

## **COMPETITION COUNCIL DECISION**

**No. 3 of 06.01.2006**

**regarding the State aid scheme enclosed by the Draft Decision of the Environmental Fund Selection Committee for the approval of the Project on the limitation of emissions of certain pollutants into the air from large combustion plants**

### **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. 35249/27.09.2005, registered at the Competition Council with the no. RS-AS 92/28.09.2005, the Ministry of Environment and Water Management – The Administration of the Environmental Fund – notified the Project on the limitation of emissions of certain pollutants into the air from large combustion plants, 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 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 Project<sup>2</sup>.

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

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

(3) By the notified Project, the undertakings shall receive non-reimbursable grants from the Environmental Fund to make investments in order to limit or reduce the emissions of pollutants generated by large combustion plants, 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.

(5) According to the Handbook, the undertakings that request financing have to submit their projects within the submissions sessions advertised by the The Administration of the Environmental Fund. Based on the criteria laid down in the Handbook, the Examination

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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 submitted additional information through its addresses registered at the Competition Council with no. RG/8520/03.11.2005 and RG/9498/07.12.2005.

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- Law no. 73/2000 on the Environmental Fund, with the subsequent amendments and completions;
- Emergency Government Ordinance (EGO) no. 243/2000 on the protection of the atmosphere;
- Government Decision (GD) no. 541/2003 on establishing the measures to be taken in order to reduce the emissions of certain pollutants into the air from large combustion plants;
- The Implementation Plan for the Directive 2001/80/EC on the limitation of emissions of certain pollutants into the air from large combustion plants;
- 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.

and Assessment Commission, within the The Administration of the Environmental Fund, establishes the score of each 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 25.

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

(8) The 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;

*B – for reimbursable financing* – maximum 15% of the eligible costs of the project financed from State sources<sup>4</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

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<sup>3</sup> Under the scheme, State aid beneficiaries may choose from any of the three aforesaid financing forms, within the limits of the scheme's total budget and the maximum number of beneficiaries.

<sup>4</sup> 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 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 (maximum 2 years). Under these circumstances, 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 shall be calculated in accordance with the provisions of Annex I 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>5</sup>.

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

(9) Directive 2001/80/CE on the limitation of emissions of certain pollutants into the air from large combustion plants, transposed by GD no. 541/2003, has as objective the limitation of sulphur dioxide, nitrogen oxides and dust emissions from large combustion plants, in view of improving the quality of the environment. The Directive defines the main obligations to be fulfilled by large combustion plants whose nominal thermal power is equal or exceeds 50 MWt, regardless of the type of fuel used, considering that these plants significantly contribute to the atmosphere sulphur dioxide and nitrogen oxides emissions and that the limitation of such emissions is necessary.

- (10) The implementation of Directive 2001/80/CE has as main objectives the following:
- fulfilling the obligations undertaken through the accession to international conventions in the field of air quality protection;
  - preventing acidification, eutrophication and tropospheric ozone formation phenomena;

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- I. If the beneficiary is a large enterprise, non-reimbursable financing amounting up to 40% of the eligible costs is granted. In addition, a reimbursable financing of 30% 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 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 (maximum 2 years). Under these circumstances, 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 interests shall be calculated in accordance with the provisions of Annex I to the Regulation on regional aid.

- II. If the beneficiary is an SME, a 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 is granted, with an interest of 5% per year. The difference between this interest and the market 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 circumstances, 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 shall be calculated in accordance with the provisions of Annex I to the Regulation on regional aid.

- reducing concentrations and critical levels of the main pollutants causing acidification (sulphur and nitrogen oxides) to the levels required for protection of the environment and human health.

(11) The actions to be carried out in view to fulfil the envisaged objectives mainly consist of the following:

- using liquid fuels with a low sulphur level according to Directive 1999/32/CE on reducing the level of sulphur in liquid fuels, transposed by GD no. 142/2003 on the limitation of sulphur content in liquid fuels;
- implementation of specific BREF-BAT<sup>6</sup> regulations for large combustion plants, having as purpose:
  - desulphurisation and reduction of the nitrogen oxides emissions from combustion gases;
  - minimise dust emissions from combustion gases.
- carrying out measurements for relevant pollutants according to the provisions of CEN<sup>7</sup> standards;
- implementation of environmental management systems.

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

### **4.1. Objective**

(12) The objective of the project consist in reducing specific polluting and dust emissions from large combustion plants, by means of investments in the purchase and setting into function of equipments and installations ensuring the reduction or limitation of such emissions into the air, as well as their monitoring, in view of increasing the environmental protection.

(13) Financial support shall be granted in view of achieving the investments necessary for the building of new installations exclusively, in order to observe the maximum admissible emission ceilings and the technical parameters, according to BAT.

(14) Moreover, in accordance with the provisions of the Draft Decision of the Environmental Fund Selection Committee, investments made in new installations by means of the State support shall be maintained for a minimum period of 5 years.

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<sup>6</sup> BAT – Best Available Techniques – the most efficient techniques for reaching a high level of environmental protection; BREF –Best Available Techniques for each industrial sector.

<sup>7</sup> CEN – European Standardisation Committee

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

(15) According to the implementation plan of Directive 2001/80/CE on the limitation of emissions of certain pollutants into the air from large combustion plants, the following main targets were established for Romania:

- reduction or limitation of emissions from large combustion plants, so that the provisions of Directive 2001/80/CE are fully observed;
- establishment of national reduction ceilings of emissions from large combustion plants;
- monitoring, assessment and reporting of polluting emissions from large combustion plants, according to the provisions of Directive 2001/80/CE.

(16) National program of reducing sulphur dioxide, nitrogen oxides and dust emissions laid down their reduction to the levels mentioned in the table below:

**Table no. 1 Level of total annual emissions of sulphur dioxide, nitrogen oxides and dust**

Emissions from large combustion plants	- tonnes -					
	2007	2008	2010	2013	2016	2017
Sulphur dioxide	540,000	530,000	336,000	148,000		
Nitrogen oxides	128,000	125,000	114,000	112,000	80,000	74,000
Dust	38,600	33,800	23,200	15,500		

Source: GD no. 541/2003, Annex 7<sup>2</sup>

(17) Observing the above-mentioned emissions ceilings implies important financial efforts for the involved undertakings considering that, generally, installations falling under the provisions of Directive 2001/80/CE are complex installations requiring significant investments, as well as a long period of time for setting them operational.

(18) Carrying out the investments within the Project shall contribute to the setting up of new units and, in some cases, to the extension of the existing ones; thus, these shall lead to an increased quality of the environment and, in the same time, to the development of the areas where these installations are located.

#### 4.3. Eligible activities within the Project

(19) The financial support from the State shall be granted, within the Project, for the acquisition of new installations and equipments ensuring the reduction or limitation of polluting emissions into air, observing the emissions maximum ceilings laid down by GD no. 541/2003.

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

(21) The eligible costs of the project shall be considered as those established in accordance with the provisions of draft GD of the Environmental Fund Selection Committee for the acquisition of installations and equipments ensuring the reduction or limitation of emissions into the air, as well as their monitoring, within the activities

falling under Directive 2001/80/CE (large combustion plants whose nominal thermal power is equal or exceeds 50 MWt, regardless of the type of fuel used)<sup>8</sup>.

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

(22) The total amount to be allocated within the project is of RON 13 million, during 2005 – 2010, as follows:

**Table no. 2 Sums allocated within the Project**

- RON million -							
<b>Year</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>Total</b>
<b>Sum</b>	0.5	6	3	2	1	0.5	13

*Source: The notification form*

### **5. ASSESSMENT OF THE SUPPORT MEASURES**

#### **5.1. Existence of aid**

(23) 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.

(24) 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) to be selective,
- c) to ensure an advantage to the undertaking,
- d) to distort or to threaten to distort competition and to affect the trade between Romania and the EU Member States.

*a) the support is granted from State resources*

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

*b) the support measure has a selective character*

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<sup>8</sup> In accordance with the Draft Decision of the Environmental Fund Selection Committee, issued for the approval of the Project on integrated pollution prevention and control, hereby named the Project, 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 conclusion of the purchase contract, costs related to the personnel training, traveling, wages, motor vehicles and other costs not related to the project.

(26) 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*

(27) 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 affect the trade between Romania and the EU Member States*

(28) The aid granted to the 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.

(29) In conclusion, the Competition Council considers the financial support granted within the Project as State aid, in accordance with Art. 2 (1) of the Law no. 143/1999 on State aid, republished.

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

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

(31) In principle, the Competition Council assesses the State aid schemes for investments in environmental protection based on the criteria laid down in the Regulation on State aid for environmental protection. However, if the criteria provided by the Regulation on regional State aid are fulfilled, the State aid can be assessed on the basis of the latter Regulation. Therefore, the Competition Council assesses the State aid scheme established by the Project on the limitation of emissions of certain pollutants into the air from large combustion plants, based on the criteria provided in the Regulation on regional State aid (hereinafter named Regulation).

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

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



(33) Within the meaning of art. 5 of the Regulation, an initial investment is an investment in fixed capital relating to the setting up of a new establishment, the extension of an existing establishment, or the starting up of an activity involving a fundamental change in the product or production process of an existing establishment through rationalisation, diversification or modernisation.

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

- a) The initial investment financed with State aid within the Project aim to create new units and, in some cases, extend the existing ones, according to par. 18. 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 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 assessed State aid scheme provides that allocations shall not be granted to undertakings in economic-financial difficulty. Therefore, the provisions of art. 5 (2) (b) in the Regulation concerning the exclusion of the financial restructuring measures for a firm in difficulty from the category of initial investments are fulfilled.

#### **5.2.1.2. Eligible costs**

(35) Granting the financial support within the Project aims to accomplish only investments in tangible assets. Therefore, the assessment of the eligible costs shall be based on the provisions of art. 6 of the Regulation related to costs for investments in tangible assets.

(36) According to Art. 6 (1) of the Regulation, the State aid for initial investment is calculated as percentage of the investment's value. In accordance with art.6 (2) of the Regulation, this value is established based on a 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.

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

#### **5.2.1.3. The beneficiary's contribution**

(38) The beneficiary must contribute to the financing of the investments with at least 25% of the eligible costs, in accordance with the provisions of art. 8 (1) of the Regulation.<sup>9</sup>

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

(39) 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;
  - minimum 46% of the project's eligible costs, if the State aid beneficiary is a SME.

(40) 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**

(41) In accordance with art. 9 of the Regulation on the regional State aid, the State aid's gross intensity must not exceed 50% of the equivalent net subsidy. According to art. 4(2) of the Regulation on the State aid for SMEs, the maximum ceiling for SMEs may be raised by the supplements 15 percentage points gross, with the condition the total gross intensity not to exceed 65%.

(42) 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.

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

#### **5.2.1.5. Maintaining the investment**

(44) In accordance with art. 11 of the Regulation, the State aid for initial investment must be made conditioned, by its allocation manner or by conditions related to its obtaining on the maintaining the investment in question for a minimum period of 5 year.

(45) 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 the

maintaining the investment for a minimum period of 5 year, thus fulfilling the provisions of art. 11 of the Regulation on regional State aid.

#### **5.2.1.6. The State aid stimulating effect**

(46) 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 limiting the air pollutions of large combustion plants before granting the State aid allocations based on it.

(47) In light of the facts mentioned 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.

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

#### **5.2.1.7. Cumulation**

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

(50) 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 intensity, namely 50%, plus 15 percentage points for SMEs.

### **5.3. Conclusions**

(51) 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 Environmental Fund 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.

(52) After the assessment, the Competition Council considers that the State aid amounting to RON 13 million, consisting in financial allocations from the Environmental Fund for the building of installations and equipments that aim at limiting emissions and reducing pollution, fulfils the granting criteria in accordance with the Regulation on regional State aid, enforced by the Order of the Competition Council President no. 55/2004.

## **DECIDES**

**Art. 1.** The financial support measure granted based on the State aid scheme enclosed by the Draft Decision of the Environmental Fund Selection Committee for the approval of the Project on the limitation of emissions of certain pollutants into the air from large combustion plants, notified by Ministry of Environment and Water Management – The Administration of the Environmental Fund, is considered State aid under the provisions of art. 2 (1) of Law no. 143/1999 on State aid, republished.

**Art. 2.** Based on art. 21 (2) (b) and 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 Environmental Fund Selection Committee for approving the Project on the limitation of emissions of certain pollutants into the air from large combustion plants, is authorised.

**Art. 3.** The budget of the State aid scheme is RON 13,000,000.

**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 purposes.

**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 parties before the Bucharest Court of Appeal, the Administrative Section, within 30 days since 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**