

# **THE DECISION OF THE COMPETITION COUNCIL**

**no. 90 on 19.05.2005**

**regarding the state aid granted to  
SC PROMEX SA Braila  
notified by the Authority for State Assets Recovery**

## **THE COMPETITION COUNCIL,**

Having in regard the provisions of the Decree no. 57/2004 on the appointment of the Competition Council members,

Having in regard the provisions of the Competition Law no. 21/1996, published in the Romanian Official Gazette, Part I, no. 88 on April 30, 1996, with the subsequent amendments and completions,

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

Having in regard the provisions of the Europe Agreement establishing an association between Romania, on the one hand, and the European Communities and their Member States, on the other hand, ratified by the Law no. 20/1993, published in the Romanian Official Gazette, Part I, no. 73 on April 12, 1993,

Having in regard the provisions of the Regulation on state aid for rescue and restructuring firms in difficulty, as published in the Romanian Official Gazette, Part I, no. 470 on July 2, 2002,

**On the grounds of:**

## **1. LEGAL FRAMEWORK DESCRIPTION**

### **1.1. LEGAL BASIS FOR GRANTING THE STATE AID**

(1) The financial support was granted to SC PROMEX SA Braila on the grounds of the Law no.137/2002 regarding certain measures for accelerating the privatization process, on the grounds of the Government Decision no. 577/2002 regarding the approval of the Methodological Norms for the application of the Government Emergency Ordinance no. 88/1997 on the privatization of the commercial undertakings and on the grounds of the Government Ordinance no. 13/1995 on certain acceleration measures for the restructuring of the national companies and the commercial undertakings having major state-owned capital, for the strengthening the financial discipline and for improving the discounts at the level of

economy of the GEO no. 26/2004 regarding some measures for finalizing the privatization of companies being in the portfolio of APAPS and the strengthening of some privatizations.

## **1.2. NOTIFICATION PROCEDURE**

(2) By the letter no. P/17/05.05.2004, registered with the Competition Council under no. RS-AS 55/05.05.2004, the Authority for Assets Recovery (hereinafter called AVAS) **notified**, the financial support granted to SC PROMEX SA Braila at its privatization, under art. 6 and art.14 letter (e) of the Law no. 143/1999 on State aid, with subsequent amendments and completions.

(3) By the letters nos. DAAS/365/24.05.2004, DAAS 600/28.07.2004 and DAAS 620/04.08.2004 and DAAS/681/08.09.2004 and CC/2634/13.12.2004 and CC/546/14.04.2005 additional information has been requested. AVAS and the beneficiary had transmitted the required information by the letters nos. DCS/800/08.06.2004, DCS/2030/06.08.2004 and P/9031/13.09.2004, 373/27.01.2005 VP4/354/01.04.2005 and 1028/22.04.2005 registered with the Competition Council under no. RG 3118/09.06.2004, and respectively no. DAAS/427/06.08.2004, RG/6477/14.09.2004, CC/234/22.02.2005, RG/2267/05.04.2005, respectively DAAS/374/25.04.2005.

(4) The notification has become effective at the date the information were accurate and complete, namely on 25.04.2005.

## **1.3. DESCRIPTION OF THE PRIVATIZATION PROCESS**

(5) SC PROMEX SA Braila was subject to privatization in the year 2002. The majority of the company's shares has been offered for privatization 5 times after its being advertised in mass-media (ADEVARUL newspaper, local daily paper, on Internet and by displaying the announcement at the headquarters of the Authority for Privatization and Management of State Portfolio (hereinafter called APAPS)).

(6) In the privatization offer is stipulated the fact that APAPS takes to sale S.C. PROMEX S.A. Braila in accordance with the provisions of the Law no. 137/2002, on the Enforcement Methodology approved by GD no. 577/2002 and EGO no.88/1997. These normative acts are also enclosed in the Tasks Register issued by APAPS at Chapter 1 "Legal framework" and at Chapter 9 "Other main elements of the sale."

(7) Two presentation dossiers were bought by SC UZINSIDER SA Bucuresti and SC ASINBANGRUP SRL Galati, the only buying offer being submitted by SC UZINSIDER SA Bucuresti. In accordance with the published advertising, at the negotiation were admitted only the bidders proving that they fulfill the following pre-qualifying criteria: minimum 5 years experience in the field of production and commercializing construction equipments, construction and reflecting materials, high mechanic and optic products, complex technological equipments for the iron industry, etc, such as those manufactured by PROMEX. After checking the submitted documents, the negotiation commission found out that the bidder UZINSIDER SA Bucuresti fulfilled the legal conditions in force as well as those requested by APAPS and

decided to admit the bidder to the negotiations. Based on the shares sale-purchase contract's standard draft form, the negotiation commission and the bidder SC UZINSIDER SA agreed on the contractual clauses. After the negotiations, the no.46/23.12.2002 share sale-purchase contract was closed, for the shares held by APAPS at SC PROMEX SA Braila.

(8) The Buyer has notified the Competition Council with the economic concentration which has been authorized by the Decision no.157/17.04.2003.

(9) In accordance with the Stock Sale – Purchase Contract, the transfer of the ownership right over the shares has become effective on 09.01.2003, while the Buyer presented the amounts necessary for the first year of investments designated for carrying out the technological and environmental investments (assumed capital contribution).

## **2. BENEFICIARY OF THE STATE AID FACILITIES**

(10) The beneficiary of the financial aid granted by the State is SC PROMEX SA Braila.

(11) SC PROMEX SA Braila was established in 1921 as French – Romanian Company for manufacturing materials for railways. On the grounds of the nationalization law on June 11, 1948, the company is taken over by the state and registered as IUG „Progresul” Braila. In the period during 1950 – 1990, the company had become one of the main manufacturers of industrial equipment in Romania and the only company manufacturing excavators. In 1991, based on the Government Decision no.139/25.02.1991, IUG „Progresul” Braila is turned into SC PROMEX SA. In the period 1991 -1997 SC PROMEX SA undergoes a gradual decrease of orders, especially those for the domestic and Eastern markets, due to the drop of CAER. Starting with August 7, 1997, the undertaking shall enter into a 3-year winding-up process, with a later on reconsideration of this decision. From the end of 2002, when SC UZINSIDER SA bought the major stock, PROMEX becomes a stock company with entirely private capital. The company is registered with the Trade Register Office under no. J9/112/1991, under the unique registration code 2265683 and R fiscal code identification.

(12) On the signing date of the Stock Sale – Purchase Contract, the registered capital of SC PROMEX SA Braila with the Trade Register Office amounted at ROL 151,897,475 thousands, divided into 6,075,899 shares, of ROL 25,000 nominal value each.

(13) Before signing the Stock Sale – Purchase Contract, the shareholding structure of PROMEX was as follows:

**Table no.1 – The shareholders' structure before privatization**

SHAREHOLDERS	OWNED CAPITAL	
	Number of shares	Share capital quota (%)
APAPS	5,801,905	95.5
PPM shareholders	273,994	4.5
<b>Total</b>	<b>6,075,899</b>	<b>100.0</b>

*Source: The notification form*

(14) As a result of the ownership right transfer over the shares, on 09.01.2003, the shareholding structure of PROMEX is:

**Table no.2 – The shareholders' structure after privatization**

SHAREHOLDERS	OWNED CAPITAL	
	Number of shares	Share capital quota (%)
SC UZINSIDER SA	5,801,905	95.5
PPM shareholders	273,994	4.5
<b>Total</b>	<b>6,075,899</b>	<b>100.0</b>

Source: The notification form

(15) The main object of activity of the undertaking is to manufacture and market equipment for road building and constructions, fine mechanics products, complex technological equipment for metallurgical sub-branches, construction and reflecting materials, mounted axles on disk or bandage wheels, reducers, plastic deformation processing equipment, cast and forged half-finished products, equipment, machines and installations for special purpose vehicles, spare parts for various equipment and installations, machine tools repairs.

(16) The company performs the following secondary activities: road and railway transportation, service and technical assistance for the delivered products, production of compressed-air, oxygen, technological steam and hot water for industrial use.

(17) The economic – financial results, as showed in the balance sheets for the last 4 years are as follows:

**Table no.3 – the Company's economic – financial situation during 2000 - 2003, in current prices**

-ROL mill., current prices -			
Turnover (ROL million)			
2000	2001	2002	2003
160,515	273,110	301,489	388,623
Turnover on the Romanian market (ROL million)			
2000	2001	2002	2003
100,322	155,648	187,422	188,404
Net Profit / Loss (ROL million)			
2000	2001	2002	2003
43,377	10,647	899	1,588
Profit / Loss on the Romanian market (ROL million)			
2000	2001	2002	2003
738	208	17	9

Source: The notification form

Analyzing the turnover and the net profit obtained by the company both on the domestic and external markets, in terms of comparable prices (the prices at the level of 2000), it is found as follows:

**Table no.4 – The Company’s economic – financial situation during 2000 - 2003, in comparable prices**

- ROL mill., comparable prices -

<b>Consumer Price Index</b>			
<b>2000</b>	<b>2001/2000</b>	<b>2002/2001</b>	<b>2003/2002</b>
100.0	134.5	122.5	115.3
<b>2000</b>	<b>2001/2000</b>	<b>2002/2000</b>	<b>2003/2000</b>
100.0	134.5	164.8	190.0
<b>Turnover (ROL million)</b>			
<b>2000</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>
160,515	203,056	182,942	204,538
<b>Profit / Loss (ROL million)</b>			
<b>2000</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>
43,377	7,916	545	836

Source: The yearly statistic report and the notification form

Though in current prices the turnover realized by the company shows a significant increase (with approx. 90% higher in 2002 compared with 2000 and with 10% higher in 2002 compared with 2001), in comparable prices, the increase is of 14% in 2002 compared with 2000, and in comparison with the previous year (2001), the turnover decreases with approx. 10%. The assessment of the financial net result will be extended at Chapter 6 –SC PROMEX SA’s eligibility – firm in difficulty.

(18) SC PROMEX SA Braila knows an increasing liability (leverage) rate, all the debts of the company representing the debt amounts for a whole year period. The volume of outstanding payments is also on an ascendant trend, especially due to the debts to the budget creditors (92% in 2000, 96.3% in 2001 and 90% in 2002).

**Table no.5 – Situation of the firm’s debts during 2000 - 2002**

ROL million

	<b>2000</b>	<b>2001</b>	<b>2002</b>
<b>Total debts, out of which:</b>	234,113	255,541	293,201
<b>Outstanding payments</b>	172,059	223,996	243,654

Source: The notification form

(19) SC PROMEX SA Braila holds the following production capacities:

- Industrial Equipment Factory: manufactures equipment for the metallurgical industry, equipment for construction material industry, processing equipment for plastic deformation, reducers, axles, complex welded metal structures, welded components for machine tools and presses, etc.;
- Hydraulic Equipment Factory – manufactures tyre and rail excavators, variously equipped, equipment for road maintenance, hydraulic apparatus and instruments, naval hydraulic equipment;
- Factory of Half-finished Cast and Forged products – produces cast steel parts, forged parts.

(20) The geographical area these products are marketed in includes both the domestic and the external market.

(21) Most of SC PROMEX SA's products are unique or small series, large size products manufactured according to the client's documents, at the date of the privatization the excavators' production strongly decreasing. SC PROMEX SA's main domestic clients are:

**Table no.6 – Domestic clients of SC PROMEX SA Braila**

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(22) The export, representing 45% in 2002, mainly consists in metallurgical equipment and related spare parts while the major beneficiaries of the exported products are companies in Austria, Holland and Italy. In 2002, the export exclusively consisted in metallurgical equipment. Due to the fact that the company's traditional customers have purchased less and less PROMEX products, the sale volume to such customers being 13 times less as compared to 1996, the company had enlarged the number of its customers. So, during 1999 and 2000, 6 new customers have been attracted. After 2000 the customer distribution is even larger.

(23) The main customers are:

**Table no.7 – External clients of SC PROMEX SA Braila**

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(24) SC PROMEX SA Braila acts as a manufacturer on the following market segments:

**Table nr.8 – The market shares owned by SC PROMEX SA Braila**

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(25) The main competitors of SC PROMEX SA for industrial equipments and casted and forged half-finished products, are: IUG Craiova, UNIMET, CUG Cluj Napoca, CUG Iasi, ICMUG Giurgiu, Faur Bucuresti, IMGB, Fortus Iasi, UNIO Satu-Mare, UPSRS (within ISPAT SIDEX Galati), IOB Bals, ASTRA Arad, Aker Tulcea, Beta Buzau, Constructii Montaj Craiova, Armatura Cluj, Fontec Campina, Saturn Alba Iulia etc. As far as excavator production is concerned, there are no other domestic manufacturers; the competition on the market is represented only by companies selling foreign products of similar type.

(26) For the next three-year period it is estimated that all the competitors shall be better represented on the domestic market, since such companies have the necessary resources and technological capabilities.

(27) At the level of 2000, PROMEX was endowed, as far as the basic equipment is concerned, with a total of 1000 pieces of equipment for its hot and cold processing production sectors. The

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<sup>1</sup> Confidential data

<sup>2</sup> Confidential data

<sup>3</sup> Confidential data

average obsolescence of the hot processing equipment is of 84% while the average obsolescence for the cold processing equipment is of 70%.

(28) By examining the achieved output, as compared to the recalculated production capacity in the year 2000, a severe decrease in the use rate of its production capacities, for all its manufacturing sectors is found.

**Table no.9 – The production capacities and their use rate during 2000 - 2002**

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(29) As a result of the diminishing demand due to CAER market drop, the use rate of the production capacities had a descending evolution, but also due to the fact that in 1997 SC PROMEX SA was subject to a liquidation procedure, according to the Decision of the General Shareholder Meeting no. 15/16.08.1997, published in the Official Monitor no.1829 on 21.08.1997, action which was gave up to in 1998. The coming in liquidation procedure was determined by the financial blockage of SC PROMEX SA, due to the non-payment of the debts towards the State as the production designated to the domestic market was made without having orders and could not be sold.

### **3. FINANCIAL AID FACILITIES GRANTED BY THE STATE FOR RESTRUCTURING SC PROMEX SA Braila**

(30) At the time of its privatization, the company needed a financial restructuring in order to carry out its operation under normal parameters, in addition to the investments and the working capital contribution undertaken by the Buyer through the Stock Sale – Purchase Contract.

(31) The measures of financial support consist in facilities granted in accordance with the provisions in the Law no.137/2002, the Government Ordinance no.13/1995 and GEO no. 26/2004, amounting at a total value of .....<sup>5</sup> as follows:

a) Payment postponement for exemption purposes, as stated in the Law no.137/2002, amounting at a total value of .....<sup>6</sup>representing:

- delay penalties for the debts to the state budget, calculated until the date of the ownership right transfer over the shares;
- debts to the social insurance state budget and to the unemployment insurance budget, due and outstanding debts existing on 31.12.2001;
- delay interests and penalties related to the employer payment obligations to the social insurance state budget and to the unemployment insurance budget, due and outstanding

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<sup>4</sup> Confidential data

<sup>5</sup> Confidential data

<sup>6</sup> Confidential data

debts existing on 31.12.2001, calculated until the date of the ownership right transfer over the shares;

- APAPS own claims, owed and unpaid on 31.12.2001;
- APAPS own claims, calculated until the date the share selling-buying contract was signed;
- payment obligations to the local budget, due and outstanding on 31.12.2001;
- delay interests and penalties due and outstanding debts existing on 31.12.2001, calculated until the date of the ownership right transfer over the shares;

b) payment deferrals in value of .....<sup>7</sup> according to the Law no. 137/2002, representing:

- obligations to the social insurance State budget and the unemployment insurance budget, owed and not paid by the company at 31.12.2001;
- interests afferent to the individual contribution to social insurances, owed and not paid by the company at 31.12.2001, calculated until the date the transfer of the property right over shares was made;
- APAPS own claims, owed and not paid at 31.12.2001;
- APAPS own claims, calculated until the date the share selling-buying contract was signed
- obligations owed to the Local Council budget, and not paid at 31.12.2001;

c) Exemption from the penalties to be paid to the Romanian Commercial Bank – Braila Branch amounting at .....<sup>8</sup> under GO no. 13/1995.

d) payment postponement for further exemption, in amount of .....<sup>9</sup> according to the GEO no. 26/2004, representing dividends, moratorium damages and related interest and delay penalties;

e) deferral payment in amount of .....<sup>10</sup> according to the GEO no. 26/2004, representing dividends, moratorium damages and related interest and delay penalties;

#### **4. THE RESTRUCTURING PROGRAM**

(32) After 1990, the company was manly confronted with the impossibility to deal with the new economic situation generated by the disappearance of the CAER (COMECON) market, as well as with the lack of demand on the domestic market, the production capacities and the personnel number being oversized compared with the request's size. The entrance on the Romanian market of cheaper and with a high degree of viability industrial products manufactured by traditional manufacturers, as well as the external market being controlled by the big firms specialized in machinery manufacture, doubled by a management misfit to the demands of the market economy, have lead to the increase in the difficult situation of the company.

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<sup>7</sup> Confidential data

<sup>8</sup> Confidential data

<sup>9</sup> Confidential data

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(33) Through the designed restructuring program, the company has dimensioned its restructuring funding resources, on the one hand from its own resources and, on the other hand, based on the commitments of the Buyer undertaken under the Stock Sale – Purchase Contract in respect of the technological and environmental investments, absolutely necessary for its normal operation.

(34) The restructuring program aims at making the company more efficient by adequate organization, increased flexibility and faster feedback, faster adaptation to the market requirements, increased physical and value production, increased labor productivity and increased profit. The company intends to mainly focus on the production of unique or small series products, enclosing the “creativity” factor, giving up to the large series production, more dependent on the know-how and a higher degree of the involved technologies.

(35) These objectives are to be attained by: reorganizing the activities in profit centers, structuring of the marketing activity, reorganizing the market information management system, correlating the number of equipment with the production schedule, adapting the sources for utilities to the consumers’ current and future requirements, assimilating new equipment and products, correlating the number of personnel with the production schedule, creating policies for attracting and training personnel specialized in the strategic sectors (marketing, management and IT), improving the management policy for stocks and receivables.

(36) In accordance with the Stock Sale – Purchase Contract, the Buyer is bound to make investments from its own resources amounting at EUR 64,300 respectively ROL 2,427 million for environmental restructuring and Euro 1,500,000 during 2003- 2005 for investments and working capital.

(37) The restructuring program of SC PROMEX SA Braila covers the 2003-2005 period and includes the following sets of measures: organizational restructuring, technical and technological restructuring, environmental investments and financial restructuring.

(38) The synthesis of the measures included in the restructuring and financial rehabilitation program as well the restructuring costs are presented in the table below:

***Table no.10 – The restructuring measures and its costs***

(39) The financial resources for the restructuring plan are structured as follows:

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***Table no.11 – Financing sources for the restructuring plan***

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#### **4.1. Organizational and management restructuring**

(40) The organizational and management restructuring mainly aims to re-orient the company on profit and management centres, restructuring the marketing activities, re-organizing the

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<sup>11</sup> Confidential data

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technological fluxes which will lead to the decrease of the unproductive areas within the hall and selling the available fix assets, the improvement of the stocks and debts' management policy, adapting the sources for utilities to the present and future requests of the consumers.

(41) In summary, the organizational and management restructuring encloses the following measures:

**Table no.12 - Organizational and management restructuring measures**

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## 4.2. Technical and technological restructuring

(42) The technological restructuring, estimated to be finished mainly during 2004 and 2005, includes actions aiming at improving the quality of the processing technologies by purchasing high performance equipment and machines, restructuring of the compressed air, oxygen, carbon dioxide supply systems, as well as for ensuring the necessary endowments for performing road transportation services. Also, putting in place a reliable IT system by purchasing computers (hardware), software, establishing computer network loops and then putting all these together in an single computer network; metering system for utilities (water, methane gas, electricity, etc.).

(43) In summary, the technical and technological restructuring encloses the following measures:

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## 4.3. Restructuring measures on environmental protection

(44) The environmental protection problems of the company are the metallic oxide infiltrations in the water layer, rare waist and dusts emissions in the atmosphere, difficulties in recycling the chemical waists. The Buyer, by the shares' sale - purchase contract, undertook the new program for fulfilling the environmental conditions, in order to obtain the environment authorization. This program was entirely finalised, fact confirmed by Braila Environmental Protection Agency, in its letter no.7935/12.12.2003 submitted to AVAS. The positive effects of the environmental project mainly consist in the hydro-chemical monitoring of the underground water corresponding to the production facility area, improved efficiency of the management of the waste management, improved quality of the neutralization procedures of the washing waters, chemically impure after metal coating processes, accurate reading of the air pollution and building a concrete tank for the chlorine hydride acid tank at the thermal power station.

(45) The restructuring measures on environmental protection are presented in the table here-under:

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<sup>13</sup> Confidential data

<sup>14</sup> Confidential data

**Table no.14 - Restructuring measures on environmental protection**

-ROL thousands-

Measure	Time limit	Implementing Effort	Financing		State aid
			Own sources	Buyer's sources	
Drilling, at the base of the stock-pile to hydro-chemical monitor the water level	2003	56,605.5	-	56,605.5	-
Making a concrete floor for the platform of the span storehouse and a sewerage for it	2003	377,370.0	-	377,370.0	-
Repairing the installation for measuring the volumes came from the Danube	2003	98,116.2	-	98,116.2	-
Finalizing the main repairing at the neutralization installation from the Metallic Coatings Shop	2003	377,370.0		377,370.0	-
Bringing back into function their own analysis laboratory for monitoring the disbursed waste water	2003	264,159.0	-	264,159.0	
Installing the hydro-clon to the sandblast related to FUH in order to reduce the dust emissions into the atmosphere	2003	75,474.0	-	75,474.0	-
Proper usage and maintenance of the cleaning installations and of the own sewerage networks, for keeping the evicted waste-water quality indexes within the imposed limits	2003	320,764.5	-	320,764.5	-
Endowment with lab equipments for monthly monitoring the waste from the atmospheric emissions	2003	188,685.0	-	188,685.0	-
Finding some ways to re-capitalize or neutralize the substances with exceeded time limit	2003	226,422.0	-	226,422.0	-
Taking the administrative steps for obtaining the environmental authorization, according to the law	2003	113,211.0	-	113,211.0	-
Endowment of the fuel station with oil-absorbent substances	2003	18,868.5	-	18,868.5	-
Designing green spaces for a proper environment	2003	37,737.0	-	37,737.0	-
Making a concrete tank for the acid's reservoir from the heating power plant	2003	132,079.5	-	132,079.5	-
Keeping in work the self-discharging pits to insure the constant water level	2003	37,737.0	-	37,737.0	-

Treating the galvanic slurries for neutralizing it before storing it in the industrial stock-pile	2003	45,284.4	-	45,284.4	-
Storage of re-usable wastes by sorts, in containers or on concrete surfaces to be sold	2003	56,605.5	-	56,605.5	-
<b>TOTAL</b>		<b>2,426,489.1</b>	<b>-</b>	<b>2,426,489.1</b>	<b>-</b>

Source: S.C.PROMEX S.A. Braila's restructuring program

#### 4.4. Financial restructuring

(46) The measures of The State financial support consist in facilities granted in accordance with the provisions in the Law no.137/2002, the Government Ordinance no.13/1995 and GEO no. 26/2004, amounting at a total value of ROL 227,366,150,957 of which ROL 222,471,427,112 represent payment exemption and ROL 4,894,723,845 represent deferrals.

(47) The financial restructuring encloses the following measures:

*Table no.15 – Financial restructuring measures*

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(48) The restructuring program, through its financial restructuring component, provides opportunities for cash flow increase, stability of the cash-flow, fact which shall facilitate the financial operations of the company. Thus, the company shall be able to pay its current debts to the state budget and to allocate the liquidity as necessary for the required investments for developing and sustaining the production program in the future. Therefore, we mention that SC PROMEX SA, in 2003 and in 2004, paid all its debts toward the budgetary debtors.

#### 5. THE STATE AID CHARACTER OF THE FINANCIAL SUPPORT GRANTED TO THE COMPANY

(49) The financial support is granted for the restructuring of SC PROMEX SA Braila, at the time of its privatization, since the company needed a financial restructuring in order to carry out production operation within normal parameters.

(50) The facilities granted to SC PROMEX SA consist of renouncement by the budgetary creditors of future revenues (i.e. Ministry of Public Finance, Ministry of Labor, Social Solidarity and Family, Health Insurance National House, Local Council of Braila) and APAPS, by granting certain facilities for the due payments (writing off debts and deferrals). Such facilities shall be granted for this company viability purposes.

(51) By analyzing the financial support measures, the Competition Council has found that there is no doubt that such measures are funded from the state resources and shall confer an advantage for SC PROMEX SA Braila. Also, there is no doubt that the taken financial

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<sup>15</sup> Confidential data

measures shall affect the trade with the EU member states, since the products manufactured by SC PROMEX SA Braila are to be sold on the external market as well.

(52) In conclusion, the financial support measures are considered state aid and shall be subject to the Law no. 143/1999 on the state aid with the subsequent modifications and completions.

(53) The purpose of this aid aims at the restructuring of SC PROMEX SA Braila, for the rehabilitation of the company viability.

(54) SC PROMEX SA Braila has benefited from no other state aids for failing and/or restructuring purposes.

(55) The Competition Council has examined whether the state aid can be considered compatible with the regular competitive environment in accordance with the provisions in art. 2 paragraph (2) and (3) of the Law no. 143/1999 on the state aid with the subsequent modifications and completions and observes the international agreements Romania is part of.

(56) The analysis of the notified measures has been performed in accordance with the criteria for granting state aids, as stated in the Regulation on the state aid for rescue and restructuring firms in difficulty.

## **6. ELIGIBILITY OF SC PROMEX SA Braila –COMPANY IN DIFFICULTY**

(57) Considering the evolution of the main economic – financial indicators as recorded until 2003, it is found that, at the time of its privatization, the company was in a difficult economic situation.

(58) From the balance sheet data it results that starting with 2000 SC PROMEX SA begun to have profit succeeding to cover its loss from 1999 of ROL 106.6 bill. and to obtain a profit of ROL 43.4 bill. in 2000, then from 2001 until 2003 its level is practically insignificant.

(59) The sudden shift to profit in 2000 with very high values (covering in 2000 the loss of ROL 106.6 bill. from 1999 and obtaining the profit of ROL 43.4 bill., in total ROL 150 bill.=ROL bill.106.6 + ROL bill. 43.4) is determined by the assets re-evaluation, especially of the tangible assets, made based on the GD regarding the assets re-evaluation of the tangible assets no.403/2000 and of the Order of the minister of finance no.314/1999. By the GD no.403/2000 was established that the undertakings can proceed to the re-evaluation of the tangible assets in their patrimony, so that the result of the re-evaluation to be enclosed in the balance sheet closed on December the 31st, of that respective year. The re-evaluation was made according to the provisions of the decision, according to the inflation rate correlated to the utility and the market value of those specific goods.

(60) In March 2001, the General Shareholder Meeting decided, at the approval of the balance sheet for 2000, to cover the losses from the previous years with the differences resulted from the undertaking's patrimony re-evaluation. Covering the losses with the stocks created from re-evaluations was a formal solution that did not had a real base as it did not brought new cash flows for the firm so it did not really came in the support of SC PROMEX SA as:

- the working capital (the difference between the own capitals and the fix assets) is maintained negative for 2000, at a very high level for SC PROMEX SA (ROL -153.4 bill.) with a turnover in 2000 of ROL 160.5 bill..
- the working capital needs were covered by the non-payment of the debts which increased from ROL 252.1 bill. in 1999, to ROL 293.2 bill. in 2002 from which, towards the state budget it owed ROL 251.9 bill.
- the stock immobilizations increased from ROL 93.1 bill. in 2000 to ROL 215.4 bill. in 2002 from which finished products increased from ROL 31.5 bill in 2000 to ROL 95.9 bill. in 2002.

(61) Covering in 2000 the loss of ROL 106.6 bill. from 1999 and obtaining the profit of ROL 43.4 bill. (in total ROL 150 bill.) couldn't be made under the conditions in which the turnover obtained by SC PROMEX SA in 2000 was of ROL 160.5 bill..

(62) In conclusion, by assessing the accounting data, it results that actually the loss of ROL 106.6 bill. was maintained (with an un-significant decrease in 2001 and 2002) until the date of the privatization (2002) and the production activity couldn't function any more due to the financial blockage, SC PROMEX SA not having in reality the financial means necessary for its activity.

(63) Covering the deficit of working capital by short term credits would have lead, taking into account the level of the interest rates from Romania, to financial expenses of approx. ROL 35 bill. which would have mend 22% from the turnover, while the profit from execution is practically inexistent.

(64) Taking into account the huge debt accumulated at the State budget, the commercial banks systematically refused to grant production credits, as the Bank Norms don't allow the granting of credits for the payment of the budgetary obligations unpaid and non-echeloned but also due to S.C. PROMEX S.A. insolvency at the date of its privatization.

(65) The stock volume indicated a continuous increase, out of which the finished products stocks having an important share (about 45% in 2002).

**Table no.16 - The stock volume during 2000- 20002**

ROL thousands			
	2000	2001	2002
Stocks, of which:	93,087,514	157,537,395	215,380,353
Finished products	31,539,891	43,802,675	95,874,834

Source: The notification form

(66) The rotation rate of the finished products stocks, calculated as a ratio between the finished product stock volume and the turnover multiplied by 365 days, indicates an increase in the number of the rotation days, as follows:

**Table no.17** - The rotation rate of the stocks during 2000-2002

	ROL thousands		
	2000	2001	2002
Finished products stocks	31,539,891	43,802,675	95,874,834
Turnover, in current prices	160,514,795	273,110,496	301,489,209
Finished product stock rotation rate (days)	71.72	58.54	116.07

Source: The notification form

(67) The causes leading to the increase of the value of raw materials and materials stocks as well as those of finished products' stocks are the following:

- making finished products without orders, impossible to sell;
- all the patrimony elements suffered modifications, namely the increase of their value, due to the application, in the company, of the provisions imposed by the Order of the minister of public finance no. 94/2001 regarding the introduction of the International Accounting Standards.
- increase of the utilities' prices (electrical energy, caloric energy, gas, etc.)
- increase of the prices for raw materials and materials, especially to the unique suppliers, such as foil from ISPAT SIDEX Galati, with a price increasing for this period of approx. 4 times. This raw material has an important proportion in the structure of the production prices of SC PROMEX SA (approx. 40%);
- Decrease of the domestic sale market for some products, especially for spare parts for road products.

(68) The indebtedness rate, expresses as a ratio between total debts and own capitals is maintained at a constant high level, all these being debts to be paid in one year. The structure of these debts indicates that 76% are debts to the budget creditors.

**Table no.18** - The company's indebttness degree during 2000-2002

	- ROL thousands -		
	2000	2001	2002
Total debts	234,113,251	255,541,298	293,200,658
Own capitals	642,046,179	914,938,845	859,576,996
Liability (leverage) rate	36.4	27.93	34.11

Source: The notification form

(69) The weight of arrears within the total debts indicated an ascending trend, especially due to the debts to budget creditors.

**Table no.19** - The quota of arrears with the total debts

- ROL thousands -			
	2000	2001	2002
Overdue payments	172,058,830	223,995,735	243,653,751
Debts	234,113,251	255,541,298	293,200,658
Arrears (%)	73.5	87.65	83.10

Source: The notification form

(70) Partial liquidity rate (current assets – stocks/debts) indicates a continuous decrease demonstrating the incapacity of the company to assume and fulfill short-term payment obligations.

**Table no.20 - Partial liquidity rate**

- ROL thousands -			
	2000	2001	2002
Current assets– stocks	85,741,973	90,121,602	87,048,199
Debts	234,113,251	255,541,298	293,200,658
Partial liquidity rate (%)	0.37	0.35	0.30

Source: The notification form

## 7. REHABILITATION OF THE COMPANY'S VIABILITY

(71) According to art. 12 in the Regulation on the state aid for rescuing and restructuring firms in difficulty, the restructuring plan must enclose the giving up to activities generating losses and to insure the company's long term viability, allowing it to function with its own resources.

(72) The restructuring plan of SC PROMEX SA starts from the technical –economic data showing the company's activity during 1996- 2002. This plan was elaborated following a diagnosis analysis underlining the company's strong and weak points, the circumstances leading to the difficulties had by the company and of the recommendations to restructure, make more efficient and improve the company's performances, study elaborated by the institute IPCMG Bucharest, in 2001.

(73) SC PROMEX SA's strategy aims to keep the strong points, respectively the possibility to produce a high range of spare peaces for road equipment, the relatively steady demand on the domestic market of spare peaces for road equipment, the high product integration level, high flexibility, as well as maintaining the commercial relations with some of the traditional customers and, in the same time, it aims to limit and mitigate with proper measures the weak points such as: loosing the traditional markets due to the disappearance of the CAER (COMECON) market, large size, management insufficiently adapted to the market economy demands, low reliability and price-quality ratio inconvenient for the products from the range of the road equipments for construction, the lack of the investments in the metallurgical industry,



the competition of the importers of road equipment for construction (excavators) of a high quality.

(74) Taking into account the situation existing on the markets the company is acting, the restructuring program proposes a number of measures to straighten up the company on long term, within a reasonable time period, namely 3 years. The restructuring program's implementing has as main objective the reduction of losses and reach of an operative equilibrium in order to obtain profit.

(75) The restructuring action refers to the following main directions:

- re-organizing the company on management and profit centers;
- structuring the marketing activity (strategically marketing- to elaborate the diagnosis analysis necessary for finding the company's perspectives and establishing the strategically objectives and operational marketing, at the level of the profit centers – to prospect the specific market, identify the main sale opportunities and monitor the customers;
- correlating the number of equipments and the employees number with the production program;
- re-organizing the technological fluxes to lead to the reduction of the unproductive areas within the halls and the sale, by bidding, of the fix assets available;
- adjusting the utility sources to the present and future requests of the consumers;
- endowment with new equipments and installations;
- enclosing new products and gradually giving up to the excavators' production;
- hiring and training the specialized personnel;
- improving the stocks and debts management policy.

(76) Due to the implementing of the restructuring plan, the company aims to become viable by the following measures:

- continuity of the production activities according to the market demand. For this the company shall orient itself towards the manufacture of small series products which will be re-designed and modernized to become competitive and towards the products with high demand in the future, such as presses for condensing metallic waists, axels for Russian trains, sinuous shaft for locomotives. In the same time new products shall be assimilated into the fabrication, such as steel valves and axels for trams;
- improving the economic- financial indicators and the quality of the manufactured products;
- decreasing the production costs and therefore achieving competitive sale prices, obtaining this way a safer and more diversified sale market;
- increasing the actions for prospecting the market for finding new clients and suppliers, diversifying the distribution channels;
- introducing an integrated IT system.

(77) Due to the disappearance of the CAER (COMECON) market, the excavators produced by SC Promex SA couldn't be exported any more, all the production being designated for the domestic market. As a result of the decrease of the demand and of the external competition represented by the imports of similarly products, the company's excavators production was of just 28 peaces in 2000, and keeps on decreasing. During 2003- 2004, the company will limit the activity of the excavator factory, gradually giving up to their production, fact leading to the

decrease of the production surfaces of the excavators factory from 68,720 sqm to 13,744 sqm in the same time with the reduction of the number of related equipments.

(78) The company will re-orient itself towards new markets for selling industrial equipments, as sub- supplier of some big owners of engineering from the European Union, especially in Holland, Germany, France, Austria, Luxembourg, Belgium and Italy, with which it closed, or will close, contracts for its products.

(79) New products and equipments are in process of being assimilated in fabrication, such as: drag boat for cleaning the lakes, channels and rivers, installation for polishing band, rolls overturns, which will replace the production of old excavators which is without demand. In the same time the existing products shall be improved.

(80) By applying the measures included in the restructuring plan comprised of contributions from both the Company and the Buyer – by its own sources – and of the State – by the facilities granted to the company in respect of the payment of its budgetary obligations for the 2003 – 2005 period, an improvement of the economic-financial indicators is estimated as follows:

**Table no.21** - *The forecast evolution of the financial-economic indexes as a result of the restructuring measures being implemented*

ROL mill.

No.	Indicators	2003	2004	2005
1	<b>Total revenues, out of which:</b>	489,851	656,984	774,528
	Operating incomes	483,160	645,884	768,699
	Net turnover	388,623	625,000	700,245
	Financial revenues	6,691	11,100	5,829
	Extraordinary revenues	-	-	-
2	<b>Total expenditure, out of which:</b>	481,192	643,918	722,565
	Operating expenditure	474,501	623,818	716,684
	Financial expenditure	6,691	20,100	5,882
	Extraordinary expenditure	-	-	-
3	Gross profit (+) / Loss (-)	9,136	13,066	51,963
4	Net profit (+) / Loss (-)	1,588	9,800	32,147

Source: SC Promex SA Braila's restructuring program

(81) It is estimated that as a result of the application of the measures in the restructuring plan in 2005 the turnover will have a 1.6 times increase, as compared to 2003, while the net profit will tend to get closer to the level of 2000.

(82) The facilities granted to the company under the form of a state aid shall allow the increase of the cash-flow, ensuring a stable cash-flow, payment of the current debts to the state budget, as well as allocation of liquidity as necessary to make the required investments and to sustain the production program.

## 8. GROUP AFFILIATION

(83) SC UZINSIDER SA Bucuresti, the owner of the majority stake of PROMEX, has as its main activity object consulting services for business and management, business guidance and

operational assistance. SC UZINSIDER SA also holds control over the following commercial companies: 24 IANUARIE SA Ploiesti (71.39% of its registered capital), COMELF SA Bistrita (76.64% of its registered capital), UZINSIDER Engineering SA Galati (80.93% of its registered capital). In its position of majority stakeholder of PROMEX, UZINSIDER benefits from the rights and obligations incurring from the position of a majority shareholder.

**(84)** In accordance with the provisions of art. 2 paragraph (5) of the Regulation on the state aid for rescue and restructuring of a company in difficulty, a company affiliated to a group is not regularly eligible for granting the rescue and restructuring aid, except for the case when it can be demonstrated that the difficulties the respective company faces with are its own and do not result from any arbitrary allocation of the costs within the group.

**(85)** The liaison of SC PROMEX SA with the group was made after the privatization, the group having no influence on its activity before the privatization. The state aid was granted at the privatization, as a component of the privatization offer of APAPS.

**(86)** The difficulties of SC PROMEX SA do not come from arbitrary allocations of costs after its acquisition by SC UZINSIDER SA but they are the exclusive result of its activity and of the economic performances obtained during the years previous to selling its majority stake, being “historical debts”.

**(87)** Though SC PROMEX SA wasn’t part of the group SC UZINSIDER SA., by the privatization contract, the buyer assumed to bring a contribution to the capital, to be used for investments of for working capital of Euro 1.5 mill in 3 years, the obligation being guaranteed by the pledging of all bought shares until the total accomplishment of the obligations for investments.

**(88)** .....<sup>16</sup>

**(89)** Through the state aid granted at privatization, based on the Law no. 137/2002 regarding certain measures for accelerating the privatization, the State aimed at to erasing the old debts accrued by the companies subject to privatization, in order to attract investors able to pay a good price and to restructure the companies ensuring their long term viability. Thus, art. 18 from Law no. 137/2002 provides the facilities which are being granted to companies with majority of equity held by the state, subject to the privatization process. Under these circumstances, the exemptions from the payment of the debts were included in the privatization offer, the only buying offer for the share package being based on it, other possible bidders being not interested even in the offered conditions.

## **9. AVOIDANCE OF THE SIGNIFICANT MISREPRESENTATION OF THE COMPETITIVE ENVIRONMENT**

**(90)** SC PROMEX SA Braila has an extremely diversified manufacturing range and, as a consequence, holds small market shares in the sectors it is active in, enclosed between 0.04%

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<sup>16</sup> Confidential data

and 5.4%. Therefore, taking into account the provisions of art. 14 in the Regulation on the state aid for rescue and restructuring firms in difficulty, where is stipulated that the compensatory measures will be proportionally with the distorting effects of the state aid on the competition and especially proportionally with the size and the relative importance of the company on the affected markets, the Competition Council considers that, for SC PROMEX SA, aren't necessary significant reductions in the production capacities.

(91) The measures to be taken by the company till the end of the restructuring period, for avoiding the competition's distortion, consist in irreversible reduction of the production capacities, as follows:

- dissolving the oxygen factory;
- dissolving the Steel casting no.1;
- dissolving the Wagner mechanic forming line and of 2 electric avons from the Steel casting no.2;
- dissolving the carpenter workshop;
- destroying equipments (1,500 peaces).

These irreversible capacity reductions are part of the restructuring plan and represent approx. 30% from the total of the company's production capacities. From the dissolving production capacities, part will be sold and part will be taken out from the accountability and capitalized as scrap iron.

(92) Through the restructuring program, PROMEX shall not increase its domestic market share, but it aims to recover the backlogs, as compared to its current competitors, and to keep its external market share.

(93) There are significant differences between the designed production capacity and the operational capacity of SC PROMEX SA. The company does not intend to enlarge its production capacities but to achieve a higher rate of utilization of the existing ones.

(94) The excavator production for which SC PROMEX SA is a sole domestic producer, decreased very much, from 1,200 excavators in 1990, to 28 excavators in 2000 and 12 excavators in 2003. The market share owned on the excavators market in Romania is under 1%. The undertaking intends to give up, for the future, to the production of excavators, re-orienting its activity towards the manufacture of new products, as on the excavators market it cannot face the external competition, the Romanian market being taken over by the excavators produced in the European Union, having a superior quality.

(95) For the next 3-year period, it is estimated that all the competitors shall be much better represented on the domestic market since they have available technological capabilities and necessary resources. Moreover, the privatized companies under the current control of foreign companies which operate on the same market on which SC PROMEX SA is active, establish contract relationships with foreign beneficiaries and consequently they shall obtain revenues incomes and profit from export operations.

(96) The state aid shall be used exclusively for the purpose of restoring the viability of the company and the beneficiary shall not be allowed to extend its production capacity throughout the application of the restructuring plan.

(97) The application of the restructuring program shall allow the restoring of SC PROMEX SA profitability at production levels accepted by the market by reducing costs, increases in efficiency and removal of its historical debts (financial restructuring). By granting the state aid and applying the restructuring program of SC PROMEX SA, the structure of the relevant market shall not suffer any modification with anti-competition effects, such a process being intended to increase the economic efficiency of the company, without generating extra liquidity likely to be used in aggressive actions of distorting the competition on the market.

## **10. MINIMUM - LIMITED AID**

(98) The difficult financial situation of SC PROMEX SA Braila has made its privatization necessary and granting a restructuring aid by writing off a substantial part of the debts accumulated until the privatization date, in order to become profitable and maintain this company on the market, as well as in order to avoid certain social problems in the area, by laying off about 1,850 employees.

(99) According to the provisions of art.14 in the Regulation on the state aid for rescuing and restructuring firms in difficulty, the amount and the intensity of the state aid must be limited to the minimum necessary, to allow the restructuring according to the financial resources of the company and of the shareholders.

(100) Previous to the granting of the state aid, the beneficiary analyzed all the financing possibilities for the restructuring program. So, in order to contribute to the restructuring program, the beneficiary will sell assets which are not important for the company's survival.

(101) The restructuring program is funded from the company's and the buyer's own resources, and state aid, which indicates the fact that the value of the state aid is reduced to the minimum necessary to complete the intended program under the operational conditions suggested by the company.

(102) The contribution of SC PROMEX SA and of the buyer in the implementation of the measures described in the restructuring program is of ROL .....<sup>17</sup>

(103) The company's own contribution to the funding of the restructuring program is insured from the following sources:

- incomes from the sale of assets, amounting ROL 5,147 mill.;

- contracting two credits from the Romanian capital market to insure the working capital, taking into account that by granting the state aid at the privatization, the company becomes eligible for receiving credits from banks. The credits are not guaranteed by the State, are contracted under market conditions, the interest is of 20% per year. The credits' total value is of .....<sup>18</sup>

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<sup>17</sup> Confidential data

<sup>18</sup> Confidential data

(104) The restructuring cost of SC PROMEX SA amounts at ROL.....<sup>19</sup>, covered as follows:

- SC PROMEX SA own resources.....<sup>20</sup>
- Majority shareholder capital infusion.....<sup>21</sup>
- State aid.....<sup>22</sup>

(105) The intensity of the state aid, calculated as a ratio between to the value of the state aid and the restructuring cost is of 51.1%.

(106) The Competition Council states that the erase of SC PROMEX SA's historical debts, for its rescue from liquidation through its privatization, has a significant regional impact, the company being one of the biggest productive undertakings in the Braila County. If the existing number of employees as at the date of the privatization became unemployed (approx.1,850 employees, mainly men) would have brought in difficulty the same number of families, respectively 5-6,000 persons, which for the county of Braila represented a very big problem since as of 31.12.2002 there were 7,186 unemployed persons, the unemployment rate being higher with 2.5% than the national average. The liquidation of SC PROMEX SA would have meant an increase in the unemployment figures by 25% over the present level, with a very serious social impact.

## **11. MEETING THE “FIRST TIME –LAST TIME” PRINCIPLE**

(107) SC PROMEX SA hadn't received restructuring state aid, this way fulfilling the provisions of art. 18 in the Regulation on the state aid for rescuing and restructuring firms in difficulty, which stipulate that the restructuring aid shall be granted only once.

## **12. ANNUAL MONITORING AND REPORTING**

(108) In accordance with the provisions of art. 17 in the Regulation on the state aid for rescue and restructuring firms in difficulty, the Competition Council monitors the implementation of the restructuring program as well as the enforcement of the current decision's provisions.

(109) The Competition Council shall continue to monitor the implementation of the restructuring plan until the end of the restructuring period in order to make sure that no extension of the production capacity will exist, or major deviations from achieving the restructuring measures, as well as to make sure that the state aid shall not generate extra-liquidity to be used for activities other than those included in the restructuring program.

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<sup>19</sup> Confidential data

<sup>20</sup> Confidential data

<sup>21</sup> Confidential data

<sup>22</sup> Confidential data

### **13. CONCLUSIONS**

**(110)** The information presented in the notification submitted to the Competition Council leads to the conclusion that the individual state aid granted to SC PROMEX SA Braila shall not be in the position to significantly affect the normal competitive environment and does not infringe the appropriate application of the international agreements Romania is part of.

**(111)** Following the carried out analysis, it was found that the state aid amounting at ROL 227,366,150,957, consisting in payment facilities granted on the grounds of the Law no.137/2002, of the Government Decision no. 577/2002, of the Government Ordinance no.13/1995 and of the GEO no. 26/2004, meets the granting criteria in accordance with the Regulation on the state aid for rescue and restructuring firms in difficulty.

### **DECIDE**

**Art. 1.** The individual state aid granted to SC PROMEX SA Braila represents a state aid measure compatible with the Romanian legislation and with the agreements Romania is part of.

**Art. 2.** On the grounds of art.12 paragraph (2) letter c) corroborated with art.14 paragraph (1) letter e) of the Law no.143/1999 with the subsequent modifications and completions, it is authorized the state aid for restructuring granted to SC PROMEX SA Braila, under the condition that the concerned company shall not increase its production capacity and to fully implement the assumed restructuring plan.

**Art. 3.** The value of the state aid to be granted amounts at ROL 227,366,150,957.

**Art. 4.** This Decision comes into force on the date of its communication.

**Art. 5.** In accordance with the dispositions in art. 24 of the Law no.143/1999, with the subsequent modifications and completions the authorities providing state aid shall submit to the Competition Council information on the granted state aids in order to keep their proper inventory and monitoring. AVAS shall submit annual reports regarding the implementation of the restructuring plan to the Competition Council. The first Report is to be submitted within 6 months from the decision issuing date.

**Art. 6.** According to the provisions of art. 29 of the Law no. 143/1999 on the state aid, with the subsequent modifications and completions this Decision can be appealed by the concerned entities at the Bucharest Court of Appeal, Administrative Claim Department, within 30 days from its communication date.

**Art. 7.** The General Secretariat of the Competition Council shall communicate this decision to:

- Authority for State Assets Recovery (AVAS), 50 Cpt. Av. Alexandru Serbanescu St., sector 1, Bucuresti;
- SC PROMEX SA Braila, 17 Industriiei St., postal code 6100, Braila, Braila County.

**PRESEDINTE**  
**MIHAI BERINDE**