

DECISION
no. 215 from 30.11.2005 regarding the state aid scheme enclosed by the Draft
Decision of the Advisory Committee of the Environmental Fund for approval of the
Project regarding the treatment of urban waste water

THE COMPETITION COUNCIL,

Having regard to the provisions of the Europe 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 from 12 April 1993,

Having regard to the provisions of the Competition Law no. 21/1996, republished in the Official Monitor of Romania, Part I, no. 742 from 16 August 2005,

Having regard to the provisions of the Law no. 143/1999 on the state aid, republished in the Official Monitor of Romania, Part I, no. 744 from 16 August 2005,

Having regard to the Regulation regarding the regional State aid, published in the Official Monitor of Romania, Part I, no. 340 from 19 April 2004, with the subsequent amendments and completions, issued in the application of the Law no. 143/1999 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 of Romania no. 340 from 19 April 2004, issued in the application of the Law no. 143/1999 on the state aid, republished,

Having regard to 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 the address no. 35274/27.09.2005, registered at the Competition Council with the no. RS-AS 91/28.09.2005, the Ministry of Environment and Water Management – The Administration of the Environmental Fund notified the Project regarding the treatment of urban waste water, hereby named the Project according to the Art. 15 of the Law no. 143/1999 of the state aid, republished.¹ The notification became effective on 03.11.2005.

2. Legal Base

(2) The Administration of the Environmental Fund notified the Project based on the Draft Decision of the Selection Committee approving the Project².

3. Description of the financial support measures

3.1. Objective of the scheme

(3) By the Project, grants are to be made from the Environmental Fund to develop and extend the installations for treatment of urban waste water, with the related endowments, in order to fulfill the commitments assumed by Romania within the Plan for Implementing the Directive 91/271/CEE on the treatment of urban waste water, modified by the Directive 98/15/CE, Annex to the Complementary Position Paper of Romania, Chapter 22- Environment³.

3.2. Beneficiaries

¹ The Competition Council requested additional information by address no. DAAS/1295/07.11.2005; the Administration of the Environmental Fund answered by address registered at the Competition Council with the no. RG/ 8518/03.11.2005.

² - Law no. 73/2000 regarding Environmental Fund with the subsequent amendments and completions;
- Law of water no. 107/1996, with the subsequent amendments and completions;
- Government Decision no. 188/2002 for the approval of norms regarding the conditions for the release in the aquatic environment of the waste water, with annexes:

- Normative NTPA-001/2002 regarding the establishment of pollutants charging limits of industrial and urban waste water at release into the natural receptors;
- Normative NTPA-002/2002 regarding the conditions for evacuating waste water into the local sewerage networks and directly into the treatment stations;
- Technical standards NTPA-011/2002 regarding the collection, the treatment and the release of urban water and the Annex: Action Plan regarding the collection, the treatment and the release of urban waste water.

³ Directive 91/271/CEE was completely transposed into the Romanian legislation by Government Decision no. 188/2002. Related directives include Directive 91/271/CEE were also transposed into the Romanian legislation: Directive 91/676/CEE by GD no. 964/2000; Directive 76/464/CEE by GD no. 118/2002; Directive 78/659/CEE by GD no. 202/2002; Directive 76/160/CEE by GD no. 959/2002; Directive no. 98/83/CE by Law no. 458/2002; Directive 75/440/CEE by GD no. 100/2002; Directive 99/31/CE by GD no. 162/2002.

(4) 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.

(5) 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.

(6) 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;
- The beneficiaries of financings within the scheme do not make business within the steel sector and synthetically fires sector.

(7) The maximum number of beneficiaries within the scheme is 50.

3.3. The aid instrument

(8) 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 sources⁴;

B – for reimbursable financing - maximum 16% of the eligible costs of the project financed from State sources⁵;

⁴ Non-reimbursable financing amounting 30% of the eligible costs are granted, to which it can be added a bonus of:

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

⁵ Reimbursable financing amounting to 80% of the eligible costs of the beneficiary's project are granted with an interest of 5% per year. The difference between this interest and the market's interest is 10%.

*C – for mixed financing - maximum 38% of the eligible costs of the project financed from State sources.*⁶

3.4. Background. General considerations on the treatment of urban waste water in Romania

(9) The Directive 91/271/CEE on the treatment of urban waste water, modified by Directive 98/15/CE, has as an objective the environmental protection against the negative effects of the releasing of urban waste water and waste water from certain industrial sectors⁷.

(10) In order to ensure the implementation of EU policy in Romania, within the field of urban waste water, Government Decision no. 188/2002 regarding the approval of some norms concerning conditions for the releasing of waste water in aquatic environment was adopted thereby transposing Directive no. 91/271/CEE and at the same time establishing an Action Plan for the collection and treatment of urban waste water. There were also issued the Implementation Plan of the above Directive containing the phases which Romania intends to follow, the schedule of achievements and related costs.

(11) The objectives of the Action Plan regarding the collection, treatment and release of urban waste water are:

- to ensure the protection and normal functioning of sewage networks of the localities and of the urban waste water treatment stations;
- to protect the population and the environment against the negative effects of the releases of urban and industrial waste water.

(12) In order to implement the Directive 91/271/CEE in Romania, the following main priorities were identified:

Therefore, the financial support from the State consists of the difference between the interest granted to the beneficiary and the market interest, multiplied by the number of years for reimbursing the loan (max. 2 years). Under these conditions, the financial support from the State for each beneficiary is of 16% from the project's eligible costs ($10\% \times 80\% \times 2 \text{ years} \times \text{eligible costs} = 16\% \times \text{eligible costs}$);

⁶ Non-reimbursable financing up to 30% of the project's eligible costs. There is also granted non-reimbursable financing up to 40% of the project's eligible costs to the beneficiary, with an interest of 5% per year. The difference compared to the market interest is 10%. 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, multiplied with the number of years for reimbursing the loan (max. 2 years). Under these conditions, the maximum amount of the reimbursable financial support, for each beneficiary, is 8% from the project's eligible costs ($10\% \times 40\% \times 2 \text{ years} \times \text{eligible costs} = 8\% \times \text{eligible costs}$)

Thus, in case of mixed financing, the maximum financial support from the State consists of the following:

- 30% of the project's eligible costs, to which it can be added 8% of the project's eligible costs.

⁷ Mainly from the manufacturing and processing of food products.

- the identification of human agglomerations having more than 2,000 e.i.⁸ and of those higher than 10,000 e.i., that require the construction or the extension of the systems for the collection and the treatment of waste water;
- establishment of the programs to build sewage networks and of the treatment stations in accordance with the Action Plan for collecting, treatment and release of the urban waste water;
- the construction of a new treatment station and the extension of the existing ones in human agglomerations as well as the building or the extension of some urban waste water treatment stations from the food processing industry; the building or the extension of sewage systems.

4. Description of the Project

4.1. Objective

(13) The objective of the Project consists of the building of new facilities and the extension of urban waste water treatment installations with related endowments, in order to attain higher levels of environmental protection, in accordance with the requirements of Directive 91/271/CEE. This fact will improve the environment and, at the same time, will contribute to the development of the areas in which these will be located.

(14) By the notified Project financial support shall be granted only for making the investments necessary for the building of new facilities or the extension of urban waste water treatment installations. In addition, in accordance with the provisions of the Selection Committee of the Environment Fund, investments made with the State support shall be maintained for a minimum period of 5 years.

4.2. The necessity of the project implementation. Background

(15) In Romania, in the stations for waste water treatment, only 77% of the debit from the released waste water are treated within urban collecting systems; in 47 urban localities having over 150,000 citizens, the waste water is released without preliminary treatment. Also, from 21.7 million citizens, nearly 11.5 million have access to the collection and treatment of waste water services. The highest volume of untreated water comes from sewage systems of localities (over 89%).

(16) In these circumstances there is absolutely necessary to make investments with the following objectives:

- the increase of the treatment ratio before the release of urban waste water that come into the collection systems;
- the fulfillment of requirements of Directive 91/271/CEE on the release of industrial waste water that come into collection systems and into urban treatment installations, as well as on the storage of mud resulted from treatment stations;
- to ensure the optimum conditions for the release of bio-degradable industrial waste water which does not come into urban waste water treatment stations;

⁸ Equivalent inhabitants.

- the monitoring of evacuated waste water, of receiving water, as well as of the storage of the mud resulted from the treatment of urban waste water.

(17) Additionally, having in view the geographical position of Romania within the Danube and Black Sea area as well the necessity of the environmental protection of these areas, Romania declared „sensitive area” the whole of its territory. This means that all agglomerations having over 10,000 e.i. must ensure a severe treatment of urban waste water.

4.3. Eligible activities within the Project

(18) The financial support can be granted to acquire new technological installations and equipments, monitoring equipments, clean technologies to reduce water pollution.

(19) The installations and equipments to be acquired by the beneficiaries of the support must fulfill the requirements of NTPA-001/2002 Normative on the settlement of limits of charging with pollutants of industrial and urban waste water on the release in natural receivers, of NTPA-002/2002 Normative on the conditions of release of waste water from the sewage network of localities and directly in the treatment systems and of Technical Standard NTPA-011/2002 on the collection, treatment and release of urban water.

(20) The installations and equipments to be acquired within the projects financed with State support shall lead to the creation of new treatment units of urban waste water, in accordance with the provisions of the Directive 91/271/CEE.

(21) The eligible costs of the Project will be considered as the costs set in accordance with the Draft Decision of the Selection Committee of Environment Fund for approving the Project on the treatment of urban waste water (acquisitions of equipments, related constructions, automation and information related to the project)⁹.

4.4. The budget and the project's implementing period

(22) The total amount to be allocated in the project is of RON 85 million, during 2005 – 2010, as follows:

Table no. 1

Sums allocated within the Project

- RON million -

⁹ In accordance with the Draft Decision of the Selection Committee issuing for approving the Project on the treatment of urban waste water the following costs are not eligible: 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.), lands procurements, 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, organization of the yard (scaffolding, locating the installations helping the works etc.), laboratory and related endowments, stationery and consumables, costs related to the organization of the bidding and conclusion of the purchase contract, costs related to the personnel training, traveling, wages, motor vehicles and other costs not related to the project.

Year	2005	2006	2007	2008	2009	2010	Total
Allocated sum	6	34	25	10	6	4	85

Source: The notification form

5. Assessment of the support measures

5.1. Existence of aid

(23) The criteria on which a support measure granted by the State is considered to be State aid are provided for in art. 2 (1) of Law no. 143/1999 on State aid, republished.

(24) In order to be considered State aid, according to the Law no. 143/1999 on State aid, the financial support must cumulatively fulfill the following conditions:

- 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 to threaten to distort the competition and to affect the trade between Romania and the EU Member States.

a) the support is granted from State resources

(25) The Project's financing is to be made from resources of the Administration of the Environmental Fund, i.e. state resources.

b) the support measure has a selective character

(26) The support measures within the Project are addressed only to eligible undertakings as set out in paragraph 3.2. Therefore the granted financial support has a selective character.

c) the support measure represents an advantage to the beneficiaries

(27) The support measures granted to undertakings selected within the Project provide preferential treatment to the 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 EU Member States.

(28) The aid granted to undertakings under the scheme aid can or could affect the trade with the EU Member States in so far as the beneficiaries of the financial support measures compete with undertakings from the EU performing similar activities.

(29) 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

(30) 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 the State aid.

5.2.1. Applicability of the Regulation on the regional State aid

(31) In principle, the Competition Council assesses the State aid schemes for investments in environmental protection based on the criteria provisioned in the Regulation on the State aid for environmental protection. However, if the criteria provided in the Regulation on the regional State aid are fulfilled, the State aid can be assessed on the basis of the latter Regulation. Therefore, the Competition Council assesses the State aid scheme established by the Project on the treatment of urban waste water, based on the criteria provided in the Regulation on regional State aid (hereafter “Regulation”).

5.2.1.1. State aid for initial investment

(32) In accordance with art. 2 (2) in the Regulation, State aid may be granted for a productive investment or for the creation of jobs linked to such investments (initial investment).

(33) Within the meaning of art. 5 of the Regulation, by initial investment it is understood an investment in fixed capital related to the creation of a new unit, the extension of an existing unit or the start up of an activity implying a fundamental change of the product or the manufacturing process of an existing unit by its rationalization, diversification or modernization.

(34) The Competition Council takes into account the following:

- a) The investment Project is for the creation of new (and/or extension of existing) facilities, including installations and technological equipments for treatment of urban waste water, as well as the equipments for monitoring the urban waste water’ pollution degree, in the treatment stations as well as in the natural basins, aim to purchase new treatment installations to meet the quality indicators provided by the communitarian regulations. Capital investments are required in order to create these new facilities. The Project described above to be financed within the State aid scheme fulfills the definition in art. 5 (1) of the Regulation;
- b) In accordance with the facts mentioned at point 4.3., the State aid does not aim to finance replacement investments preserving the production potential, thereby fulfilling this way the provisions of art. 5 (2) (a) of the Regulation related to the replacement investment;
- c) In accordance with the facts mentioned at paragraph 6, the State aid scheme provides that allocations shall not be granted to undertakings in financial difficulty. Therefore, the provisions of art. 5 (2) (b) in the Regulation concerning the exclusion of the financial restructuring measures for a firm in difficulty from the category of initial investments are fulfilled.

5.2.1.2. Eligible costs

(35) 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 of the Regulation related to costs for investments in tangible assets.

(36) 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 set of costs related to the following categories of investments: lands, buildings and equipments forming the standard base provided in Annex no. 2 of the Regulation.

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

5.2.1.3. The beneficiary's contribution

(38) The beneficiary must contribute to finance the investments with at least 25%, in accordance with the provisions of art. 8 (1) of the Regulation.¹⁰

(39) Based on the facts 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 of a beneficiary's contribution is the following:

- for non-reimbursable financing – minimum 50% of the project's eligible costs;
- for reimbursable financing - minimum 84% of the project's eligible costs;
- for mixed financing - minimum 62% of the project's eligible costs.

(40) Therefore, the Competition Council considers that the provisions of art. 8 (1) of the Regulation relating to the minimum contribution of the regional State aid's beneficiary to the investments' financing are fulfilled.

5.2.1.4. Aid intensity

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

(42) 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 – maximum 50% of the project's eligible costs;

¹⁰ This minimum contribution of 25% cannot be subject to another State aid (art. 8 (2) in the Regulation).

- For reimbursable financing– maximum 16% of the project’s eligible costs;
- For mix financing– maximum 38% of the project’s eligible costs.

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

5.2.1.5. Maintaining the investment

(44) 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 the maintenance of the investment for a minimum period of 5 years.

(45) In accordance with the fact mentioned on paragraph 14, 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 on regional State aid.

5.2.1.6. The State aid’s stimulating effect

(46) The Competition Council considers that the Ministry of Environment and Water Management – The Administration of the Environmental Fund, has notified the scheme established by the Project on treatment of urban waste water before granting the State aid allocations based on it. Furthermore, and in light of the points made at point 4.2., it can be seen that by increasing the treatment ratio, before releasing urban waste water into the collection systems, coupled with the optimization of the conditions for the release of bio-degradable industrial waste water which does not flow into urban waste water treatment stations, the overall development and stimulation of the region’s growth will be significantly promoted.

(47) Therefore, the Competition Council considers that the condition referring to the State aid’s incentive effect is fulfilled.

5.2.1.7. Cumulation

(48) In accordance with the provisions of art. 16 of the Regulation, the ceilings for the aid intensity mentioned at paragraph 41 apply to the total aid. This also applies where the beneficiary receives at the same time aid within other schemes, from different sources: local, regional, national or community.

(49) The Administration of the Environmental Fund shall monitor the activity of the undertakings benefiting of State aid allocations within the scheme established by the Project on treatment of urban waste water, making sure 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

(50) The information presented in the notification submitted to the Competition Council leads to the conclusion that the State aid scheme established by the Project of Decision of the Selection Committee for approving the Project on treatment of urban waste water, does not, in any measure, unduly affect the competitive environment and does not infringe the proper application of the international treaties Romania is being part of.

(51) After the assessment, the Competition Council considers that the State aid amounting RON 85 million, consisting in financial allocations from the Environmental Fund for the building of new facilities and the extension of installations for the treatment of urban waste water, fulfills the granting criteria in accordance with the Regulation on regional State aid, enforced by the Order of the President of the Competition Council no. 55/2004.

DECIDE

Art. 1. The financial support measures granted based on the State aid scheme established by the Project of Decision of the Selection Committee for approving the Project on the treatment of urban waste water, 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 (1) of Law no. 143/1999 on the State aid, republished.

Art. 2. Based on art. 21 (2) (b) corroborated with art. 23 (1) (f) of Law no.143/1999 on State aid, republished, the State aid scheme for regional development enclosed in the Project on treatment of urban waste water is hereby authorized.

Art. 3. The budget of the State aid scheme is of RON 85,000,000.

Art. 4. 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. 5. 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. 6. 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, building A, sector 6, 060031, Bucharest.

PRESIDENT

MIHAI BERINDE