Call # 1 - Deposit refund system for beverage bottles and cans.

Legal opinion on the State Aid framework

1. In accordance with this Call, it is sought to develop projects that contribute to the fulfilment of the obligations assumed under Directives 2008/98/EC of the European Parliament and of the Council, of 19 November 2008 and Directive 2008/56/EC of the European Parliament and of the Council of 17 June 2008 (Marine Strategy Framework Directive). In particular, plastic waste is subject to the Union's general waste management measures and targets, as well as the objective of recycling plastic packaging waste set out in Directive 94/62/EC of the European Parliament and the Council[1], furthermore, the "package of measures" contained in the European Plastics Strategy to ensure, that, by 2030, all plastic packaging placed on the Union market is reusable or easily recyclable.

2. Thus, under the terms of this Call, the four priority areas to be reached are the following:

A) Solutions for depositing plastic bottles (and cans), and the projects to be developed in this area must adopt the following minimum criteria for the implementation of a pilot deposit refund system for non-reusable beverage packaging, namely plastic bottles, it can also include metal cans.

The deposit refund system assumes that the consumer is charged a deposit amount for each plastic bottle (or can) purchased, and the amount of which is refunded when the empty packaging is delivered to the designated places.

Thus, the minimum criteria to be verified in the scope of the projects to be considered are the following:

i. The geographical scope may be national or restricted to certain regions, and may also occur in a closed circuit;

ii. The system can include any categories of beverages sold on the national market for the final customer (consumer), as well as any types of plastic / metal and packaging capacities;

[1] Directive 94/62 / EC of the European Parliament and of the Council of 20 December 1994 on packaging and packaging waste (OJ L 365, 31.12.1994, p. 10).

iii. The return of plastic bottles (and cans) can occur through automatic equipment or through manual collection;

iv. The waste collected within the scope of the system must be sent for recycling, respecting all applicable legislation, namely in terms of waste management;

v. All hygiene, health and safety issues that may arise from the functioning of the system must be safeguarded;

vi. Communication and awareness raising within the scope of the project's development should be privileged, to the extent applicable;

vii. The system must be monitored in order to allow the measurement of results and their degree of convergence with the objectives, goals and expected results.

***B)*: Solutions for the reuse of plastic bottles**, and the projects to be developed should present solutions for the design of reusable plastic bottles and / or for systems for the reuse of plastic bottles, which should fit, namely in the following areas:

I. **Circular design, through product redesign / reengineering of materials for reuse;**

II. Circular services and processes, which include, for example, return / repair / reuse systems;

III. Consumption, through initiatives that encourage actions for reuse;

IV. Product recovery, namely through advanced reverse logistics systems;

V. New business models based on reusable alternatives;

VI. Development and or implementation of reuse systems;

VII. Positive discrimination models and reuse systems.

C) Solutions for producers to use recycled plastic bottles (and cans), and the processes to be developed in this context should allow the development or implementation of solutions for the design, production and use of plastic bottles (and cans) made entirely or partially of recycled materials, which have a direct impact on one or more of the following areas, namely:

I. **Reintroduction of secondary raw materials into the economy, namely through greater use of recycled plastics;**

II. **Reduction in the use of plastic of fossil origin;**

III. Stimulating demand for recycled materials and helping to form supply chains;

IV. Promote the acceptance of recycled materials in the market;

V. **Ensure the necessary safety standards when using recycled plastic in products that come into contact with food;**

VI. Generate opportunities for the recycling sector and for the recycled plastic markets.

D) **Solutions for the treatment and recycling of plastic bottles (and cans).** Under this priority, projects must be aligned with the objective of increasing recycling and the quality of recycled materials, in particular plastics, **through the development of recycling capacity, improving the efficiency of the treatment and recycling processes and innovative solutions**, providing for the development or implementation of solutions in the following areas, namely:

I. Development of infrastructures and investments in modern treatment and recycling equipment and technologies;

II. Innovative solutions for advanced chemical sorting and recycling systems;

III. Improvement of waste management practices with a direct impact on the quantity and quality of materials for recycling, namely in terms of sorting and treatment;

IV. Better identification, traceability and removal of dangerous substances and pollutants (contaminants) from plastic waste;

V. Technological specialization that contributes to reaching higher quality standards for food quality applications;

VI. Greater integration of recycling activities in the plastics value chain, through close collaboration between the industry and plastics recycling operators;

VII. Promote voluntary certification of treatment and recycling facilities;

VIII. Increase confidence in secondary raw materials and recycled materials and contribute to supporting the market.

3. However, considering that the priority areas that guide the projects object of this Call are directed to the promotion of research and development («R&D») as an essential engine to achieve the objectives of smart, sustainable and inclusive growth, the communication on the strategy Europe 2020 notes that state aid policy «can contribute actively and positively (...), promoting and supporting initiatives in favour of more innovative, efficient and environmentally friendly technologies, while facilitating access to public investment support, risk capital and funding for research and development ».[2]

4. Therefore, and since state aid to R&D is mainly justified on the basis of Article 107 (3) of the Treaty (Treaty on the Functioning of the European Union) and can be compatible with the internal market, when they are likely to mitigate a market failure, by promoting the realization of an important project of common European interest or by facilitating the development of certain economic activities, and when the resulting distortion of competition and trade is not contrary to the interest common.

5. It follows, therefore, that, in the present case, the project is subject to state aid and falls under the categories of industrial research and experimental development. Aid that mainly targets market deficiencies related to positive externalities (knowledge dissemination), but can also target market deficiencies caused by imperfect and asymmetric information (mainly in collaborative projects).

6. So**, it is an aid to research and development projects, which can be framed under the terms of Article 25.º of Regulation (EU) No. 651/2014, of the Commission, of 16 June 2014 (RGIC).**

7. In fact, the aspect of the project in question falls in to the **industrial research** (point b) of paragraph 2 of cit. Art.) because it implies planned research or critical research aimed at acquiring new knowledge and skills for the development of new products, processes or services or to introduce a significant improvement in existing products, processes or services.[3]

8. We may consider, for example, the outlined in the priority areas (mentioned above and highlighted in bold):

[2] Commission Communication "Europe 2020: A strategy for smart, sustainable and inclusive growth", COM (2010) 2020 final, 3.3.2010.

[3] *Vide* Recital 85 of the GBER.

A. The projects to be developed in this area should include the implementation of ***a pilot deposit refund system for non-reusable beverage packaging,*** *namely plastic bottles, which may also include metal cans.*

B. The projects must present solutions for the design of reusable plastic bottles and / or systems for the reuse of plastic bottles, and must fit, namely in the following areas:

- ***Circular design, through product redesign / material reengineering for reuse;***
- ***Circular services and processes, which include, for example, return systems for repair / reuse;***
- ***Consumption, through initiatives that encourage comportment for reuse;***
- ***Product recovery, namely through advanced reverse logistics systems;***
- ***New business models based on reusable alternatives;***
- ***Development and or implementation of reuse systems***

C*. The projects to be developed in this scope should allow the development or implementation of solutions for the design, production and use of plastic bottles (and cans) made entirely or partially from recycled materials, which have a direct impact in one or more of the following areas :*

- ***Reintroduction of secondary raw materials into the economy, namely through greater use of recycled plastics;***
- ***Reduced use of plastic of fossil origin.***

D. Under this priority, projects are aligned with the objective of increasing recycling and the quality of recycled materials, in particular plastics, ***through the development of recycling capacity, improving the efficiency of treatment and recycling processes and innovative solutions****, providing for the development or implementation of solutions in the following areas:*

- ***Development of infrastructure and investments in modern treatment and recycling equipment and technologies;***
- ***Innovative solutions for advanced chemical sorting and recycling systems;***

- ***Improvement of waste management practices with a direct impact on the quantity and quality of materials for recycling, namely in terms of sorting and treatment;***

- ***Better identification, traceability and removal of dangerous substances and pollutants (contaminants) from plastic waste;***

- ***Technological expertise that contributes to achieving higher quality standards for food grade applications.***

9. Likewise, the aspect of the project in question is also part of experimental development (point c) of paragraph 2 of cit. art.) since it includes the creation of prototypes, the demonstration, the elaboration of pilot projects, the tests and the validation of new or improved products, processes or services, with the objective of developing new technical improvements in the products, processes or services that are not mainly established.[4]

10. In the present case, it should be noted that it includes the creation of prototypes, the demonstration and the elaboration of pilot projects. This prototype will tend to be commercially usable, being, preferably, the final marketable product.

11. As an example, see what is stated in the priority areas (mentioned above and highlighted in bold):

In priority A. The projects to be developed in this scope should include the implementation of a pilot deposit refund system for non-reusable beverage packaging, namely plastic bottles, which may also include metal cans.

In priority B. Projects should present solutions for the design of reusable plastic bottles and / or systems for the reuse of plastic bottles, and they must fit, namely in the following areas:

- ***Circular design, through product redesign / material reengineering for reuse;***

- ***Circular services and processes, which include, for example, return systems for repair/reuse;***

- ***Consumption, through initiatives that encourage behaviour for reuse;***

- ***Product recovery, namely through advanced reverse logistics systems.***

[4] *Vide* Recital 86 of the GBER.

In priority C. The projects to be developed in this scope should allow the development or implementation of solutions for the design, production and use of plastic bottles (and cans) made entirely or partially from recycled materials, which have a direct impact on one or more of the following areas:

- ***Reintroduction of secondary raw materials into the economy, namely through greater use of recycled plastics;***
- ***Reduced use of plastic of fossil origin.***
- *Stimulate the demand for recycled materials and help to form supply chains;*
- *Promote the acceptance of recycled materials on the market;*
- *Ensure the necessary safety standards when using recycled plastic in products that come into contact with food;*
- *Generate opportunities for the recycling sector and for the recycled plastics market.*

• In priority D. The objective is to increase recycling and the quality of recycled materials, in particular plastics, through the development of recycling capacity, ***improving the efficiency of treatment and recycling processes and innovative solutions****, providing for the development or implementation of solutions in the following areas:*

- ***Infrastructure development and investments in modern treatment and recycling equipment and technologies;***
- ***Innovative solutions for advanced chemical sorting and recycling systems;***
- ***Improvement of waste management practices with a direct impact on the quantity and quality of materials for recycling, namely in terms of sorting and treatment;***
- ***Better identification, traceability and removal of dangerous substances and pollutants (contaminants) from plastic waste;***
- ***Technological expertise that contributes to achieving higher quality standards for food grade applications.***

12. On the other hand, it should be noted that the notification thresholds that underlie aid for research and development are those set out in point i), paragraph 1, of article 4.º of the GBER, and the aid intensity must not exceed 50% of the eligible costs for fundamental research (point b) of paragraph 5 of article 25.º of the RGIC) and 25% of the eligible costs for experimental development (point c) of paragraph 5 of article 25.º of the RGIC), which can be increased to a maximum intensity of 80% of the eligible costs (paragraph 6 of article 25.º of the RGIC).

13. In this context and for the reasons mentioned, there is no doubt that it is a subsumable aid in points c) and b) of paragraph 2 of article 25.º of the RGIC, pursuant to paragraph 1, which provides that aid for research and development projects must be compatible with the internal market, within the meaning of paragraph 3 of Article 107 of the Treaty, and should be exempt from the notification obligation imposed by paragraph 3 of Article 108 of the Treaty, provided that they fulfil the conditions set out in this Article and in Chapter I.

14. All in all, it is concluded, therefore, that this aid constitutes an exception to the principle of incompatibility of State aid and is exempt from prior notification to the European Commission; However, under Article 11.º and Annex II, both of the GBER, the Member State must provide the Commission with a summary of the information on each aid measure exempted under this Regulation within 20 working days after application of the measure together with a full access link for the aid measure, via the electronic notification system SANI 2.

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