

1291**THE LAW**

of April 30th, 2004, on the procedural
issues concerning public aid

Chapter 1

General provisions

Article 1. The Law defines principles applied to cases of state aid that meets the criteria described in Article 87 section 1 of the Treaty of European Communities, hereinafter referred to as 'public aid', including:

- 1) procedure regarding preparations for notification of draft aid schemes, individual aid projects and individual restructuring aid projects;
- 2) principles of co-operation of the President of Office for Competition and Consumer Protection, hereinafter referred to as the 'President of the Office', with entities developing aid schemes, with authority granting aids, undertaking applying for aids and aid beneficiaries with respect to public aid;

- ¹¹ 1) The following Laws are amended through adoption of this present Law: of January 12th, 1991, on local taxes and duties; of July 26th, 1991, on personal income tax; of February 15th, 1992, on corporate income tax; of October 20th, 1994, on special economic zones; of December 23rd, 1994, on the Supreme Chamber of Control; of January 5th, 1995, on interest relief regarding certain banking credits; of August 8th, 1996, on principles of execution of rights due to the State Treasury; of August 30th, 1996, on commercialisation and privatisation; of May 8th, 1997, on guarantees granted by the State Treasury and by certain legal persons; of August 29, 1997 — Tax ordinance; of November 26, 1998, on public finance; of October 7, 1999, on supporting restructuring of the industrial defence potential and on technical modernisation of the Armed Forces of the Republic of Poland; of September 9th, 2000, on civil acts tax; of March 20th, 2002, on financial support for investments; of October 30th, 2002, on public aid to entrepreneurs of special importance for the job market; and of October 2nd, 2003, on changing the Law of special economic zones and certain other laws.
- 2) This Law represents a partial implementation of the Commission Directive 80/723/EEC of June 25th 1980, on transparency of financial relations between member states and public enterprises (Official Journal of the European Communities, L 195 of 29.07.1980) recently amended with Directive 2000/52/EC (Official Journal of the EC, L 193 of 29.07.2000).
- 3) The data regarding publication of European Union legal acts, included in this Law — as of the date of the Republic of Poland's membership in the European Union — refer to publication of these acts in the Official Journal of European Communities — special edition.

- 3) principles of representation of the Republic of Poland at the Court of Justice and the Court of First Instance in cases regarding public aid;
- 4) principles and methods of returning public aid;
- 5) principles of public aid monitoring.

Article 2. Whenever this Law mentions:

- 1) the Commission — it stands for the European Commission;
- 2) the Council Regulation — it stands for the Council Regulation (EC) No 659/1999 of March 22, 1999, laying down detailed rules for application of Article 93 of the EC Treaty (Official Journal of the European Communities, L 83 of 27.03.1999);
- 3) aid granted on the basis of block exemptions — it stands for the public aid to which the duty of notification does not apply, in accordance with Commission Regulations issued on the basis of article 1 of the Council Regulation (EC) No 994/98 of May 7th, 1998, on application of Articles 92 and 93 of the Treaty establishing the European Community to certain categories of horizontal state aid (Official Journal of the EC, L 142 of 14.05.1998), in particular with:
 - a) the Commission Regulation (EC) No 68/2001 of January 12th, 2001, on the application of Articles 87 and 88 of the EC Treaty to training aid (Official Journal of the EC, L 10 of 13.01.2001),
 - b) the Commission Regulation (EC) No 2204/2002 of December 5th, 2002, on the application of Articles 87 and 88 of the EC Treaty of the European Communities to state aid for employment (Official Journal of the EC, L 337 of 13.12.2002),
 - c) the Commission Regulation (EC) No 70/2001, of January 12th 2001, on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises (Official Journal of the EC, L 10 of 13.01.2001);
- 4) regulation on 'de minimis' aid — it stands for the Commission Regulation (EC) No 69/2001 of January 12th, 2001, on the application of Articles 87 and 88 of the EC Treaty to de minimis aid (Official Journal of European Communities, L 10 of 13.01.2001);
- 5) individual aid — it stands for the aid referred to in Article 1 letter e) of the Council Regulation;
- 6) individual restructuring aid — it means individual aid provided for in the

- restructuring plan that defines activities aimed at restoring an entrepreneur to long-term viability to compete in the market, especially the way of financing such activities, including through provision of public aid;
- 7) an aid scheme — it stands for a normative act that meets criteria referred to in Article 1 letter d) of the Council Regulation;
 - 8) unlawful aid — it means aid referred to in Article 1 letter f) of the Council Regulation;
 - 9) misuse aid — it stands for the type of aid referred to in Article 1 letter g) of the Council Regulation;
 - 10) de minimis aid — it stands for aid that meets requirements of Article 2 of the regulation on ‘de minimis’ aid;
 - 11) the day of aid provision — it stands for the day when an entity seeking public aid gained the right to receive such aid, and when tax relief aid is granted on the basis of a normative act, without a decision required:
 - a) the day when – based on separate regulations – the deadline passes to submit declaration or another document describing the value of aid, with the reservation of letter b),
 - b) the day on which – as per separate regulations – the deadline passes to submit the annual tax return — in case of granting aid in the form of income tax relief,
 - c) the day of actual provision of financial benefit — in case if submitting a declaration or another document defining the value of aid is not obligatory;
 - 12) aid granting authority — it stands for a public administration body or another entity authorised to grant public aid, including a public entrepreneur;
 - 13) amount of aid — it stands for the value of public aid expressed in a monetary amount or for intensity of public aid expressed as a relation of the value of public aid to costs qualified to be covered by public aid;
 - 14) a public entrepreneur — it stands for each business entity conducting business operations, which is influenced in a decisive, direct or indirect way by a public authority. i.e. in particular:
 - a) a state-owned enterprise, a company held in trust by the State Treasury or by a local government unit,
 - b) a joint stock company or a limited liability company, for which the State Treasury or a local government unit or entrepreneurs mentioned in letter a) are entrepreneurs equivalent to dominating entity, in the sense of regulations on competition and consumer protection;
 - 15) notification — it stands for submitting to the Commission a draft of aid scheme, draft of individual aid or draft of individual aid for restructuring, as per

Article 88 of the Treaty of European Communities, together with information necessary for assessing compliance of the public aid with the common market;

- 16) aid beneficiary — it stands for an entity that conducts business operations, irrespective of its organisational and legal form or the way of financing, which received public aid.

Article 3. Principles for acceptability of public aid are defined in regulations of Articles 36, 73 and 86—89 and Article 296 of the Treaty of European Communities.

Article 4. Provisions of the Law are not applicable to public aid provided in agriculture, in the sense of Article 32 of the Treaty of European Communities.

Article 5. 1. De minimis aid does not include public aid granted as part of an aid scheme, individual aid or individual aid for restructuring confirmed by the Commission as per Article 88 of the Treaty of European Communities, nor the aid provided as part of block exemptions.

2. Aid granting authority issues certificates to the aid beneficiary stating that the public aid provided is de minimis aid.

3. The Council of Ministers will define in an regulation the form and content of certificates referred to in point 2 above, as well as times and ways of issuing such certificates, considering the need for assuring transparency of information regarding de minimis aid provided to particular beneficiaries.

Article 6. 1. Public aid granted on the basis of a normative act, which is not an aid scheme, is governed by regulations regarding individual aid, with the reservation of point 2 below.

2. Public aid provided for in a normative act that makes the right to aid dependent exclusively on fulfillment of criteria defined in such an act, without the need to issue a decision or enter into an agreement, or if the decision only confirms acquisition of a right, may be granted if the normative act is an aid scheme approved by the Commission, as per Article 88 of the Treaty of European Communities.

Article 7. 1. A draft aid scheme, a draft of individual aid or draft of individual aid for restructuring, is subject to notification.

2. A draft of aid granted as part of block exemptions is subject to notification if such notification is requested by the authority preparing the aid scheme or the authority granting such an aid.

3. A draft aid scheme that provides for de minimis aid is only subject to submission to the President of the Office, who may within 14 days present any reservations regarding transparency of the rule of aid granting.

4. If a draft of individual aid for restructuring was approved by the Commission in compliance with Article 88 of the Treaty establishing the European Communities, the public aid to be provided as per the restructuring plan is not subject to notification, unless a Commission decision provides otherwise.

Article 8. In case of an aid scheme where a local law contains the legal basis for granting public aid, and detailed conditions of such aid provision were specified in accordance with the Law containing authorisation to issue such an act, subject to notification is only the draft of law specifying detailed conditions of aid provision.

Article 9. Subject to notification are any important amendments confirmed by the Commission, as per Article 88 of the Treaty establishing the European Communities, of an aid, individual aid or individual aid for restructuring, in particular amendments of its form, objective or conditions of granting aid.

Article 10. 1. Regional aid mentioned in Article 87 section 3 (a) and (c) of the Treaty establishing the European Communities, may be granted in the scope following from the regional aid map.

2. The Council of Ministers specifies, by means of a regulation, the regional aid map, defining:

- 1) regions of the country where it is allowed to provide public aid and maximum amounts of aid for such areas, considering in particular the level of Gross Domestic Product per capita in a given area, as well as
- 2) types of economic activity for which aid can not be granted and types of economic activity for which the maximum amounts of aid are other than general maximum amounts for regions, with indication of such amounts, considering that provision of regional aid for certain types of economic activity is especially negative for competitive conditions in the common market.

3. Draft regulation referred to in section 2 is subject to notification.

Article 11. 1. The value of public aid is expressed in an amount of money after re-calculation in a way that allows for establishing the amount that would be obtained by an aid beneficiary if aid was granted in the form of a subsidy.

2. The Council of Ministers will determine, by the way of an regulation, detailed conditions of calculating the value of public aid granted in various forms, considering in particular the need to assure comparability of aid values of aid provided in various forms.

3. Equivalence of aid in EUR is established as per the average exchange rate published by the National Bank of Poland, in force on the day of granting aid.

Chapter 2

Notification procedure

Article 12. 1. Draft of aid schemes and draft of individual aid, including those that provide for granting aid as part of block exemptions, as well as individual aid for restructuring, require an opinion of the President of the Office.

2. The provision of point 1 above is applied accordingly in cases of important change of drafts prior to notification, and in case of aid provided as part of block exemptions — prior to the time when it starts to be granted. Important change of drafts means in particular changing the amount of aid, its form, objective or granting conditions.

3. The opinion referred to in point 1 contains in particular:

- 1) the statement on whether the draft provides for granting public aid;
- 2) the statement regarding compliance of public aid with the common market;
- 3) proposed amendments presented in order to assure compliance of draft provisions with the common market;
- 4) the statement regarding the obligation of draft notification.

Article 13. 1. The entity the application of for opinion as referred to in Article 12 point 1 is respectively:

- 1) for a draft aid scheme — the public administration body that prepares such a draft;
- 2) for individual aid — the authority granting such aid;
- 3) for individual aid for restructuring — the undertaking applying for aid.

2. Attached to the application for opinion is the draft aid scheme or a draft act which is to be the basis for individual aid, in particular — a draft decision or agreement, as well as information necessary for issuing an opinion, in particular those regarding recipients of planned aid, its objective, form, amount and duration.

3. In case of a draft of individual aid for restructuring, attached to the application is information mentioned in point 2, the restructuring plan and opinions of the aid granting authority (authorities) regarding probability of granting such aid on the terms as described in the plan.

4. The Council of Ministers will establish, by the way of an regulation, the detailed scope of information as mentioned in point 2 above, and the elements that should be included in a restructuring plan, considering the requirements defined by the Law of the European Union regarding notification.

Article 14. The President of the Office issues the opinion as mentioned in Article 12 section 1, within 60 days, and in case of a draft of aid scheme — within 21 days of receiving the application together with the attached information and documents, as mentioned in Article 13.

Article 15. 1. The President of the Office, prior to issuing the opinion as mentioned in Article 12 point 1, may request the public administration body preparing the draft aid scheme, and in case of individual aid and individual aid for restructuring — the authority granting the aid, the undertaking applying for aid or to other interested parties, to provide additional clarification and information in a specified time.

2. If entities or authorities referred to in point 1 fail to present additional clarification and information within the specified period, the President of the Office issues the opinion based on available information.

Article 16. 1. Notification of a draft of aid scheme requires acceptance of the Council of Ministers.

2. The Council of Ministers takes a resolution regarding notification after taking cognizance of the opinion of the President of the Office.

3. The Council of Ministers, together with the draft of Law constituting an aid scheme, informs the Marshal of the Sejm about the notification.

Article 17. In case if the President of the Office issues an opinion stating that the draft aid scheme providing for aid as part of block exemptions is non-compliant with the common market, and the entity preparing the draft had not applied for notification, the President of the Office submits his opinion to the Council of Ministers.

Article 18. 1. In case of a draft of individual aid or draft of individual aid for restructuring, the President of the Office submits his opinion without undue delay, as referred to in Article 12 point 1, to the entity the application of for the opinion and to the authority granting aids.

2. Within 14 days of receiving the opinion regarding non-compliance with the common market of an individual aid or of an individual aid for restructuring, the entity the application of for the opinion may apply to the President of the Office to notify such a project, with the exception of point 3.

3. In case if the opinion of the President of the Office on non-compliance with the common market refers to an individual aid or to individual aid for restructuring, the authority or authorities granting the aid may amend the opinion referred to in Article 13 point 3, notifying the President of the Office and the entity the application of for the President's opinion within 14 days of receiving the opinion.

4. The President of the Office does not notify a project:

- 1) of individual aid or individual aid for restructuring — if the deadline referred to in point 2 passes without effect,
- 2) of individual aid for restructuring — in case if it is stated in the amended opinion as mentioned in point 3 that aid cannot be provided.

Article 19. 1. In case if amendments to the scope of public aid are introduced in a draft law constituting an aid scheme notified to the Commission, the Marshal of the Sejm submits the draft with amendments to the Prime Minister; the President of the Office submits the draft with amendments to the Commission for completing the notification, in accordance with Article 20.

2. In case if amendments are introduced to the draft of aid scheme in the part that is not a draft law, or to an individual aid or individual aid for restructuring as notified to the Commission, the entity the application of for notification submits the draft to the President of the Office in order to complete the notification.

Article 20. The President of the Office, through the Permanent Representative of the Republic of Poland at the European Union in Brussels, makes or completes the notification regarding:

- 1) an aid scheme — immediately after the Council of Ministers takes a resolution regarding notification;
- 2) individual aid or individual aid for restructuring — immediately after an opinion is issued on the compliance of aid with the common market, or after application for notification, as referred to in article 18 point 2, with the reservation of Article 18 sections 3 and 4.

Chapter 3

Proceeding before the Commission

Article 21. 1. For procedure at the Commission as mentioned in the Council regulation, hereinafter referred to as the 'proceeding before the Commission', the proper authority is the President of the Office.

2. In relating to the proceeding before the Commission, public administration authority preparing draft aid schemes, authority granting aids that developed individual aid, undertaking applying for aids or other appropriate bodies present the

President of the Office - within an defined time – with information necessary for developing responses to Commission questions, explanations, remarks or positions.

3. The President of the Office consults with the entities mentioned in point 2 the content of responses, explanations, remarks or positions — developed by him based on presented information – for immediate submission to the Commission through the Permanent Representative of the Republic of Poland at the European Union in Brussels.

Article 22. 1. In case of the Commission taking decisions as mentioned in Article 4, Article 7, and Article 10 point 3 and Article 11 of the Council Regulation, the President of the Office informs the appropriate entity immediately, submitting a copy of the decision at the same time.

2. If the Commission issues a recommendation as in Article 18 of the Council regulation, the provision of point 1 applies accordingly.

3. Information of the Commission taking the decisions as in Articles 4 and 7 of the Council Regulation, the President of the Office makes proper announcement in a public IT network.

Article 23. 1. Upon receiving a copy of the Commission decision as referred to in 11 point 1 of the Council Regulation that obliges to stop providing the aid, the authority granting aid immediately stops the provision.

2. Upon receiving a copy of the Commission decision as mentioned in Article 11 point 2 of the Council, that obliges to return the aid, the authority granting aid immediately takes appropriate decision in this respect.

Article 24. 1. Prior to the Commission taking decisions as mentioned in Articles 4 and 7 of the Council Regulation, notification may be withdrawn in case of:

- 1) an aid scheme — at a request of a public administration body developing such a draft, upon acceptance of the Council of Ministers;
- 2) individual aid — at a request of an authority granting aid;
- 3) individual aid for restructuring — at a request of an undertaking applying for aid or provider.

2. The President of the Office informs the Commission immediately on withdrawing a notification decision through the Permanent Representation of the Republic of Poland at the European Union in Brussels.

Chapter 4

Aid recovery granted in non-compliance with the common market and of misused aid

Article 25. 1. An aid beneficiary is obliged to return the amount, representing equivalent of public aid as to which the Commission decided on obligatory recovery, unless, due to an appeal,

implementation of such a Commission decision is suspended.

2. The duty to return aid as mentioned in point 1, also comprises interest as referred to in Article 14 point 2 of the Council regulation.

3. Until the aid beneficiary performs his duty as mentioned in point 1 above, no public aid may be granted to the beneficiary.

Article 26. 1. A copy of the Commission decision on obligatory aid recovery as mentioned in Article 14 of the Council regulation, and a decision issued in cases referred to in Article 9 and Article 16 of the Council Regulation:

- 1) is immediately passed by the President of the Office onto the authority granting aid;
- 2) is immediately presented by the authority granting aid to the aid beneficiary.

2. The President of the Office, publishes – in a public IT network – information on the Commission decision issued, as mentioned in Article 14 of the Council Regulation, and a decision issued in cases referred to in Article 9 and Article 16 of the Council Regulation, as well as information about an aid beneficiary completing the aid recovery.

Article 27. 1. In case of issuing a Commission decision on the obligatory aid recovery as mentioned in Article 14 of the Council regulation, if the aid was granted on the basis of:

- 1) a decision — the issuing body may cancel or change it even without agreement of the parties, or may order aid recovery provided; the provision of Article 253a § 3 and article 256 of the Law of August 29th, 1997 — Tax ordinance (Law Journal No 137, item 926, with later amendments²⁾) does not apply;
- 2) an agreement — the authority granting aid may apply to a court to dissolve the agreement which was the basis for aid or to order the aid to be returned.

2. The provision of point 1 applies also in case if a Commission decision is issued on obligatory aid recovery in cases referred to in Articles 9 and 16 of the Council Regulation.

3. In civil procedure, administrative procedure and at administrative courts, the President of the Office has prosecutor powers as defined in separate regulations.

² Amendments to the Law in question were published in the following Law Journals: 1997 - No 160, item 1083; 1998 – No 106, item 668; 1999 - No 11, item 95 and No 92, item 1062; 2000 - No 94, item 1037, No 116, item 1216, No 120, item 1268 and No 122, item 1315; 2001 - No 16, item 166, No 39, item 459, No 42, item 475, No 110, item 1189, No 125, item 1368 and No 130, item 1452; 2002 - No 89, item 804, No 113, item 984, No 153, item 1271 and No 169, item 1387; 2003- No 130, item 1188, No 137, item 1302, No 170, item 1660 and No 228, items 2255 and 2256; 2004- No 29, item 257, No 64, item 593, No 68, item 623, No 91, item 868, No 93, item 894 and No 116, item 1205.

Article 28. Compulsory collection of an amount that represents an equivalent of the provided aid together with interest is done in accordance with regulations regarding collection procedure in administration or with regulations on court collection procedure.

Chapter 5

Procedure at the Court of Justice

Article 29. 1. The President of the Office is the body appropriate for representing the Republic of Poland in procedures related to public aid at the Court of Justice and at the Court of First Instance, where the Republic of Poland is a party.

2. The President of the Office is the appropriate authority for making appeals – upon acceptance of the Council of Ministers – against Commission decisions to the Court of Justice and the Court of First Instance, in matters related to public aid.

3. The Council of Ministers agrees to make an appeal referred to in point 2 above, considering the position of the entity developing the draft aid scheme, the authority granting aid, the opinion of the President of the Office and opinions submitted by other entities with legal interest related to appealing against the Commission decision.

4. The President of the Office is a body appropriate for appealing against Commission decisions – at request and on behalf of local administration bodies – to the Court of Justice and the Court of First Instance, in matters related to public aid.

5. President of the Office is the appropriate entity for submitting – upon acceptance of the Council of Ministers – cases related to public aid to the Court of Justice on behalf of the Republic of Poland, and to participate in procedures in this respect at the Court of Justice and the Court of First Instance.

6. The Council of Ministers issues acceptance as mentioned in point 5 above, considering the position of te President of the Office.

7. In cases related to public aid, reviewed by the Court of Justice or the Court of First Instance, the President of the Office may use legal replacement. Costs of legal replacement are covered from the state budget in a part administered by the President of the Office, with the reservation of point 8.

8. If the request to appeal is made by a local government body, costs of legal replacement are covered by such a body.

Article. 30. The President of the Office immediately announces in a public IT network the following information regarding procedures at which the Republic of Poland is a party:

- 1) On making an appeal against a Commission decision in matters related to public aid;
- 2) On submitting a case related to public aid to the Court of Justice;
- 3) On decisions of the Court of Justice or the Court of First Instance in public aid cases.

Chapter 6

Monitoring of public aid

Article 31. 1. Monitoring of public aid comprises collecting, processing and transfer of information regarding public aid granted, in particular about its types, forms and amounts.

2. The authority monitoring public aid is the President of the Office.

Article 32. 1. Authority granting aid are obliged to prepare reports on provided public aid and to submit them to the President of the Office. Such reports will in particular include information on aid beneficiaries, as well as types, forms, amounts and appropriation of the aid.

2. In case if an aid beneficiary received aid based on a legal act as mentioned in Article 6 point 2, those obliged to prepare and submit reports as mentioned in point 1 above are the entities that obtained declarations or other documents specifying reduction amounts from aid beneficiaries.

3. Heads of revenue offices and of customs duties offices, as well as directors of Revenue Chambers and Customs Chambers, submit the reports mentioned in point 1 above through a minister appropriate for public finance.

4. Local government units submit the reports mentioned in point 1 above through regional accounting chambers.

5. The National Fund for Environmental Protection and Water Economy submits the reports mentioned in point 1 above through the minister appropriate for the environment, and the Provincial Funds for Environment Protection and Water Economy — through Heads of Province Assemblies.

6. The Voivods (Provincial Governors), submit the reports mentioned in point 1 above through the minister appropriate for public administration.

7. Entities not listed in points 2—6 above submit the reports mentioned in point 1, through their supervisory bodies, and in case of lack of such bodies — directly to the President of the Office.

8. The reports mentioned in point 1 are submitted in an electronic format via data transfer, on a form made available by the President of the Office in a public IT network.

Article 33. 1. Authority granting aids are obliged to submit – at request of the President of the Office or a minister appropriate for public finance – information regarding aid provided, in the scope and time frame indicate in the request.

2. Entities developing aid schemes providing for aid as part of block exemptions inform the President of the Office immediately — in an electronic format via data transfer, on a form made available by the President of the Office in a public IT network – on starting the aid provision based on an aid scheme.

3. Entities providing individual aid as part of block exemptions, inform the President of the Office immediately - in an electronic format via data transfer, on a form made available by the President of the Office in a public IT network – on providing such aid.

Article 34. 1. Entities appropriate for collection of receivables are obliged to provide the minister appropriate for public finance with reports on entrepreneurs' arrears with their commitments to the public finance sector, within their competencies.

2. Provisions of Article 32 points 2—7 apply accordingly.

Article 35. The Council of Ministers will establish, by the way of an regulation, the scope of reports mentioned in Article 32 point 1 and Article 34 point 1, as well as the reporting periods, deadlines and form templates, considering requirements of effective monitoring of public aid and of related reporting duties.

Article 36. 1. The President of the Office, based on the reports as mentioned in Article 32 point 1, will develop – upon consultation with the minister appropriate for public finance – and present to the Council of Ministers, a report with results of public aid monitoring in the previous year, containing in particular data on scope, forms and appropriation of public aid, as well as assessment of the competitive effect of provided aid.

2. The Minister appropriate for public finance presents the Council of Ministers with a collective annual statement on entrepreneurs' arrears in meeting their commitments to the public finance sector.

3. The report mentioned in point 1 above is presented by the Council of Ministers to the Sejm by the end of the calendar year following the year to which the report applies.

Article 37. 1. An entity seeking de minimis aid is obliged to present all proofs of de minimis aid received within the period of 3 years before the current application - to the aid provider, together with the application.

2. The President of the Office – at a request of the Commission as mentioned in Article 3 point 3 of the regulation on de minimis aid – presents information on de minimis aid to the Commission.

3. An entity seeking a kind of aid different from de minimis aid is obliged to present the authority granting aid with an application for aid together with information on the public aid received, containing in particular the data on its legal basis, form and appropriation.

4. The Council of Ministers will establish, by the way of an regulation, form templates for information on aid received, as mentioned in point 3, considering appropriation of the planned aid and the need to assure that acceptable aid limits are not exceeded, in connection with implementation of a certain undertaking by particular entities seeking aid.

5. Until the beneficiary provides certificates or information mentioned in points 1 or 3, aid may not be granted to that beneficiary.

Article 38. The entity providing aid is obliged to inform the beneficiary in writing about its being approved or otherwise by the Commission, as per Article 88 of the Treaty of European Communities, or about a lack of obligation to notify.

Article 39. 1. The aid beneficiary and the entity seeking aid are obliged to submit information regarding their public aid to the President of the Office or to the authority granting aid – at their request, in the scope and the time frames specified in the request.

2. The date specified in the request mentioned in point 1 above may not be shorter than 30 days, unless the information regarding aid provided is requested by the Commission.

Article 40. 1. Aid beneficiaries are obliged to submit periodical reports regarding the aid received to the President of the Office or to the authority granting aid, with the reservation of point 2 below. The provision of Article 32 point 8 applies accordingly.

2. The Council of Ministers will establish by the way of an regulation the scope of reports referred to in point 1 above, the report receiving entities, reporting periods, deadlines, report form templates and categories of aid beneficiaries obliged to submit reports, considering in particular the need to assure transparency and effectiveness of public aid monitoring.

3. Public entrepreneurs and other entities which receive public aid as part of their economic operations, taking advantage of exclusive or special rights, or performing public duty tasks, with the reservation of point 4 below, are obliged to:

- 1) Define documentation referred to in Article 10 of the Law of September 29, 1994, on accounting (Law Journal of 2002, No 76, item 694, with later amendments³¹), and accounting principles, including the company account plan, in a way that assures all income and related cost to be accounted for separately with respect to activities that benefit from public aid, as well as methods of assigning costs and revenues to particular types of activity, and
- 2) Submit reports to the President of the Office regarding the use of public aid, in particular with respect to realisation of exclusive or special rights, and implementation of public duties allowing for transparency of financial relations.

4. The Council of Ministers should define, by the way of an regulation, the scope of reports mentioned in point 3 sub-point 2, as well as reporting periods, report deadlines, report form templates and categories of entities obliged to report or to establish the principles and methods as in point 3 sub-point 1, considering in particular the scope of operations of such entities and their specific market position.

5. Art. 41. 1. Information regarding aid beneficiary and undertaking applying for aid are subject to professional confidentiality in the sense of regulations on protection of confidential information, except for information on the size and form of aid provided and on its appropriation, on its legal basis and entities providing aid.

2. Professional confidentiality is not violated when information on aid to specific beneficiaries is passed on to the Commission, or in cases of reports on public aid provided in the mode of Article 32, or arrears reports, referred to in Article 34 point 1.

Chapter 7

Audit of an aid beneficiary

Article 42. 1. In case if the Commission makes an audit referred to in Article 22 point 1 of the Commission regulation, hereinafter referred to as the 'Audit of an aid beneficiary', the President of the Office is entitled to present remarks to the Commission regarding the audit and any reservations as to the choice of experts.

³¹ Amendments to the unified text of that Law were announced in Law Journals of 2003, No 60, item 535, No 124, item 1152, No 139, item 1324 and No 229, item 2276 and of 2004, No 96, item 959.

2. During the audit of the aid beneficiary, persons authorised by the President of the Office may be present.

Article 43. If the aid beneficiary obstructs an audit, the President of the Office may use the help of duly authorised government audit functionaries, or the Police station appropriate for the location of the aid beneficiary.

Chapter 8

Financial penalties

Article 44. 1. Non-performance or inappropriate performance of duties mentioned in Article 39 and in Article 40 point 1 and point 3 sub-point 2, and obstruction of audit at aid beneficiary, may be grounds for the President of the Office to impose a penalty, by the way of an administrative decision, of up to EUR 10,000.

2. The amount of financial penalties mentioned in point 1 above is established considering in particular the extent and circumstances of the violation of law.

3. The amount referred to in point 1 is calculated to PLN as per the average exchange rate announced by the National Bank of Poland, binding on the day when the decision is issued by the President of the Office.

Article 45. 1. The financial penalty should be paid within 14 days of the effective date of the decision by the President of the Office.

2. In case if the financial penalty is paid in delay, statutory interest is charged.

3. Compulsory collection of financial penalty is done as per provisions on collection procedures in administration.

4. Financial resources from the penalties represent income of the State Budget.

Article 46. 1. Decisions of the President of the Office on imposing financial penalties may be appealed against to the Competition and Consumer Protection Court within 14 days of the date when the decision is received.

2. Procedure for appeals against decisions of the President of the Office is conducted according to provisions of the Law of November 17th, 1964 — Code of civil procedure (Law Journal No 43, item 296 with later amendments⁴) regarding procedure in business cases.

3. In case of an appeal against the decision, the President of the Office submits it immediately together with the case files to the competition and consumer protection court.

4. Matters regarding procedure with the President of the Office and not regulated in this chapter are governed by provisions of the Law of June 14th, 1960 — Code of administrative procedure (Law Journal of 2000 No. 98, item 1071, with later amendments⁵⁾).

Chapter 9

Amendments in the binding regulations

Article 47. In the Law of January 12, 1991, on local taxes and duties, (Law Journal of 2002 No 9, item 84, with later amendments⁶⁾), Article 7 point 3 receives the following shape:

„3. The commune council may, by the way of resolution, introduce other subject exemptions than those described in point 1 and in Article 10 point 1 of the Law of October 2, 2003, on changing the Law on special economic zones and certain other Laws”.

Article 48. In the Law of July 26, 1991, on the personal income tax (Law Journal of 2000,

⁴⁾ Amendments to the Law in question were announced in Law Journals: 1965- No 15, item 113; 1974- No 27, item 157 and No 39, item 231; 1975- No 45, item 234; 1982- No 11, item 82 and No 30, item 210; 1983- No 5, item 33; 1984- No 45, items 241, 242; 1985- No 20, it 86; 1987- No 21, item 123; 1988- No 41, item 324; 1989- No 4, item 21 and No 33, item 175; 1990- No 14, item 88, No 34, item 198, No 53, item 306, No 55, item 318 and No 79, item 464; 1991- No 7, item 24, No 22, item 92 No 115, item 496; 1993- No 12, item 53; 1994- No 105, item 509; 1995- No 83, item 417; 1996- No 24, item 110, No 43, item 189, No 73, item 350, No 149, item 703; 1997- No 43, item 270, No 54, it 348, No 75, item 471, No 102, it 643, No 117, it 752, No 121, items 769, 770, No 133, item 882, No 139, it 934, No 140, item 940, No 141, it 944; 1998- No 106, item 668 and No 117, item 757; 1999- No 52, item 532; 2000- No 22, items 269, 271, No 48, items 552, 554, No 55, it 665, No 73, it 852, No 94, it 1037, No 114, items 1191, 1193 and No 122, items 1314, 1319, 1322; 2001- No 4, it 27, No 49, it 508, No 63, it 635, No 98, items 1069, 1070, 1071, No 123, it 1353, No 125, it 1368, a No 138, it 1546; 2002- No 25, it 253, No 26, it 265, No 74, it 676, No 84, it 764, No 126, items 1069, 1070, No 129, it 1102, No 153, it 1271, No 219, it 1849 and No 240, it 2058; 2003- No 41, it 360, No 42, it 363, No 60, it 535, No 109, it 1035, No 119, it 1121, No 130, it 1188, No 139, it 1323, No 199, it 1939, and No 228, it 2255; 2004- No 9, item 75, No 11, item 101, No 68, item 623, No 91, item 871, No 93, item 891 and No 121, item 1264.

⁵⁾ Amendments of the unified text of the Law in question were announced in the Law Journals of 2001, No 49, item 509; of 2002, No 113, item 984, No 153, item 1271 and No 169, item 1387, as well as of 2003, No 130, item 1188 and No 170, item 1660.

⁶⁾ Amendments of the unified text of the Law in question were announced in the Law Journals of 2002, No 200, item 1683, of 2003, No 96, item 874, No 110, item 1039, No 188, item 1840, No 200, item 1953 and No 203, item 1966, and of 2004, No 92, items 880 and 884 and No 96, item 959.

No 14, item 176, with later amendments⁷⁾) in Article 21, point 1, sub-point 63a receives the following shape:

‘63a) income of taxpayers, with the reservation of points 5a—5c, obtained from business activity in a special economic zone based on a permit referred to in Article 16 point 1 of the Law of October 20th, 1994, on special economic zones (Law Journal No 123, item 600; of 1996, No 106, item 496, of 1997, No 121, item 770, of 1998, No 106, item 668, of 2000, No 117, item 1228; of 2002, No 113; item 984 and No 240, item 2055; and of 2003, No 188, item 1840), whereby the scale of public aid extended in the form of this relief may not exceed the public aid for entrepreneur acceptable for the areas qualified for obtaining the highest possible amount, in conformity with separate regulations.’

Article 49. In the Law of February 1992, on corporate income tax (Law Journal of 2000, No 54, item 654, with later amendments⁸⁾), Article 17 point 1 sub-point 34 receives the following shape:

„34) the income (with the reservation of points 4—6) obtained from economic activity conducted in a special economic zone on the basis of a permit referred to in Article 16 point 1 of the Law of October 1 of October 20th, 1994, on special economic zones (Law Journal No 123, item 600; of 1996; No 106, item 496; of 1997, No 121, item 770, of 1998, No 106, item 668; of 2000, No 117; item 1228; of 2002, No 113, item 984 and No 240, item 2055, as well as of 2003, No 188, item 1840), while the scope of public aid extended in the form of such exemption may not

⁷⁾ Amendments to the unified text of the Law in question were announced in the following Law Journals: 2000- No 22, item 270, No 60, item 703, No 70, item 816, No 104, item 1104, No 117, item 1228 and No 122, item 1324; 2001- No 4, item 27, No 8, item 64, No 52, item 539, No 73, item 764, No 74, item 784, No 88, item 961, No 89, item 968, No 102, item 1117, No 106, item 1150, No 110, item 1190, No 125, items 1363, 1370 and No 134, item 1509; 2002- No 19, item 199, No 25, item 253, No 74, item 676, No 78, item 715, No 89, item 804, No 135, item 1146, No 141, item 1182, No 169, item 1384, No 181, item 1515, No 200, item 1679 i No 240, item 2058; 2003- No 7, item 79, No 45, item 391, No 65, item 595, No 84, item 774, No 90, item 844, No 96, item 874, No 122, item 1143, No 135, item 1268, No 137, item 1302, No 166, item 1608, No 202, item 1956, No 222, item 2201, No 223, item 2217 i No 228, item 2255 and of 2004- No 29, item 257, No 54, item 535, No 93, item 894, No 99, item 1001, No 109, item 1163, No 116, item 1203, 1205 i 1207 i No 120, item 1252.

⁸⁾ Amendments to the unified text of the law in question were announced in the following Law Journals: of 2000- No 60, items 700, 703, No 86, item 958, No 103, item 1100, No 117, item 1228 and No 122, item 1315 and 1324, of 2001- No 106, item 1150, No 110, item 1190 and No 125, item 1363; of 2002- No 25, item 253, No 74, item 676, No 93, item 820, No 141, item 1179, No 169, item 1384, No 199, item 1672, No 200, item 1684 and No 230, item 1922; of 2003- No 45, item 391, No 96, item 874, No 137, item 1302, No 180, item 1759, No 202, item 1957, No 217, item 2124 and No 223, item 2218; of 2004- No 6, item 39, No 29, item 257, No 54, item 535, No 93, item 894 and No 116, item 1203.

exceed the scope of public aid for an entrepreneur, acceptable for areas qualified for receiving aid in the maximum amount, as per separate regulations,".

Article 50. In the Law of October 20th, 1994, on special economic zones (Law Journal No 123, item 600, with later amendments⁹⁾) the following amendments are introduced:

1) in Article 4 point 4, sub-point 5a is added in the following shape:

„5a) conditions of public aid provision to entrepreneurs conducting business operations within the zone, based on the permit referred to in Article 16 point 1, considering the need to assure compliance of the aid with the laws of the European Union";

2) in Article 5a:

a) point 1 receives the following shape:

„1. The Council of Ministers, at a request of the Minister appropriate for the economy, agreed with the minister appropriate for regional development, may cancel the zone with an regulation prior to the end of the period for which it was established, change its area or combine several zones, considering that the total area of all the zones may not exceed the previously established total area, taking into account point 5, and considering that the priority should be given to creating the best possible conditions of functioning of the zones",

b) point 5 is added in the following shape:

„5. The total area of the zones as mentioned in point 1 may be enlarged up to 8,000 hectares, with the proviso that the enlargement may only be provided for implementation of a new investment valued at not less than EUR 40 m or creating at least 500 new jobs.";

3) in Article 12 the second sentence is cancelled.

Article 51. In the Law of December 23rd, 1994, on the Supreme Chamber of Control, (Law Journals of 2001, No 85, item 937 and No 154, item 1800; 2002 - No 153, item 1271) Article 2 point 3 sub-point 5a receives the following shape:

‘5a) provide or take advantage of public aid subject to monitoring in the sense of separate regulations.’

Article 52. In the Law of January 5th, 1995, on interest relief for some banking credits (Law Journal No 13, item 60, with later amendments¹⁰⁾), in Article 3 point 3 is cancelled.

⁹⁾ Amendments to the Law in question were announced in the following Law Journals: 1996 - No 106, item 496; 1997 - No 121, item 770; 1998 - No 106, item 668; 2000 - No 117, item 1228; 2002 - No 113, item 984, No 240, item 2055 and 2003 - No 188, item 1840.

¹⁰⁾ Amendments to the Law in question were announced in the following Law Journals: 1995 - No 83, item 418; 1996 - No 152, item 719; 1997 - No 80, item 504, No 107, item 690, No 121, item 770 and No 158, item 1044; 1999 - No 27, item 243, No 63, item 702 and No 70, item 778; 2000 - No 122, item 1315; 2001 - No 72, items 744 and 746; 2003 - No 104, item 962 and No 188, item 1839; 2004 - No 91, item 867.

Article 53. In the Law of August 8th, 1996, on principles of execution of rights of the State Treasury (Law Journal No 106, item 493, with later amendments¹¹⁾) the following amendments are introduced:

1) in Article 2 points 8a and 8b are added, in the following shape:

„8a) provides aid for relief and restructuring of state-owned enterprises, companies with a share of the State Treasury, companies which received an enterprise for rent, on the basis of Articles 51 and 52 of the Law of August 30, 1996, on commercialisation and privatisation (Law Journal of 2002 No 171, item 1397 and No 240, item 2055; of 2003 - No 60, item 535 and No 90, item 844 and of 2004 - No 6, item 39) — meeting criteria of a small or medium-sized entrepreneur, in the sense of attachment to the regulation No 70/2001 of January 12th, 2001, on the application of Articles 87 and 88 of the EC Treaty with respect to state aid to small and medium-sized enterprises (Official Journal of the European Communities, L 10 of 13.01.2001),

8b) approves the corporate restructuring plans referred to in 8a above, in case if such plans provide for restructuring aid to be granted by the minister appropriate for the State Treasury, or to a minister appropriate for the State Treasury together with other entities’;

2) Article 2b is added in the following shape:

„Article 2b. The minister appropriate for the State Treasury will establish – by the way of an regulation – the methods, conditions and form of aid provision, as referred to in Article 2 point 8a, considering in particular the need to position the ‘relief’ aid as aid granted to an entrepreneur so that he can operate for a period necessary for preparing a restructuring plan, while the actual restructuring aid — as regaining the long-term competitive ability in the market”.

Article 54. In the Law of August 30th, 1996, on commercialisation and privatisation (Law Journal of 2002, No 171, item 1397 with later amendments¹²⁾) the following amendments are made:

1) in Article 35, point 3 receives the following shape:

„3. The Council of Ministers will define, by the way of an regulation:

1) the method of financing share disposal and the required form of payment for shares acquired from the State Treasury

¹¹⁾ Amendments to the Law in question were announced in the following Law Journals: 1996 - No 156, item 775; 1997 - No 106, item 673, No 115, item 741 and No 141, item 943; 1998 - No 155, item 1014; 2000 - No 48, item 550; 2001 - No 4, item 26; 2002 - No 25, item 253 and No 240, item 2055; 2004 - No 99, item 1001.

¹²⁾ Amendments to the unified text of the Law in question were announced in the Law Journals of: 2002, No 240, item 2055; 2003 - No 60, item 535 and No 90, item 844; 2004 - No 6, item 39.

- taking into account the need to assure transparency of procedures and due security of the State Treasury interest,
- 2) conditions in which payment for shares may be rescheduled into installments, considering that the use of an interest rate better than the market will represent regional public aid for supporting new investments’;
- 2) in Article 48 point 7 receives the following shape:
- „7. The Council of Ministers will define, by the way of an regulation:
- 1) the detailed mode of sale referred to in point 1, taking into consideration the need to assure transparency and openness of procedures,
- 2) conditions in which the payment for the enterprise may be scheduled in installments, considering that using an interest rate better than the market will represent regionalna public aid for supporting new investment”;
- 3) in Article 54, point 1 receives the following shape:
- „1. The Council of Ministers will establish, by the way of an regulation:
- 1) detailed payment conditions for lease of the enterprise, considering that establishing conditions better than the market will represent regional public aid for supporting new investments,
- 2) the way and scope of changing the conditions mentioned in sub-point 1 above, considering that changing such conditions represents public aid for restructuring and is possible in cases when the acquirer is an entrepreneur in a difficult economic situation,
- 3) the method of securing the unpaid part of receivables, if the ownership of the enterprise was transferred prior to the payment of full receivable amount for the enterprise established in the contract, with due assurance of the State Treasury interest,
- 4) interest conditions regarding the unpaid part of the receivables, in case of an earlier transfer of the corporate ownership, considering that setting an interest rate better than the market offered rate will represent regional public aid for supporting new investments.”;
- 4) in Article 56:
- a) in point 1, sub-point 2 receives the following shape:
- ‘2) 15 % of income obtained from privatisation in a given financial year is directed to corporate relief and restructuring aid,’
- b) point 3 receives the following shape:

- ‘3. The Minister appropriate for the State Treasury augments the founding capital of Agencja Rozwoju Przemysłu S.A. each year, by an amount representing 1/3 of the ‘special means income’ referred to in point 1, sub-point 2, aiming to provide such resources for the relief aid and restructuring of entrepreneurs others than small and medium-sized ones, in the sense of the attachment to the regulation No 70/2001 of January 12th, 2001, regarding application of Articles 87 and 88 of the EC Treaty with respect to the state aid to small and medium-sized enterprises (Law Journal of European Communities, L 10 of 13.01.2001)’.

Article 55. In the Law of May 8th, 1997, on guarantees issued by the State Treasury and by certain legal persons (Law Journal of 2003, No 174, item 1689), the following amendments are introduced:

- 1) in Article 1 point 3 is cancelled;
- 2) in Article 2c, point 3, sub-point 4 receives the following shape:
- ‘4) establishing commission rates on guarantees which do not represent public aid in the sense of public aid regulations’.

Article 56. In the Law of August 29th, 1997 — Tax ordinance (Law Journal No 137, item 926, with later amendments ¹³¹) the following amendments are made:

- 1) in Article 22 § 1a receives the following shape:
- „§ 1a. Exemption from collecting tax in the mode established in § 1 point 1 from taxpayers being aid beneficiaries takes place with consideration of the Law of April 30th, 2004, on procedure in cases regarding public aid (Law Journal No 123, item 1291).’;
- 2) in article 48, § 3 receives the following shape:
- „§ 3. Deferring the tax payment date or scheduling payment of tax arrears in installments, at request of a taxpayer – aid beneficiary takes place with consideration of the Law of April 30th, 2004, on procedure in matters regarding public aid’;
- 3) in article 67 §, 1a receives the following shape:
- „§ 1a. Redemption of tax arrears, penalty interest or prolongation fee at request of a taxpayer – aid beneficiary, takes

¹³¹ Amendments to the Law in question were announced in the Law Journals of: 1997- No 160, item 1083; 1998- No 106, item 668; 1999- No 11, item 95 and No 92, item 1062; 2000- No 94, item 1037, No 116, item 1216, No 120, item 1268 and No 122, item 1315; 2001- No 16, item 166, No 39, item 459, No 42, item 475, No 110, item 1189, No 125, item 1368 and No 130, item 1452; 2002- No 89, item 804, No 113, item 984, No 153, item 1271 and No 169, item 1387; 2003- No 130, item 1188, No 137, item 1302, No 170, item 1660 and No 228, items 2255, 2256; 2004- No 29, item 257, No 64, item 593, No 68, item 623, No 91, item 868, No 93, item 894 and No 116, item 1205.

place with consideration of the Law of April 30th, 2004, on procedure in cases regarding public aid’;

Article 57. In the Law of November 26, 1998, on public finance (Law Journal of 2003; No 15, item 148, with later amendments¹⁴⁾), Article 76a receives the following shape:

‘Article 76a. A target subsidy may be granted to an entrepreneur, in case of an entrepreneur making a new investment, on principles defined in regulations regarding financial support of investments’.

Article 58. In the Law of October 7th, 1999, on supporting restructuring of the industrial defense potential, and on technical modernisation of the Armed Forces of the Republic of Poland (Law Journal No 83, item 932, with later amendments¹⁵⁾), Article 5b point 4 receives the following shape:

‘4. The basis for granting the support is a decision of a minister appropriate for the economy, with the reservation of point 10’.

Article 59. In the Law of September 9th, 2000, on the tax on civil law acts (Law Journal No 86, item 959, with later amendments¹⁶⁾) Article 2 point 1, the letter i) is added as follows:

‘i) granting aid for corporate relief and restructuring aid.’.

Article 60. In the Law of March 20, 2002, on financial supporting of investments (Law Journal No 41, item 363, No 141, item 1177 and of 2003 No 159, item 1537), the following amendments are made:

1) Article 1 receives the following shape:

‘Article 1. 1. The Law specified the principles, forms and detailed conditions of granting regional aid to entrepreneurs carrying out economic activity on the territory of Republic of Poland:

- 1) making new investments,
- 2) creating new jobs as areult of new investments.

2. Provisions of the Law do not apply to granting financial support to entrepreneurs operating in the synthetic fibre sector, coal mining,

¹⁴⁾ Amendments to the unified text of the Law in question were announced in the Law Journals of 2003, No 45, item 391, No 65, item 594, No 96, item 874, No 166, item 1611 and No 189, item 1851, as well as of 2004- No 19, item 177, No 93, item 890 and No 121, item 1264.

¹⁵⁾ Amendments to the Law in question were announced in the following Law Journals: 2000- No 119, item 1250; 2001- No 76, item 805 and No 100, item 1080; 2002- No 240, item 2053 and 2004- No 19, item 177 and No 120, item 1252.

¹⁶⁾ Amendments to the Law in question were announced in the following Law Journals: 2000- No 103, item 1099; 2001- No 100, item 1085; 2002- No 121, item 1031 and No 199, item 1672; 2003-No 80, item 721, No 96, item 874, No 137, item 1302 and No 210, item 2037; 2004- No 6, item 42, No 42, item 386 and No 54, item 535.

steel and iron industry, shipbuilding, fishing, as well as production, processing and trade in the agricultural products mentioned in Annex No I to the Treaty establishing the European Community.’;

2) in Article 2 point 1:

a) sub-points 1 and 2 receive the following shape:

‘1) law on public aid — it stands for the Law of April 30, 2004, on procedural issues concerning to public aid (Law Journal No 123, item 1291),

2) aid — it stands for the state aid meeting the requirements referred to in Article 87 point 1 of the Treaty of European Communities’.

b) sub-points 5 and 6 receive the following shape:

‘5) new investment — it stands for an investment related to setting-up or extending an enterprise, as well as to starting activities comprising substantial changes in productin or production process, changes of the product or service including also changes in the method of service provision,

6) the amount of aid — it stands for the amount of aid referred to in article 2 point 13 of the Law on public aid’,

c) point 7 is hereby cancelled,

d) point 8 takes the following shape:

‘8) creation of new jobs as areult of the new investment — it stands for a net growth of jobs at a given enterprise resulting from the new investment over a specified period of time, no longer, however, than 3 years of completing the investment’,

e) point 9 is hereby cancelled,

f) point 13 takes the following shape:

‘13) the day of granting financial support — it stands for the day when aid was provided as referred to in Article 2 point 11 of the Law on public aid’,

g) points 16 and 17 are added:

‘16) a large investment project — it stands for a new investment in which eligible expenditure exceed the equivalent of EUR 50 milion, whereas:

a) costs of the new investment represent expenses on fixed assets incurred in the period of three years by one or more entrepreneurs implementing the investment, and

- b) the fixed assets are physically or functionally connected and serve for achieving a strictly specified purpose, in particular to produce a specific product or various products, if they are manufactured with the use of the same raw materials
- 17) the day of investment completion — it stands for the day when the supported investment, as per the implementation time schedule, of the project referred to in Article 12 section 3, was completed';
- 3) in Article 3:
- a) point 1 letter b receives the following shape:
- 'b) the value of the new investment is not smaller than equivalent of EUR 500,000, in case when the investment is related to extension or modernisation of an existing enterprise and maintains at least 100 jobs for a period of not shorter than 5 years, or,'
- b) points 3 and 4 receive the following shape:
- '3) economic activity connected with the supported investment will be carried out for at least 5 years since the date of investment completion,
- 4) in case of financial support that is to be directed to creating new jobs — the newly created jobs will be maintained for a period of at least 5 years from the date of completion of the given investment";
- 4) Articles 4—6 receive the following shape:
- „Article 4. 1. Eligible expenditures for being granted financial support include:
- 1) the price of land purchased, up to 10 % of total eligible cost of the investment project qualified for covering with support,
 - 2) the price of purchase or cost of generation of new fixed assets, including:
 - a) buildings and structures,
 - b) machines and equipment,
 - c) tools, instruments and appliances,
 - d) technical equipment for office work,
 - e) technical infrastructure related to the new investment, whereas building the technical infrastructure is to be understood as construction or modernisation of a road passage and building under the ground, on-ground or suspended pipelines for water, sewage, heating, electricity, gas and telecommunications.
 - 3) purchase price of second-hand fixed assets,
 - 4) purchase price of intangible assets consisting in purchasing the patent, a licence or non-patented know-how, up to the limit of 25 % of total expenses as mentioned in points 1—3, qualifying for support,
 - 5) cost of fixed assets installation and start up,
 - 6) purchase price of materials or building works, provided that they remain in direct connection with the purposes of the supported project,
 - 7) legal fees, notary fees, costs of technical and financial expertise, as long as such costs are directly related to the investment and necessary for preparations and implementation,
 - 8) bank account fees, as long as payment of the support requires opening a separate banking account, for the period of payments.
2. Expenditure referred to in point 1 above are considered as eligible for support:
- 1) in case of expenditure mentioned in point 1 sub-point 1 - if:
 - a) there is a direct connection between purchase of land and the implemented investment project,
 - b) the estimate of land has been presented, made by an authorised expert, stating that the purchase was made for the price that does not exceed market prices,
 - 2) in case of expenditure referred to in point 1 section 2 letter a), if:
 - a) there is a direct connection between purchase of the buildings and purposes of the supported project,
 - b) the entrepreneur presents:
 - a certificate confirming that the price of purchase does not exceed the market value, issued by an independent, authorised expert or by another duly authorised entity,
 - opinion of a construction expert holding a building licence and employed at a local or provincial inspectorate of building supervision, stating that the building is fit for the specified use, in conformity with purposes of the supported project,

- c) during the 10 year period prior to the application for financial support the buildings were not financed with the use of aid or resources based on the European Union funds,
 - d) the buildings will be used in compliance with the purposes of the financially supported project,
- 3) in case of expenditure referred to in point 1 sub-point 3, if:
- a) the supplier made a statement specifying the origin of the fixed assets used, and confirming that during the 7 years before the submission of application for the financial support the assets were not purchased with the use of aid or financial resources of the European Union; the statement in question is made by an entrepreneur and addressed to an authority granting aid in writing, during 14 days of the date of purchase of used fixed assets,
 - b) the price does not exceed the market value and is lower than the price of new fixed assets,
 - c) the assets have technical properties necessary for implementation of the supported project,
 - d) they meet the binding standards and requirements,
- 4) in case of expenditure referred to in point 1 sub-point 4, if:
- a) they will be used only by the entrepreneur receiving regional aid,
 - b) they will be purchased from a third party on terms that are not different from normal investment practice,
 - c) they will represent property of the entrepreneur for a period of at least 5 years,
 - d) they are subject to depreciation as per separate regulations.
3. Eligible expenditure for financial support is the expenses for new jobs creation; they include cost of gross wages of employee, increased by all obligatory payments related to their employment.
4. In case of an entrepreneur conducting business operations with respect to transport services, expenditures for purchasing means of transport do not represent eligible expenditure.
5. The purchase price and cost of creation of fixed assets and of intangible assets is established in accordance with accounting regulations.
- Article 5. 1. Financial support of investment granted to an entrepreneur may be allocated to finance eligible expenditure, as described in Article 4 item 1 — up to the limit of 50% of the maximum intensity or maximum value of aid, as defined in items 3—6, or to the amount of the maximum financial support.
2. Financial support of investment granted to an entrepreneur may also be allocated to expenses related to creation of new jobs, as referred to in Article 4 point 3 — up to the equivalent of EUR 4,000 per one created job, while the value of such support may not exceed such part of the 2-year labour cost of new employees that corresponds to the maximum aid intensity or value that is referred to in points 3—6, or the value of the maximum financial support.
3. The maximum intensity of aid, with the reservation of points 4—6, amounts to:
- 1) 30 % of eligible expenditure — in the case of investments realised in the areas belonging to sub-regions marked with the statistical numbers 22 and 42,
 - 2) 40 % of eligible expenditure— in case of investments realised in the areas belonging to the subregions marked with statistical numbers 4, 17 and 30,
 - 3) 50 % of eligible expenditure— in case of investments realised in the remaining parts of the country.
4. In case of financial support granted to a small or medium-sized entrepreneur, excluding entrepreneurs operating in the transport sector, the maximum intensity of aid is increased by 15 gross percentage points.
5. In case of financial support granted to entrepreneurs operating in the motor vehicle sector, the maximum aid intensity is 30 % of the intensity referred to in point 3, if the amount of the planned financial support expressed as an equivalent of gross subsidy exceeds the equivalent of EUR 5,000,000.

6. In case of financial support extended to an entrepreneur for implementation of a large investment project, the maximum aid value is established according to the following formula:

$$I = R \times (50 \text{ million} + 0,5 \times B + 0,34 \times C),$$

where particular symbols stand for:

I — the maximum value of aid for a large investment project,

R — aid intensity referred to in point 3 — depending on the area where the investment is to be located,

B — the amount of eligible expenditure above EUR 50,000,000 — not exceeding the equivalent of EUR 100,000,000,

C — the amount of eligible expenditure exceeding the equivalent of EUR 100,000,000.

7. The aid allocated to new investments may be granted together with aid for creation of new jobs, provided that the total aid intensity does not exceed the maximum aid intensity or value referred to in points 3—6, while the acceptable amount of aid is established as a multiplication of the maximum aid intensity and the higher amount of new investment costs or 2-years labour costs of new hired employees.

Article 6. 1. Financial support referred to in the Law, is cumulated with the aid received by the entrepreneur in other forms and from other sources allocated to a new investment or to creation of new jobs, and may not exceed the maximum intensity or value of aid referred to in article 5 point 3—6, or of the maximum amount of financial support referred to in article 5 point 7.

2. A large investment project whose value of aid exceeds the maximum acceptable support that can be received for investment valued at EUR 100,000,000 could receive considering the principles used with calculating support for large investment projects, is subject to notification in an individual notification procedure mentioned in separate principles'.

5) article 9 is cancelled;

6) In article 10:

- a) In point 1 sub-points 9 and 12 are cancelled,
- b) In point 2 sub-point 6 is added as follows:
„6) description of a new technology provided for use as part of the

investment and its period of application in the global scale, confirmed in the opinion of an independent entity which is competent in this area';

7) article 11 receives the following form:

- „Article 11. 1. Applications form for financial support to the new investment is submitted to the minister appropriate for the economy during the last month of each of the first two quarters of the calendar year. The order submitting the application does not affect the provision of financial support.
2. Application form for financial support to the new investment are reviewed by the minister appropriate for the economy by the end of the second and third quarter of each year.
3. Up to ½ of financial resources allocated to a given year is provided for financial support of the new investment on the basis of applications submitted in the first period referred to in point 1';

8) in Article 12:

- a) point 2 is cancelled,
- b) in point 3 the first sentence receives the following shape:

'The agreement referred to in point 1 specifies commitments of the entrepreneurs, including in particular the location, investment value, investment project time schedule, the name of the purchased technology and the number of employees';

9) in Article 13 point 1 is cancelled;

10) in Article 13a:

- a) point 1 receives the following shape:
„1. The Minister appropriate for the economy informs the entrepreneur on the reasons of extending financial support to the new investment',
- b) in point 2 the first sentence receives the following shape:

'The entrepreneur may turn to the minister appropriate for the economy within 14 days of receiving the information referred to in point 1, to the minister appropriate for the economy, for re-assessment of the application';

11) in Article 14:

a) point 1 receives the following shape:

„1. The minister appropriate for the economy transfers the financial support upon assessment of the new investment's meeting the general criteria referred to in point 2',

b) in point 2 sub-point 4 is cancelled;

12) in Article 15, sub-point 2, the first sentence receives the following shape:

'In case if the entrepreneur fails to meet his investment commitments contained in the agreement defined in Article 12, the granted financial support must be returned, as per Article 93 of the Law of public finance'.

Article 61. In the Law of October 30, 2002, on public aid to entrepreneurs of special importance for the job market (Law Journal No 213, item 1800 and of 2003, No 90, item 844 and No 229, item 2271) Articles 56 and 61 are cancelled.

Article 62. In the Law of October 2, 2003, on changing the Law on special economic zones and certain other laws (Law Journal No 188, item 1840) the following amendments are introduced:

1) in Article 5 points 1—6 receive the following shape:

„1. With the reservation of point 6, an entrepreneur, who has a permission obtained before January 1st, 2001, the right to tax reliefs defined in Article 12 of the Law referred in Article 1, in the form of December 31st, 2000:

1) in the period from December 31st 2011 r. — if he was a small entrepreneur on the effective date of this law,

2) in the period before December 31st, 2010 — if the entrepreneur was a medium-sized entrepreneur on the effective date of this law,

— in the meaning of attachment 1 to regulation No 70/2001/WE of the January 12th, 2001, on the application of Articles 87 and 88 of the EC Treaty to state aid to small and medium-sized enterprises (Official Journal of the European Communities, L 10 of 13.01.2001).

2. The income obtained by an entrepreneur different from the entrepreneur referred to in point 1 above, from business operations conducted within the zone on the basis of a permission issued prior to January 1st, 2001, are exempted from the income tax in the scope specified in article 12 of the Law referred to in Article 1, with the reservation that:

1) the maximum acceptable amount of aid is:

a) 30 % of investment costs incurred by December 31st, 2006 — for entrepreneurs operating in the motor vehicle sector,

b) 75 % of investment costs incurred by December 31st, 2006 — for entrepreneurs conducting activities other than that described in letter a) on the basis of a permit issued before January 1st, 2000,

c) 50 % of investment costs incurred prior to December 31st, 2006 — for entrepreneurs conducting activities different than that described in letter a) on the basis of a permission issued after December 31st, 1999,

2) when establishing acceptable amount of public aid referred to in sub-point 1, costs of investment is considered that was incurred by the entrepreneur during the period of the permission,

3) when establishing acceptable amount of public aid, total value of public aid obtained by the entrepreneur before January 1st, 2001 is considered, except for the public aid following from the tax return issued for the year 2000,

4) in order to assess the value of public aid due to a relief in the income tax, business income achieved within the zone subject to the permission, decreased by equivalent of the losses suffered by the entrepreneur in these business operations.

3. In case if permission is issued prior to January 1st, 2001, an entrepreneur loses the right to the reliefs referred to in points 1 and 2, and is obliged to pay, respectively, the corporate income tax or the personal income tax subject to such reliefs, for the period from occurrence of the circumstances which is the basis for withdrawing the permission.

4. In the scope regulated by points 1 and 2 and by Articles 10 and 11, the provision of Article 10 point 1 of the Law of April 30th, 2004, on procedure in cases regarding public aid (Law Journal No 123, item 1291) does not apply.

5. An entrepreneur is regarded as conducting operations in the motor vehicle sector if:

1) his operations consist in production, assembly, or design and development works with respect to:

a) combustion engines with internal combustion, as well as other engines used exclusively in the mechanical vehicles described in letters b-d;

- b) passenger cars,
- c) other mechanical vehicles for transportation of people,
- d) mechanical vehicles for transportation of goods,
- e) bodies of mechanical vehicles, excluding trailers and pickups;
- 2) he is a supplier of components who provides the entrepreneur referred to in point 1, in components necessary for the production process or for the assembly stage, or takes part in design and implementation works related to the products mentioned in point 1, with the provision that:
- a) such activity is conducted in a close proximity of the place where the entrepreneur referred to in sub-point 1 operates, by which one should understand in particular a distance of substantial influence on minimising the cost of components transportation, including that allowing for direct connection between places of operation of both entrepreneurs with a rail track or a transporting belt, and
- b) the entrepreneur referred to in point 1 is the receiver of at least half the components sold by the given supplier
- while 'components' should be understood as the basic elements aimed for the products mentioned in points 1 letters a—d, produced, assembled or put together by the components supplier, and delivered by him to the entrepreneur referred to in point 1 above, using the system of orders. In particular, components are the parts and accessories for mechanical vehicles and for their engines, as well as components of electric equipment for cars.
6. Starting from the financial year following the year when:
- 1) 100 % of equity or shares were sold of a small or medium-sized entrepreneur, referred to in point 1,
- 2) the company which is a small or medium-sized entrepreneur, referred to in point 1, merged with another company,
- 3) an acquisition took place of an enterprise from a small or medium-sized entrepreneur, referred to in point 1,
- the entrepreneur loses the right to the tax reliefs referred to in point 1";
- 2) in Article 8:
- a) point 2 receives the following shape:
- „2. The target reserve referred to in point 1 is allocated for subsidies to new investments, related to creation or extension of an enterprise, or to the enterprise starting activities related to general amendments in production or the manufacturing process, amendments to product or service, including the amendments in the way of providing the services.';
- b) in point 3:
- the initial sentence receives the following shape:
- 'Subsidies to the new investment referred to in point 2, implemented on the territory of the Republic of Poland, is granted with the reservation of point 11',
- sub-point 3 receives the following shape:
- '3) ... an entrepreneur, in whose founding capital the dominating body in the sense of the Law of August 21st, 1997 — the Law on public trading in securities (Law Journal of 2002, No 49, item 447 and No 240, item 2055; of 2003, No 50, item 424, No 84, item 774, No 124, item 1151, No 170, item 1651 and No 223, item 2216, as well as of 2004 - No 64, item 594, No 91, item 871, No 96, item 959 and No 116, item 1205), in relation to a taxpayer or entrepreneur referred to in point 1, holds a share of at least 90 %.';
- c) point 8 receives the following shape:
- „8. The Council of Ministers, considering assurance of compliance with the principles of provision of public aid and of efficient subsidy granting, will determine, by the way of an regulation:
- 1) conditions for subsidy provision,
- 2) eligible expenditure for a new investment referred to in point 2,
- 3) the maximum acceptable aid intensity,
- 4) the kind of economic activity excluded from applying of subsidy,
- 5) a specimen of the application form referred to in point 7 and required documents,
- 6) a detailed procedure and deadline for submitting and assessment of the application referred to point 7.';
- 3) in article 10 point 2 receives the following shape:
- '2. The exemptions referred to in point 1 above, represent regional public aid for supporting new investments';
- 4) in Article 11, point 1 receives the following shape:
- „1. Redemption of arrears related to the property tax for the period from January 1, 2001, for land and buildings occupied by the entrepreneur running business operations within the zone, based on the permit, who

prior to the date of January 1st, 2001, an agreement, a contract or a letter of intent, with the commune where the land and buildings are situated, whereby the commune undertook to exempt that entrepreneur from the property tax, waive such tax commitments or tax arrears that occurred after the date of investment costs qualifying for public aid, represents regional public aid for supporting new investments’.

Chapter 10

Transitional and final provisions

Article 63. In the period of 3 years from the effective date of this Law, in order to state whether the planned aid for an entrepreneur is a de minimis aid, the authority granting aid takes into consideration the sum of:

- 1) the value of individual aid granted to the entrepreneur before the effective date of this law, if the value of aid, together with the aid granted to the entrepreneur over the period of 3 consecutive years preceding the date of present aid does not exceed the equivalent of EUR 100,000 and is not subject to the opinion of the Charman of the Office;
- 2) the aid whose de minimis nature was confirmed with a certificate referred to in Article 5 section 2.

Article 64. As of the effective date of this law, procedures regarding opinion of the President of the Office conducted according to Article 24 or 25 of the Law referred to in Article 71 are cancelled.

Article 65. If normative acts referred to in article 6 point 2 are not aid schemes, appropriate entities are obliged to prepare drafts of necessary amendments in these acts within 1 month of the effective date of this law.

Article 66. 1. By the time when detailed conditions of aid are determined, as referred to in article 8, subject to notification are drafts of local legal acts that specify detailed conditions for aid provision, no longer, however, than by December 31st, 2004.

2. Article 16 does not apply to the notification procedure referred to in point 1 above.

3. In case of the President of the Office issuing an opinion on non-compliance of the draft referred to in point 1 with the common market, such a draft is not subject to notification.

Article 67. 1. In 2004, aid providing entities will run a study of effectiveness of public aid granted in 2003.

2. Entrepreneurs taking advantage of aid are obliged to provide – at request of an authority granting aid – information allowing to assess effectiveness of the aid provided, within the time frame indicated in the request, not shorter, however, than 30 days from delivery of the request.

3. When conducting the study referred to in point 1, provisions apply issued on the basis of Article 39 points 3 and 4 of the Law referred to in Article 71 below, remain in force until December 31st, 2004.

Article 68. Regulations issued on the basis of Article 5 point 2, Article 13 point 1, Article 27 point 3, Article 42 and Article 44 points 4 and 6 of the Law referred to in Article 71 below remain in force by the time of enforcement of regulations issued to this Law, not longer, however, than until December 31st, 2004.

Article 69. Regulations issued on the basis of Article 4 point 1 and Article 5a point 1 of the Law referred to in Article 50 of this Law, Article 35 point 3 and Article 54 point 1 of the Law referred to in Article 54 of this Law, Article 2c point 3 of the Law referred to in Article 55 of this Law, and Article 9 point 3, Article 10 point 3 and Article 11 point 3 of the Law referred to in Article 60 of this Law remain in force until new executive regulations are effective, not longer, however, than until December 31st, 2004.

Article 70. 1. The provision of Article 2 of the Law of September 19, 2003, on changing the Law on acceptability conditions and monitoring of public aid to entrepreneurs (Law Journal No 189, item 1850) expires after 3 years of the effective date of this Law, while provisions regarding individual aid of this Law apply to the cases of public aid referred to in Article 2 point 1 of this Law, with the reservation of point 2.

2. Public aid granted in compliance with the conditions specified in the regulations issued on the basis of Article 2 point 2 of the Law referred to in point 1, that meet the conditions for aid schemes and for which the Commission issued a decision on compliance with the common market, is not subject to notification.

3. By the date of May 1st, 2007, the Council of Ministers may, by the way of regulations, establish aid schemes with respect to public aid extended on the basis of separate laws, considering in particular the development needs of the economy and the need to assure compliance of the aid with the common market.

Article 71. The Law of July 27th, 2002, on acceptability conditions and monitoring of public aid for entrepreneurs is hereby expired (Law Journal No 141, item 1177 and of 2003, No 159, item 1537, No 188, item 1840, No 189, item 1850 and No 228, item 2261).

Article 72. This Law is enforced as of the date of publication.

President of the Republic of Poland: *A. Kwaśniewski*