

**D E C I S I O N N O 1 6 7**  
**of 02.06.2004**

**on the notification of the Ministry of Public Finances referring to the  
facilities to be granted to SC NUCLEARELECTRICA SA**

**THE PRESIDENT OF THE COMPETITION COUNCIL,**

**Based on:**

1. Presidential Decree no. 57/2004 for appointing the Competition Council's members;
2. The provisions of the Competition Law no. 21/1996, published in the Official Gazette of Romania, Part I, no. 88/30.04.1996, with subsequent amendments and completions;
3. The provisions of the Law no. 143/1999 on State Aid, published in the Official Gazette of Romania, Part I, no. 370/03.08.1999, with subsequent amendments and completions;
4. The Regulation regarding the organization, functioning and procedure of the Competition Council, published in the Official Gazette of Romania, Part I, no. 288/01.04.2004;
5. The Regulation regarding the form, content and other details of a State aid notification, published in the Official Gazette of Romania, Part I, no. 125/24.03.2000;
6. The notification of the individual State aid to be granted to SC NUCLEARELECTRICA SA, based on art. 38(8) of the Fiscal Code and the intention of the Romanian State to guarantee 100% the EURATOM credit, submitted by the Ministry of Public Finances under Note no.107630/16.03.2004, registered at the Competition Council as no. RS-AS 26/18.03.2004. The notification became effective at the date the information were exact and complete, mainly on 26.05.2004.
7. The notice of the Directorate for State Aid Authorization regarding the notified State aid.

**Based on the following:**

1. The measures notified by the Ministry of Public Finances are instituted by the following normative acts:

- GD no.825/2002 regarding the guaranteeing, by the Ministry of Public Finances, in 2002, of certain external credits amounting USD 115 million, the equivalent in CAD and EURO, necessary to further carrying on the works of Unit 2 CNE Cernavoda;
- GD no.322/2002 regarding the guaranteeing, by the Ministry of Public Finances, in 2002, of certain external credits up to an amount of CAD 316 million, EURO 141 million, USD 24 million, for the acquisition by National Company “Nuclearelectrica” SA of imported goods and services necessary to complete Unit 2 CNE Cernavoda, amended by the GD no.1339/2002;
- Fiscal Code approved by the Law no.571/2003 art.38 (8).

At the same time, the intention of granting a guarantee for the external credit granted by EURATOM in amount of EURO 223.5 million was also notified.

2. The purpose of the notified facilities is represented by the necessity to complete the works and to put into function the Unit 2 CNE Cernavoda which represents a priority of the development strategy for the energetic sector in Romania, according to GD no.35/1997.

3. The necessity and opportunity to put into function the Unit 2 CNE Cernavoda were constantly demonstrated by studies regarding the electric energy sector's development, some of them elaborated with assistance provided by foreign companies well-known in the field. **“Study for developing with minimum costs the electric and thermo energy production capacities”** elaborated during 1996- 1998 by the SEP Consortium (Holland) - Tracteb (Belgium) – EDF (France), analyzed the development of the energetic sector during 1996- 2020, the result being a list of priorities to carrying out or completing the energetic objectives, based on the optimization of primary fuel utilization and the impact on the environment.

4. Due to the increase of the national need for electric energy, the finalization of the Unit 2 CNE Cernavoda represents the best solution for developing the electric energy production sector in Romania, the finalizing and exploiting costs generating tariffs within those values forecasted for the analyzed period. The average acquisition price for the electric energy at the

level of the National electro-energetic System will diminish with approx.6.5%

**5. In the “National Strategy for developing the energetic sector in Romania during 2001- 2004”** as part of the national economic strategy, approved by the GD no.647/2001, submitted to the European Commission, it is emphasized, based on the minimum costs analysis, also taking in account programs for improving the energy use efficiency, the necessity to finalize the Unit 2 CNE Cernavoda.

**6.** From the data presented in the notification form, it results that this analysis, until 2010, proves that, due to an increase of the energy need at national level, according to the provisions of the “Road Map for the energetic field in Romania”, approved by GD no.890/2003, taking into account the acquisition prices for electric energy charged by different producers in April 2004, it will be registered an increase of the average acquisition price for electric energy at the level of the National electro-energetic System with approx.2.2% if the investment project for Unit 2 CNE Cernavoda will not be completed. If the increase until 2007 and the constant evolution until 2010 of the natural gas price are taken into account, the average acquisition price for the electric energy at the level of the National electro-energetic System could increase with more than 6 % in the perspective of 2010, without finalizing Unit 2 CNE Cernavoda.

**7.** SN Nuclearelectrica, owned 100% by the Romanian State through the Ministry of Economy and Commerce, has as activity objective the production of electric and thermo energy through the classic nuclear procedure, sale of electric and thermo energy produced through the classic nuclear procedure, manufacture of nuclear fuel, establishing and preserving the heavy water and nuclear fuel stock, etc. The percentage of electric energy production represents approx.99% of the total turnover of the company.

**8.** SN Nuclearelectrica SA Bucharest produces and sells electric energy, under the supply conditions and prices set up by the National Regulatory Authority for Energy. At the same time, the producers are forced, at the request of the National Energetic Dispatch, to produce the required quantities, increasing or reducing the electric discharged in the system, when the consumption- production balance at national level, is not equilibrated, regardless the way the contracts are carried out.

**9.** The production of SN Nuclearelectrica SA is sold under regulatory conditions, as follows:

- ? 97% of the quantity of produced electric energy is sold under regulatory conditions to the energy suppliers (SC ELECTRICA SA's branches) of the captive consumers (consumers that don't have the possibility to choose their supplier). The selling under regulatory conditions is being made in the quantities and at the prices approved by ANRE.
- ? 3% of the quantity of energy is sold to CN TRANSELECTRICA SA, also under regulatory conditions by ANRE and at the same price, as a system service to cover the technical losses within the transport network..

**10.** Since January 1, 2004, the annual average acquisition tariff for electric energy charged by producers and approved for SN Nuclearelectrica SA is of ROL 918,000/MWh according to the ANRE decision no.493/19.12.2003, amended by the ANRE decision no.106/29.04.2004. This tariff covers the operating/exploitation, maintenance and repairing costs as well as the depreciation related to Unit 1 CNE Cernavoda, but it doesn't provide the necessary sources for investments and development, respectively for funding the finalization of the investments and putting into function of Unit 2 CNE. The company's own source is only its profit, which is entirely invested in accordance with the provisions of *GO no.126/2000 regarding the carrying out of works of the Unit 2 CNE*, amended by *Law no.571/2003 on Fiscal Code*, source that is insufficient for a project of this size.

**11.** The total value of the works to be further carried out to complete the Unit 2 of CNE Cernavoda is of EURO 777.856 million.

**12.** The putting into function of Unit 2 CNE Cernavoda shall have the following effects:

- covering from nuclear sources approx. 20% of the electric energy necessary for Romania, at lower costs and with high environmental protection, in comparison with the other electric plants functioning with fossil fuel.
- equilibrating the energetic balance of Romania by decreasing the degree of dependence on imports of primary energy, especially of petroleum and natural gas, taking into account that for the production of the same quantity

of electric energy in the classic electric plants it would have been necessary a petroleum import of approx. 1.4 million tons/year.

- increase of the safety of energy supply in Romania, according to the European trends.
- consolidating a competitive and economic source of electricity, taking into account the integration within the Single Market of electricity.
- achieving an equilibrated structure of the energetic resources necessary Romania, increasing in this way the degree of flexibility in covering the electric energy need.

Producing a quantity of electric energy of 5,280 GWh/year in the first two years of functioning and of 5,326 GWh /year in the next years until the end of the life period, and from these it shall be delivered in the National Energetic System 4,860 GWh/year, respectively 4,900 GWh/year.

- insuring 3,500 new jobs on the Cernavoda platform during the finalization of the investment and of 500 standing jobs for exploiting Unit 2.

**13.** According to *GO no.126/2000 regarding the carrying out of works of the Unit 2 CNE* amended by *Law no.571/2003 on Fiscal Code* the carrying out of works until the finalization and putting into function of Unit 2 CNE constitutes energetic objective of national strategic interest.

**14.** Having in regard that:

- the Romanian State is the sole shareholder of SN Nuclearelectrica SA;
- the company does not have the financial capacity to cover from its own sources a project of this size;
- the external credits contracted by the company, necessary to complete the works of Unit 2, guaranteed by the Romanian State, shall be reimbursed from SN Nuclearelectrica SA's own sources;
- the EURATOM credit, to be guaranteed by the State, shall be used to finance the increase of the safety and efficiency of Unit 2, diminishing at the same time the pressure of the investment project over the State budget (in the absence of this credit, the EURO 223.5 million must be paid from the State budget for the period the project is carried out of, namely 5 years);
- the investments are necessary for the good and secure functioning of the National Energetic System, being the best solution for developing this system;

the facilities granted according to the normative acts notified by Ministry of Public Finances, including the intention to grant the State guarantee for the EURATOM credit, do not confer an advantage for SN Nuclearelectrica SA.

## **DECIDES:**

**Art. 1.** Based on art.8 align.(2) read in conjunction with art. 12 (2) a) of the Law no.143/1999 on State aid, with subsequent amendments and completions, the guarantees granted by the State for the external credits contracted to complete and put into function the Unit 2 CNE, including the guarantee to be granted for the EURATOM credit, as well as the exemption from the payment of profit tax for the 2003- 2010 period stipulated by art.38(8) of the Fiscal Code, amounting ROL 248 billion, do not constitute State aid, since these do not confer an advantage for SN Nuclearelectrica SA.

**Art. 2.** The present Decision becomes effective at the date of its communication.

**Art.3.** According o the provisions of art.29 in the Law no.143/1999 regarding the state aid, with the subsequent modifications and completions, the present Decision can be appealed by the interested persons at Bucharest Appeal Court, Administrative-Contentious Section within 30 days as of its communication.

**Art. 4.** The present Decision will be communicated by the General Secretariat of the Competition Council to the following:

- the Ministry of Public Finances, 17 Apolodor Street, sector 1, Bucuresti;
- SN Nuclearelectrica SA, 65 Polona Street, sector 1, Bucharest.

**Art. 5.** The Secretariat General and the Directorate for State Aid Authorization of the Competition Council shall pursue the fulfillment of this Decision.

**PRESEDINTE  
MIHAI BERINDE**