

LEGAL ASPECTS CONCERNING THE MIHAIL KOGĂLNICEANU PROGRAMME FOR SMALL AND MEDIUM SIZED ENTERPRISES

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Abstract

The Mihail Kogălniceanu Programme for small and mediu-sized enterprises is a multi-annual programme meant to boost the creation and development of small and medium – sized enterprises, consisting in a credit line, amounting up to RON 125.000 for one SME yearly, with an interest partially subsidised and, possibly, guaranteed by the state. In order to make it easier for SMEs to have access to credits, the Programme regulates a number of facilities for partial subsidization of the interests and, as the case may be, for guaranteeing the credits granted to the SMEs by the credit institutions, as well as a number of specific obligations, namely eligibility criteria that the SMEs should meet in order to benefit from these facilities.

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JEL Classification: *K20*

INTRODUCTION

The global financial and economic crisis is the main cause that has lead to the significant rise, this year, in the bankruptcy rate among SMEs. Statistics and polls made recently confirm that many SMEs, particularly those set up more recently, are affected by the economic crisis whose end cannot yet be foreseen. In Romania as well, many companies go out of business / go bankrupt, some willingly, but, more and more of them because insolvency proceedings are instituted at the request of the creditors. In the struggle to survive on the market, the efficient management of the company's own financial resources and attracting external funding prove to be – alongside the innovation of products and services supplied on the market – really decisive factors, which the entrepreneurs are compelled to take into account. The negative consequences of the economic crisis on the Romanian business environment have materialized through much stricter conditions for credits/loans and limited access for SMEs to credits and guarantees. Consequently, the number of economic operators has diminished on the market as a consequence of bankruptcies among SMEs because of their difficulty in managing cash flows at a time of economic crisis.

The EU efforts to stimulate the business environment during the economic crisis have also been replicated by the national authorities, the latter trying to find legislative solutions to maintain the activity and the jobs among SMEs, as well as to increase their competitiveness.

Therefore, there are more and more requests to the state to intervene in the real economy vigorously and decisively in order to boost/relaunch the economic activity. The state support is particularly expected concerning/ as regards to facilitating the access of SMEs to loans and guarantees. The state is also called upon to take measures towards improving the current business environment. Among the measures envisaged are those concerning the creation of suitable conditions to have access to loans and guarantees for SMEs.

The statistics show that one of the problems facing the economic operators is the difficult

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access to loans, the lack of liquidity for the short term to carry out the business activity. Urgent measures have been envisaged in order to further the access of SMEs to guarantees and loans, as a part of a programme for supporting SMEs, by granting a state subsidized and, as the case may be, partly state guaranteed credit line.

The economic solutions found are supposed to lead to an as significant as possible contribution to the growth of the GDP and consumption, the increase of the number of people with an open-ended employment contract and the decrease of unemployment, all having positive effects on the whole national economy.

THE MIHAIL KOGĂLNICEANU PROGRAMME FOR SMALL AND MEDIUM SIZED ENTERPRISES

In the Romanian Official Gazette, Part I, no.460 of 30 June, 2011, the Emergency Ordinance no. 60/2011 has been published to approve the Mihail Kogalniceanu Programme for Small and Medium Sized Enterprises, a programme aiming to grant facilities for partial subsidization and, as the case may be, for state guarantees for the loans given to small and medium sized enterprises, henceforth called SMEs, by the credit institutions³.

To complete this act, the Government Decision no. 682/2011 has been adopted concerning the Methodological Standards for the Application of the Emergency Ordinance no. 60/2011 approving the Mihail Kogalniceanu Programme for Small and Medium Sized Enterprises².

It is a multiannual programme for the period 2011-2013 meant to encourage and boost the development of SMEs, consisting in the granting of a credit line, amounting up to RON 125.000 lei/SME/year, with a partially subsidized interest and, as the case may be, the credit guaranteed by the state, in order to support the SMEs' access to funding, to meet the liquidity needs for one year of business activity, with a possible extension, in compliance with the Ordinance, without exceeding the duration of the Programme. (Art. 1, Para. 2).

The Programme started in August 2011, after a preliminary period for the selection of the credit institutions interested to participate in the Programme, and for the conclusion of Collaboration Protocols and Conventions with the Programme partners (the National Credit Guarantee Fund for SMEs, the Romanian Counter Guarantee Fund, and the credit institutions.)

The institutions implementing the Programme are the Ministry of Economy, Trade and Business Environment (METBE) through the Agency for SMEs Projects and Programmes Implementation (ASMEPPI) and the Ministry of Public Finance, in partnership with the National Credit Guarantee Fund for SMEs Ltd. NCFI (NCGFSME), as well as the credit funding institutions.

The beneficiaries of this programme are, in compliance with Art.2, Para. 1, Let. a of Emergency Ordinance (EO) no. 60/2011, the economic operators who meet the standards of a SME in compliance with Law no. 346/2004 concerning the stimulation of SMEs creation and development, with the subsequent modifications and additions, and of the ordinance we are discussing.

According to Arts. 2 and 3, of Law no. 346/2004³ modified, an enterprise is any type of organization of an economic activity, patrimonially autonomous and authorized, in compliance

³ The Romanian Government Emergency Ordinance no. 60/2011 approving the Mihail Kogălniceanu Programme for Small and Medium Sized Enterprises published in the Romanian Official Gazette no. 460/2011.

² Government Decision no. 682/2011 has been adopted concerning the Methodological Standards for the Application of the Emergency Ordinance no. 60/2011 approving the Mihail Kogalniceanu Programme for Small and Medium Sized Enterprises published in the Official Gazette no. 489/2011.

³ Law no. 346/2004 on stimulating the creation and development of SMEs, published in the Official Gazette no.681/2004

with the laws in force, to draw merchant acts and perform trade activities to obtain a profit, in a competitive environment, such as: trade companies, cooperative companies, natural persons who perform economic activities independently and family associations authorized in compliance with the laws in force.

In order to be placed in the SMEs category, these companies should fulfil cumulatively the following conditions: to have an average yearly number of employees under 250; to have an annual turnover of up to Euro 8 million or an annual accounting balance result not higher than the Ron equivalent of Euro 5 million, and to observe the criterion of independence, that is no more than 25% of the share capital or of the voting rights can held by another company or more companies together which are not SMEs.

In order to be eligible for the Programme, the SMEs have to fulfil cumulatively certain conditions stipulated in Art. 3 of the Ordinance, namely:

- not to be in difficulty in the light of the Communication from the Commission, Community Guidelines on State Aid for Rescuing and Restructuring Firms in Difficulty;⁴
- if a decision to recover a state aid has been issued against them, and executed, the debt being recovered;
- not to be party to a litigation - as defendants - with the Ministry of Finance, Ministry of Economy, Trade and Business Environment and the partner credit institution;
- the sum of de minimis aids they have benefitted from in a period of 3 fiscal years, including the aid granted based upon the Programme, should not exceed the equivalent in Ron of Euro 200,000;
- not to appear with outstanding credits in the data base of the Banking Risks Central (BRC) ;
- not to appear with major incidents with cheques or bills payable to order in the last 12 months in the data base of the Payment Incidents Central (PIC) ;
- not to have insolvency proceedings instituted against them, according to the provisions of Law no. 85/2006 on insolvency proceedings ;
- to submit to the credit funding institution collateral securities for at least 40% of the credit value ;
- should have been in business for at least 2 consecutive years.

Certain SMEs cannot be selected in the Mihail Kogalniceanu Programme if they do business in certain fields, clearly set out in Art. 4 of the Ordinance and Art. 6 of the Methodological Standards, as follows: financial intermediation and insurance, real estate, gambling and betting, production and selling of arms and ammunition, explosive devices, tobacco, alcohol, fuels, substances under national control, stupefacient plants, substances, mixtures and narcotics, renting and leasing, investigation and protection, and activities excluded by the EU standards, for which de minimis aid cannot be granted⁵.

The Mihail Kogalniceanu Programme sets a guarantee mechanism on whose basis the Ministry of Finance is authorized to assign the National Credit Guarantee Fund for SMEs Ltd. NBF (NCGFSME) the task of issuing guarantees, in the name and on the account of the state, to the benefit of the credit institutions which are to grant credits to the eligible SMEs.

As a procedure, accessing the Programme implies registering on the web page of the Authority for Implementing Projects and Programmes for SMEs (AIPPSME), www.aippimm.ro, by filling out the online form, and – within 30 days from the sending of the confirmation message – the applicant will receive the decision of the AIPPSME. If the application is accepted, the

⁴ Community Guidelines on State Aid for Rescuing and Restructuring Firms in Difficulty(2004/C 244/02), published in the Official Journal of the European Union, C Series, no. 244/2 of 1 October 2004;

⁵ EC Regulation no. 1.998/2006 of 15 December 2006 on the application of Arts. 87 and 88 of the Treaty to de minimis aids, published in the Official Journal of the EU, series L, no. 379 of 28 December 2006.

applicant will be notified on the agreement in principle on subsidizing the interest. Further to receiving the notification from the AIPPSME, the credit institution specified in the application will assess the request and grant the credit line. According to Art.7 of Ordinance no. 60/2011, the credit line can be granted by automatically subsidizing up to 70% of the interest rate related to the credit, but no more than 6,5% per year of the balance of the amount used from the credit line granted. In addition, the applicant who benefits from the credit should provide a tangible security — non-possessory lien on the credit balances of all the accounts opened at the credit funding institution, but only when the Programme beneficiary does not have enough guarantees to access the credit line.

Further to being granted the credit line, the benefitting SME can receive only up to Ron 125,000 lei annually, as follows: 30% of the turnover in the last 12 months, when there are other credit facilities for the short term, or 50% of the turnover in the last 12 months, if there are no other credit lines opened for the short term.

According to Art.2, Para.2 of the Ordinance, the funds provided by the credit line can be used to cover the current expenses of the benefitting SME, such as: payment of taxes, charges, contributions and other amounts owed to the state; expenses concerning the supplies, production, sales; expenses made for works and/or provision of services; expenses regarding the creation, processing and capitalization of stocks; expenses related to salaries or similar to salaries, other operation costs. Drawings from the credit line can be done completely or partially, in accordance with the Programme beneficiary's business funding needs, on the written request of the beneficiary sent to the credit institution.

Every month, the SME benefitting from the Programme shall pay at least 30% of the credit related interest. The credit line shall be paid back no later than one year from the date of credit granting, and can be extended during the period of the Programme.

If the programme beneficiary does not fulfil the payment obligations based on the credit contract, in compliance with Art. 22 of the Methodological Standards, the credit institution can demand enforcement of the guarantee issued by NCGFSME, payment of the guarantee enforcement value being made by the Ministry of Finance from the risk fund made in compliance with Art. 8 of the EO no. 60/2011. Recovery of the amounts paid as a consequence of the enforcement of the guarantees granted within the Programme shall be carried out by the competent bodies of the National Fiscal Administration Agency.

AIPPSME, in its capacity of supplier of the state aid, is required to keep detailed records of the aids granted based on the Programme, for a period of 10 years from the date when the last specific allocation was granted based on the Programme. These records have to contain all the information needed to prove the observance of the conditions required by the European legislation in the field of state aid.

AIPPSME is also required to permanently supervise the states aids granted which are underway and to take the necessary measures against the infringement of the conditions stipulated by the methodological standards.

AIPPSME shall communicate to the Competition Council all the data and information needed in order to monitor the state aids at national level. If there are serious doubts regarding the data communicated by the AIPPSME, the Competition Council can request supplementary data and information, and may also request on-site checks.

The Programme beneficiaries shall be monitored and checked by the SME territorial offices, subordinated to the AIPPSME, according to the Programme control and monitoring procedures.

If, following the checks or notified by the competent state control bodies, the beneficiaries are found to have made incomplete and/or false statements in order to be granted credits and credit

interest subsidization, the de minimis aid granted shall be completely or partially recovered according to the writ of execution stipulated by Art. 12 Para. (4), which shall be submitted to the authorized fiscal bodies of the National Fiscal Administration Agency for recovery.

The beneficiaries of the de minimis aid are required to report to the Territorial Office for SMEs and Cooperatives in the county where the applicant SME is registered the effects of the participation in the Programme for a period of 3 years starting with the year following the granting of the credit line. Based on this information, AIPPSME, as implementation authority, shall assess the conditions for granting Programme facilities for the 12 months of the previous implementation in the annual report regarding the progress and the effects of the Programme.

CONCLUSIONS

As more and more SMEs stay in business, and a favourable environment is created to make the best of the current possibilities of economic development of Romania and stimulation of the business environment, by improving the SMEs' access to funding, there will be positive changes not only regarding the dynamics but also the quality related to the economic capitalization of the outcomes of innovation and research, the development of new products and/or technology transfer related operations, international partnerships, etc⁴.

The advantages of applying this funding solution to the national economy are: facilitation of access to funding for small and medium sized operators, conservation of existing business activities and jobs among SMEs and Authorized Natural Persons, and in addition, the support provided for their competitiveness, as well as the decreasing of arrears owed by SMEs to the state.

According to the most recent data provide by AIPPSME, until 08.10.2012, 6969 application files have been registered in the Programme, of which 6834 have already been assessed and 5824 files have been admitted by AIPPSME. 18 credit files have been concluded with a total value of Ron 2,834,467.72 and 1467 files have been paid⁶.

All these data are yet inferior to what authorities anticipated as they estimated a larger number of applicants (only for 2012, 12,000 applicants).

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⁴ Background note of the Government Emergency Ordinance no. 60/2011, <http://www.cdep.ro>

⁶ Announcement concerning the level of implementation of Mihail Kogălniceanu Programme for SMEs, on 08.10.2012, <http://www.aippimm.ro/categorie/comunicate/comunicate/>