

**REGULATION  
ON DETERMINING CRITERIA FOR GRANTING THE INCENTIVES FOR  
ATTRACTING DIRECT INVESTMENTS IN THE FOOD MANUFACTURING  
BUSINESS**

*(Official Gazette of the Republic of Serbia, No. 1/2019)*

**I. INTRODUCTORY PROVISIONS**

**Scope of Regulation**

**Article 1**

This Regulation specifies the criteria, conditions and method of attracting direct investments in the food manufacturing business and maintenance of records on incentives approved.

**Definitions**

**Article 2**

The terms used in this Regulation shall have the following meaning:

- 1) Direct investments, within the meaning of this Regulation, are the investments in material and non-material assets of companies, in compliance with this Regulation, with the aim of initiating a new business activity, expanding the existing capacities or expanding the production to include new products and manufacturing processes, as well as with the aim of acquiring assets which are directly related to the company which has terminated its operations or would terminate its operations if a third person hadn't bought it under market conditions, and whereby new employment is ensured. Acquisition of stakes or shares in a company shall not be considered to be a direct investment within the meaning of this Regulation;
- 2) An investment project is a project through the realization of which a direct investment is realized, and which is described in the business plan which is to be submitted enclosed with the application for incentive granting and which shall mandatorily include a detailed description of the elements of direct investment, as well as the elements for an expert analysis of the investment project, in compliance with this Regulation;
- 3) An investor is a domestic or a foreign company which is submitting an application for incentive granting with a view to realizing an investment project, through the Beneficiary of funding which is a party related to it. In cases of Investors which are companies with their seats in the Republic of Serbia, they can at the same time be the beneficiaries of incentive funds;
- 4) A beneficiary of incentive funds is a company with its seat in the Republic of Serbia;
- 5) A small economic entity is an economic entity with less than 50 employees and the annual turnover or total annual balance sheet worth less than EUR 10 million, in compliance with the regulation governing state aid (hereinafter: a small company);

- 6) A medium-sized economic entity is an economic entity with 50 to 250 employees and with the annual turnover which does not exceed EUR 50 million or the total annual balance sheet worth less than EUR 43 million in compliance with the regulation governing the state aid (hereinafter: a medium-sized company);
- 7) A large economic entity is an economic entity with more than 250 employees and with the annual turnover exceeding EUR 50 million or the total annual balance sheet worth more than EUR 43 million in compliance with the regulation governing the state aid (hereinafter: a large company);
- 8) Food Manufacturing Business, for the purpose of the regulation governing the classification of business activities, includes the processing of products of agriculture, forestry and fishery for the purpose of obtaining food for humans or animals including the production of various intermediate products. Exceptionally, for activities considered to be the retail sale of products of producers who own their retail stores (for example, those performed in bakeries, pastry shops or butchers selling their own products), incentive funds, in terms of this Regulation, may not be granted;
- 9) Investments in material assets is the investments made in land, buildings, production plants, machines and equipment, in compliance with regulations governing state aid, which shall be recognized as eligible costs of investment, if used solely by the beneficiary of incentive funds (greenfield or brownfield investments);
- 10) Investments in non-material assets is the investments in patents and licenses in compliance with the regulations governing state aid, which are recognized as eligible costs of investment, providing that amortisation is calculated on these assets, providing that they are used solely by the beneficiary of incentive funds, providing that they are accounted for in the balance sheets of the beneficiary of incentive funds over a minimum period of five years or three years in the case of small and medium-sized companies, and which were bought under market conditions from the third parties;
- 11) New employees whose employment is related to the investment project represent the net increase of the number of domestic nationals employed for an indefinite period of time with full working hours with the beneficiary of incentive funds over the period of realisation of the investment project, compared against the highest number of persons employed for a definite period of time and for an indefinite period of time over a period of 12 months preceding the submission date of the application for incentive granting;
- 12) A single investment project is each direct investment realized by the beneficiary of incentive funds or a company related to them, over a period of three years from the initial date of realisation of the previous investment project for which incentive has been granted, in compliance with a previously concluded agreement on incentive granting in the territory of the same or a neighbouring local self-government unit;
- 13) The development level of a local self-government unit in which an investment project is realized i.e. the classification of local self-government units according to the level of their development is the level determined according to the regulations governing the single list of development levels of the local self-government units which is valid on the submission date of the application for incentive granting;

14) The realisation period of an investment project is the period defined by the agreement on granting incentive funds, in compliance with this Regulation;

15) Agreed salary represent the basic salary of the newly employed persons which is at least 20% higher than the minimum salary in compliance with the regulations governing employment;

16) Equipment being imported based on the investor's contribution is the equipment not older than three years, which the investor imports and invests as its investment in a company. The equipment which is being imported by a large company as the contribution of the investor, which is the beneficiary of incentive funds according to the agreement on incentive granting, must be new.

## **Eligible Costs**

### **Article 3**

The eligible costs are:

- 1) Investments in material and non-material assets starting from the submission date of the application for incentive granting until the expiration date of the period for realisation of investment project, in compliance with the agreement on incentive granting (hereinafter: the eligible investment costs) or alternatively
- 2) Gross salaries for the newly employed persons over the period of two years after the achievement of full employment with the beneficiary of incentive funds (hereinafter: the eligible costs of gross salaries).

The rental costs of the business premises in which the investment project is realized during the project realisation period shall additionally be taken into account in case of an investment, on condition that the rental period from the expiration date of the period for investment project realisation is not shorter than five years for the large companies i.e. three years for small and medium-sized companies.

The costs related to the acquiring of a leased property, except land and buildings, are taken into consideration only if the lease takes the form of a financial lease and includes the obligation to purchase property at the end of the lease period, where the costs incurred under this basis during the realization period of the project.

In case of purchasing property of a company which has ceased its operations or would have cease its operations if it weren't bought, the eligible costs shall be the costs of assets' purchasing by a third person under market conditions.

Eligible costs of an investment into non-material assets for large companies can be recognized up to 50% of the total amount of eligible costs of the investment, and in cases of small and medium-sized companies, up to 100% of the eligible investment costs.

The costs which are related to purchase of passenger vehicles and means of transport are not considered to be eligible investment costs.

Assets acquired by a company based on investment following the submission form for incentive granting, excluding land and buildings, must be new.

The restriction referred to in paragraph 7 of this Article shall not pertain to the small and medium-sized companies or to the cases of purchases of companies' assets referred to in Article 2, paragraph 1, line 1) of this Regulation.

Eligible costs of gross salaries referred to in paragraph 1, line 2) of this Article represent the total amount that the beneficiary of incentive funds actually pays for the work of an employee and include the gross salary i.e. the salary which includes taxes and contributions for mandatory social insurance which are paid from the salary, as well as contributions which are paid on the salary.

When calculating the eligible costs of an investment, the prices reduced by the amount of public revenues are taken into account.

## **II. INCENTIVE FUNDS AMOUNT AND THE RIGHT TO PARTICIPATION IN INCENTIVE GRANTING PROCEDURES**

### **Sources of Funds for Attracting Direct Investments**

#### **Article 4**

The incentive funds for attracting direct investments in the food manufacturing business for the implementation of this Regulation are provided in the budget of the Republic of Serbia (hereinafter: the funds).

#### **Right to participate in funds granting procedure**

#### **Article 5**

The right to participate in funds granting procedure have investors who report investment projects in the food manufacturing business providing that prior to commencing the realization the investment project they apply for funds granting in the manner and under conditions in accordance with this Regulation.

The beneficiary is obliged to provide a minimum of 25% of the eligible costs from own resources or from other sources which do not contain state aid.

Funds may not be granted to a large company before having determined by means of inspection of documentation that funds granting has effective supportive effect i.e. that it has an impact on:

- 1) A significant increase of the scope of the project, or
- 2) A significant increase of the total amount of funds invested by the beneficiary of incentive funds into the project, or
- 3) A significant speeding up of project realisation, or
- 4) Realisation of a project which could not be realised without funds granting.

### **Exemptions from the Right to Funds Granting**

#### **Article 6**

The following investors and beneficiaries of incentive funds are exempted from the right to funds granting:

- 1) Companies in difficulties, within the meaning of regulations governing the rules for state aid granting;
- 2) Those with mature and outstanding tax liabilities in the Republic of Serbia;
- 3) Those in which the Republic of Serbia, an Autonomous Province or a local self-government unit has a capital share;
- 4) Those which are obliged to repay the unallowed state aid;
- 5) Those with which agreements on incentive funds granting has been terminated, except in cases of terminations by mutual consent.

### **Companies Eligible for Incentive Funds Granting**

#### **Article 7**

Funds can be granted to company which fulfils the criteria and conditions defined by this Regulation, and:

- 1) Is registered with the Serbian Business Registers Agency;
- 2) Has submitted application form for funds granting and the business plan for investment project for which is eligible for funds granting in compliance with this Regulation;
- 3) Has not been subject to any previous bankruptcy procedure, reorganisation, insolvency or liquidation, in compliance with the regulations governing bankruptcy and liquidation;
- 4) Has not been granted funds for the same eligible costs.

### **Maximum Permitted Amounts of Funds**

#### **Article 8**

Maximum permitted amounts of funds shall be determined in compliance with regulations governing rules for state aid allocation and in compliance with the criteria provided for to in this Regulations.

The maximum permitted amount of funds for large companies can be determined up to 50% at the maximum of the eligible costs for realisation of an investment project.

The maximum permitted amount of funds for medium-sized companies can be determined at the maximum up to 60% of eligible costs and for small companies at the maximum up to 70% of eligible costs for realisation of an investment project.

In determining the amount of funds that can be granted, cumulation with previously granted state aid shall be taken into consideration in compliance with the regulation governing the rules for granting state aid.

The maximum permitted amount of funds for investments exceeding EUR 50 million may not exceed 25% of eligible costs of investment and for the investments exceeding the amount of EUR 100 million, such percentage cannot exceed 17% of eligible costs of investment and shall be determined as follows:

- 1) For the portion of the eligible costs of investment which exceeds the amount of EUR 50 million – up to 25% of such costs,

2) For the portion of the eligible costs of investment which exceeds the amount of EUR 100 million – up to 17% of such costs.

For direct investment considered as a single investment project, the maximum allowed amount of funds that can be granted to the funds beneficiary or related entity is determined up to the percentage referred to in paragraph 5, item 1) and 2) of this Article.

### **III. PERMISSIBILITY OF FUNDS GRANTING AND CONDITIONS FOR FUNDS GRANTING**

#### **Investment Projects Eligible for Funds Granting**

##### **Article 9**

Funds can be granted to investment projects in the food manufacturing business in the meaning of this Regulation, the minimum value of which is EUR 2,000,000, and which secure the employment of at least 30 new employees for an indefinite period of time related to the investment project.

#### **Conditions for Funds Granting**

##### **Article 10**

Funds can be granted under the following conditions:

- 1) To maintain direct investment in the same location in the local self-government unit for at least five years after realisation of the investment project for the large companies or for at least three years for the small and medium-sized companies, and
- 2) That the achieved number of employees with the beneficiary of incentive funds following the realization of investment project is not reduced over a period of five years for the large companies or over a period of three years for the small and medium-sized companies.

After reaching full employment the beneficiary of incentive funds in accordance with the agreement on incentive funds granting referred to in Article 20 of this Regulation, is obliged to regularly pay the agreed salary referred to in Article 2, paragraph 1, line 15) of this Regulation to each new employee.

#### **Period for Realisation of Investment Projects**

##### **Article 11**

The period for realisation of investment projects and for employment of new employees related to the investment project is up to three years from the submission date of the application for incentive funds granting, which can be extended following the conclusion of the agreement on incentive funds granting for up to five years counting from the submission date of the application for incentive funds granting, based on a duly reasoned request of the beneficiary of incentive funds, providing that the Council for Economic Development (hereinafter: the Council) assesses that the circumstances which have led to the need for the

extension of the period are objective and that the extension of the period is legitimate and appropriate i.e. that it will serve to achieve the objectives of the investment and of the economic development in the most efficient way.

For investments of special importance, the period for the realisation of the investment project and employment of new employees related to the investment project in case of the investments of special importance is up to ten years from the submission date of the application for incentive funds granting.

In case of an extension of the period referred to in paragraph 1 of this Article, the validity of the bank guarantee shall be extended proportionately to the extension of the period for realisation of the investment project.

## **Criteria for Expert Analysis of Investment Projects**

### **Article 12**

The criteria for expert analysis of an investment project shall be as follows:

- 1) References of the investor (recognition in the market, references from the clients, previous experiences and success in the realisation of investment projects, etc.);
- 2) The percentage of unemployed persons with qualifications corresponding to the economic activity of the investor and/or of the beneficiary of incentive funds in the total number of persons in the records of the National Employment Service in the territory of the local self-government unit in which the investment is to be made;
- 3) The number and/or the percentage of highly qualified persons to be employed with the realisation of the investment project;
- 4) The amount and type of investment (greenfield or brownfield investments), and/or the involvement level of the construction industry in the realisation of the investment project;
- 5) The technological level of the economic activity which is subject to the investment, in compliance with the EUROSTAT classification;
- 6) Previous cooperation with the suppliers and the planned share of domestic suppliers;
- 7) Effects of the investment on the employees (employee training and average salary amount);
- 8) Previous and planned volume of international and total turnover (before and after the investment project);
- 9) Financial and market assessment of the investment project (sources of financing, liquidity, profitability, sustainability and investment return period, etc.).

Information referred to in paragraph 1, line 2) of this Article shall be delivered by the National Employment Service to the Development Agency of Serbia (hereinafter: the Agency), at its request.

## **IV TYPE AND AMOUNT OF INCENTIVE FUNDS THAT CAN BE GRANTED**

### **Incentives for Eligible Costs of Gross Salaries for New Jobs Related to the Investment Project**

#### **Article 13**

The beneficiary of incentive funds which opens new jobs related to the investment project in a local self-government unit which is categorized in the first group of classification of local self-government units according to the development level shall be approved funds in the amount of 20% of eligible costs of the gross salaries referred to in Article 3 of this Regulation, in the maximum amount of EUR 3,000 in RSD equivalent per each new job position.

The Beneficiary of incentive funds which opens new jobs related to the investment project in a local self-government unit which is categorized in the second group of classification of local self-government units according to the development level shall be approved funds in the amount of 25% of eligible costs of the gross salaries referred to in Article 3 of this Regulation, in the maximum amount of EUR 4,000 in RSD equivalent per each new job position.

The beneficiary of incentive funds which opens new jobs related to the investment project in a local self-government unit which is categorized in the third group of classification of local self-government units according to the development level shall be approved funds in the amount of 30% of eligible costs of the gross salaries referred to in Article 3 of this Regulation, in the maximum amount of EUR 5,000 in RSD equivalent per each new job position.

The Beneficiary of incentive funds which opens new jobs related to the investment project in a local self-government unit which is categorized in the fourth group of classification of local self-government units according to the development level shall be approved funds in the amount of 35% of eligible costs of the gross salaries referred to in Article 3 of this Regulation, in the maximum amount of EUR 6,000 in RSD equivalent per each new job position

The Beneficiary of incentive funds which opens new jobs related to the investment project in a local self-government unit which is categorized as a devastated area according to its development level shall be approved funds in the amount of 40% of eligible costs of the gross salaries referred to in Article 3 of this Regulation, in the maximum amount of EUR 7,000 in RSD equivalent per each new job position.

The total amount of the incentive funds which can be granted in compliance with this Regulation and of other incentives shall be determined as an absolute amount, without exceeding the upper limit for the allowed total amount of state aid granted in compliance with the regulations governing the rules for state aid granting.

## **Incentives for Eligible Costs of Investments in Fixed Assets**

### **Article 14**

An increase of the grant amount referred to in Article 13 of this Regulation in the amount of up to 20% of the eligible costs of investment in fixed assets may be approved to a beneficiary of incentive funds for investments in fixed assets that are up to EUR 20,000,000.

The amount referred to in paragraph 1 of this Article shall be increased by 10% of the eligible costs for investments in fixed assets that are EUR 20,000,000-40,000,000.

The amount referred to in paragraph 2 of this Article shall be increased by 5% of the eligible costs for investments in fixed assets that are over EUR 40,000,000.

The total amount of funds in compliance with this Regulation and of other incentives shall be determined as an absolute amount, without exceeding the upper limit to which the total amount of state aid is allowed in compliance with the regulations governing the rules for state aid granting.

## **V PROCEDURE OF GRANTING THE FUNDS**

### **Letter of Intent and Notification of Possible Incentives Level**

#### **Article 15**

An investor who intends to realize an investment in the food manufacturing business may submit to the Agency a Letter of Intent relating to the realisation of an investment project.

The Letter of Intent contains in particular data on the investor, on the economic activity, previous investment activities, planned investment amount in the fixed assets, the number of the newly employed and/or of the jobs related to the investment project, planned costs of gross salaries for the new jobs related to the investment project over a period of two years following the achievement of full employment, as well as information referred to in Article 12 of this Regulation, with the exception of information referred to in paragraph 1, lines 2) and 5) of that Article.

If the Letter of Intent does not contain the elements referred to in paragraph 2 of this Article, the Agency shall ask the investor to supplement it, and it may additionally request additional information from the investor, in compliance with this Regulation.

Based on information provided in the Letter of Intent, the Agency shall deliver a notification to the investor on the possible level of incentives, leaving a period of 30 days to state his intentions.

If the Agency determines that it is an investment of special importance, in addition to delivering the notification referred to in paragraph 4 of this Article to the investor, the Agency shall notify the Ministry of Economy (hereinafter: the Ministry) and the Council of the existence of a project of special importance.

The notification of a possible incentive level shall be legally non-binding and shall include information that the Council is to decide on granting and on the amount of funds after having determined all the conditions for granting funds in compliance with this Regulation.

### **Application for Funds Granting and Expert Analysis**

#### **Article 16**

An investor who intends to realize an investment shall submit to the Agency an application for funds granting in the prescribed form, in Serbian language (hereinafter: the Application for Funds Granting) for the purpose of determining eligibility for funds granting, without prior submission of the Letter of Intent, or following the receipt of the notification referred to in Article 15. paragraph 4 of this Regulation.

Based on the Application for Funds Granting, the Agency shall perform an expert analysis of the investment project by applying the criteria referred to in Article 12 of this Regulation.

The Agency shall, *ex officio*, acquire an excerpt from the Central Register of mandatory social insurance based on which the number of employees shall be determined for each month and the type of work engagement with the beneficiary of incentive funds in the period of 12 months preceding the submission date of the Application for Funds Granting.

The Central Register of mandatory social insurance is obliged to deliver the excerpts referred to in paragraph 3 of this Article to the Agency without delay.

The Agency shall notify the investor of the incentive amount that will be proposed to the Council and deliver a draft agreement on incentive funds granting to them.

The expert analysis of the investment project includes an analysis of the possible amount of funds.

## **Application Form for Funds Granting**

### **Article 17**

The Minister in charge of economy (hereinafter: the Minister) shall prescribe the application form for incentive funds granting in accordance with this Regulation.

The following shall be submitted enclosed with the Application for Funds Granting:

- 1) The Business Plan for the investment project for the realisation of which funds are to be granted;
- 2) The original or a certified photocopy of the registered financial statements of the investor for two preceding business years, inclusive of the auditor's report (where there is the legal obligation of auditing) where these are not publicly available, and the foreign legal entity shall submit the original or a certified photocopy of the financial statements with auditor's report (where there is the legal obligation of auditing) and a certified translation into Serbian language or a statement of the investor that it is not obliged to acquire any report from a certified auditor. The investor shall be obliged to deliver the original or a certified photocopy of the consolidated financial statement of the division and a certified translation into Serbian language thereof or the statement that they are not obliged to perform any consolidation in addition to delivering the original or a certified photocopy of individual financial statements of the related parties;
- 3) The original or a certified photocopy of the excerpt from the relevant register of the state where the foreign investor's seat is located, not older than three months, certified by the competent authority, as well as the certified translation of the excerpt into Serbian language;
- 4) A certificate verifying that no previous bankruptcy proceedings, reorganisation or bankruptcy have been initiated against the investor and the beneficiary of incentive funds, and the foreign legal entity shall additionally submit a statement thereof;
- 5) Proof of settlement of tax related liabilities in the Republic of Serbia and for the foreign investors which have not had business operations in the Republic of Serbia, a signed statement that the investor has not conducted business in the Republic of Serbia

and that it does not have a tax identification number assigned to it in compliance with the regulations governing the tax procedure and tax administration;

- 6) A statement that the responsible person of the investor and the beneficiary of incentive funds has not been finally convicted of the criminal offences against labour rights;
- 7) A statement that the investor and the beneficiary of incentive funds have not been convicted of the criminal offences committed against economy;
- 8) A statement that the investor and the beneficiary of incentive funds are not companies in difficulties in terms of the rules on granting state aid.

The Business Registers Agency shall be obliged to allow unrestricted access to the base of financial statements and delivery of aggregate data for groups of companies, branches or geographic areas.

In case that the Agency cannot determine the relevant facts for decision making from the submitted documentation, it may also request the submission of other documentation or other evidence relevant for deciding on the submitted Report for the allocation of funds, if it considers it appropriate.

Documents submitted by foreign companies must be certified in compliance with the regulations of the country in which they were issued and translated into Serbian language by a certified translator.

The date of receipt of the Application for Funds Granting in the Agency shall be considered to be the submission date of the Application for Funds Granting.

### **Determining Compliance with the Formal Conditions for Funds Granting**

#### **Article 18**

The Agency shall determine whether the formal conditions for incentive funds granting are fulfilled.

If the Application for incentive funds has not been submitted in compliance with Article 17 of this Regulation, the Agency shall address a request for supplementing of documentation to the investor.

If the investor fails to comply with the request referred to in paragraph 2 of this Article within the period of 30 days from the request receipt date, the Agency shall reject the Application for incentive funds granting as incomplete with an explanation.

If the Application for the granting of funds does not apply to an investment project in the food manufacturing business or the conditions referred to in Article 6 of this Regulation are fulfilled, the Agency shall reject this application and submit it to the applicant in explanation, within 30 days from the date of receipt.

The complaint against the decision of the Agency referred to in paragraphs 3 and 4 of this Article can be submitted to the Ministry within eight days from the receipt date of the Agency's decision.

The Ministry shall decide on the complaint referred to in paragraph 5 of this Article and shall deliver the response to the Applicant within the period of 30 days from the objection receipt date.

Applications which are complete and permissible the Agency shall deliver to the Council no later than 30 days from the date of receipt.

## **Relationship between the Agency and the Council**

### **Article 19**

The Agency performs administrative, technical and expert tasks for the Council, proposes convening of Council meetings to the President of the Council, prepares materials for consideration and decision making in the Council meetings, provides the required information on the status of investment projects, prepare minutes from the meetings and act in compliance with the decisions of the Council.

The Agency prepares the text of the draft agreement on funds granting.

## **VI AGREEMENT AND INCENTIVE FUNDS PAYMENT METHOD**

### **Agreement on Incentive Funds Granting**

#### **Article 20**

Mutual rights and obligations of the Ministry and the beneficiary of incentive funds shall be regulated by the agreement on incentive funds granting (hereinafter: the Agreement), concluded by the Ministry and the beneficiary of incentive funds.

The text of the draft Agreement the Ministry shall deliver to the Commission for State Aid Control i.e. the Government, for its prior approval.

The Agreement shall include: the scope, amount and schedule of investment and the number of new jobs related to the investment project with the schedule of employment, planned costs of gross salaries for the new jobs related to the investment project over a period of two years following the achievement of full employment, the obligation to pay the agreed salary, the period for the realisation of the investment project, the amount of funds granted, the payment schedule for funds granted, the obligation to report on the change of investment schedule by the expiry of the third quarter of the current year at the latest, information on the collateral, statements on fulfilment of conditions referred to in Article 17 of this Regulation, on the obligation to report, on control of fulfillment of contractual obligations, on termination of Agreement, Force Majeure, environmental protection and on occupational safety and health, on dispute resolution and other issues of significance for realisation of Agreement.

The Agreement shall determine the obligation of the Beneficiary of incentive funds to deliver audio and visual material on the realisation of investment project, which the Agency shall be entitled to use for the purpose of implementing the strategic marketing of economic potentials, promotion and reputation of the Republic of Serbia as an investment location.

The business plan which pertains to the amount, structure and schedule of investment, plan and schedule of employment and projected gross salaries shall be an integral part of the Agreement.

In case of any discrepancy from the agreed obligations envisaged in the business plan during the realisation period, the beneficiary of incentive funds shall be obliged to deliver to the Ministry amendments to the business plan before the moment of signing of an Annex to the Agreement, agreement on mutual regulation of rights and obligations i.e. conclusion of settlement.

The change of contractually determined conditions for withdrawal of the first tranche shall be an exception to the obligation to conclude an annex to the agreement and to deliver amendments and supplements to the business plan, where the total discrepancy from the agreed obligations defined for the first tranche cannot exceed 20% of the determined schedule providing that the total determined obligation of making the investment and employment which pertains to the entire investment project remains unchanged.

In the case of any changes in the schedule of investment and schedule of employment referred to in paragraph 7 of this Article, the beneficiary of incentive funds shall be obliged to deliver a report of an independent certified auditor on the fulfilment level of obligations determined in the Agreement of 80% at the minimum in the year in question.

The Minister may terminate the Agreement in each phase of its realisation, if it is determined that the beneficiary of incentive funds does not comply with the conditions determined by the Agreement, if it is determined that the statements on fulfilment of conditions referred to in Article 17 of this Regulation are not true and if the Council has passed the decision on termination. Where there are duly justified reasons, the Ministry may terminate the Agreement and call on the securities even before the Council's meeting, and shall notify the Council thereof in the first following meeting of the Council.

## **Disbursement of Granted Funds**

### **Article 21**

Payment of granted funds shall be disbursed based on a request submitted (hereinafter: the Payment Request) which shall be delivered to the Ministry by the beneficiary of the incentive funds, in compliance with the Agreement.

Granted funds shall be disbursed in instalments, in compliance with the Agreement and available budget funds.

The instalment amount shall be determined as a percentage of the total amount of funds granted, in the following manner:

- 1) In the amount proportionate to the percentage of investment made into the fixed assets in each year of realization of the investment project, against the total investments in fixed assets defined in the investment project, or
- 2) In the amount proportionate to the percentage of newly employed persons in each year of realisation of the investment project against the total number of newly employed persons defined in the investment project, or

3) As a combination of the above two methods.

The following shall be submitted enclosed to the Payment Request:

- 1) The report of an authorized auditor which is insured against professional liability and any additional pieces of evidence of fulfilment of conditions for instalment payment, and
- 2) The bank guarantee for repayment of disbursed funds.

Upon the request of the Ministry i.e. of the Agency, the Central Register of mandatory social insurance shall deliver reports on the number of newly employed persons and on the types of work engagement with the beneficiary of incentive funds on the delivery date of the payment request for each individual instalment of the funds granted, within five days from the request receipt date at the latest.

Along with the request for disbursement of the first instalment, two signed blank solo promissory notes shall be submitted with signed promissory note authorisation for collection of statutory default interest, in addition to the documents referred to in paragraph 4 of this Article 2 signed blank solo promissory notes with a signed promissory note authorization for the purpose of collecting the statutory default interest shall also be submitted.

Instead of the blank solo promissory notes, the beneficiary of incentive funds may deliver a bank guarantee for the collection of the possible statutory default interest for the amount of the instalment i.e., in case of the last instalment, for the total amount of incentive funds granted.

In the case referred to in paragraph 7 of this Article, the beneficiary of incentive funds shall be obliged to, on the occasion of payment of each instalment, in addition to the bank guarantee for the amount of such instalment, deliver a bank guarantee covering the amount of any possible statutory default interest as well.

For the payment of the final instalment, the beneficiary of incentive funds shall be obliged to deliver a bank guarantee for the total amount of granted funds with the validity period of three years and six months from the Payment Request submission date in case of small and medium-sized companies i.e. with the validity date of five years and six months from the Payment Request submission date in case of large companies.

The Ministry determines regularity and rationality of the Payment Request, in line with the documentation submitted by the beneficiary of incentive funds.

## **Collaterals**

### **Article 22**

The Beneficiary of incentive funds is obliged to attach a bank guarantee issued by a commercial bank that is registered in the territory of the Republic of Serbia, which is unconditional and payable on the first call to the benefit of the Republic of Serbia.

The paid funds must be secured with a bank guarantee, in accordance with the Agreement.

In addition to the bank guarantee, the Beneficiary of the funds shall submit 2 signed blank solo promissory notes with a signed promissory note authorization for the purpose of

collecting the statutory default interest, in accordance with the law that determines the amount of the statutory interest rate, and in the event of failure to fulfill the contractual obligations.

The statutory default interest is calculated for the period from the date of payment of each individual instalment until the day of the refund of the total amount of disbursed funds.

In the event of failure to fulfill the contractual obligations or of a partial fulfillment of contractual obligations, the Ministry may, based on issued bank guarantees and blank promissory notes, collect funds up to the amount of funds disbursed and prescribed statutory default interest.

## **VII CONTROL OF FULFILMENT OF CONTRACTUAL OBLIGATIONS**

### **Reports To Be Submitted by the Beneficiaries of Incentive Funds**

#### **Article 23**

The beneficiary of incentive funds shall be obliged to report to the Ministry on the realisation of investment project for which funds are granted.

The report referred to in paragraph 1 of this Article shall be submitted:

- 1) Within 60 days from the date of submission of a complete Request for Payment for the last instalment i.e. from the date of completion of the investment project, and
- 2) Within 60 days from the date of expiry of the period of guaranteed investment and employment.

The report on realisation of investment project shall include a report on the findings of facts drafted by an independent certified auditor who holds the insurance from professional liability on the project audit, which shall include a verification of investment in respect of the amount and structure thereof, the amount of salaries, taxes and contributions for newly employed paid, the number of newly employed and the total number of employees, as well as a verification of compliance with other provisions of the Agreement (hereinafter: an auditor's report).

The control of data on the number of the newly employed and on the total number of employees shall be conducted by the Ministry based on the report of the Central Register of mandatory social insurance.

The beneficiary of incentive funds shall be obliged to allow the certified auditor to carry out the audit of the compliance with the obligation to make the investment (the amount and structure of investment during the realisation of the project), of the obligation to employ and to maintain the number of employees determined in the Agreement (during the realisation and during the period of guaranteed investment and employment), of the costs of salaries envisaged in the investment project, as well as of discharging of any other contractual obligations and to, for that purpose, enable inspection of the documentation of the beneficiary of incentive funds.

The auditor's report shall include a conclusion with an unqualified and/or adverse opinion, and in case of a qualified opinion i.e. disclaimer of opinion, he/she shall be obliged to provide

an explanation of such qualified opinion and/or to state the facts and reasons for such disclaimer of opinion, in the conclusion thereof.

An audit of an investment project which is an investment of special importance can be performed by an auditing company which employs four licensed certified auditors at the minimum with full working hours.

If it can be concluded from the auditor's report that the beneficiary of incentive funds has not discharged all the contractual obligations during the project realisation period i.e. during the period of guaranteed investment and employment (an adverse opinion, a qualified opinion, a disclaimer of opinion), the Ministry shall deliver a written notice to the beneficiary of incentive funds on the obligation to remove the deficiencies thus identified. During and/or following the project realisation period, in case of a complete discharging of the obligation to invest in respect of the total investment amount determined in the Agreement and a partial deviation in relation to the structure of the investment, the beneficiary of incentive funds shall be obliged to deliver to the Minister an adjusted business plan prior to the submission of a Payment Request and/or report on project realisation.

In case of a failure of the beneficiary of incentive funds to remove the deficiency within 30 days from the receipt of the notice referred to in paragraph 8 of this Article, the Ministry may terminate the Agreement and request that the funds granted which have been paid to the beneficiary of incentive funds be returned, increased by the amount of accrued statutory default interest or alternatively to propose to the beneficiary of incentive funds, in accordance with the decision of the Council, that an annex to the Agreement be concluded.

## **Control and Monitoring of fulfilment of Contractual Obligations**

### **Article 24**

At the request of the Ministry, the Central Register of mandatory social insurance shall deliver the reports on the number of newly employed persons and on the type of work engagement with the beneficiary of incentive funds as at the delivery date of the request for payment for each individual instalment of funds granted, within no later than five days from the date of receipt of the request.

At the request of the Ministry, the Central Register of mandatory social insurance shall additionally deliver to the Ministry the reports on the number of employees and on the type of work engagement with the beneficiary of incentive funds during the project realisation period, as well as during the period of guaranteed investment and employment.

The Ministry shall deliver to the Central Register of mandatory social insurance a list of beneficiaries of incentive funds as per the Agreements.

The Central Register of mandatory social insurance shall be obliged to, at the end of each quarter, deliver to the Ministry reports on the number of employees and on the types of work engagement with the beneficiary of incentive funds, in accordance with the list referred to in paragraph 3 of this Article.

The Ministry shall conduct control of discharging of obligations of the beneficiary of incentive funds referred to in Article 10, paragraph 2 of this Regulation and on the basis of the report of a duly authorized independent auditor.

The Ministry may, at any time during the realisation of the investment project, perform a control of the amount, schedule and structure of investment envisaged by the investment project i.e. by the Agreement, with the aim of controlling the fulfilment of contractual obligations of the beneficiary of incentive funds.

The Ministry shall conduct controls even upon the expiration date of the period for realisation of investment projects in compliance with Article 10, paragraph 1, line 1) of this Regulation and the Agreement.

Copies of reports and information referred to in paragraphs 1, 2, 4, 5, 6 and 7 of this Article shall be delivered to the Agency by the Ministry.

Based on the reports and information referred to in paragraph 8 of this Article, the Agency shall monitor the schedule of realisation of investment projects during the realisation of the investment project.

In cases where it is determined that a Council decision is necessary for further activities in relation to the investment project in question, the Ministry shall prepare the report and the draft measures and shall deliver them to the Council through the Agency.

The report referred to in paragraph 10 of this Article shall include data and information on all the elements of the investment project and shall mandatorily include:

- 1) A summary of the auditor's report on the investment project audit which shall include a verification of compliance with all the provisions of the Agreement;
- 2) Information on the amount of investment made by the beneficiary of incentive funds in relation to the elements of investment listed in the Application, Agreement and/or in the investment project;
- 3) Information on the schedule of employment of new employees for indefinite period of time with the beneficiary of incentive funds;
- 4) An overview of freezing of current accounts of the beneficiary of incentive funds, if any;
- 5) Information on the problems faced by the investor and/or the beneficiary of incentive funds during realisation of investment project;
- 6) Other information of significance for preservation of financial, developmental and bilateral economic interests of the Republic of Serbia which may be threatened by the actions of the beneficiary of incentive funds.

The Ministry shall deliver to the Serbian Business Registers Agency the list of beneficiaries of incentive funds as per the Agreements.

In case of a registration of changes with the beneficiary of incentive funds, the Business Registers Agency shall be obliged to notify the Ministry thereof without delay.

The control of investment amount made into the fixed assets referred to in paragraph 6 of this Article shall be performed in compliance with the Addendum on the method and procedure of

investment amount control, which has been printed with this Regulation and is an integral part hereof.

## **VIII TRANSITIONAL AND FINAL PROVISIONS**

### **Termination of the Regulation Article 25**

The control of fulfilment of contractual obligations as per the concluded agreements on incentive funds granting, as well as the decision making upon concluded controls shall be carried out in compliance with the provisions of this Regulation.

Procedures for incentive funds granting initiated by the date of entry into force of this Regulation shall be completed in compliance with the Regulation on Terms and Conditions for Attracting Direct Investments ("Official Gazette of RS", No. 37/18).

### **Entry into Force**

#### **Article 26**

This Regulation shall enter into force on the eighth day from the date of its publication in the Official Gazette of the Republic of Serbia.

## **ADDENDUM**

### **METHOD AND PROCEDURE FOR INVESTMENT CONTROL**

#### **1. REPORT ON A REALIZED INVESTMENT**

1.2. The finding from the auditor's report on the amount and structure of the realized investment shall comprise of:

- 1) The introductory part: basic information on the beneficiary of incentive funds and on the Agreement, as well as on any Annex/Annexes to the Agreement, if any, the name of the beneficiary of incentive funds, company registration number, tax identification number, agreement number, agreement scope, amount and schedule of investment and period for realisation of investment project, Application for Incentive Granting, and it can additionally include other information as well,
- 2) The list of documentation based on which the findings on realized investment amount has been drawn up,
- 3) Findings on the investment amount and compliance with contractual obligations.

#### **2. DOCUMENTATION BASED ON WHICH AUDITS OF INVESTMENT AMOUNTS ARE PERFORMED**

Controls of the amount of investment envisaged in the investment project, depending on the scope of investment, shall be performed based on the following documentation:

a) To prove that the assets acquired through a direct investment are used solely by the beneficiary of incentive funds:

1) Statement of the responsible person with the beneficiary of incentive funds that the assets acquired through the direct investment are used solely by the beneficiary of incentive funds,

2) Proof that the assets are accounted for in the business books of the beneficiary of incentive funds.

b) To prove the duration of lease: lease agreement.

c) For tangible assets:

A) For the land:

1) Acquisition for compensation (Sale and Purchase Agreement, proof of payment, excerpt from the cadastre and/or from the real estate register), proof that it has been accounted for in the business books of the beneficiary of incentive funds.

2) Acquisition without compensation (legal basis for acquisition without compensation - agreement, proof that it has been accounted for in the business books of the beneficiary of incentive funds),

3) Lease of land (lease agreement, proof that it has been accounted for in the business books of the beneficiary of incentive funds).

B) For buildings and production plants:

- For the greenfield investments:

1) Construction permit where it is envisaged for the concrete type of construction works,

2) Exploitation permit for facilities and/or for the group of facilities for which the construction permit was issued,

3) Proof that the facility has been entered in the real estate folio as the property of the beneficiary of incentive funds,

4) Records of the handover of completed works (records made by the commission for technical inspection of works),

5) Proof of recording in the business books of the beneficiary of incentive funds.

- For the brownfield investments:

Which do not include reconstruction of existing facilities:

1) Sale and Purchase Agreement for the facility and/or title deed or exploitation permit for the facility and/or Agreement on Lease of facility,

2) Proof that it has been accounted for in the business books of the beneficiary of incentive funds;

Which include reconstruction/adaptation of existing facilities:

- 1) Permit for reconstruction/adaptation,
- 2) Exploitation permit,
- 3) Adequately drafted and certified interim payment certificates and final payment certificate with proof of payments,
- 4) Records on acceptance of completed works (the records made by the commission for technical inspection of works),
- 5) Proof that they have been accounted for in the business books of the beneficiary of incentive funds.

C) Plants, machines, equipment:

- New equipment:

- 1) Invoices issued by the suppliers for the beneficiary of incentive funds and/or for the investor; customs clearance documentation in cases of imported equipment,
- 2) Proof that the beneficiary of incentive funds has become the owner of assets,
- 3) Proof that they have been accounted for in the business books of the beneficiary of incentive funds.

- Used equipment:

- 1) Invoices issued by the suppliers for the beneficiary of incentive funds and/or for the investor; customs clearance documentation in cases of imported equipment and proofs of payments effectuated to the supplier,
- 2) In cases of contributions comprising of own assets - proof of ownership, agreement on contribution of equipment for discharging of contractual obligations,
- 3) Proof that the beneficiary of incentive funds has become the owner of assets,
- 4) Proof that they have been accounted for in the business books of the beneficiary of incentive funds.

D) For intangible assets:

- 1) Legal basis for acquisition,
- 2) Suppliers' invoices,
- 3) Evidence that the intangible asset has been accounted for in the business books of the beneficiary of incentive funds,
- 4) Statement of the responsible person with the beneficiary confirming that the intangible assets are used solely by the beneficiary of the incentive funds.

E) Services provided by Service Centres:

1) Sale and Purchase Agreement for the facility i.e. property register or exploitation permit for the facility, Lease Agreement.

The offsetting transactions, such as payments in goods or services which does not involve cash flows, shall not be considered, within the meaning of this Regulation, to be acquisitions of material assets referred to in part 2, paragraph 1, line c) of this Addendum.