

DECISION

no. 2 of 06.01.2006

regarding the state aid scheme enclosed by the Draft Decision of the Selection Committee of the Environmental Fund for the approval of the Project on integrated pollution prevention, reduction and control

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 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 the address no. 35273/27.09.2005, registered at the Competition Council with the no. RS-AS 94/28.09.2005, the Ministry of Environment and Water Management - the Administration of the Environmental Fund - notified the Project on integrated pollution prevention, reduction and control, hereinafter named the Project, according to Art. 15 of the Law no. 143/1999 on state aid, republished¹. The notification became effective on 7.12.2005.

2. LEGAL BASE

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

3. DESCRIPTION OF THE FINANCIAL SUPPORT MEASURES

3.1. Objective of the scheme

(3) By the Project notified, grants are to be made from the Environmental Fund to invest in preventing and reducing emissions into the air, water and soil, having as ultimate objective to reach a high level of environmental protection.

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.

¹ The Competition Council requested additional information by address no. DAAS/1295/07.11.2005. The Administration of the Environmental Fund answered by addresses registered at the Competition Council with no. RG/ 8520/03.11.2005 and RG/9497/07.12.2005.

²

- Law no. 73/2000 on the Environmental Fund, with the subsequent amendments and completions;
- EGO no. 34/2002 on integrated pollution prevention, reduction and control, with the subsequent amendments and completions;
- The Implementation Plan for the IPPC Directive 96/61/EC;
- GD no. 188/2002 approving the norms regarding the conditions for the discharge of waste water into surface waters;
- GD no. 351/2005 for approving the Programme for phasing out discharges, emissions and leaks of highly dangerous substances;
- Order no. 592/2002 for approving the norms establishing the limit values, threshold values and assessment criteria for sulphur dioxide, nitrogen dioxide, powder for suspension, lead, benzene, carbon monoxy and ozone into the air, with the subsequent amendments and completions;
- Order no. 756/1997 for approving the Regulations on assessing the environmental pollution, with the subsequent amendments and completions.

(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 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 60.

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 following³:

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;⁴

³ 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.

⁴ Reimbursable financing amounting to 75% of the eligible costs of the beneficiary's project is 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 conditions, the maximum financial support from the State under the scheme, is of 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 I to the Regulation on regional aid;

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 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.⁵

3.4. Background. General considerations on the integrated pollution prevention and control

(9) The IPPC Directive 96/61/EC, fully transposed by EGO no. 34/2002, aims at preventing or minimising emissions into air, water and soil, as well as the waste resulting from highly polluting activities, in order to achieve a high level of protection for the environment as a whole.

(10) The Directive defines the main obligations that must be observed by the existing or new installations, namely implementing the best measures and the best available technologies to fight against pollution (that generate the least waste, that use the least hazardous substances and allow for recovering and recycling the emissions), preventing major pollution, preventing, recycling and eliminating waste by the least polluting methods, using energy efficiently, preventing accidents and limiting their consequences. Moreover, limit-values are established for the polluting substances resulting from the highly polluting activities.

⁵ 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 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 reimbursable 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 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 enterprise, 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 interests will be calculated in accordance with the provisions of Annex I to the Regulation on regional aid;

II. *If the beneficiary is an SME*, 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, with an interest of 5% per year. The difference between this interest and the market's interest is 10%. Therefore, the reimbursable 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 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 I to the Regulation on regional aid.

(11) The actions to be carried out by each undertaking whose activity is covered by the provisions of Directive 96/61/EC, aiming at the integrated pollution prevention and control, refer to:

- Taking all necessary measures to efficiently prevent pollution, particularly by implementing the best available technologies;
- Taking all necessary measures to ensure that no major pollution occurs;
- Avoiding waste generation, wherever this is practicable, and where it is not, recovering and disposing of waste, thus avoiding or reducing any impact on the environment;
- Using energy efficiently;
- Taking the necessary measures to prevent accidents and limit their consequences.

4. DESCRIPTION OF THE PROJECT

4.1. Objective

(12) The objective of the Project consists in preventing or minimising polluting emissions into air, water and soil, as well as the waste resulting from highly polluting activities, by investing in the purchase and setting into function of installations ensuring a high level of protection for the environment as a whole, by using clean technologies.

(13) By the notified Project financial support shall be granted only for making the investments necessary for the building of new installations, in order to observe the maximum admissible emission limits and the technical parameters, according to BAT⁶.

(14) In accordance with the provisions of the Draft Decision of the Selection Committee approving the Project, investments made in new installations with the State support shall be maintained for a minimum period of 5 years.

4.2. The necessity of the project implementation

(15) The implementation of the Project is necessary in the light of the requirements of Directive 96/61/EC, namely:

- To establish emission limits and technical parameters based on BAT;
- Special measures concerning water, soil and air protection;
- Emission monitoring;
- Measures for reducing cross-border pollution;
- Efficient use of energy and minimising the quantity of generated waste.

(16) In order to comply with the requirements of Directive 96/61/EC, transposed by EGO no. 34/2002, all installations covered by this legal act shall function at the parameters necessary for obtaining the integrated environment permit⁷.

⁶ BAT –Best Available Techniques – The most effective techniques for ensuring a high level of protection of the environment as a whole.

(17) Obtaining the integrated environmental permit infers great financial efforts for the undertakings concerned, since most installations falling under the provisions of Directive 96/61/EC are complex installations, requiring significant investments and a long time span to be set into function.

(18) In addition, investments are necessary to implement the self-monitoring system for the emissions of the installations, in order to comply with the requirements of the Directive.

(19) Investments carried out within the Project will contribute to setting up new units and, in some cases, to extending the existing ones; these will lead to an increased quality of the environment and, at the same time, to the development of the areas where they will be located.

4.3. Eligible activities within the Project

(20) The financial support from the State shall be granted, within the Project, for acquisition of new installations and equipment for preventing or minimising polluting emissions into air, water and soil, as well as waste generated from highly polluting activities, and which observe the maximum emission values provided by GD no. 351/2005.

(21) Financing granted within the Project shall cover the expenses with purchasing the installations, as well as those with purchasing the pollution control equipment.

(22) 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 the activities covered by Directive 96/61/EC (such as chemical installations for producing organic and anorganic substances, with a capacity higher than 10t/day, industrial installations for the production of wood pulp or other fibrous materials, installations for producing glass, installations for generating ceramic products by burning)⁸.

⁷ Integrated environmental permit – technical-juridical act issued by the competent environmental protection authority, according to the legal provisions in force, which grants the right to fully or partially exploit an installation, under certain conditions ensuring that the installation fulfills the requirements of EGO no. 34/2002 on IPPC. According to the Implementation Plan for the IPPC Directive 96/61/EC, issued by the Romanian Government, by the deadline provided by the Directive and the national legislation in force, all installations covered by this shall be subject to the integrated authorisation procedure and integrated environmental permits shall be granted only for activities that observe the legal requirements.

⁸ 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 (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

4.4. The budget and the project's implementing period

(23) The total amount to be allocated in the project is of RON 120 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	10	40	30	20	10	10	120

Source: The notification form

5. ASSESSMENT OF THE SUPPORT MEASURES

5.1. Existence of aid

(24) 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.

(25) 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

(26) 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

(27) 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

(28) 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.

conclusion of the purchase contract, costs related to the personnel training, traveling, wages, motor vehicles and other costs not related to the project.

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

(29) 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.

(30) 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

(31) 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. Applicability of the Regulation on the regional State aid

(32) 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 integrated pollution, prevention and control, based on the criteria provided in the Regulation on regional State aid (hereinafter called Regulation).

5.2.1.1. State aid for initial investment

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

(34) 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.

(35) 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 to par. 19.

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 (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

(36) 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.

(37) 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.

(38) 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

(39) The beneficiary must contribute to finance the investments with at least 25%, in accordance with the provisions of art. 8 (1) of the Regulation.⁹

(40) 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:
 - minimum 54% of the project's eligible costs, if the State aid beneficiary is a large enterprise;

⁹ This minimum contribution of 25% cannot be subject to another State aid (art. 8 (2) in the Regulation).

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

(41) 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 the investments, are fulfilled.

5.2.1.4. Aid intensity

(42) 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 raised by the supplements 15 percentage points gross.

(43) 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.

(44) 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

(45) 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.

(46) In accordance with the facts mentioned at paragraph 14, the Competition Council notes that the granting of the allocations within the notified scheme is conditioned by maintaining the investment for a minimum period of 5 years, fulfilling this way the provisions of art. 11 of the Regulation on regional State aid.

5.2.1.6. The State aid's stimulating effect

(47) 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 integrated pollution prevention and control, before granting the State aid allocations based on it.

(48) 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.

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

5.2.1.7. Cumulation

(50) In accordance with the provisions of art. 16 of the Regulation, the ceilings for the aid intensity mentioned at paragraph 42 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.

(51) 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

(52) 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 affects the competitive environment and does not infringe the proper application of the international treaties Romania is part of.

(53) After the assessment, the Competition Council considers that the State aid amounting to RON 120 million, consisting in financial allocations from the Environmental Fund for the building of installations and equipment that aim at reducing gas emissions and reducing pollution, 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.

DECIDES

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 the integrated pollution prevention and control, 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 the integrated pollution prevention and control, is authorised.

Art. 3. The budget of the State aid scheme is of RON 120,000,000.

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