

## **DECISION**

**no. 208 from 11.11.2005**

**regarding the state aid scheme enclosed by the Draft Government Decision for the  
approval of the Project  
“Incinerating the dangerous waste and sterilizing the waste  
resulted from medical activities”**

### **THE 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 Monitor no 73/12.04.1993, Part I,

Having regard the provisions of the Competition Law no. 21/1996, republished in the Official Monitor no. 742/16.08.2005, Part I,

Having regard the provisions of the Law no. 143/1999 on the state aid, republished in the Official Monitor no. 744/16.08.2005, Part I,

Having regard to the Regulation regarding the regional state aid, published in the Official Monitor no. 340/19.04.2004, with the subsequent amendments and completions, issued in the application of the Law no. on the state aid, republished,

Having regard to the Regulation regarding the state aid for small and medium size enterprises, published in the Official Monitor no. 340/19.04.2004, with the subsequent amendments and completions, issued in the application of the Law no. on the state aid, republished,

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

**Based on the following considerations,**

## **1. PROCEDURE**

(1) By address no. 34111/09.09.2005 registered at the Competition Council with the no. RS-AS 84/13.09.2005, the Ministry of Environment and Water Management – The Administration of the Environmental Fund, based on the Art. 15 in the Law no. 143/1999 of the state aid, republished, notified the Project “Incinerating the dangerous waste and sterilizing the waste resulted from medical activities”, hereby named the Project.

(2) The notification became effective at the date of its registration, namely on 13.09.2005.

## **2. Legal Base**

(3) The Administration of the Environmental Fund notified the Project based on the Draft GD approving the Project<sup>1</sup>(for the entire legal base see also Footnote no.1).

## **3. DESCRIPTION OF THE FINANCIAL SUPPORT MEASURES**

### **3.1. Objective of the scheme**

(4) By the Project, grants are to be made from the Environmental Fund to develop installations that will dispose such dangerous waste thereby fulfilling the engagements assumed by Romania in the Plan for Implementing the Directive 2000/76/CE on incinerating waste, annexed to the Additional Document to Romania’s Position, Chapter 22- Environment.

### **3.2. Beneficiaries**

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- <sup>1</sup> GD no.128/2002 on incinerating the dangerous waste, with the subsequent amendments and completions;
  - The Order of the Minister of Environment and Water Management nr.756/26.11.2004 for approving the Technical Methodology on incinerating waste;
  - GD no. 1470/2004 for approving the National Strategy for managing waste and the National Plan for managing waste;
  - EGO no. 78/2000 on waste regime, approved with amendments by Law no. 426/2001;
  - GD no. 856/2002 on the evidence of the management of waste and for the approval of the list enclosing waste, including dangerous waste, with the subsequent amendments and completions;
  - The Plan for implementing the Directive 2000/76/CE on incinerating the waste;
  - The Handbook of the Environmental Fund;
  - Regulation on the regional state aid, with the subsequent amendments and completions, published in the Official Monitor of Romania, Ist Part, no. 340 on 19 of April 2004, amended and completed by the Regulation for the amendment and completion of the Regulation on the regional state aid, published in the Official Monitor of Romania, Ist Part, no.847 on 16.09.2004,
  - Regulation on the State aid for SMEs, with the subsequent amendments and completions, published in the Official Monitor of Romania, Ist Part, no. 340 on 19.04.2004, amended and completed by the Regulation for the amendment and completion of the Regulation on the State aid for SMEs, published in the Official Monitor of Romania, Ist Part, no.127 on 9.02.2005.

(5) Beneficiaries to be financially supported from the Environmental Fund within the Project are undertakings whose projects are selected by a Committee based on criteria provisioned in the Environmental Handbook.

(6) In accordance with the Handbook of the Environmental Fund, the undertakings requesting financing must submit Informative Forms on the projects (FIP) within the submission sessions advertised by the Administration of the Environmental Fund. The assessment and selection criteria of the projects are mentioned in the Operating Handbook. Based on these selection criteria, the Ascertainment and Assessment Commission of the Environmental Fund Administration establishes the score of a project financing request.

(7) According to the Project, in order to be eligible, the beneficiaries must fulfill the following conditions:

- Are undertakings;
- Perform activities according to the legislation in Romania;
- Have paid their financial obligations to the State budget and/or to the Environmental Fund;
- Do not sponsor or finance activities with a negative effect on the environment;
- The state aid allocations within the scheme shall not be granted to undertakings in economic-financial difficulty.

(8) The maximum number of beneficiaries within the scheme is 8.

### **3.3. The aid instrument**

(9) Financial support within the Project can be granted as non-reimbursable, reimbursable or as a mix of the two. The maximum value to be financed from State sources, for each beneficiary is the following:

*A – for non-reimbursable support – maximum 50% of the eligible costs of the project financed from State sources<sup>2</sup>.*

*B – for reimbursable financing - maximum 8% of the eligible costs of the project financed from State sources.<sup>3</sup>*

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<sup>2</sup> non-reimbursable financing amounting to 30% of the eligible costs, to which can be added a bonus of:

- 10% of the Project's eligible costs, if the beneficiary is SME, in accordance with the Regulation on the State aid for SMEs;
- 10% of the Project's eligible costs, if by accomplishing the project is recovered energy used for the community.

*C – for mixed financing - maximum 34% of the eligible costs of the project financed from State sources.*<sup>4</sup>

### **3.4. Background. General considerations on the waste management in Romania**

(10) The Directive 2000/76/CE on waste incineration regulates the development of the incinerating and co-incinerating activities and the control and monitoring measures for the incineration and co-incineration installations. The regulation of these activities has as purpose the prevention or reducing of the negative effects on environment, especially on the air, soil, surface and underground waters' pollution and of any risks for the population's health. The Directive requests to all Member States to take all measures to ensure the compliance with the Directive's demands, including the waste' thermo treatment.

(11) The priorities in managing waste in Romania are defined and established in the National Strategy for managing the waste, elaborated in 2003. These priorities are:

- Preventing the production of waste;
- Recycling waste;
- The material capitalizing of the waste;
- The thermo capitalizing of the waste;
- The controlled storage of the waste with the insurance of the installations necessary for significantly reducing the negative impact on the environment.

(12) In order to fulfill the objectives established in the National Strategy for managing the waste, a Plan for Implementing the Directive 2000/76/CE on the incineration of waste was elaborated in 2004. It is the instrument to ensure the implementation in Romania of

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<sup>3</sup> Reimbursable financing amounting to 80% of the eligible costs of the beneficiary's project is granted with an interest of 5% per year. Therefore, the financial support from the State consists of the difference between the interest granted to the beneficiary and the market interest. The interest difference is 10%. Under these conditions, the financial support from the State for each beneficiary is of 8% from the project's eligible costs ( $10\% \times 80\% \times \text{eligible costs} = 8\% \times \text{eligible costs}$ );

<sup>4</sup> Non-reimbursable financing up to 30% of the project's eligible costs and reimbursable financing of 34% from the project's eligible costs. Therefore, the financial support from the State, for the reimbursable financing, consists in the amount calculated as a difference between the interest granted to the beneficiary and the market interest.

The difference compared to the market interest is of 10%.

Thus, the financial support from the State for reimbursable financing consists of the following:

- 30% of the project's eligible costs, to which it can be added,
- 4% of the project's eligible costs ( $10\% \times 40\% \times \text{eligible costs} = 4\% \times \text{eligible costs}$ ).

the EU policy in the waste area and ensures the establishment of a lasting system for managing the waste in Romania<sup>5</sup>.

(13) The incineration of dangerous waste capacity shall be accomplished until the end of 2008, taking into consideration the steps necessary for locating, designing, authorizing, as well as drawing the funds necessary for accomplishing the incineration capacity.

(14) Starting with 1.01.2007, all incineration installations for dangerous waste in function in Romania will have to fulfill the standards provisioned in the Government Decision no.128/2002 on waste incineration, with the subsequent amendments and completions.

## **4..Description of the Project**

### **4.1. Objective**

(15) As a result of the engagements assumed by the Plan for implementing the Directive 2000/76/CE on waste incineration, Romania must accomplish until 2008 a incineration capacity of approx. 63,000 tones per year, in order to eliminate the dangerous waste. In this capacity are also included approx. 3,000 tones per year dangerous waste arising from medical activities with high degree of risk, the others to be treated by thermo sterilization.

(16) The objective of reaching the projected capacity is to be fulfilled through the Project, which consists in acquiring and bringing into function incineration facilities and installations for the management of dangerous waste and of sterilizing dangerous waste arising from medical activities. This will bring obvious advantages to the environment and, at the same time, will contribute to the development of the areas where they are located.

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<sup>5</sup> Previous to the elaboration of the National Strategy for managing the waste an assessment was made on the quantities of industrial, medical and housekeeping waste/inhabitant in Romania. These are the following:

- Total industrial waste: 18.13 tones/inhabitant;
- Incinerationable dangerous industrial waste (exclusively those physical-chemical treatable, co-incinerationable and storable under special conditions): 0.002 tone/inhabitant;
- Total medical waste: 0.003 tone/inhabitant;
- Dangerous medical waste (infectious and sharp): 0.000872 tones/inhabitant ;
- Housekeeping waste (collected in a controlled manner): 0.274 tones/inhabitant;

It is forecasted that until 2009, the total quantity of waste will decrease by 10%, an average of 0.8% per year, due to the implementation of the demands of Directive 96/61/CE. The total quantity of dangerous waste produced in Romania was assessed at the level of 2002, at 581,000 tones. To this approx. 19,000 tones of medical dangerous waste are added. The quantity of dangerous waste to be cremated was estimated to be around 60,000 tones/year starting with 2009. This quantity shall be temporarily stored, until 31.12.2008, in accordance with the provisions of art. 2 (g) of the Directive 99/31/CE. The quantity of dangerous medical waste to be cremated together with the industrial dangerous waste, starting with 2009, is of 3,000 tones. The difference up to 19,000 tones dangerous medical waste, respectively 16,000 tones, shall be treated by thermo sterilization.

(17) By the notified Project financial support shall be granted only for making the investments necessary for the cremators and sterilizers of dangerous waste. According to the provisions of the Government Decision Project, the investment financed with state support shall be maintained for a minimum period of 5 years.

#### **4.2. The necessity of the project implementation. Background**

(18) The Plan for implementing the Directive 2000/76/CE on waste incineration provides for the incremental closure, until 31.12.2008, of 346 cremators attached to hospitals, as they do not fulfill the conditions necessary for the safe elimination of dangerous waste from medical activities and cannot be technologically renewed to fulfill the Directive's demands. According to the Plan, 236 installations for burning the dangerous medical waste will be closed down until 31.12.2006, and 110 installations for burning dangerous medical waste will also be closed between 31.12.2006 – 31.12.2008.

(19) The closure of certain cremators is due to the very low burning temperature (many times under 400°C). During the burning process, noxious emissions are produced which are not monitored or retained due to the lack of equipments. The smoke furnaces do not have the proper ventilation, and in many cases are under the level of the neighboring buildings. These cremators have a high usage degree and cannot be adapted for incinerating the waste with a high content of plastic materials. These are the reasons why it is necessary to close down these cremators and to acquire new incinerating and sterilizing installations.

(20) In the study elaborated by the Institute for Public Health under the authority of the Ministry of Health, the total quantity of medical waste produced in Romania is estimated to approx. 64,000 tones/year, from which:

- waste from the same category as housekeeping waste, but from medical activities – 45,000 tones/year;
- infectious waste from medical activities– 12,000 tones/year;
- sharp – cutting waste resulted from medical activities – 7.000 tone/an;

(21) From the total medical waste, dangerous waste resulted from medical activities represent approx. 30%, respectively 19,000 tones/year (19% infectious waste and 11% sharp - cutting waste).

(22) Until 2008, Romania will have to establish a incineration capacity of 63,000 tones/year, in which shall be cremated approx. 60,000 tones/year industrial dangerous waste and approx. 3,000 tones/year medical dangerous waste.

#### **4.3. Eligible activities within the Project**

(23) The financial support can be granted to acquire new technological installations and equipments, monitoring equipments, clean technologies to reduce air, soil and water pollution, including assembly-constructions.

(24) The incineration installations to be acquired by the beneficiaries of the support must fulfill the following criteria:

- Incineration capacity higher than 10,000 tones/year;
- Bi-room cremator, with two blowpipes;
- Combustion temperature in the second room higher than 1,100 °C;
- endowment with system for recovering the heat and using the energy;
- endowment with filters and systems for washing the gases;
- endowment with systems for continuously monitoring the emissions in order to meet the maximum allowed values provisioned in the GD no. 128/2002, with the subsequent amendments and completions;
- endowment with pre-purification station for the waste waters for the cremators provisioned with systems for gases moisture washing;
- recirculation of waters within the system;
- separate flows for the dangerous and non-dangerous waste in the incinerating undertakings, without the risk of interfering with each other.

(25) The thermo sterilization installations to be acquired by beneficiaries of the financial support within the Project must fulfill the following criteria:

- sterilizing the waste shall be made by thermo procedures, without adding other substances;
- inactivation of the germs until the III<sup>rd</sup> degree.

(26) The installations and equipments to be acquired within the projects financed with State support shall lead to the creation of new incinerating and sterilizing units for dangerous waste, in accordance with the provisions of the Directive 2000/76/CE.

(27) The costs within the Project will be considered to be the costs in accordance with the Draft GD approving the Project “Incinerating the dangerous waste and sterilizing the waste resulted from medical activities” (acquisitions of installations, assembling the installations, related buildings and the buildings necessary for assembling the installations, automation and information related to the project).<sup>6</sup>

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<sup>6</sup> In accordance with the Draft GD for approving the Project “Incinerating the dangerous waste and sterilizing the waste resulted from medical activities”, the following costs are not included: the retrospective costs, the costs with research and designing, the costs on the impact and feasibility studies, the costs for obtaining approvals, authorizations, the infrastructure and supra-structure besides the installation (administrative buildings, endowments for buildings, furniture etc), acquiring lands, losses from the foreign exchange rate, VAT, connections to the utilities necessary for the installation or the equipments within the project, inner roads between the technological objectives-part of the installation, organizing the yard (scaffolding, locating the installations helping the workings etc), laboratory and the related endowments, stationery and consumables, costs related to the organization of the bidding and closing the purchase contract, costs related to the training of personnel, traveling, wages, vehicles and other costs not related to the project.

#### 4.4. The budget and the project's implementing period

(28) The total amount to be allocated in the project is ROL 340 billion, during 2005 – 2008, as follows:

*Table no. 1* Sums allocated within the Project

- billion ROL -

Year	2005	2006	2007	2008	Total
Allocated sum	34	260	36	10	340

*Source: The notification form*

#### 5. Assessment of the support measures

##### 5.1. Existence of aid

(29) The criteria based on which a support measure granted by the State is considered to be State aid are provisioned at art. 2 (1) of Law no.143/1999 on State aid, republished.

(30) In order to be considered State aid, according to Law no. 143/1999 on State aid, the financial support must cumulatively fulfill the four conditions provisioned at art. 2:

- a) to be granted by the State or from State resources,
- b) the measure to be selective,
- c) to ensure an advantage to the undertaking,
- d) to distort or threaten to distort the competition and to affect the trade between Romania and the Member States of the European Union.

*a) the support is granted from State resources*

(31) The Project's financing is made from State resources.

*b) the support measure has a selective character*

(32) The support measures within the Project are addressed only to the eligible undertakings presented at point 3.2. Therefore, the granted financial support has a selective character.

*c) the support measure grants an advantage to the beneficiaries*

(33) The support measures provide preferential treatment to beneficiaries giving them advantages compared with other competitors.

*d) the support measure distorts or threaten to distort the competition and to affect the trade between Romania and the Member States of the European Union.*

(34) Under the scheme aid may be granted to undertakings which can or could affect the trade with the Member States of the European Union in so far as the beneficiaries of the



financial support measures compete with undertakings from the EU performing similar activities.

(35) In conclusion, the Competition Council considers the financial support granted within the Project as State aid, in accordance with art.2 (1) of the Law no.143/1999 on the State aid, republished.

## **5.2. Compatibility of the State aid scheme**

(36) In assessing the compatibility of the scheme, the Competition Council, in view of the environmental impact of the scheme, would analyze the fulfillment of the criteria provided in the secondary legislation concerning State aid.

### **5.2.1. Applicability of the Regulation on the regional State aid**

(37) In principle, the Competition Council assesses the State aid scheme for investments in environmental protection based on the criteria provisioned in the Regulation on the State aid for environmental protection. Hereinafter, if the criteria provided in the Regulation on the regional State aid are fulfilled, the State aid can be assessed based on Regulation on the regional State aid. Therefore, the Competition Council assesses the State aid scheme established by the Project, based on criteria provisioned in the Regulation on regional State aid (hereafter “Regulation”).

#### **5.2.1.1. State aid for initial investment**

(38) According to art. 2 (2) of the Regulation, the State aid may be granted for a productive investment (initial investment) or for the creation of jobs linked to such investments.

(39) Within the meaning of art. 5 of the Regulation, by initial investment it is understood an investment in tangible assets related to the creation of a new unit, extending an old one or starting an activity implying a fundamental change in the product or in the manufacturing process of the existing unit by its rationalization, diversification or modernization.

(40) The Competition Council notes the following:

- a) The investment project on incineration and sterilizing installations aims to introduce new installations and facilities that were previously nonexistent in Romania. The project described above to be financed within the State aid scheme fulfils the definition of an initial investment, in accordance with the provisions of art.5 (1) of the Regulation regarding the initial investment;
- b) In accordance with the facts mentioned at point 4.3., the State aid does not aim to finance replacement investments, fulfilling this way the provisions of art.5 (2) (a) of the Regulation;
- c) In accordance with the information mentioned in para. 7, the State aid scheme stipulates that allocations within the scheme are not to be granted to undertakings

in difficulty. Therefore, the provisions of art. 5 (2) (b) of the Regulation, regarding the measures designated for the financial restructuring of an undertaking in difficulty are fulfilled.

#### **5.2.1.2. Eligible costs**

(41) Granting the financial support within the Project aims to accomplish only investments in tangible assets. Therefore, the assessment of the eligible costs shall be based on the provisions of art. 6 in the Regulation, related to costs for investments in tangible assets.

(42) According to art. 6 (1) of the Regulation, the State aid for initial investment is calculated as percentage points of the investment's value. In accordance with art. 6 (2) of the Regulation, this value is established based on a set of costs, relating to the following categories of investments: lands, buildings and equipments forming the standard base provisioned in accordance with Annex no.2 of the Regulation.

(43) In accordance with the facts mentioned at point 4.3. the Competition Council notes that all conditions provisioned at art. 6 of the Regulation, conditions referring to the eligible costs for investments are observed.

#### **5.2.1.3. The beneficiary's contribution**

(44) The beneficiary must contribute to finance the investments with at least 25%, in accordance with the provisions of art. 8 (1) of the Regulation.<sup>7</sup>

(45) Based on those mentioned at point 3.3., the Competition Council notes that the financing within the Project can be granted non-reimbursable, reimbursable or a mix of the two. The minimum value for the own contribution, is the following:

- for non-reimbursable financing – min. 50% of the project's eligible costs;
- for reimbursable financing – min. 92% of the project's eligible costs;
- for mixed financing – min. 66% of the project's eligible costs.

(46) The Competition Council considers that the provisions of art 8 (1) in the Regulation, regarding the minimum contribution of the regional State aid beneficiary to the investments' financing are fulfilled.

#### **5.2.1.4. Aid intensity**

(47) In accordance with art. 9 of the Regulation on the regional State aid, the State aid's gross intensity must not exceed 50% of the equivalent net subsidy. According to art. 4(2) of the Regulation on the State aid for SMEs, the maximum ceiling for SMEs may be

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<sup>7</sup> This minimum contribution of 25% cannot be subject of any other State aid (art. 8 (2) in the Regulation).

increased with 15 percentage points, under the condition that the total net intensity does not exceed 75%.

(48) Based on the facts mentioned at point 3.3., the Competition Council notes that the financing from State resources granted within the Project is as follows:

- For non-reimbursable financing– max. 50% of the project's eligible costs;
- For reimbursable financing– max. 8% of the project's eligible costs;
- For mixed financing– max. 34% of the project's eligible costs.

(49) Therefore, the Competition Council considers that the provisions of art. 9 of the Regulation on regional State aid and of art.4 (2) of the Regulation on State aid for SMEs are fulfilled.

#### **5.2.1.5. Maintaining the investment**

(50) In accordance with art. 11 of the Regulation, the State aid for initial investment must be conditioned, by its allocation manner or by conditions related to its obtaining, on maintaining the investment for a minimum period of 5 years.

(51) In accordance with the fact mentioned on para. 22, the Competition Council notes that the granting of the allocations within the notified scheme is conditioned by maintaining the investment for a minimum period of 5 years, fulfilling this way the provisions of art. 11 of the Regulation.

#### **5.2.1.6. The State aid's stimulating effect**

(52) The Competition Council considers that the Ministry of Environment and Water Management – The Administration of the Environmental Fund, has notified the draft scheme “Incinerating the dangerous waste and sterilizing the waste resulted from medical activities” before granting State aid allocations enclosed by it. Furthermore, in accordance with those mentioned at point 3.4. it can be considered that the projects to be financed with the support of the State aim the best management of the dangerous waste. Therefore, the Competition Council considers that the condition referring to the State aid's stimulating effect is fulfilled.

#### **5.2.1.7. Cumulation**

(53) In accordance with the provisions of art.16 of the Regulation, the ceilings for the aid intensity mentioned at para. 53 and 54 apply to the total aid. This also applies where the beneficiary received at the same time aid within other schemes, from different sources: local, regional, national or communitarian.

(54) The Administration of the Environmental Fund shall monitor the activity of the undertakings benefiting of State aids within the scheme established by the Project, shall

ensure that the granted State aid, cumulated with other State aids granted for the same objective within other schemes, does not exceed the maximum allowed ceiling for the regional State aid's intensity, namely 50% plus 15 percentage points for SMEs.

### **5.3. Conclusions**

(55) The information presented in the notification submitted to the Competition Council leads to the conclusion that the State aid scheme established by the Project is not in any measure to unduly affect the competitive environment and does not infringe the proper application of the international treaties Romania is being part of.

(56) After the assessment, the Competition Council considers that the State aid amounting to ROL 340 billion, consisting in financial allocations from the Environmental Fund for the establishment of the installations incinerating and sterilizing the dangerous waste, fulfills the granting criteria in accordance with the Regulation on regional State aid, enforced by the Order of the Competition Council's President no.55/2004.

## **DECIDES**

**Art.1.** The financial support measures granted based on the state aid scheme established by the Draft Government Decision for the approval of the Project "Incinerating the dangerous waste and sterilizing the waste resulted from medical activities", notified by Ministry of Environment and Water Management – The Administration of the Environmental Fund, are considered state aid and fall under the incidence of art. 2 para. (1) of Law no. 143/1999 on the state aid, republished.

**Art.2.** Based on art. 21 para. (2) (c) corroborated with art. 23 para.(1) (f) of Law no.143/1999 on state aid, republished, the state aid scheme for regional development enclosed in the Project "Incinerating the dangerous waste and sterilizing the waste resulted from medical activities" is hereby authorized.

**Art. 3.** The value of the State aid to be granted is RON 34,000,000.

**Art.4.** The Administration of the Environmental Fund shall monitor that the specific State aid allocations granted within the scheme will not exceed the maximum allowed intensity when cumulating the State aids for the same objective and beneficiary.

**Art.5.** According to the provisions of art. 32 of Law no.143/1999 on state aid, republished, the Administration of the Environmental Fund shall submit to the Competition Council information regarding the state aid scheme for inventorying and monitoring it.

**Art.6.** According to the provisions of art. 46 of Law no.143/1999 on state aid, republished, the present Decision may be appealed by concerned persons before the Bucharest Court of Appeals, the Administrative Litigation Section, in 30 days from its communication.

**Art. 7.** The present decision becomes applicable at the date of its communication.

**Art.8.** The present Decision shall be communicated by the Secretariat-General of the Competition Council to:

- Ministry of Environment and Water Management, B-dul Libertatii nr.12, sector 5, Bucharest,
- Administration of the Environmental Fund, str. Splaiul Independentei nr. 294, Corp A, sector 6, 060031, Bucharest.

**PRESIDENT**

**MIHAI BERINDE**