

D E C I S I O N
no. 96 of 25.04.2006
regarding the financial support granted to
S.C. ACVARIM S.A. Ramnicu Valcea,
for co-financing the Project „Rehabilitation of the water supply system, of the
sewerage system and the waste water treatment station in the city of Ramnicu Valcea,
Valcea county, Romania”

THE COMPETITION COUNCIL,

Taking into consideration the provisions of the European 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 Gazette, Part I , no. 73/12.04.1993,

Taking into consideration the provisions of the Competition Law no. 21/1996, republished in the Official Gazette, Part I, no. 742/16.08.2005,

Taking into consideration the provision of the Law no 143/1999 on State aid, republished in the Official Gazette, Part I, no. 744/16.08.2005,

Taking into consideration the dispositions of the Regulation on state aid as compensations granted to undertakings entrusted with services of general economic interest, published in the Official Gazette Part I, no. 1048/12.11.2004,

Taking into consideration the dispositions of the Regulation on regional aid, published in the Official Gazette Part I, no. 340/19.04.2004,

Taking into consideration the dispositions of the Regulation on the form, contents and other details of the notification of a State aid, published in the Official Gazette Part I, no. 82/25.01.2005,

Having regard to the Decree no. 57/2004 regarding the appointment of the Competition Council,

Based on the following,

1. PROCEDURE

- (1) By the note no. 686867/23.02.2006, filed at the Competition Council no. RS-AS 39/03.03.2006, the Ministry of Public Finance, as aid grantor, notified, based on art. 15 of Law no. 143/1999 on State aid, republished, the aid to be granted to SC ACVARIM SA Ramnicu Valcea (hereinafter ACVARIM).

- (2) By notes no. DAAS/451/15.03.2006 and DAAS/517/27.03.2006 additional information were requested, based on art. 15 (4) of Law no. 143/1999 on State aid, republished. The Ministry of Public Finance transmitted the reply to the additional information requested by the addresses registered at the Competition Council under no. DAAS/497/23.03.2006, DAAS/515/27.03.2006, DAAS/543/03.04.2006 and DAAS/561/05.04.2006.
- (3) The notification became effective as of the date when the information was accurate and complete, respectively on 05.04.2006.

2. DESCRIPTION OF THE MEASURE OF FINANCIAL SUPPORT

2.1. The beneficiary of the support measure granted by the state

- (4) The beneficiary of the notified support measure is ACVARIM, under the authority of the Ramnicu Valcea.
- (5) ACVARIM was established according to the provisions of LCD no. 13/1998, of the *Law no. 326/2001 on public services of town management* and *GO no. 32/2002 on water supply and waste water collection public services*, as a company with legal person status, functioning based on economic management and financial autonomy for the management of goods in the public domain (the water supply and sewage systems) required to discharge the public services of water supply and sewage systems.
- (6) ACVARIM is headquartered in the city of Ramnicu Valcea, Carol I Str., no. 3-5, Valcea county and registered with the Trade Register under no. J 38/213/1998, and unique registration code no. 6985318.
- (7) ACVARIM's shareholders equity currently amounts to RON 840,465, divided into 331,186 nominal shares, in nominal value of RON 2.5 /share, held entirely by the Local Council of the City of Ramnicu Valcea.
- (8) The economic and financial results obtained by ACVARIM during 2002-2005 are presented in Table no. 1.

Table no.1 - Economic and financial results of ACVARIM

				RON-
No.	INDICATOR	2002	2003	2004
1.	Net turnover	6,188,798.3	7,660,946.8	8,371,686.4
2.	Net profit	105,251.4	150,930.3	-3,069.3

Source: Notification form

- (9) According to its setting up deed, the main object of activity of ACVARIM is represented by the discharge of the following services of public town management: the sourcing, treatment and distribution of drinking water and the collection, transport and treatment of waste water, CAEN code 4100. According to art. 2 of the *Law on public services of town management no. 326/2001*, establishing the legal framework regarding the set-up, organization, monitoring and control of the functioning of public services of town management in counties, cities and villages, the public services of town management represent the total activities and utility actions of local interest, carried

out under the authority of the local public administration, having as purpose the supply of public utility services.¹

- (10) By license granted by the National Agency of Regulation in the field of Services of Town Management (hereinafter called ANRSC), the company is entrusted with the discharge of public services of water supply and sewage.
- (11) ACVARIM administers and operates the public systems for the supply of drinking water and sewerage in the city of Ramnicu Valcea, based on the contract of delegating the management of the water supply and sewage services in the city of Ramnicu Valcea no. 10805/2004.
- (12) The obligations of ACVARIM, as a provider of public services of town management to the consumers are, in principle, the following:
 - a) to supply all consumers in the coverage area for which it was authorized/ certified;
 - b) to observe the performance parameters set by local public administration authorities, or by the national regulating authority;
 - c) to provide the local public administration authority, respectively the national regulating authority the information required and to allow access to the utilities' documents, according to the clauses of the operating agreement.
- (13) Given the above, the public services of general economic interest entrusted to the company are:
 - supply of drinking water (the public service of drinking water supply entails mainly the sourcing, treatment of water, transport and distribution of drinking water);
 - sewerage (the public service of sewerage entails the following: collection and transport of waste domestic water from users to the treatment facilities, treatment of waste water and its disbursement, collection, evacuation and adequate treatment of the waste from drainage slots and the assurance of their functionality, the supervision of the evacuation of industrial waste water in the sewerage system, evacuation and treatment of sludge and other similar waste derived from the activities mentioned above, as well as their storage).
- (14) The services for the supply of drinking water and sewerage services represent 100% of the total activity carried out by ACVARIM. Given the fact that there is only one sewerage network in the city of Ramnicu Valcea, the company takes over both the domestic and meteoric waste water as well as industrial, the latter activity having a non significant contribution to the entire activity of ACVARIM. We mention that each undertaking has the obligation to ensure the pre-treatment of the waste industrial water resulted from its activity before discharging it in the sewerage network, therefore ACVARIM does not carry out industrial water treatment activities.

¹ ACVARIM's secondary activities consist in construction works for transport through pipes, electrical installations for water pipes, anti-corrosive protective isolating works, sanitary and central heating installation works, installation of equipment and technological machinery in buildings and engineered buildings, other installation works and ancillary constructions etc.

- (15) The importance of public water supply and waste water collection services to the population and public institutions represents approximately 54% of the total public services supplied by ACVARIM.

2.2. The sector affected by the financial support granted to ACVARIM

- (16) The sector affected by the granting of the financial support analyzed in the present decision is represented by the market of public services of water supply and sewerage.
- (17) The public services of water supply and sewerage function in a centralized system and are organized under the coordination and control of the local public administration authorities, based on the local autonomy principle. The relevant geographical market is represented by the area of the city of Ramnicu Valcea. This is a regulated market because prices and tariffs of the services are not determined by supply and demand but approved by the local public administration – the County Council of Ramnicu Valcea - and adjusted and agreed by A.N.R.S.C.; the service provider is bound to ensure the supply of services to all connected to the network, without discrimination. Also, all consumers connected to the drinking water and sewerage network of the city are captive consumers, because they do not have the possibility to choose their service supplier.
- (18) ACVARIM is the only provider of public services for the supply of drinking water and sewerage in the area it discharges the service, namely the area of the city of Ramnicu Valcea.

2.3. Ways of granting the financial support

- (19) The Ministry of Public Finance has contracted a direct loan from the European Investment Bank (hereinafter EIB), which it shall sub-loan, under the same terms, to ACVARIM. The value of the credit is EUR 7,250,000 Euro to be reimbursed in 2010-2029, at an interest rate of 3.85% per year.
- (20) The subloaned funds are earmarked to co-finance the Project „Rehabilitation of the water supply system, of the sewerage system and the waste water treatment station in the city of Ramnicu Valcea, Valcea county, Romania” (hereinafter named Project), for which ACVARIM benefits from non reimbursable financial assistance in value of EUR 21,750,000 through the Instrument for Structural Policies for Pre-Accession. The terms for realising the Project, its financing and implementation modalities are regulated by the *Financing Memorandum* agreed between the *Government of Romania and the European Commission, regarding the non-reimbursable financial assistance granted for the measure „Improvement of water supply system, of the sewerage system and of the waste water treatment station in the city of Ramnicu Valcea, Valcea county, Romania” signed in Brussels on 06 December 2004 and in Bucharest on 14 February 2005, published in the Official Gazette, Part I, no. 687bis of 01.08.2005.*
- (21) The legal basis for granting the notified financial support is the *Financing Memorandum* agreed between the *Government of Romania and the European Commission, regarding the non-reimbursable financial assistance granted for the measure „Improvement of the water supply system, of the sewerage system and the*

waste water treatment station in the city of Ramnicu Valcea, Valcea county, Romania” signed in Brussels on 06 December 2004 and in Bucharest on 14 February 2005, published in the Official Gazette, Part I, no. 687bis of 01.08.2005, GD no. 1328/2005 for approving the technical-economic indicators of the investment objective included in the ISPA programme „Rehabilitation of the water supply system, of the sewerage system and the waste water treatment station in the city of Ramnicu Valcea, Valcea county, Romania” and LCD no. 114/2005 regarding the approval of the phesability study of the technical-economic indicators and of the financing sources for the investment project „Rehabilitation of the water supply system, of the sewerage system and the waste water treatment station in the city of Ramnicu Valcea, Valcea county, Romania”.

- (22) In addition, according to EGO no. 198/2005 regarding the setting up, supply, replacement and development fund for the development projects of public service infrastructure that benefit from EU financial assistance, the sums representing profit tax, dividends and the monthly fee that ACVARIM owes to the budget of the Local Council of the city of Ramnicu Valcea shall be returned to the company and used also to co-finance the Project, respectively to reimburse the loan, interests and corresponding commissions. These sums shall be fed into a special fund for the maintenance and development of the Project, namely for the reimbursement of the loan, interests and corresponding commissions. According to the additional information received, the total estimated amount of these sums is RON 6,958,800, as follows:
- a. profit tax: RON 1,183,900;
 - b. dividends : RON 5,547,500;
 - c. fee: RON 227,400.

2.4. Description of the Project

- (23) Considering the age and the considerable worn out ratio of the public water and sewerage infrastructure in the city of Ramnicu Valcea, the necessity to realize investments to rehabilitate, develop and modernize it has been identified. Due to the fact that ACVARIM is entrusted with the discharge of public services of water supply and sewerage in the city of Ramnicu Valcea, the obligation to implement the Project belongs to this undertaking.
- (24) According to the criteria provided in the financing Memorandum, the Project’s eligible expenses amount to EUR 29,000,000 and are financed as follows:
- ISPA assistance - EUR 21,750,000 (75% of the Project eligible costs);
 - Co-financing of the ISPA assistance beneficiary (25% of the Project eligible costs) is foreseen to be ensured by subloan, in amount of EUR 7,250,000.
- To this value we add the Project non-eligible expenses², in amount of EUR 600,868, to be covered by the Local Council of the city of Ramnicu Valcea.
- (25) The Project consists in investments regarding the extension and improvement of systems for the treatment of drinking water, the collection of waste water and of the

² We mention that this is not eligibility within the meaning given by the State aid regulations, but eligibility within the meaning of the criteria provided in the Financing Memorandum.

treatment station in the city of Ramnicu Valcea. The financed components of the Project are the following:

- A. Treatment and distribution of drinking water
- B. Wastewater collection and treatment
- C. Technical assistance, supervision during implementation and publicity.

(26) The A component contains the following investment objectives:

- Rehabilitation and extension of the drinking water network, water stock and pumping installations

The total length of the network is 110 km. Losses in the distribution system are very high. The non-billed water volume currently amounts to 42% and this is mainly due to water losses determined by the precarious state of the distribution network. Within this measure, the following works shall be executed:

- Replacement of approx. 16 km of asbestos and corrugated steel pipes with High-Density Polyethylene Pipes (HDPE);
- Extension of the sewerage network by approx. 19 km to supply 5,000 inhabitants of the areas that are not currently connected to the supply system;
- Completion of the metering by installing 2,000 water meters;
- Installation of the SCADA system and approx. 300 pressure water taps in order to carry out measurements of the network at the sewerage network openings;
- Endowment of the Cetățuia, Petrișor and Goranu basins with rechlorination installations in order to increase the safety of drinking water. The Cetățuia basin will be completely restored, this operation including structure works and hydraulic installations;
- Within the technical assistance component, it is foreseen to purchase digital cartography/GIS equipment and a mobile unit for detecting leaks and allow for better detecting these. The GIS system comprises hardware and software, as well as network modelling instruments. Digital cartography/GIS will be used both for the water and the sewerage network. This equipment will improve leak control, speed and quality of the repair works. Good pressure control shall contribute to improving the management of pipes and facilities. The installation of varying speed pumps will be accompanied by hydraulic restructuring and network optimisation.

(27) The B component contains the following investment objectives:

- Rehabilitation and extension of the sewerage network

The total length of the sewerage system is approx. 102 km. The level of infiltration in the sewerage system is high (approx. 50%), with blocked segments and deteriorations of the pipe structure. Within this measure, the following works will be carried out:

- Replacement of approx. 6 km of pipes within the combined sewerage network and approx. 5.5 km of pipes within the divided sewerage network. Approx. 11% of the sewerage network shall be replaced;
- Rehabilitation of approx. 2 km of main collector;
- Extension of the sewerage network by approx. 15.5 km to supply 6,000 inhabitants;
- Rehabilitation of the combined sewerage network implies cleaning an existing basin and building three new retention basins, with volumes between 1,700 and 4,600 m. The retention basins shall reduce the maximum debit in rainy weather;
- In view of increasing the capacity of a collecting basin, a pumping station will be installed on the main collectors in the Ostroveni area and the waste water filtering station;

- Supplying the maintenance equipment necessary to improve operational efficiency. The equipment is composed of: 1) a mobile unit for cleaning the sewerage system, including CCTV equipment; 2) a mobile sludge extractor (to be included in the technical assistance component).

- Rehabilitation of the waste water treatment station (WWTS)

The Ramnicu Valcea waste water treatment station is located 4 km downstream the city, on the right bank of the Olt river. Filtered waste water is dejected in the Olt river.

The first line of the WWTS was set into function in 1979, for a designed debit of 510 l/s and the second line was added in 1989, with an equivalent debit of 510 l/s.

Currently, the WWTS does not comply with the norms set by the Urban Waste Water Treatment Directive 91/271/EEC, since it has not been over-dimensioned to take into account the future needs of the city of Ramnicu Valcea, it is deteriorated and only carries out primary treatment. The WWTS is endowed with obsolete equipment which has low treatment efficiency and uses a high energy volume.

Due to the precarity of the existing facilities, these will be nearly entirely demolished and a new WWTS will be built. The new station will comply with the norms set by the Urban Waste Water Directive for discharging into water courses not subject to eutrophication (secondary treatment). The station will be built so as to allow further upgrading following the cost-efficiency principle, by including the tertiary phase.

The sludge treatment system will be improved, by adding the thickening process, followed by its dehydration. The possibility to include sludge fermenting facilities in the ISPA measure will be analysed during implementation, as part of the sludge management strategy.

The rehabilitation facilities will benefit from modern Supervision and Data Collection equipment (SCADA), that will also cover the pumping stations in the sewerage system.

(28) The C component includes the following activities:

- Technical assistance in support of the procurement process and assistance in implementing the project;
- Supervision of the works contracts;
- Publicity for the Project;
- Revision of the Strategic Plan and preparation of the application for the Cohesion Fund;
- Study on the private sector participation;
- Assistance in assessing the offers.

(29) The deadlines for the investment objectives financed within the Project are shown in Table no.2.

Table no.2 - Deadlines and value of the components financed within the Project

No.	Component	Value (Euro)	Deadline
1.	Treatment and supply of drinking water	6,370,555	December 2009
2.	Collection and treatment of waste water	17,815,445	December 2009
3.	Technical assistance, supervision during implementation and publicity	4,814,000	December 2009

Source: Financing memorandum

3. ANALYSING THE STATE SUPPORT MEASURE

(30) In order to ascertain the applicability of the rules on State aid, the Competition Council has to analyse if the measure constitutes aid within the meaning of *Law 143/1999 on State aid, republished*.

3.1. The object of the decision

(31) The object of the present decision is the financial support under the form of subloan granted by the Ministry of Public Finance to ACVARIM and under the form of the facilities granted by the Ramnicu Valcea Local Council (see paragraphs 22 and 24). The subloan is intended for financing an investment objective regarding the infrastructure of water and sewerage of the city.

3.2. Assessment of the aid

(32) Analyzing the overall economic and financial position of ACVARIM it can be concluded that the company is not in difficulty. It results from the information sent by the beneficiary that ACVARIM can obtain loans from a commercial bank, at market terms, without the state intervention, but at a higher interest than the interest paid by the Ministry of Public Finance for the subloan.

(33) The state aid under the form of subloan can be calculated in the same way as the net grant-equivalent of a loan granted in preferential conditions, the interest bonus representing the difference between the market interest rate and the interest rate obtained for the subloan granted by the State, after any premiums have been paid.

(34) Due to the fact that a commercial bank would have granted ACVARIM a similar loan, without the state guarantee, at an annual interest rate of 6.384%, the Competition Council considers that this rate can be taken as reference when calculating the financial support under the form of preferential loan.

(35) In these circumstances, the financial support granted under the form of preferential loan is equal to the discounted difference between the market interest rate and the interest rate to the subloan, respectively: EUR 2,442,745.7, the equivalent of RON 8,502,465.³

(36) The financial support to be granted to ACVARIM by the Ramnicu Valcea Local Council under the form of the non-eligible costs of the Project (according to the financing Memorandum and *LCD no. 114/2005*)⁴ in amount of EUR 600,868 (equivalent of RON 2,091,441⁵) and under the form of the sums representing profit tax and the monthly royalty that ACVARIM owes to the Local Council budget and which will be reimbursed to the company in order to co-finance the Project, sums constituted

³ The NBR exchange rate of 03.03.2006, respectively 1 Euro = RON 3.4807 was used.

⁴ We mention that this is not eligibility within the meaning given by the State aid regulations, but eligibility within the meaning of the criteria provided in the Financing Memorandum.

⁵ The NBR exchange rate of 03.03.2006, respectively 1 Euro = RON 3.4807 was used.

in a special fund for the maintenance and development of the Project, in estimated value of RON 6,958,800.

- (37) The total amount of the financial support to be granted to ACVARIM for implementing the Project is RON 17,552,706.

3.3. Analysis of the financial support in the context of the rules on regional aid for investments

- (38) Taking into account that the aid is designed to finance some investment objectives, the Competition Council assessed the aid under Art. 2 and Art. 23 of *Law 143/1999, republished*, and the *Regulation on Regional Aid*.
- (39) ACVARIM is located in the 4 South-West Oltenia development region in Romania. As stated under par. (8) of this decision, ACVARIM is not a company in difficulty, thus being eligible for regional aid in accordance with Art. 1 (4) of the *Regulation on Regional Aid*.
- (40) In accordance with Art. 5 of the *Regulation on Regional Aid*, the notified aid is aid for initial investment as it serves the expansion, rationalization and modernization of an existing unit.
- (41) The financial support is granted individually to ACVARIM in view of co-financing the Project. The Competition Council therefore notes that the aid in question is not granted in the framework of any regional scheme previously approved. Therefore, the aid is considered as ad hoc aid. It must be underlined that the State did not merely pursue a specific or sectoral policy in granting the aid. Nor did it primarily follow the goal to promote the region.
- (42) Regional aid measures are different from other aid categories in that they are intended for certain regions, and the purpose of their granting is to develop these regions. As concerns Romania, the entire territory is eligible for such aid. Regional aids aim at the sustainable development of the underdeveloped regions by encouraging investments and job creation in these areas.
- (43) In the present case, these objectives are not priorities for the aid grantor, whose final purpose is to ensure adequate water and sewerage systems for the citizens of the city of Ramnicu Valcea. The management of such a system is considered to be a public service obligation. Following the nature of the investment project, the Competition Council concludes, that the rules on SGEI seem to be “closer” than those on regional aid. At the same time, the Competition Council acknowledges that the rules on services of general economic interest are derogatory provisions.
- (44) In addition, the Competition Council underlines that all the investment objectives which will be achieved within the Project are not part of the private patrimony of the beneficiary, respectively ACVARIM, but part of the water and sewage public infrastructure of the city of Ramnicu Valcea, which is property of the Romanian state, namely public property of the County Council of Ramnicu Valcea (*Law 213/1998 on public property and legal status*).

- (45) Leaving these general considerations aside, the Competition Council concludes the following concerning the compatibility of the measure in the context of the *regional aid Regulation*:
- (46) Art. 8 of the *Regulation on regional aid* provides that in order to ensure that the productive investment benefiting from aid is viable and sound, the recipient's contribution to its financing must be at least 25 %. This criterion is presently not fulfilled, since ACVARIM has not made any contribution from own sources to financing the eligible costs (own sources unaffected by State support).
- (47) Regarding the maintaining of investments for a period of minimum 5 years, given that they are part of the technical-urban infrastructure of the city, it may be deemed that they shall be maintained for the whole duration of their functioning.
- (48) Vis-à-vis the above arguments, the Competition Council concludes that the criteria to authorize a regional aid for investments are not met cumulatively.
- (49) Since the service provided by ACVARIM has the character of a public-service-obligation, by derogation from the general state aid rules, the recent case law of the ECJ in the context of the definition of state aid in this field (Altmark-Judgement) and *the Regulation on state aid in the form of compensations granted to certain undertakings entrusted with services of general economic interest* have to be taken into account.

3.4. Analysis of the financial support based on the provisions of the *Regulation on state aid in the form of compensations granted to certain undertakings entrusted with services of general economic interest*

3.4.1. General considerations

- (50) The financial support granted to a company entrusted with the obligation to deliver a service of general economic interest is not considered State aid for the purposes of Art. 2 of *Law 143/1999 on state aid, republished*, if the following conditions are cumulatively met:
- a) the obligation to discharge a service of general economic interest is entrusted through a normative/administrative act and is clearly defined;
 - b) the parameters based on which the compensation is calculated must be established in advance, in an objective and transparent way, in order to avoid granting an economic advantage to the beneficiary;
 - c) the compensation must not exceed the amount necessary to totally or partially cover the costs incurred through the service of general economic interest, taking in consideration the relevant incomes and a reasonable profit in performing these obligations;
 - d) if the undertaking entrusted with the service of general economic interest was not selected through open public tender which would have allowed the selection of an bidder able to discharge this public service at the lowest costs, then the level of compensation must be set based on a comparative analysis of the company's costs and the costs of well-managed and profitable enterprise which meets all the conditions set for the performance of the particular public service, given the relevant

revenues and a reasonable profit from meeting the service of general economic interest obligations.

3.4.2. The condition from par. 3.4.1. a):

- (51) ACVARIM is entrusted to deliver public services of water supply and sewage by the license approved by ANRSC Order no. 18/20.01.2004 extended by the license issued by ANRSC Order no. 147/02.03.2005. In the license there are provided, among others, the specific obligations of the undertakings delivering services of general economic interest as follows: continuity in supplying water and sewage, ensuring access to networks for new customers, equal treatment of all customers, achieving performance standards. Also, by G.D. no. 1591/2002, the company is compelled to deliver these services at prices and tariffs approved by the County Council and established by the ANRSC.
- (52) According to the *Law on town management services no. 326/2001*, the water supply and sewage services are public utility services.
- (53) The organisation, exploitation and functioning of public services must fulfil the following main conditions:
- a) Fulfilling the users' needs, both in quality and quantity, according to the conditions stipulated in the contract;
 - b) The optimal operation in safety, profitability and economic efficiency conditions of buildings, equipments, installations and all assets, according to the projected technological parameters and in compliance with the requested conditions, operation guidelines and organization and functioning regulations;
 - c) Protecting the public estate and environment by observing the legal provisions;
 - d) Informing and consultation the citizens with the purpose of protecting the health of the population benefiting from these services.
- (54) The supply of the public service of drinking water and sewerage is achieved through the public system for water and sewerage, part of the technical-municipal infrastructure of the town. The administration of the water and sewerage system, necessary for delivering the general economic interest service is entrusted to the autonomous regie by the County Council of Ramnicu Valcea by the contract for delegation of the management of public water supply and sewerage services in the city of Ramnicu Valcea no. 10805/2004.
- (55) Regarding the above presented facts, we underline that ACVARIM is under the obligation to ensure the effective functioning of services relating to the production, transport, distribution and supply of drinking water that are essential for the population, institutions and undertakings of Ramnicu Valcea. It is furthermore required to provide these services at a regulated price that is intended to ensure the affordability for the consumer. Consequently, one can conclude that ACVARIM is entrusted, by license, with the discharging of a service of general economic interest.

3.4.3. The condition from par. 3.4.1. b):

- (56) According to this criterion the compensation for the discharge of the public service of general economic interest obligation must be calculated on pre-established objectives and transparent parameters and may not grant an economic advantage to the beneficiary.

- (57) According to the provisions of GO no. 32/2002 on the management and functioning of public services of water supply and sewage, establishing, adjusting, modifying the prices and tariffs for the public services of water and sewerage must be approved by ANRSC, irrespective the organizational or property form of the operators delivering such services. The level of prices and tariffs approved by ANRSC is mandatory for all operators and must assure a balance between the affordability of the users and the economical viability of the operators of public services.
- (58) The prices and tariffs for public services of water supply and sewage are justified in advance according to transparent parameters such as: production and operating costs, repairs and maintenance costs, the annual depreciation of tangible and intangible assets; when setting up prices and tariffs it is taken into consideration the interest and the credits that need to be repaid, for creating, developing and modernization sources of the technical-municipality systems, as well as a reasonable profit, provided that the structure and the level of tariffs represent the real cost of supplying/delivering the service, to discourage the excessive consumption, to encourage the efficient supply of services, to ensure the environment protection, to encourage capital investments and to be correlated with the users' affordability degree.
- (59) The operators which demand the establishment, adjustment or amendment of prices and tariffs for water supply and sewage have the obligation to transmit ANRSC the following documents:
- a request for establishing, adjustment or amendment which comprises: the present prices, the requested prices and the justification for the proposal of establishment, adjustment or amendment;
 - the justification fiches of requested prices and tariffs;
 - other data and information necessary for the justification of the proposed prices and tariffs.
- (60) The justification of prices for drinking water/sewerage is set up in advance, based on the following elements:
- I. Costs from the previous period:
 1. material costs: untreated water; technological losses; energy; technological materials; annual depreciation; repairs for third parties; water quality protection costs etc
 2. employment costs (salaries, employer's contribution to the social insurance fund and to the health insurance fund, unemployment fund etc.);
 3. financial costs (interest, commissions, etc.).
 - II. Revenues from the previous period from production, transport, distribution of drinking water and revenues from sewage;
 - III. Previous period profit;
 - IV. Development quota;
 - V. Drinking water quantity delivered, including own consumption;
 - VI. Quantity of domestic and meteoric waste water processed;
 - VII. Price/unitary tariff from the previous period.
- (61) Starting from this entry data, the prices/tariffs adjusted for the next period are determined taking into consideration the following criteria:

- For expenses for untreated water, energy and materials representing an important part of costs, the amendment of purchasing prices compared with the previous period is done within the limit of market prices;
- Specific consumption of untreated water, energy, fuels and materials shall be considered to a level equal to the one from the previous amendment;
- For employment costs, the justification is made according to the legislation in force, correlated with the economical efficiency principle;
- Depreciation costs and/or royalty are taken into consideration, observing the legal regulations in force;
- In the delivery price of water shall be included the technological losses for the production system, transport and distribution, approved by the authorities of the local public administration;
- The supplied drinking water quantities and the domestic and meteoric waste water processed shall be taken into consideration at the level taken into consideration at the previous approval.

(62) Before the beginning of every financial exercise, ACVARIM is justifying its revenues and expenditures budget, which is subject to the analysis and approval of the Ramnicu Valcea Local Council. In the budget are distinctly presented the revenues and expenditures related to the operating activity, as well as the planned investments to be realized in the respective year. The projected investments are presented by programs and components, specifying the cost of each component, the financing sources, and related deadlines. Thus, the costs related to investments required by the good functioning of the public system of water and sewerage are set in advance. At the same with the calculation for the prices and tariffs, the operator submits to ANRSC a Technical Memorandum with the main characteristics from the feasibility studies of the investments to be realized in the water and sewerage infrastructure.

3.4.4. The condition from point 3.4.1. c):

- (63) Condition 3.4.1.c) provides that this compensation must not be higher than the costs imposed by the discharge of the service for general economic interest.
- (64) As pointed in para. (37), the financial support granted to ACVARIM amounts to RON 17,552,706.
- (65) The financial support granted by the State is earmarked to co-finance the Project. Granting the aid was absolutely necessary to ensure the co-financing of the beneficiary, in percentage of 25% of the eligible costs of the Project (the minimum 25% representing an indispensable condition for obtaining the non-reimbursable financing from ISPA Programme).
- (66) Analyzing the economic and financial position of ACVARIM at the moment of contracting the sub-loan, it can be observed that the company does not have sufficient resources to sustain by itself the co-financing of a project of this size and is forced to use a loan. Thus, the Ministry of Public Finance subloans the funds contracted with the EIB at a lower interest rate (3.85% respectively) than the interest rate the company might have obtained for a credit granted by a commercial bank (6.44%).

(67) According to the Financing Memorandum, in order to meet the expenses related to the subloan (respectively interest, commissions, instalments), ACVARIM has to adjust its tariff as follows:

- an up to 40% increase in real terms of the drinking water and sewerage tariffs by 01.07.2005, as compared to the tariffs of 01.07.2004;
- an up to 30% increase in real terms of the drinking water and sewerage tariffs by 01.01.2006, as compared to the tariffs of 01.01.2005;
- an up to 20% increase in real terms of the drinking water and sewerage tariffs by 01.01.2007, as compared to the tariffs of 01.01.2006;
- an up to 15% increase in real terms of the drinking water and sewerage tariffs by 01.01.2008, as compared to the tariffs of 01.01.2007;
- an up to 10% increase in real terms of the drinking water and sewerage tariffs by 01.01.2009, as compared to the tariffs of 01.01.2008.

According to studies of the regulatory authority, the above percentages represent ceilings by which the consolidated tariff can be adjusted for the public services of drinking water supply and sewerage, given Ramnicu Valcea consumers' affordability.

(68) In the hypothesis ACVARIM had not benefited from State aid in order to co-finance this Project, the expenses the company would have had to sustain from own sources and to draw in at market terms would have been significantly higher. The difference between the total cost of the public services of water supply and sewage under the conditions of taking the subloan and their total costs under the conditions of contracting the loan from a commercial bank results from the data presented in Table 3.

Table no. 3 – *Supplementary costs incurred by contracting a credit under normal market conditions, related to the discharge of the public service of drinking water supply and sewage, for 2005-2029*

Year	Unit cost of the SGEI if State aid is granted ⁶		Unit cost of the SGEI if the project is financed from own sources ⁷		Total quantity of drinking water supplied and filtered		Difference between the total cost of the SGEI if State aid is granted and the total cost of the SGEI if the project is financed from own sources		
	RON/cm		RON/cm		cm		RON		
	water	sewerage	water	sewerage	water	sewerage	water	sewerage	TOTAL
1	2	3	4	5	6	7	8= (4-2)*6	9=(5-3)*7	10=8+9
2005	0.80	0.37	0.80	0.37	11,704,000	8,849,000	0	0	0
2006	0.98	0.52	0.98	0.52	11,539,000	8,724,000	0	0	0
2007	1.20	0.65	1.24	0.66	11,373,000	8,600,000	454,920	86,000	540,920
2008	1.45	0.75	1.49	0.77	11,208,000	9,808,000	448,320	196,160	644,480
2009	1.60	0.85	1.63	0.86	11,043,000	9,710,000	331,290	97,100	428,390
2010	1.60	0.85	1.64	0.86	10,878,000	9,612,000	435,120	96,120	531,240
2011	1.60	0.85	1.65	0.86	10,749,000	9,549,000	537,450	95,490	632,940
2012	1.60	0.85	1.65	0.86	10,620,000	9,483,000	531,000	94,830	625,830
2013	1.60	0.85	1.65	0.87	10,563,000	9,488,000	528,150	189,760	717,910
2014	1.60	0.85	1.65	0.88	10,543,000	9,530,000	527,150	285,900	813,050
2015	1.60	0.85	1.65	0.88	10,524,000	9,571,000	526,200	287,130	813,330
2016	1.60	0.85	1.65	0.88	10,506,000	9,612,000	525,300	288,360	813,660
2017	1.60	0.85	1.66	0.88	10,489,000	9,652,000	629,340	289,560	918,900
2018	1.60	0.85	1.66	0.88	10,473,000	9,693,000	628,380	290,790	919,170
2019	1.60	0.85	1.67	0.89	10,458,000	9,733,000	732,060	389,320	1,121,380
2020	1.60	0.85	1.67	0.90	10,444,000	9,733,000	731,080	488,650	1,219,730
2021	1.60	0.85	1.67	0.90	10,458,000	9,839,000	732,060	491,950	1,224,010
2022	1.60	0.85	1.67	0.90	10,472,000	9,906,000	733,040	495,300	1,228,340
2023	1.60	0.85	1.67	0.90	10,488,000	9,972,000	734,160	498,600	1,232,760
2024	1.60	0.85	1.68	0.90	10,483,000	10,016,000	838,640	500,800	1,339,440
2025	1.60	0.85	1.68	0.90	10,532,000	10,017,000	842,560	505,350	1,347,910
2026	1.60	0.85	1.69	0.91	10,548,000	10,120,000	949,320	607,200	1,556,520
2027	1.60	0.85	1.69	0.91	10,564,000	10,138,000	950,760	608,280	1,559,040
2028	1.60	0.85	1.70	0.92	10,580,000	10,154,000	1,058,000	710,780	1,768,780
2029	1.60	0.85	1.70	0.92	10,595,000	10,170,000	1,059,500	711,900	1,771,400
TOTAL							15,463,800	8,305,330	23,769,130

Source: Notification form

As resulting from the data presented in the table above, financing the Project from own sources would lead to total additional costs of the public water supply and sewerage services of RON 23,769,130; this would be reflected in a tariff increase beyond the consumers' affordability threshold.

(69) From the comparative analysis of the supplementary costs incurred by the company if it were to finance the Project from its own sources, in amount of RON 23,769,130 and of the financial support under the form of the subloan granted by the Ministry of

⁶ State aid consists in the subloan granted by the Ministry of Public Finance and the facilities granted by the Local Council in order to reimburse this loan (royalty, profit tax and dividends due to the Local Council as well as budgetary allocations)

⁷ The scenario in which the company would contract from a commercial bank, without the intervention of the State, a loan of EUR 7,250,000 and would reimburse it from own sources, without the assistance of the Local Council and in the absence of the facilities granted by it.

Public Finance and the facilities granted by the Local Council of the city of Ramnicu Valcea in amount of RON 17,552,706, it results that the latter is just a compensation granted to ACVARIM for performing the obligation of service of general economic interest of supplying drinking water and sewage. Without the State aid, ACVARIM could not finance the Project unless it increased tariffs up to a level difficult to afford by the public service beneficiaries.

3.4.5. Condition from point 3.4.1. d):

- (70) ACVARIM was not entrusted with the service of general economic interest to supply drinking water and sewage following a public tender procedure.
- (71) The public service to supply drinking water and sewage was entrusted to ACVARIM by ANRSC license, and a comparative analysis of its costs with those of a well-run undertaking providing the same service could not be carried out by the grantor.
- (72) Considering the above, the Competition Council concludes that the four conditions under point 3.4.1 are not met cumulatively, mainly the condition under par. 3.4.1 (d) was not proved. Therefore, the measure of support notified for ACVARIM constitutes state aid for the purposes of *art. 2 of Law 143/1999 on State aid, republished*, and of the *Regulation on state aid in the form of compensations granted to certain undertakings entrusted with services of general economic interest*.
- (73) The value of the state aid granted to ACVARIM is RON 17,552,706.

3.4.6. Assessment of the compatibility of the state aid in the context of the *Regulation on state aid in the form of compensations granted to certain undertakings entrusted with services of general economic interest*

3.4.6.1. General considerations

- (74) The ECJ has consistently held that Article 86 EC may provide for an exemption from the ban on state aid for undertakings entrusted with a service of general economic interest (SGEI). It has been implicitly confirmed in the Judgment of the ECJ in the Altmark Case, that state aid which compensates for the costs incurred by an undertaking in providing an SGEI can be regarded as compatible with the common market if it meets the conditions of Article 86(2) of the EC Treaty⁸. The ECJ has made it clear that, for a measure to benefit from such exemption, the principles of definition, entrustment and proportionality must all be fulfilled. The Competition Council considers that, where these principles are fulfilled, the development of trade is not affected to an extent contrary to the interests of the Community.

⁸ Judgment of 24 July 2003 in Case C-280/00 *Altmark Trans*, paragraphs 101 to 109. In those paragraphs the Court examined the question of whether some state payments to transport undertakings classified as state aid could be found to be compatible with the common market under Article 77 of the EC Treaty as reimbursement for the discharge of public service obligations. It did not rule out this possibility, provided that the binding conditions laid down by the secondary legislation for the transport sector were met. This reasoning must apply *mutatis mutandis* to undertaking entrusted with an SGEI outside the transport sector and in relation to Article 86(2) EC.

- (75) According to the *Regulation on state aid in the form of compensations granted to certain undertakings entrusted with services of general economic interest* compensations granted in view of discharging the service of general economic interest may constitute state aid compatible with a normal competition environment if the following conditions are met cumulatively:
- a) the state aid is necessary for operating a service of general economic interest;
 - b) the state aid does not unduly affect the trade between Romania and the EU Member States.

3.4.6.2. The state aid is necessary for operating a service of general economic interest

- (76) In order to appreciate the necessity of granting the state aid for operating the service of general economic interest, the following conditions must be considered:
- the beneficiary must be officially entrusted the obligation to discharge a public service of general economic interest, clearly defined;
 - the compensation level must not exceed what is necessary for the supply of the respective public service, taking into account the relevant revenues and a reasonable profit resulting from discharging these obligations.
- (77) As discussed under point 3.4.2, ACVARIM is exercising a service of general economic essential for the population, institutions and undertakings and this obligation is clearly defined by license.
- (78) ACVARIM operates its services based on its ANRSC licence. This licence, together with the relevant legislation, clearly define the public service obligation to be provided by the undertaking. Thus, we may conclude that ACVARIM has been officially entrusted with the public service that it discharges.
- (79) Also, from the assessment made at point 3.4.4. it results that, under the conditions of a regulated market from the point of view of prices and tariffs, in order to perform this service the company cannot impose its own prices to the consumers, prices that could cover the real operating costs. In establishing the prices and tariffs it must be taken into account the consumers' affordability degree. This is the main cause for which ACVARIM is granted State aid. The compensation granted to ACVARIM does not exceed the costs incurred by the performance of the above-mentioned public service of general economic interest, in the scenario of financing the investments from sources obtained under normal market terms.
- (80) Therefore, one can conclude that the state aid granted to ACVARIM does not exceed what is necessary for the functioning in conditions of continuity, safety and comfort of the public water supply and sewerage services in the area of the city of Ramnicu Valcea.
- (81) By implementing this Project it is aimed the significant improvement of the performance indicators of the public services of water supply and sewerage in Ramnicu Valcea, as follows:
- As regards the water component:
- Reducing water losses that lead to a high dilution of used waters and, consequently, to additional costs for the treatment of used waters;
 - Increasing revenues of the water supplier by cutting water losses;

- Improving metering within the system;
- Rendering the functioning of the drinking water system more efficient.

As regards the used water component:

- Compliance with the treatment norms set by the Urban Waste Water Directive 91/271/EEC for discharge in water courses not subject to eutrophication;
- Reducing pollution of the Olt river, caused by the inadequate treatment of used waters;
- Reducing public health risks, by connecting all inhabitants to the sewerage network;
- Improving the protection of water sources;
- Reducing the risk of flooding that exists in the lower areas in Ramnicu Valcea;
- Reducing the infiltrations in the sewerage system.

Table no. 4 - Performance indicators of the public water supply and sewage systems in the city of Ramnicu Valcea

Performance indicators	Before ISPA	After ISPA
<i>Drinking water</i>		
% of the population supplied	89%	100%
Reduction of un-billed water	42%	30%
Number of meters per customer/registered customer	95%	100%
Specific water losses	16.63 c.m./km pipe/hour	6.8 c.m./km pipe/hour
Average combined water and used water tariff in constant terms	0.20 Euro/c.m.	0.55 Euro/c.m.
<i>Collection and treatment of used water</i>		
Local population connected to the sewerage network/total local population	71%	100%
Infiltration in the sewerage network	49%	33%
Performance of the WWTS: Directive 91/271/EEC	Non-compliant	Compliant with Directive 91/271/EEC (for the sensitive area)

Source: Financing Memorandum

3.4.6.3. No unduly affect of the trade between Romania and the EU Member States

(82) It needs to be noted that the activity of the company is restricted to a limited geographical area represented by the area of the city of Ramnicu Valcea. ACVARIM is the only operator on this market. The regie is not involved in export operations. Under these circumstances it is considered that granting this state aid does not unduly affect the trade between Romania and the EU Member States.

3.4.6.4. There is no over-compensation

(83) The state aid granted to ACVARIM does not represent an over-compensation because it does not exceed the costs which are absolutely necessary in order to perform the service of general economic interest under safety, continuity and comfort conditions for the citizens of the city of Ramnicu Valcea.

(84) Thus, the two conditions provided at point (75), conditions provided in the *Regulation on state aid in the form of compensations granted to certain undertakings entrusted with services of general economic interest* are cumulatively met.

3.4.6.5. Transparency

- (85) According to the provisions of Law nr. 326/2001 on public services of town management, the undertakings discharging public services have to keep separate records of the performed activities, with separate accounting for each type of service, so that their activities are easy to assess, monitor and control.
- (86) In order to maximize transparency, in the Financing Memorandum of the Project it is provisioned that the body involved in the management and implementation of the Project must have a separate accounting system, or an adequate accounting coding system for all the involved transactions, therefore facilitating the checking, by the national control authorities and by the Commission, of the incurred costs, to make sure that these were correctly allocated for the subjected Project. It shall be insured the availability of all justifying documents on the costs made for the Project's accomplishment, on a 5 year period from the date of last payment.
- (87) The exception foreseen in the *Regulation on state aid in the form of compensations granted to certain undertakings entrusted with services of general economic interest* is applicable to the ad-hoc aid analysed in the present decision. As shown above, the state aid has been granted for the compensation of a clearly defined general obligation of public services of general economic interest. The State aid measure is proportionate to the net public service costs discharged by ACVARIM; thus, it does not distort competition in such a manner to impede on the community interest.
- (88) The state aid notified, in amount of RON 17,552,706, is compatible with a normal competitive environment.

DECIDES

- Art.1.** The financial support granted to SC ACVARIM SA Ramnicu Valcea for financing the project „Rehabilitation of the water supply system, of the sewerage system and the waste water treatment station in the city of Ramnicu Valcea, Valcea county, Romania” constitutes State aid in the sense of art. 2 (1) of *Law 143/1999 on State aid, republished*.
- Art.2.** The notified state aid represents a compensation necessary to accomplish in normal safety and continuity conditions for the services of general economic interest of supply with drinking water and sewerage, compensation which does not unduly affect the trade between Romania and the Member States of the European Union.
- Art.3.** Pursuant to Art. 21 par. (2) b), corroborated with Art. 23 par.(1) j) *Law 143/1999 regarding state aid, republished*, the state aid in amount of RON 17,552,706 for SC ACVARIM SA Ramnicu Valcea, is authorized as aid to achieve under conditions of safety and continuity the service of general economic interest.
- Art.4.** Pursuant to Art. 32 of *Law 143/1999 on state aid, republished*, the grantor shall annually submit to the Competition Council information regarding the state aid granted to SC ACVARIM SA Ramnicu Valcea, in view of monitoring the aid.

Art.5. The present Decision shall become effective upon its communication date.

Art.6. Pursuant to Art. 46 of *Law 143/1999 regarding state aid, republished*, this decision may be appealed by the interested persons before the Bucharest Court of Appeal, the Administrative Section, within 30 days from its communication.

Art.7. The present decision shall be communicated by the Secretariat General of the Competition Council to:

- The Ministry of Public Finance, 17 Apolodor Str., sector 5, Bucharest;
- The Local Council of the City of Ramnicu Valcea, 14 General Praporgescu Str., Ramnicu Valcea, Valcea county;
- SC ACVARIM SA Ramnicu Valcea, 3-5 Carol I Str., Ramnicu Valcea, Valcea county.

PRESIDENT

MIHAI BERINDE