

**DECISION NO. 27**  
**of 21.01.2004**

**regarding the authorization of the State aid specific allocation that is intended to be granted to S.C. HESPER S.A. Bucharest as part of the State aid scheme contained by GEO no. 40/2002 for the recovery of the budgetary arrears approved and amended by Law no. 491/2002**

**The Competition Council's Plenum,**

**Based on:**

- 1.** Decree no. 1075/2001 on the appointment of the members of the Competition Council;
- 2.** The provisions of the Competition Law no. 21/1996, published in the Official Gazette no. 88, Part I, of 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 no. 370, Part I, of 03.08.1999, with subsequent amendments and completions;
- 4.** The provisions of the Governmental Decision no. 599/2000 for the approval of the procedures for reporting, monitoring and informing in the application of the Law no. 143/1999 on State aid, published in the Official Gazette no. 340, Part I of 21.07.2000;
- 5.** The Regulation regarding the organization, functioning and procedure of the Competition Council, published in the Official Gazette no. 50 bis, Part I of 25.03.1997 with subsequent amendments;
- 6.** The Regulation on the form, content and other details of the State aid notification, published in Official Gazette no.125, Part I of 24.03.2000;
- 7.** The Regulation regarding the state aid for rescue and restructuring the firms in difficulty, published in the Official Gazette, Part I, no. 470/02.07.2002;
- 8.** The notification of the State aid specific allocation that is to be granted to S.C. HESPER S.A. Bucharest as part of the existing State aid scheme contained by the GEO no. 40/2002 for the recovery of the budgetary arrears approved and amended by Law no. 491/2002 submitted by the Ministry of Public Finances under Note no. 293073/17.12.2003, registered at the Competition Council as no. RS-AS 79/17.12.2003, which became effective on 19.12.2003;

9. The Note of the Department for State Aid concerning the notified State aid.

**Based on the following:**

1. The notified State aid represents a State aid specific allocation within the existing State aid scheme, contained by GEO no. 40/2002 for the recovery of the budgetary arrears.

2. In accordance with the Convention closed between the Ministry of Public Finances and S.C. HESPER S.A. Bucharest, the non-observance of the payment deadlines and of the conditions under which there were approved the payment facilities generates their annulment, the beginning or the continuation, by case, of the forced execution for the entire unpaid amount and the obligation to pay the supplementary charges calculated as of the date the terms and/or conditions were not respected.

3. The relevant market is represented by the market of projecting, producing and trading the hydraulic equipments (hydraulic pumps, hydraulic engines, hydraulic installations), vacuum pumps and equipment for thermo installations (pumps and electro-pump for fuels, burners for household and industrial use).

4. The analysis of the notified measure was carried out according to the criteria for granting State aids included in the Regulation regarding the State aid for rescue and restructuring firms in difficulty. S.C. HESPER S.A. Bucharest is a company in difficulty because it confronted several problems that negatively influenced the production and economic – financial activity, this fact resulting from the following considerations: the company records losses, the existing of a longer duration for recovering the claims and a higher weight of the finished products stock in the total stocks, the lack of the cash flows, the high volume of the short term debts, being noticed also an unfavorable evolution of the economic – financial indicators.

7. The State aid granting will allow the S.C. HESPER S.A. Bucharest to achieve a large Restructuring Plan for 2004 – 2006, ensuring thus the maintaining into function and the economic recovery of the company. This plan includes organizational, technical and technological, managerial and

financial measures that will have as effect the reduction of the costs, the income obtaining and the increase of cashes.

**8.** From financial – economic point of view, the positive effects of implementing the Restructuring Plan will be recorded in the next years. These start from creating the premises for paying the overdue obligations and the related interests for which it was requested the rescheduling and end with the existence of increased financial flows which to ensure both the creation of financial sources necessary for the re-technology and modernization, the further development of the company, and the normal carrying out of the production activity.

**9.** The restructuring cost of S.C. HESPER S.A. is of ROL 88,239 mil, as follows: own sources (in value of ROL 32,691 mil) and State aid (in value of ROL 55,547 mil.). Thus, the contribution of S.C. HESPER S.A. in achieving the Restructuring Plan represents 37.04% of the financial effort.

**10.** The State aid granting to S.C. HESPER S.A. can not significantly affect the competitive environment, taking into consideration that S.C. HESPER S.A. is the single producer on the domestic market of hydraulic servo-controls, hydraulic engines, fuel pumps and pumps with blades. As well, the taken restructuring measures will lead to restraining of the production activity, to identifying of the activities generators of losses for HESPER and to their taking over by closing or selling these activities.

**11.** The State aid is limited at the minimum necessary and will be used only for restoring the viability of the company, not allowing to the beneficiary, during the application of the Restructuring Plan, to extend its production capacity. The State aid granting ensures the economic straighten of the company in a short period, the production capacity being reduced at the optimum functioning. There are thus respected the provisions of art. 14 of the Regulation regarding State aid for rescue and restructuring the firms in difficulty.

**12.** The requested State aid does not distort the competition and does not lead to an excess of liquidities that can be used in aggressive activities for distorting the market without any link with the restructuring process.

**13.** S.C. HESPER S.A. Bucharest has not received before restructuring State aid, being thus respected the art. 18 of the Regulation regarding State aid for

rescue and restructuring the firms in difficulty that stipulates the fact that the restructuring aid should be granted only ones.

**14.** The information presented in the notification registered at the Competition Council leads to the conclusion that the State aid specific allocation as part of the existing State aid scheme contained by GEO no. 40/2002 for the recovery of the budgetary arrears approved and amended by Law no. 491/2002 does not significantly affect the normal competition environment and does not infringe the proper application of the international treaties to which Romania is part.

**15.** Under art.13, par. (1) of Law no.143/1999 on State aid, the Competition Council shall permanently survey all the existing aids, and if it is found that the State aid scheme contained by GEO no. 40/2002 for the recovery of the budgetary arrears or specific allocations within it significantly affects the normal competitive environment and the proper application of the international agreements to which Romania is part, shall request to the State aid grantor to take adequate measures for eliminating the incompatibility of it with Law no. 143/1999 on State aid.

## **DECIDES**

**Art.1.** Within the meaning of art. 12 par. (2) let. b) read in conjunction with art. 14 par. (3) let. c) of the Law no. 143/1999 on State aid, the Competition Council authorizes the State aid specific allocation intended to be granted to S.C. HESPER S.A. Bucharest as part of the existing State aid scheme contained by the GEO no. 40/2002 for the recovery of the budgetary arrears, approved and amended by Law no. 491/2002, as a restructuring State aid, mentioning that, as provided under art. 18 of the Regulation regarding the State aid for rescue and restructuring the firms in difficulty, the restructuring aid is granted only ones.

**Art.2.** The value of the State aid to be granted is of ROL 55,546,535,789.

**Art.3.** The present Decision becomes effective at the date of its communication.

**Art.4.** According to the provisions of art. 29 of the Law no. 143/1999 on State aid, the present Decision can be appealed within 30 days as of its communication the Bucharest Court of Appeal.

**Art.5.** The present Decision shall be communicated by the Secretariat General of the Competition Council to:

- the Ministry of Public Finances, 17 Apolodor Street, sector 1, Bucharest;

- S.C. HESPER S.A Bucharest, 1 Dr. C. Istrati Street, sector 4, Bucharest.

**Art.6.** The Secretariat General and the Directorate for State Aid of the Competition Council shall pursue the fulfillment of the present Decision.

**PRESIDENT**

**THEODOR VALENTIN PURCAREA**