

DECISION OF COMPETITION COUNCIL
No. 150/09.08.2005

**regarding the investment scheme for small size projects of waste
management,
notified by the Ministry of European Integration**

COMPETITION COUNCIL,

Having regard the provisions of the European Agreement establishing an association between Romania, on one hand, and the European Communities and their Member States, on the other hand, ratified by the Law no. 20/1993, published in the Official Gazette of Romania, Part I, no. 73/12.04.1993,

Having regard the provisions of the Competition Law no. 21/1996, published in the Official Gazette of Romania, Part I, no. 88/30.04.1996, with the subsequent amendments and completions,

Having regard the provisions of the Law no. 143/1999 on State Aid, published in Official Gazette of Romania, Part I, no. 370 on 3rd of August 1999, with the subsequent amendments and completions,

Having regard the provisions of the Regulation on State Aid for Environmental Protection, published in the Official Gazette of Romania, Part I, no. 470 on 2nd of July 2002, with the subsequent amendments and completions,

Having regard the Decree no. 57/2004 for the appointment of the Competition Council's members,

On the following basis,

PROCEDURE

(1) By address no. 7928L/30.06.2005, registered at the Competition Council with no. RS-AS 63/06.07.2005, the Ministry of European

Integration notified, according to Art. 6 of *Law 143/1999 on State aid, with subsequent amendments and completions*, the State aid under the form of an investment scheme for small size projects of waste management, having as objective the environmental protection.

(2) The Competition Council requested additional information by the address no. CC/1575/22.07.2005, to which the Ministry of European Integration answered by address no. 9098/21.07.20005.

(3) The notification became effective on the date of registration at the Competition Council of the address comprising the supplementary information requested, namely on 25.07.2005.

DESCRIPTION OF THE SCHEME

Objective

(4) The investment scheme for small size projects of waste management is an investment scheme aiming primarily to offer technical and financial support to the local public authorities in charge with waste management in Central Region of Romania, in order to assist their efforts to reduce the waste volume and to stimulate the selective collecting of waste.

(5) The specific objectives of the scheme are the following:

- To assist the Romanian Government on the enforcement of a multi-annual integrated policy regarding encouraging waste management activities at local level;
- To improve the local public authority's abilities on contributing to environmental protection;
- To elaborate and implement local projects on waste management, which would contribute to rehabilitation and protection of the environment in the Central Area of Romania;
- To reduce the impact on the environment of waste deposits;
- To improve the collecting and transporting of waste, in areas lacking a public salubrity system;
- To improve the efficient and straightforward methods for waste treatment at a satisfying cost-benefit ratio.

(6) The scope of this scheme is to support the public local authorities in charge with waste management in their efforts to reduce the volume of waste and to stimulate the selective collecting. The waste managed by these local authorities represents garbage coming from individual households. The scheme does not make any reference to the industrial garbage.

Legal basis

(7) The legal basis for granting the financing is the Financing Memorandum between the Romanian Government on one hand, and the European Commission, on the other hand, signed on 02.12.2003, regarding the National Phare Programme 2003, published in the Official Gazette of Romania, Part I, no. 551 bis/21st of June 2004, ratified by E.G.O. no. 43/2004 and approved by the Law no. 357/2004.

Geographical coverage

(8) The geographical area aimed by this support measures is the Central Region of Romania (Region 7) which comprises six counties: Alba, Brasov, Covasna, Harghita, Mures, and Sibiu.

Eligibility of beneficiaries

(9) According to the notification form, the beneficiaries of the allocations within this scheme are the local public authorities, such as Local Councils, City Halls, or County Councils. In order to be eligible, the beneficiaries should meet the following conditions:

- to be public authorities responsible for waste management, project implementing and contracting of services and works;
- to be directly responsible with project management and planning and not to be an intermediary;
- to be a public authority of a locality with maximum 50.000 inhabitants;
- the beneficiary must not benefit of another assistance (PHARE, LIFE, etc.) for similar projects in the last 12 months prior to the submission of the financing request;
- to be the legal owner of the land or building where the structures of the project are planned to be constructed;

- to have stable financial resources guaranteeing the operation and maintenance of the financed structure, as well as maintaining the continuity in the organization throughout the whole project and, if necessary, to contribute to the project's financing;
- to have relevant experience and to be able to demonstrate the capacity to manage activities of the same importance as the project for which the financing is being requested;
- to obtain all the agreements, approvals and authorisations required by Romanian law, relating to the works to be done and/or improved during the project.

(10) The funds will be granted to each beneficiary who has previously completed a feasibility study, approved by the local relevant authority (Local/County Council). This study should include the project objective/s, location, estimated costs, as well as an implementing program. Moreover, the study should demonstrate that the beneficiary is able to financially support the project further than the period of granting the non-reimbursable funds.

(11) A beneficiary may submit more financing requests for different projects, thus he may benefit of more than one financing agreement within these scheme.

Eligible costs

(12) Any project shall include the following compulsory topics:

1. investments;
2. training activities for the personnel involved in exploitation of the investment;
3. advertising.

(13) The investments would mainly aim the following achievements:

- *Construction of plants for bio-mechanical pre-treatment of garbage;*
- *Development/rehabilitation of salubrity systems in localities which don't have any so far, establishing a waste collecting infrastructure;*

- ***Construction of composting platforms;***

(14) The other two types of activities, namely the personnel training and advertising, will also be financed from the budget of the project and the services will be provided by qualified consultants. The consultants will be selected after the financing contract is signed, according to services acquisition procedure, e.g. the tender procedure.

(15) The eligible costs are:

- *direct costs:*

- costs with the personnel hired for the project;
- transport, accommodation and daily allowance for the personnel hired for the project;
- acquisition costs for the equipments and transport facilities, if they correspond to the market value;
- writing materials costs;
- costs direct connected to the Contract requirements (information dissemination, specific evaluations, copying, insurances and so on);
- personnel training costs, which must not exceed 5% from the total eligible costs;
- advertising costs (creating and producing informative materials and promotion campaigns) which must be at least of EURO 5,000;
- costs for preparing the tender documentation and technical specifications.

- *Indirect costs:*

- A fix percentage of the overheads of the beneficiary, no more than 7% from total eligible costs, for covering the administrative costs.

(16) The following costs cannot be considered as eligible:

- Expensed for covering eventual losses or debts;
- due interests;

- cost of purchasing lands or buildings;
- costs that are already covered within other projects;
- salary costs of persons that are not involved in the project;
- costs relating to the exchange rate;
- taxes, inclusive VAT, in case the beneficiary cannot recover it (in case the legal provisions provide for such a possibility);
- preliminary studies costs and other preparing activities.

Selection criteria for projects

(17) In order to be eligible, the projects must fulfil the following conditions:

- the overall project, as well as the expected results, must be clearly defined, including a public information component;
- to have a net positive impact in the implementation area, from the environmental protection, economical and social point of view;
- to achieve the strategic objectives identified in the National Plan for Waste Management and the Regional Plan for Waste Management;
- to contribute to the implementing of the national legislation in force, with regard to waste management, in order to fulfil the EU criteria in this field.

(18) The list of the selection criteria comprises:

- duration of the project, quality and the consistence of the technical proposal;
- the costs efficiency degree in relation to the investment;
- the managerial capacity of applicants;
- the capacity of the applicants to cover future operating and maintenance expenses;
- the safety and exploiting degree of the used technologies;
- the facility to monitor the project after the implementation.

(19) The selection of projects shall be carried out by an Evaluation Committee, approved by the Regional Development Council. The Regional

Development Agency and the Regional Agency for Environmental Protection, each will name a person to take part in the Selection Committee. In addition, the Ministry of European Integration will name a third member, as an independent assessor, on the basis of a technical assistance contract.

(20) The selected projects for financing shall be approved by the Regional Development Council and the Ministry of European Integration and, finally, by the Delegation of the European Commission in Romania.

(21) According to the selection criteria, each project will be awarded grades between 1-5. Depending to the final score, the Committee will choose the projects to be financed.

Budget of the scheme

(22) The total amount of the project is of EURO 5.33 mill., out of which:

- Euro 4 mill. From PHARE funds and
- Euro 1.33 mill. co-financing from the State budget, through the Ministry of European Integration.

(23) The sums will be allocated in the form of grants, based on projects. The minimum sum for financing of each project is of Euro 300,000 and Euro 1,000,000 the maximum one.

(24) The cost of the project is not limited to a certain amount. The only condition is that the grants to cover maximum 90% from the total eligible costs (PHARE funds and co-finance from the State budget). Also, the grants must be between Euro 100,000 – 300,000 for each project.

(25) The sums for each project will be granted in several instalments. The first payment will be of 80% of the provisioned budget for the first 12 months. The subsequent payments will be allowed after the beneficiary has submitted the intermediary reports.

Duration of the scheme

(26) The duration of each project is of maximum 24 months. The limit date for signing the contracts with the local beneficiaries is the 30th of November 2005 and the dead line for the last payment is the 30th of November 2006.

Number of beneficiaries

(27) According to the notification, the Ministry of European Integration appreciate that the number of beneficiaries will be of seven, situated in the Central Area of Romania.

SCHEME EVALUATION

State aid character of the support measure

(28) In order to be considered as State aid in the meaning of the Law no. 143/1999 on State aid, with subsequent amendments and completions, the financial support must cumulatively fulfill the four conditions provided for in art. 2(1), as follows:

- To be granted by the State or from State resources;
- To be selective,
- To provide an economic advantage,
- To distort or to threaten to distort the competition or the trade between Romania and Member States of the European Union.

(29) As mentioned in the notification, the sums for this scheme are allocated from PHARE funds, co-financed from State budget. Thus, the co-financing part of Euro 1.33 mill represents sources allocated by the State, from State resources.

(30) Secondly, the financial support must be selective favouring certain undertakings or the production of certain goods. The selective character of this support scheme is obviously, as there are mentioned selection criteria for beneficiaries, which, in order to be eligible, must be local authorities, situated in the Central Area of Romania. Thus, other public authorities, situated in other areas of Romania, cannot benefit from the same financing.

(31) The third condition to be fulfilled is that the financial support measure must provide the beneficiary with an advantage. The Competition Council notes that the beneficiaries are local authorities, which do not correspond to the definition of an undertaking, in the sense of the Law no. 143/1999 on State aid, with subsequent amendments and completions.

(32) Nevertheless, there is a risk that the grants allocated within the scheme, in favour of the local authorities, to be indirect allocated to undertakings,

which could be sub-contracted in order to deliver the services of waste management. In this case, there is a possibility to be provided an indirect economic advantage to these undertakings.

(33) According to the supplementary information, the Competition Council notes that the sub-contracting of services and works and the acquisition of goods will respect the strict conditions imposed by the Practical Guide for PHARE, ISPA and SAPHARD (PRAG). This Guide governs the tendering and contracting rules, including the standard tendering documentation which must be used.

(34) As a consequence, taking into account the above said and the following two aspects, namely

- that the beneficiaries are public authorities and
- due to the fact that the possible sub-contracting of services will respect the tendering procedure,

one can conclude that there is no economic advantage either for the local authorities, or for the sub-contracted parties and therefore, there is no risk of distorting the competition or the trade with the Member states of the European Union.

(35) Taking into account the above said and the fact that two of the conditions provided for in art. 2(1) of the Law no. 143/1999 on State aid, with subsequent amendments and completions, are not met, the support measures within the scheme for small size projects for waste management do not constitute State aid.

Conclusions

(36) Having regard the above said, the Competition Council considers that the financing Scheme for investments for small size projects for waste management do not represent a State aid measure.

DECIDES

Art. 1. Based on art. 8 (2) from the Law no. 143/1999 on state aid, with subsequent amendments and completions, the financial support measures granted on the basis of the Scheme for investments for small size projects for waste management do not represent a State aid measure.

Art. 2. The present decision becomes applicable at the date of its communication.

Art.3. According to the provisions of art. 29 of the Law no. 143/1999 on State aid, with subsequent amendments and completions, the present Decision may be appealed by concerned persons before the Bucharest Court of Appeal, the Administrative Section, in 30 days from its communication.

Art.4. The present Decision shall be communicated by the Secretariat-General of the Competition Council to:

- Ministry of European Integration, 17 Apolodor Street, sector 5, Bucharest.

Art.5. The General Secretariat and the State Aid Authorization Department shall follow the fulfillment of the present Decision.

PRESIDENT

MIHAI BERINDE