

## **DECISION**

**no. 123 of 24.05.2006**

**regarding the state aid scheme contained by the Draft Decision of the  
Selection Committee of the Environmental Fund for the approval of the Project on  
the management of wood and sawmill waste resulted in the forestry and wood  
processing industry**

### **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 Journal, no. 73 of 12 April 1993,

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

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

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

Having regard to the Regulation regarding the state aid for small and medium size enterprises, published in the Official Journal of Romania no. 340 of 19 April 2004, issued in the application of the Law no. 143/1999 on 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 address AFM no. 3297/29.03.2006, registered at the Competition Council with the no. RS-AS 57/30.03.2006, the Ministry of Environment and Water Management - the Administration of the Environmental Fund - notified the Project on the management of wood and sawmill waste resulted in the forestry and wood processing industry. The notification became effective on 30.03.2006.

## **2. LEGAL BASE**

(2) The Administration of the Environmental Fund notified the Project on the management of wood and sawmill waste resulted in the forestry and wood processing industry based on the Draft Decision of the Selection Committee approving the Project”<sup>1</sup>.

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

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

(3) By the Project notified, grants are to be made from the Environmental Fund to invest in wood waste processing installations, complying with the commitments made by Romania in the field of waste management through Romania’s Accession Treaty to the European Union and the observance of durable use of natural resources.

### **3.2. Beneficiaries**

(4) Beneficiaries to be financially supported from the Environmental Fund within the Project are undertakings whose projects are selected by the Administration of the Environmental Fund, based on criteria provisioned in the Environmental Handbook.

(5) In accordance with the Handbook of the Environmental Fund, the undertakings requesting financing must submit the projects within the submission sessions advertised by the Administration of the Environmental Fund. The assessment and selection criteria

---

<sup>1</sup>- GEO no. 196/2005 on the Environmental Fund, aproved by Law no. 105/2006;

- GEO no. 195/2005 on the protection of the environment;
- GD no. 2.293/2004 on the management of wood processing waste;
- GD no. 1.470/2004 to approve the National Strategy for waste management and the National Plan for waste management;
- GEO no. 78/2000 on the waste regime, approved with modifications by Law no. 426/2001;
- GD no. 856/2002 on the records of waste management and the approval of the list containing waste, including dangerous waste, with subsequent modifications and completions.

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 each project financing request.

(6) According to the Project, in order to be eligible, the beneficiaries must fulfil 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 financing within the scheme do not operate in the steel sector and the synthetic fibres sector.

(7) The maximum number of beneficiaries within the scheme is 6.

### **3.3.The aid instruments**

(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<sup>2</sup>:

*A – for non-reimbursable support* – maximum 50% of the eligible costs of the project financed from State sources;

*B – for reimbursable financing* - maximum 15% of the eligible costs of the project financed from State sources;<sup>3</sup>

*C – for mixed financing* - maximum 46% of the eligible costs of the project financed from State sources if the beneficiaries are large enterprises, within the meaning of the

---

<sup>2</sup> State aid beneficiaries within the scheme may opt for any of the three financing forms mentioned above, within the limits of the scheme's total budget and the maximum number of beneficiaries.

<sup>3</sup> Reimbursable financing amounting to 75% of the eligible costs of the beneficiary's project is granted. Therefore, the financial support from the State consists in the difference between the interest rate granted by AFM and the market interest rate, multiplied by the number of years for reimbursing the loan (max. 2 years). The financial support will be granted only to cover a difference of up to 10% between the AFM rate and the market interest rate. Therefore, the maximum financial support from the State under the scheme, is 15% of the project's eligible costs (10% x 75% x 2 years x eligible costs = 15% x eligible costs). The State aid granted to each beneficiary in the form of difference between interests will be calculated in accordance with the provisions of Annex II to the Regulation on regional aid;

Regulation on regional aid, and maximum 54% of the eligible costs if the beneficiaries are SMEs, within the meaning of the Regulation on State aid for SMEs.<sup>4</sup>

### **3.4. Background. General considerations on the recycling of wood processing waste**

(9) Priorities of waste management in Romania included in the 2003 National Strategy of waste management elaborata are as follows:

- prevention of waste generation;
- recycling of waste;
- renewed material use of waste;
- renewed thermo use of waste;
- controlled waste storage by ensuring required constructions and installations required significantly reduce the negative impact on the environment.

(10) In order to achieve the objectives established in the Strategy for waste management, in 2004 the National Plan for waste management was drafted and approved by GD no.1470/2004. The main objectives set by this plan in the field of management of vegetal waste, sawmill and wood processing industry waste are:

- the efficient control of untreated waste storage;
- the increased use of wood waste through aerobic and anaerobic processes;
- sustain use for energy where material recovery is not technically and economically feasible, in safety conditions for the health of the population and environment.

---

<sup>4</sup> I. *If the beneficiary is a large enterprise*, non-reimbursable financing amounting up to 40% of the eligible costs are granted. In addition, reimbursable financing of 30% of eligible costs of the beneficiary's project are granted. Therefore, the reimbursable financial support to be granted by the State consists in the difference between the interest rate granted by AFM and the market interest rate, multiplied by the number of years for reimbursing the loan (max. 2 years). The financial support will be granted only to cover a difference of up to 10% between the AFM rate and the market interest rate. Under these conditions, the reimbursable financial support from the State, granted under the scheme, is of 6% from the project's eligible costs ( $10\% \times 30\% \times 2 \text{ years} \times \text{eligible costs} = 6\% \times \text{eligible costs}$ ).

Thus, in the case of mixed financing granted to large enterprises, the maximum financial support from the State is 46% of the project's eligible costs ( $40\% + 6\% = 46\%$ ).

The State aid granted to each beneficiary in the form of difference between interest rates will be calculated in accordance with the provisions of Annex II to the Regulation on regional aid;

II. *If beneficiaries are SMEs*, non-reimbursable financing amounting up to 50% of the eligible costs is granted. In addition, reimbursable financing of 20% of the eligible costs of the beneficiary's project are granted. Therefore, the reimbursable financial support to be granted by the State consists of the difference between the interest rate granted and the market interest rate, multiplied by the number of years for reimbursing the loan (max. 2 years). The financial support will be granted only to cover a difference of up to 10% between the AFM rate and the market interest rate. Under these conditions, the reimbursable financial support from the State, granted under the scheme, is of 4% from the project's eligible costs ( $10\% \times 20\% \times 2 \text{ years} \times \text{eligible costs} = 4\% \times \text{eligible costs}$ ). Thus, in the case of mixed financing granted to SMEs, the maximum financial support from the State is 54% of the project's eligible costs ( $50\% + 4\% = 54\%$ ).

The State aid granted to each beneficiary in the form of difference between interests will be calculated in accordance with the provisions of Annex II to the Regulation on regional aid.

(11) Targets to be reached by 2013, according to the National Waste Management Plan, are the material or for energy purposes use of approximately 50% of biodegradable waste and the use for energy purposes of 50% of the sawmill quantity. Also, Romania aims to reach 12% of energy to be produced from biomass in the total of energy produced in 2012.

(12) Actions to be achieved in order to use wood waste are as follows:

- diminishing the risk of pollution with wood waste of waters and soil;
- promotion renewable energy;
- increasing the use of wood waste, especially sawmill;
- reducing gas emissions and fossil fuel consumption (coal, oil, natural gas) by replacement with ecological fuels from biomass;
- reducing the wood waste storage surfaces;
- preservation and protection of eco-systems;
- reducing the costs of heating and electric energy by increasing the energy efficiency by using biomass pellets.

## **4. DESCRIPTION OF THE PROJECT**

### **4.1. Objective**

(13) The objective of the Project consists in the reduction of negative effects on the environment determined by storage of wood waste resulted from forestry exploitations and the wood processing industry, by making investments for the purchase and operation of wood waste processing installations.

(14) The financial support within the Project will be granted only for investments required for new wood waste processing units, respectively biomass lighters and pellets installations. These investments will contribute to the quality increase of the environment by reducing soil and waters pollution from storage areas and to the development of the areas where these will be carried out.

(15) Investments in installations within the Project will be maintained for at least 5 years, according to the Draft Decision of the Environmental Fund.

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

(16) According to data supplied by the National Wood Institute, sawmill and woodchips quantities resulted from wood processing amount 1,298,000 c.m. (cubic meters) in 2005, to reach in 2010 an estimated quantity of 1,498,000 c.m. These waste are insufficiently used, which led to the appearance of several piles of sawmill and other wood waste polluting soil and water courses.

(17) The pollution with wood waste has as consequence the reduction of productive soil surfaces, where the vegetation disappears or is reinstalled with difficulty, modifying the normal circuit of water surfaces, the spreading of wood dust in the air.

(18) At present capacities to use collected wood waste are insufficient, therefore it is a requirement to increase their potential by stimulating the activity to produce biomass lighters and pellets in order to generate „green energy”.

(19) These processing installations will produce lighters and pellets, which are used in heating power stations as fuel. This fuel type is superior to other wood fuel having a high calorific power (4,200 kcal/kg) and a lower percentage of ash resulted after burning (5%). As for emissions, lighters and pellets are a neutral fuel because it is considered that when burnt the same quantity of CO<sub>2</sub> is released as that absorbed by the plants from the atmosphere during the photosynthesis which generated the biomass.

(20) Investments within the Project will contribute to the creation of new units and have the effect of increase in the quality of the environment and development of areas where these will be carried out.

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

(21) The financial support from the State shall be granted, within the Project, for acquisition of new installations and equipment for processing wood waste, in order to create new units.

(22) Wood waste processing installations to be acquired by beneficiaries of financial support within the Project has to meet the following criteria:

- To comply with the European quality standards and assure operation at optimal parameters;
- The production process has to be carried out according to environment legislation and not generate emissions or suspensions to be recycled;
- Equipment producing vibrations need to be laid on elastic foundations, and the noisy ones in spaces closed up to 50%;
- lighters and pellets obtained in these installations to meet quality parameters admitted for sale according international quality standards.

(23) Financing granted within the Project shall cover in part the expenses with purchasing of recycling installations.

(24) The eligible costs of the Project will be considered as the costs set in accordance with the Draft Decision of the Selection Committee of the Environmental Fund for the purchase of installations and equipment within wood waste processing activities.<sup>5</sup>

---

<sup>5</sup> In accordance with the Draft Decision of the Selection Committee, the following costs are not eligible: the retrospective costs, the costs with research and designing, the costs of the impact and feasibility studies, the costs for obtaining approvals, authorizations, the infrastructure and supra-structure besides the installation

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

(25) The total amount to be allocated in the project is of RON 18 million, for 2006 – 2007, as follows:

*Table no. 1* **Sums allocated within the Project** - RON million -

Year	2006	2007	Total
Sum	9	9	18

*Source: The notification form*

### 5. ASSESSMENT OF THE SUPPORT MEASURES

#### 5.1. Existence of aid

(26) The criteria based 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.

(27) In order to be considered State aid, according to the Law no. 143/1999 on State aid, the financial support must cumulatively fulfil 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*

(28) 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*

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

---

(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.

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

(30) The financial support measures granted to the undertakings selected within the Project provide preferential treatment to the beneficiaries, giving them advantages compared with other competitors.

*d) the support measure distorts or threatens to distort the competition and to affect the trade between Romania and the EU Member States*

(31) The aid granted to undertakings under the aid scheme 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.

(32) 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 State aid, republished.

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

(33) In assessing the compatibility of the scheme, the Competition Council, in view of the environmental impact of the scheme, analyzes the fulfilment of the criteria provided in the secondary legislation concerning the State aid.

### **5.2.1. Aplicabilitatea Regulamentului privind ajutorul de stat regional**

(34) 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 for the management of wood waste based on the criteria provided in the Regulation on regional State aid (hereinafter called Regulation).

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

(35) In accordance with art. 2(2) in the Regulation, State aid may be granted for a productive investment (initial investment).

(36) 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.

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



- a) The initial investment financed with State aid within the Project aim to build new installations and, in some cases, extend the existing ones, according par.14 and par. 21. Thus, the State aid-financed Project fulfils the eligibility criterion regarding the initial investment, foreseen under 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 (1) (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**

(38) 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.

(39) 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 equipment forming the standard base provided in Annex 2 of the Regulation.

(40) 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**

(41) The beneficiary must contribute to finance the investments with at least 25% of eligible costs, in accordance with the provisions of art. 8 (1) of the Regulation<sup>6</sup>.

(42) Based on the facts mentioned at point 3.3., the Competition Council notes that the financing granted within the Project may be non-reimbursable, reimbursable or mixed. The contribution of the State aid beneficiary is the following:

- For non-reimbursable financing - minimum 50% of the project's eligible costs;
- For reimbursable financing – minimum 85% of the project's eligible costs;
- For mixed financing:

---

<sup>6</sup> This minimum contribution of 25% of eligible costs cannot be subject to another State aid (art. 8 (2) in the Regulation).

- minimum 54% of the project's eligible costs, if the State aid beneficiary is a large enterprise;
- minimum 46% of the project's eligible costs, if the State aid beneficiary is a SME.

(43) Therefore, the Competition Council considers that the provisions of art. 8 (1) of the Regulation, concerning the minimum contribution of the regional aid beneficiary to financing of the investments are fulfilled.

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

(44) 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 supplemented by 15 gross percentage points gross given that the maximum aid intensity does not exceed 75%.

(45) Based on the facts mentioned at point 3.3., the Competition Council notes that the aid intensity within the Project is as follows:

- For non-reimbursable financing – maximum 50% of the project's eligible costs;
- For reimbursable financing – maximum 15% of the project's eligible costs;
- For mixed financing:
  - maximum 46% of the project's eligible costs, if the State aid beneficiary is a large enterprise;
  - maximum 54% of the project's eligible costs, if the State aid beneficiary is a SME.

(46) 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**

(47) 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.

(48) In accordance with the facts mentioned at paragraph 15, 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**

(49) The Competition Council notes that the Ministry of Environment and Water Management – The Administration of the Environmental Fund, has notified the scheme established by the Project for the management of wood waste before granting State aid allocations based on it.

(50) In light of the points made at point 4.2., it can be seen that, by granting the State aid within the scheme for investments aiming at increasing the quality of the environment and, at the same time, developing the areas where these will be located.

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

#### **5.2.1.7. Cumulation**

(52) In accordance with the provisions of art. 16 of the Regulation, the ceilings for the aid intensity mentioned at paragraph 44 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.

(53) 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 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% gross plus 15 percentage points for SMEs.

### **5.3. Conclusions**

(54) The information presented in the notification submitted to the Competition Council leads to the conclusion that the State aid scheme established by the Draft Decision of the Selection Committee for approving the Project for Project on the management of wood and sawmill waste resulted in the forestry and wood processing industry does not, in any measure, unduly affects the competitive environment and does not infringe the proper application of the international treaties Romania is part of.

(55) After the assessment, the Competition Council considers that the State aid granted as grants, reimbursable and mixed financings amounting to RON 18 million, consisting in financial allocations from the Environmental Fund for investments in installations and equipments for processing of wood waste, fulfils 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 measure granted based on the State aid scheme established by the Project of Decision of the Selection Committee for approving the Project for management of wood and sawmill waste resulted in the forestry and wood processing industry, notified by Ministry of Environment and Water Management – The Administration of the Environmental Fund, is considered State aid under the incidence of art. 2 (1) of Law no. 143/1999 on 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 Draft Decision of the Selection Committee of the Administration of the Environmental Fund, for approving the Project for management of wood and sawmill waste resulted in the forestry and wood processing industry is authorized.

**Art. 3.** The budget of the State aid scheme is of RON 18,000,000.

**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:

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

**PRESIDENT**

**MIHAI BERINDE**