

LEGISLATIVE BRIEFING

Normative document: Government Emergency Ordinance

Issuer: the Romanian Government

Financial support measures for HORECA industry

Amendments brought by GEO no. 10/2021, in force from 24 February 2021

1. Legislative context

At the end of 2020, in the context of the need to adopt measures in order to support the HORECA industry, the Romanian Government adopted *GEO no. 224/2020 on some measures for providing financial support to enterprises in the field of tourism and public catering, whose activity has been affected in the context of the COVID-19 pandemic*¹.

Through this normative act has been regulated the legal framework regarding the establishment of a state aid scheme on the granting of financing from national public funds and / or from external funds for the enterprises in the field of tourism and public catering, whose activity was affected in the context COVID-19 pandemic.

2. Amendments and clarifications brought by *GEO no. 10/2021*².

GEO no. 10/2021 provides a clarification regarding the entities that can benefit from this state aid, by listing the legal basis under which the enterprises must be established and function, in order to benefit from state aid³.

¹ Published in the Official Gazette no. 1330 of December 31, 2020, in force since December 31, 2020.

²*GEO for the amendment and completion of the Government Emergency Ordinance no. 224/2020 on some measures for the provision of financial support for tourism enterprises, accommodation structures, food structures and travel agencies, whose activity has been affected in the context of the COVID-19 pandemic, as well as on some fiscal measures, in force starting with February 24, 2021.*

³ Article 1 para. (3) let. e): **beneficiaries of state aid** - *tourist reception structures with classified accommodation functions, food structures, registered for fiscal purposes on the Romanian territory, licensed travel agencies and certified tourist guides, which operate in Romania and which receive state aid, according to this scheme, owned by or organized as enterprises established under the Companies Law no. 31/1990, republished, with subsequent amendments and completions, of Law no. 1/2005 regarding the organization and functioning of the cooperation, republished, with the subsequent modifications, of the Government Emergency Ordinance no. 6/2011 for stimulating the establishment and development of micro-enterprises by start-up entrepreneurs in business, approved with amendments by Law no. 301/2011, with subsequent amendments and completions, of the Government Emergency*

Regarding the duration of the state aid scheme, **GEO no. 10/2021** provides that: "***this state aid scheme will be conducted until December 31, 2021 and the payment of the corresponding amounts will be made no later than June 30, 2022, in budget credit limit***".

The **beneficiaries of this state aid scheme** are travel agencies, which carry out activities according to **NACE codes 7911, 7912, 7990**, tourist reception structures with accommodation functions, which carry out activities according to **NACE codes 5510, 5520, 5530, 5590**, catering structures, which carry out activities according to **NACE codes 5610, 5621, 5629, 5630** and which are registered for fiscal purposes on the Romanian territory, as well as tourist guides who carry out activities according to **NACE code 7990**. The activities are eligible if they are carried out on the basis of tourism licenses, classification certificates, operating permits or valid travel guide certificates.

The aid may be granted to enterprises that are not in difficulty and / or enterprises that were not in difficulty on 31 December 2019, but which **have experienced difficulties** or subsequently entered into difficulty due to the COVID-19 epidemic. The normative act defines the enterprises in difficulty at art. 1 para. (3) lit. i)⁴.

Ordinance no. 44/2008 on the development of economic activities by authorized individuals, individual enterprises and family enterprises, approved with amendments and completions by Law no. 182/2016;

⁴ i) **enterprises in difficulty** - enterprises that are in at least one of the following situations, according to art. 2 point 18 of Regulation (EU) no. Commission Regulation (EC) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market pursuant to Articles 107 and 108 of the Treaty:

1. in the case of a limited liability company, regulated by the Companies Law no. 31/1990, republished, as subsequently amended and supplemented, other than an SME that has existed for at least three years or, for the purposes of eligibility for risk finance aid, an SME 7 years after its first qualifying commercial sale for investments for risk financing following a due diligence process carried out by a selected financial intermediary, when more than half of its subscribed share capital has disappeared due to accumulated losses. This situation occurs when the deduction of accumulated losses from reserves and all other elements generally considered to be part of the company's own funds leads to a negative result that exceeds half of the subscribed share capital. For the purposes of this provision, "limited liability company" refers in particular to the types of companies listed in Annex I to Directive 2013/34 / EU of the European Parliament and of the Council of 26 June 2013 on annual financial statements, consolidated financial statements and financial statements certain types of undertakings, amending Directive 2006/43 / EC of the European Parliament and of the Council and repealing Council Directives 78/660 / EEC and 83/349 / EEC, and "share capital" includes, if the case, any additional capital;

2. in the case of a company regulated by Law no. 31/1990, republished, as subsequently amended and supplemented, in which at least some of the partners have unlimited liability for the company's claims, other than an SME that has existed for less than 3 years or, for the purposes of eligibility for risk finance aid, an SME 7 years after its first commercial sale that qualifies for risk finance investments following a due diligence process carried out by a selected financial intermediary, when more than half of the equity, as shown in the company's accounts, disappeared due to accumulated losses. For the purposes of this provision, "a company in which at least some of the partners have unlimited liability for the company's claims" refers in particular to those types of companies listed in Annex II to Directive 2013/34 / EU;

3. where the undertaking is the subject of collective insolvency proceedings or meets the criteria laid down in national law for the opening of collective insolvency proceedings at the request of its creditors;

4. where the undertaking has received rescue aid and has not yet repaid the loan or has not terminated the guarantee or received restructuring aid and is still subject to a restructuring plan;

By way of exception, aid may be granted to micro, small and medium-sized enterprises within the meaning of Annex I to the *Regulation (EU) no. 651/2014 of the Commission of 17 June 2014*, which were already in difficulty on 31 December 2019, provided that they are not the subject of a collective insolvency under national law and have not received rescue aid or restructuring aid. In order to be eligible for aid, it is necessary that, at the time of granting the aid under this emergency ordinance, economic operators who were already in difficulty on 31 December 2019 and who received rescue aid have repaid the loan or terminated the guarantee, and economic operators who have received restructuring aid should no longer be subject to a restructuring plan.

GEO no. 10/2021 provides clarifications regarding the amount of state aid that can be granted to each company that applies for it, the method of its calculation, as well as regarding the definition of its calculation basis. The aid is granted to the beneficiaries in the form of grants **in the amount of 20% of the calculation base**, resulting from the activities related to the NACE codes provided above, in 2020 compared to 2019, but **not more than the RON equivalent of 800,000 euros at the enterprise level**. The figures used must be gross, before deducting taxes or other charges. Article 2 para. 2⁵ defines the calculation basis for determining the amount of state aid.

Beneficiaries of the state aid scheme provided for in this GEO **have the obligation to maintain the activity for which they obtained funding** for at least **12 months from the date of payment of the amounts** or **24 months from the date of payment of the amounts, if the grant amount is higher of the equivalent in lei of the amount of 200,000 euros**, if by normative acts no restrictions are established that could impose the suspension or interruption of the commercial activity. The period of suspension or interruption of the commercial activity is not taken into account when determining the term of 12 months, respectively 24 months.

5. in the case of an enterprise that is not an SME, when, in the last two years: the debt / equity ratio of the enterprise is greater than 7.5 and the interest coverage capacity calculated on the basis of EBITDA is below 1, 0.

⁵ 2. **The basis for calculating the aid shall be:**

a) for the beneficiaries who report the turnover, the difference between the turnover obtained from the eligible activity related to 2019 and the turnover obtained from the eligible activity related to 2020;

b) for the beneficiaries who apply the special regime for the travel agencies in accordance with the provisions of art. 311 of Law no. 227/2015 on the Fiscal Code, with subsequent amendments and completions, the difference between the volume of invoices issued for tourist services, including margin, for 2019 and the volume of invoices issued for tourist services, including margin, for 2020;

c) for the beneficiaries who keep records in simple batch, in accordance with the provisions of art. 1 para. (5) of the Accounting Law no. 82/1991, republished, with subsequent amendments and completions, the difference between the receipts obtained from the eligible activity related to 2019 and the receipts obtained from the eligible activity related to 2020.

The manner and date of launching the call for projects, the procedure for registration, verification, contracting, payment and monitoring, as well as the eligible expenses are detailed in the procedure for implementing the state aid scheme.

For further details and information, please contact us at the email address: office@ltj.ro.

February 26, 2020

LTJ & PARTNERS
