

## **DECISION**

**no. 13 of 31.01.2006**

**regarding the state aid scheme enclosed by the Draft Decision of the Selection Committee of the Environmental Fund for the approval of the Project for promoting the generation of energy from renewable energy sources**

### **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 of 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 of 16 August 2005,

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

Having regard to the Regulation regarding the regional State aid, published in the Official Monitor 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 Monitor 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 the address no. 35272/27.09.2005, registered at the Competition Council with the no. RS-AS 93/28.09.2005, the Ministry of Environment and Water Management – The Administration of the Environmental Fund notified the Project for promoting the generation of energy from renewable energy sources, hereinafter named the Project, according to Art. 15 of the Law no. 143/1999 on state aid, republished<sup>1</sup>. 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 Project<sup>2</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 develop the installations that aim at using and exploiting non-fossil renewable energy sources (wind, solar, geothermal, hydropower, biomass, landfill gas, sewage treatment plant, gas and biogas), in order to fulfil the commitments undertaken by Romania upon signing the Kyoto Protocol to the United Nations Framework Convention on climate change, adopted on 11 December 1997.

### **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.

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<sup>1</sup> 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 no. RG/ 8518/03.11.2005.

<sup>2</sup>- Law no. 73/2001 on the Environmental Fund, with the subsequent amendments and completions;  
- Law no/ 3/2001 for ratifying the Kyoto Protocol to the UN Framework Convention on Climate Change, adopted on 11 Decembe 1997;  
- Government Decision no. 443/2003 for promoting the generation of electricity from renewable energy sources, with the subsequent amendments and completions;  
- GD no. 1535/2003 for approving the Strategy on the use of renewable energy sources;  
- GD no. 1892/2004 setting up the system for promoting the generation of electricity from renewable energy sources, with the subsequent amendments and completions.

(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 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 financings 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 25.

### **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>3</sup>:

*A – for non-reimbursable support* – maximum 50% of the eligible costs of the project financed from State sources;<sup>4</sup>

*B – for reimbursable financing* - maximum 15% of the eligible costs of the project financed from State sources;<sup>5</sup>

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<sup>3</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>4</sup> 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.

<sup>5</sup> Reimbursable financing amounting to 75% 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%. Therefore, the financial support from the State consists of the difference between the interest granted and the market interest, multiplied by the number of years for reimbursing the loan (max. 2 years). Under these

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

### **3.4. Background. General considerations on the generation of electricity from renewable energy sources.**

(9) The Kyoto Protocol to the United Nations Framework Convention on climate change aims at the quantitative limitation and reduction of anthropogenic greenhouse gas emissions, in view of promoting a sustainable development.

(10) Directive 2001/77/EC on the promotion of electricity produced from renewable energy sources in the internal electricity market establishes the main action lines in order to attain a 22% target of the contribution of electricity produced from renewable energy sources to gross electricity consumption by 2010. The main action lines are the following:

- increasing the usage of renewable energy sources in the production of electricity and heating power;
- to set a target quota as regards the consumption of electricity produced from renewable energy sources;
- to adopt adequate procedures for financing investments in the renewable energy sources sector.

(11) By implementing Directive 2001/77/EC, Romania aims to attain a 30% target of the contribution of electricity produced from renewable energy sources to gross electricity consumption by 2010.

(10) In order to fulfil the commitments assumed by the Kyoto Protocol and Directive 2001/77/EC, Romania has adopted the Strategy on the use of renewable energy sources.

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conditions, the financial support from the State, granted under the scheme, is of 15% from the project's eligible costs ( $10\% \times 75\% \times 2 \text{ years} \times \text{eligible costs} = 15\% \times \text{eligible costs}$ ). The State aid granted to each beneficiary in the form of difference between interests will be calculated in accordance with the provisions of Annex I to the Regulation on regional aid;

<sup>6</sup> Non-reimbursable financing up to 30% of the project's eligible costs may be granted. There is also granted 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 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 within the scheme is 8% of 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 ( $10\% \times 40\% \times 2 \text{ years} \times \text{eligible costs} = 8\% \times \text{eligible costs}$ ).

(11) The objectives of the Strategy are to promote, exploit and use increasingly the renewable energy sources, by the projects that aim at setting up the installations, in view of using and exploiting non-fossil renewable energy sources.

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

### **4.1. Objective**

(12) The objective of the Project consists in building facilities, in order to exploit and use non-fossil renewable energy sources. The implementation of the Project will lead to improving the quality of the environment and, at the same time, contribute to the development of the areas in which these will be located.

(13) By the notified Project financial support shall be granted only for making the investments necessary for the building of new installations for the exploitation of the non-fossil renewable energy sources. In addition, in accordance with the provisions of the Draft Decision of the Selection Committee approving the Project, investments made with the State support shall be maintained for a minimum period of 5 years.

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

(14) Romania has a high potential for renewable energy sources: hydropower resources (approx. 40,000 Gwh/year), wind energy (approx. 23,000 Gwh/year), solar energy (approx. 1,200 Gwh/year). Moreover, according to the assessments, the exploitable potential of geothermal sources amounts to approx. 167 thousand toe<sup>7</sup> (7,000 x 10<sup>6</sup> GJ/year), and biomass to approx. 7,594 toe/year (318 x 10<sup>9</sup> MJ/year). At present, this potential is not sufficiently exploited, considering also the relatively high costs of building the installations.

(15) The acceleration of the exploitation rhythm of the renewable energy sources is justified by increasing the security of the energy supply, promoting regional development and improving environmental protection. In addition, the exploitation of the renewable energy sources contribute to fulfilling the electricity and heating needs in the less favoured rural areas.

(16) In order to carry out the commitments assumed and achieve Romania's potential of renewable energy sources, the Strategy for the use of renewable energy sources foresees, for the 2003-2010 period, to set in function new generation capacity from renewable energy sources with a total installed power of approx. 441.5 MW (electricity), 3,274.64 thousand toe (caloric energy); and for 2011-2015, to install a total power of 798 MW (electricity) and 3,527.7 thousand toe (caloric energy). Moreover, by 2015, the contribution of electricity produced from renewable energy sources to gross primary resources consumption will have to reach 11.2%, as follows:

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<sup>7</sup> Toe – tone of oil equivalent

**Table no. 1 Weight of renewable energy sources to gross primary resources consumption**

| <b>Renewable energy sources</b>   | <b>2010<br/>(thousand toe)</b> | <b>2015<br/>(thousand toe)</b> |
|---|--------------------------------|--------------------------------|
| Solar power   | 7.50                           | 17.00                          |
| Wind power  | 27.00                          | 86.10                          |
| Hydro power   | 1,565.20                       | 1,608.20                       |
| Biomass   | 3,347.30                       | 3,802.00                       |
| Geothermal  | 17.50                          | 23.90                          |
| Total   | 4,946.00                       | 5,537.20                       |
| Weight of renewable energy sources to gross primary resources consumption (%) | 11.00                          | 11.20                          |

*Source: Strategy for the use of renewable energy sources*

In order to fulfil these objectives, it is necessary to implement projects aiming to build and set into function installations for exploiting renewable energy sources.

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

(17) The financial support from the State shall be granted, within the Project, for acquisition of installations and equipments to use renewable energy sources, such as: energy systems of solar-photovoltaic type, solar collectors for water heating, air generators with wind turbines, cogeneration power plants with biomass fuel, power plants for the generation of biogas, hydro-energy based installations.

(18) By acquiring installations and equipment within the Project, will contribute to reach the following quotas<sup>8</sup>: 2.22% in 2006; 3.74% in 2007; 5.26% in 2008; 6.78% in 2009 and 8.3% in 2010-2012.

(19) The investments within the Project will lead to the setting up of new plants using renewable energy sources in the form of solar-photovoltaic systems, wind turbines, hydropower plants and biomass and geothermal energy generation installations.

(20) 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<sup>9</sup>.

<sup>8</sup> Quota = contribution of energy from renewable sources to gross domestic energy consumption

<sup>9</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 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.

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

(21) The total amount to be allocated in the project is of RON 40 million, during 2005 – 2010, as follows:

*Table no. 1*

**Sums allocated within the Project**

- RON million -

| Year | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 | Total |
|------|------|------|------|------|------|------|-------|
| Sum  | 0,5  | 10   | 10   | 10   | 5    | 4,5  | 40    |

*Source: The notification form*

### 5. ASSESSMENT OF THE SUPPORT MEASURES

#### 5.1. Existence of aid

(22) 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.

(23) 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*

(24) 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*

(25) 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.

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

(26) 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 threatens to distort the competition and to affect the trade between Romania and the EU Member States.*

(27) 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.

(28) 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**

(29) In assessing the compatibility of the scheme, the Competition Council, in view of the environmental impact of the scheme, analyzes 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**

(30) 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 promoting the generation of energy from renewable energy sources, based on the criteria provided in the Regulation on regional State aid (hereinafter called Regulation).

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

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

(32) 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.

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

- a) The investment project, which consists in the purchase of installations and equipment for the generation of energy from renewable energy sources, aims to build new installations that improve environmental protection by cutting hazardous emissions. 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 eligibility criterion related to the initial investment, provided 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**

(34) 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.

(35) 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.

(36) 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**

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

(38) 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 85% of the project's eligible costs;
- for mixed financing - minimum 62% of the project's eligible costs.

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

(39) 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**

(40) 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%.

(41) 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 38% of the project's eligible costs.

(42) 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**

(43) 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.

(44) In accordance with the fact mentioned on paragraph 13, 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**

(45) 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 for promoting the generation of energy from renewable energy sources before granting the State aid allocations based on it.

(46) In light of the points made at point 4.2., it can be seen that the exploitation of renewable energy sources leads to increasing the safety of energy supply, the environment and, implicitly, the regional development. Moreover, the use of renewable

energy sources contributes to fulfilling the needs for electricity and caloric of certain communities.

(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 40 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, 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 Draft Decision of the Selection Committee for approving the Project, does not, in any measure, unduly affect the competitive environment and does not infringe the proper application of the international treaties Romania is part of.

(51) After the assessment, the Competition Council considers that the State aid amounting RON 40 million, consisting in financial allocations from the Environmental Fund for the building of installations for exploiting renewable energy sources, 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.

## **DECIDES**

**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 for promoting the generation of energy from renewable energy sources, notified by Ministry of Environment and Water Management – The Administration of the Environmental Fund, are 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 Project for promoting the generation of energy from renewable energy sources is hereby authorized.

**Art. 3.** The budget of the State aid scheme is of RON 40,000,000.

**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, 12 B-dul Libertatii, sector 5, Bucharest;
- Administration of the Environmental Fund, 294 Splaiul Independentei str., building A, sector 6, 060031, Bucharest.

**PRESIDENT**

**MIHAI BERINDE**