act shall apply.

**Article 37.** The Act of 29 July 2005 on some forms of support for innovative activity (Dz. U. No 179, item 1484 and of 2006, No 107, item 723) shall be repealed, except for Articles 9-11 which shall be repealed as of 31 December 2008.

**Article 38.** The Act shall come into force after 14 days following its announcement, except for Articles 14-16 and Articles 29-31, which shall come into force as of 1 January 2009.

<sup>1)</sup> This Act amends the following Acts: Act of 15 November 1984 on agricultural tax, Act of 25 July 1985 on research and development entities, Act of 12 January 1991 on local taxes and charges, Act of 9 November 2000 on the establishment of the Polish Agency for Enterprise Development, Act of 30 October 2002 on forestry tax, Act of 8 October 2004 on the principles of science financing and Act of 29 July 2005 on some forms of support for innovative activity.

<sup>2)</sup> Amendments to the above-mentioned Act were published in Dz. U. of 2004 No 273, item 2703, of 2005 No 85, item 727 and No 179, item 1484 and of 2007 No 115, item 795.

<sup>3)</sup> Amendments to the above-mentioned Act were published in Dz. U. of 2003 No 60, item 535, No 124, item 1152, No 139, item 1324 and No 229, item 2276, of 2004 No 96, item 959, No 145, item 1535, No 146, item 1546 and No 213, item 2155, of 2005 No 10, item 66, No 184, item 1539 and No 267, item 2252, of 2006 No 157, item 1119 and No 208, item 1540 and of 2008 No 63, item 393.

<sup>4)</sup> Amendments to the above-mentioned Act were published in Dz. U. of 2002 No 126, item 1070, No 141, item 1178, No 144, item 1208, No 153, item 1271, No 169, item 1385 and 1387 and No 241, item 2074, of 2003 No 50, item 424, No 60, item 535, No 65, item 594, No 228, item 2260 and No 229, item 2276, of 2004 No 64, item 594, No 68, item 623, No 91, item 870, No 96, item 959, No 121,

item 1264, No 146, item 1546 and No 173, item 1808, of 2005 No 83, item 719, No 85, item 727, No 167, item 1398 and No 183, item 1538, of 2006 No 104, item 708, No 157, item 1119, No 190, item 1401 and No 245, item 1775 and of 2007 No 42, item 272 and No 112, item 769.

- 5) Amendments to the above-mentioned Act were published in Dz. U. of 2005 No 83, item 719, No 183, item 1537 and 1538 and No 184, item 1539, of 2006 No 157, item 1119 and of 2007 No 112, item 769.
- 6) Amendments to the consolidated text of the above-mentioned Act were published in Dz. U. of 2002 No 74, item 676, No 113, item 984, No 153, item 1271, No 200, item 1683 and No 240, item 2052, of 2004 No 238, item 2390, of 2005 No 164, item 1365 and No 179, item 1484, of 2006 No 104, item 708 and 711 and of 2007 No 134, item 934.
- 7) Amendments to the consolidated text of the above-mentioned Act were published in Dz. U. of 2006 No 191, item 1412, No 245, item 1775 and No 249, item 1825 and of 2007 r. No 109, item 747.
- 8) Amendments to the consolidated text of the above-mentioned Act were published in Dz. U. of 2002 No 74, item 676, No 113, item 984, No 153, item 1271, No 200, item 1683 and No 240, item 2052, of 2004 No 238, item 2390, of 2005 No 164, item 1365 and No 179, item 1484, of 2006 No 104, item 708 and 711 and of 2007 No 134, item 934.
- 9) Amendments to the consolidated text of the above-mentioned Act were published in Dz. U. of 2006 No 220, item 1601, No 225, item 1635, No 245, item 1775, No 249, item 1828 and No 251, item 1847 and of 2008 No 93, item 585.
- 10) Amendments to the above-mentioned Act were published in Dz. U. of 2002 No 216, item 1826, of 2005 No 143, item 1199, No 164, item 1365 and No 179, item 1484 and of 2006 No 245, item 1775 and No 249, item 1825.
- 11) Amendments to the above-mentioned Act were published in Dz. U. of 2004 No 273, item 2703, of 2005 No 85, item 727 and No 179, item 1484 and of 2007 No 115, item 795.