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## DECISION No. 58, dated 13.7.2015

### STATE ASSISTANCE SCHEME ON THE REALIZATION OF STRATEGIC INVESTMENTS

State Assistance Commission, with the participation of:

- Arben Ahmetaj chairman
- Mimoza Dhëmbi member
- Dareka Dariu member
- Ahmet Mançellari member
- Anduena Dedja member.

In its meeting, dated 13/07/2015, it reviewed the state assistance scheme on the provision of facilities to the investors of strategic investment, in the framework of the implementation of law no. 55/2015 “On strategic investments in the Republic of Albania”, notified through letter no. 4917, dated 15.06.2015 by the Directorate of Entrepreneurship Support in the Ministry of Economic Development, Tourism, Trade and Entrepreneurship, and decided to evaluate the compatibility of this scheme of assistance with the state assistance legislation.

## I. DESCRIPTION OF MEASURE

### A. The main provisions of law on strategic investments

1. Law no. 55/2015 “On strategic investments in the Republic of Albania” intends to enhance and support the local and foreign strategic investments in the sectors and the fields of economy of the country which present high developmental potential. This law stipulates that the strategic investments are the private, public or public-private investments in the sectors of energy and mines, transport, infrastructure and

electronic communications and urban waste, tourism, agriculture and fishing, technology zones and economic development, zones of development priority as well as the specific subsectors which shall be determined upon a decision of the Council of Ministers.

2. Article 27 “The use of state immovable properties for the realization of strategic investments” provides for:

- i. The plots of land, forests, agricultural lands and the other immovable properties in the ownership of the Albanian state may be made available for the development and the realization of the strategic investing projects, according to this law.
- ii. The mode of providing the immovable properties in the ownership of the Albanian state for the development and the realization of strategic investing projects shall be regulated upon a decision of the Council of Ministers, according to the legislation into force.

3. Article 31 “Immovable property fund on the strategic investment support” provides for as follows:

- I. The Immovable Property Fund on the Strategic Investment Support, created from the state immovable properties in the ownership of the central institutions or of the local governance units, shall be established for the state support for the investment realization.
- II. The mode of the establishment, functioning and administration of this fund shall be adopted upon a decision of the Council of Ministers.

#### **B. The reasons for the evaluation of the measure**

4. The State Assistance Commission notes that:

- I. The provision of plots of lands, forests, agricultural lands and other immovable properties in the ownership of the Albanian state for the development and realization of the strategic investing projects, may constitute state assistance.
- II. The establishment of the Immovable Property Fund for the Strategic Investment Support, composed of the state immovable properties in the function of the state support for the realization of the investment, shall activate the elements of state assistance.

## **II. EVALUATION OF THE MEASURE**

### **A. The existence of state assistance**

5. Article 4 of law no. 9374, dated 21.04.2005 “On state assistance”, as amended, provides for: “Unless otherwise provided for in this law, any assistance provided by state resources, in any form, shall be prohibited directly or indirectly as long as it deforms or threatens to deform the competitiveness prioritizing one or some specific enterprises or for the manufacturing of certain products.”

6. Pursuant to article 4 paragraph 2 of law on state assistance, the measure constitutes state assistance if the state authorities provide properties in the ownership of the Albanian state for strategic investing enterprises/subjects and provide state assistance on the form of:

- a) the grant and subventions;
- b) the exclusion, the reduction and the differentiation of taxes;
- c) the remission of the default payments and fines;
- d) the remission of debts or the coverage of the losses;
- e) the guarantees on the credits or the provision of the credits with law interest rates;
- f) the reduction of the obligation of social insurance;
- g) the reduction of the price of the provided products or the sale of the state property under the market price, or the purchase of the products at a higher price than the one of the market;
- h) the enlargement of the syaye capital at the enterprises or the change of ots value under teh circumstances which are unacceptable for a private investor who operates under normal economic conditions.

7. Providing that through the implementation of law no. 55/2015 “On strategic investments in the Republic of Albania” the state authorities provide the plots of land, the forests, the agricultural lands as well as the other immovable properties under the ownership of the Albanian state, with favourable conditions and criteria towards the market norms valuable for the strategic investing subjects<sup>1</sup> in any of the forms provided for in paragraph 2 article 4 law no. 9374, dated 21.04.2005 “On state assistance”, as amended, then the measure may constitute state assistance.

8. The state authorities shall evaluate if they provide state assistance at the moment of the provision of immovable properties under the ownership of the Albanian state for the development and the realization of the strategic investing projects, regulated with a decision of the Council of Ministers according to the legislation into force.

## **B. The compatibility of the state assistance scheme**

9. The European legislation on state assistance stipulates 2 approached for the exclusion of the possibility of the existence of the state assistance elements<sup>2</sup>:

Firstly, the sale of the state land and properties based on a procedure on the published, open and unconditional bids, compared with the use of the auction procedure accepting the best or the sole bid, and

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<sup>1</sup> Law no. 55, dated 28.05.2015, article 3 paragraph 17 provides for that “*The strategic investing subjects*” are the investing subjects interested in the development and realization of an investment qualified as strategic, according to this law. The strategic investing subjects may be the private legal persons, being natives or foreigners.

<sup>2</sup> OJ C 209, 10.7.1997, p. 3

Secondly, an evaluation *ex-ante* of the evaluation report prepared by an independent expert. These approaches intend to guarantee that the price with which the property has been provided at the disposal of the strategic investing projects by a state authority shall reflect fairly, as much as possible, the market value of the property that has been offered. This will thus exclude the possibility that the provision of the public property give an economic advantage to the investor of the strategic investment. However, the possibility of applying other evaluation approaches to verify of the price really paid by the investor reflects, as much as possible, the market value of the public property<sup>3</sup>, is not excluded.

10. Based on what was mentioned above, the State Assistance Commission considers the state assistance scheme established through the drafting of the draft-law “On strategic investments in the Republic of Albania”, in compliance with article 13, letter “a” law no. 9374, dated 21.04.2005 “On state assistance”, as amended

**FOR THESE REASONS:**

The State Assistance Commission, based on articles 4, 13, letter “a”, 17 letter “ç”, paragraph 2, 30 and 31 of law no. 9374, dated 21.04.2005 “On state assistance”, as amended,

**DECIDED:**

1. Pursuant to article 27, paragraph 2 law no. 55/2015 “on strategic investments in the Republic of Albania”, the decision of the Council of Ministers provides for that “for any case of the provision of the immovable properties in the ownership of the Albanian state, for the development and realization of the strategic investing projects, the preliminary approval of the State Assistance Commission shall be taken, according to the procedures stipulated in the state assistance legislation”.

2. Pursuant to article 31, paragraph 2 of law no. 55/2015 “On strategic investments in the Republic of Albania”, the decision of the Council of Ministers provides for that: “for the functioning and the administration of the Immovable Property Fund for the Strategic Investment Fund, all the forms of the assistance, that the strategic investing enterprises/subjects have benefited or may benefit from other state resources, shall be taken into consideration”.

3. The Albanian Agency of Investment Development (AIDA), in the position of the “unique window”, in the framework of the implementation of the functional tasks of the provision of services for the investor, stipulated in law on strategic investments, within 31<sup>st</sup> March of each year shall submit information on the

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<sup>3</sup> Decision of European Commission Evropian 30/01/ 2008 State Aid C 35/06 (ex NN 37/06)

implementation of article 27 and 31 of law no. 55/2015 “On strategic investments in the Republic of Albania” for the previous financial year.

4. This decision shall be published in the Official Journal.

**CHAIRMAN**  
**Arben Ahmetaj**