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<u>**Subject:**</u> **State aid N 629/2009**
Grants for investment in electricity and natural gas transmission networks

Excellency,

The Commission wishes to inform Romania that, having examined the information supplied by your authorities on the matter referred to above, it has decided to raise no objections to the aid measure.

1. PROCEDURE

1. Following pre-notification contacts, Romania notified the above-mentioned measure in accordance with Article 108(3) of the Treaty on the Functioning of the European Union (thereinafter "TFEU")[1] by electronic notification of 12 November 2009 (SANI 3648).

2. The Commission requested additional information by letters of 17 December 2009 (D/55405), 26 March 2010 (D/6414) and of 27 July 2010 (D/8422). Romania

[1] With effect from 1 December 2009, Articles 87 and 88 of the EC Treaty have become Articles 107 and 108, respectively, of the TFEU; the two sets of provisions are, in substance, identical. For the purposes of this Decision, references to Articles 107 and 108 of the TFEU should be understood as references to Articles 87 and 88, respectively, of the EC Treaty where appropriate.

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provided the requested information by letters of 24 February 2010 (A/3528), of 31 May 2010 (A/9030), which was subsequently supplemented by submission of 15 June 2010 (A/9788), and respectively by letter of 21 September 2010 (A/12590), which was subsequently supplemented by submission of 27 October 2010 (A/13601).

2. DESCRIPTION OF THE MEASURE

3. The notified State aid is an aid scheme entitled "Support for investments in the extension and modernisation of electricity and natural gas transmission networks".

4. The scheme will consist in supporting investments in electricity and natural gas transmission networks through resources from the Structural Funds (i.e. the European Regional Development Fund). According to the Council Regulation (EC) N o 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999[2] (hereinafter: "Regulation 1083/2006"), Romania elaborated five national operational programs, each of them having several priority axes, some being further divided into major areas of interventions, each containing several operations. The notified scheme is elaborated under the *Sectoral Operational Program "Increased Economic Competiveness (thereinafter "SOP IEC"), Priority Axe 4 "Increasing energy efficiency and security of supply in the context of fighting the climate changes" Major area of intervention 1 "Efficient and sustainable energy (improving energy efficiency and environmental sustainability of the environmental energy system)", Operation "Support for investments in the extension and modernisation of electricity and gas transmission networks as well as of electricity and natural gas distribution networks for the purpose of reducing the losses through the network and of providing the transmission and distribution service safely and continuously"*.

5. The notification contains a detailed description of the rules constituting the scheme, as well as an indicative list of projects which could possibly be supported under this scheme.

2.1. Objectives

6. The main objective of the scheme is to support investments in the electricity and natural gas transmission networks in order to reduce the energy losses occurring on these networks, to protect the environment, to enhance security of energy supply. As regards this latter objective, the scheme aims in particular to avoid the crisis situations caused by major failures of the electricity and gas systems and more generally, interruptions in the supply. Another objective is to increase the economic and quality performance of the networks.

[2] OJ L 210, 31.7.2006, p. 25

7. The scheme aims to contribute to reaching the target undertaken by Romania under SOP IEC and in the Energy Strategy of Romania for the period 2007-2020, namely to reduce the intensity of primary energy by 40% until 2015 (compared to 2001).

8. The Romanian authorities underlined that the objectives of the Energy Strategy of Romania were in accordance with the Lisbon Strategy, the Green Paper on the "European Strategy for Sustainable, Competitive and Secure Energy", and with the document "New Energy Policy for Europe", and they are aiming at ensuring security of energy supply, enhanced energy efficiency and environment protection.

2.1.1. Security of energy supply

9. It is necessary to ensure continuity of energy supply in order to maintain the safety and security of natural gas and electricity supply, The notified measure will contribute to the improvement of energy security in Romania, by significantly diminishing the risks of major failures of the system and reducing the number and duration of interruptions in the supply.

10. The notified scheme will support projects consisting in the modernization, refurbishment, and extension of certain parts of the national electricity and natural gas transmission networks. The scheme is also intended to support the introduction of a system of supervisory control and data acquisition (the so-called SCADA system) for the natural gas transmission network, allowing early detection and faster intervention in case of system failure.

11. For the natural gas Transmission System, the average unavailability time per client per year is 116.37 hours, distributed between 2.85 emergency cases per year. According to the Romanian authorities, the introduction of the SCADA system would allow intervention time to be reduced from 40.8 to 28.5 hours. The overall intended effect is the reduction of the unavailability of the natural gas transmission network by 30.1%.

2.1.2. Environmental objectives: energy savings and reduced emissions

12. The Romanian authorities underlined that Romania was characterized by a high intensity of primary and final energy compared to the average in the EU 25 (the intensity of primary and final energy is approximately three times higher in Romania than in the EU) as well as by poor energy efficiency of the networks.

13. The transmission networks are currently incurring significant losses, one of the main reasons being that a significant number of components of the networks (e.g. electricity lines, electricity transformation stations, gas pipes) are aging, and in some cases they have exceeded their normal operating lifetime. In the Electric Transmission Network the existing equipment was developed at the technological level of 1960 to 1970, and the extent of wear and tear is 50% in the case of overhead lines and 60% in the case of electricity transformation stations. As regards the Natural Gas Transmission System, 69% of all the transmission lines have exceeded their lifetime and 29% of the control-measurement stations have been exceeding the critical threshold of 25 years.

14. In 2009 energy losses registered by Transelectrica were 992.45 GWh, representing 1.96% of the net energy consumption, while in the case of Transgaz the losses of 301 721 219 m^3 represented 2.608% of the total quantity transported. The projects from the indicative list provided by Romania would allow losses to be significantly reduced. In the case of Transelectrica, the 4 projects mentioned in the list would lead to energy savings in the power transmission network in a total amount of 15 838 MWh/year.

15. Considering the average emission of 496 g CO_2/kWh, is the Romanian authorities estimate that the refurbishing of the four electricity transformation stations included in the indicative list could lead to a total emission reduction of 12 401 t CO_2/year.

16. As regards the environmental impact of the losses of natural gas (mainly composed of methane), the Romanian authorities stressed that while the national legislation does not foresee a maximum admitted concentration of methane, it should be noted that methane is a powerful greenhouse gas. They underlined that therefore, reducing the losses of the natural gas transmission system will contribute to fighting the climate change.

2.2. The support scheme for investment in electricity and natural gas transmission

2.2.1. Beneficiaries

17. The potential beneficiaries of the scheme are the Romanian electricity and gas Transmission System Operators (hereinafter: "TSOs"), respectively Transelectrica and Transgaz.

18. The operation of the electricity transmission network is a natural monopoly activity, as is the operation of the natural gas network. The two TSOs are operating the transmission network on the basis of a concession, while the State remains the owner. The concession agreement of the natural gas transmission system entered into force in 2002, for a duration of 30 years. In exchange for its concession, Transgaz pays to the State a quarterly concession fee of 10% of the gross revenue earned from the operation of the natural gas transport system. The concession contract of the electricity transmission system was signed in 2004 and has a duration of 49 years. In exchange for its concession, Transelectrica pays to the State a concession fee of 1‰ of its revenues from electricity transport calculated in relation to the quantities of electricity actually transported.

19. Under the two concession agreements, the TSOs are responsible for maintaining and developing the networks, realizing all necessary investments. However, concerning the financing or the investments, both concession agreements foresee the possibility for the State to provide funding.

20. The TSOs are required to ensure non-discriminatory access for third parties to the electricity and natural gas networks. They do not carry out activities relating to the generation, distribution or sale of electricity and natural gas. However, besides

energy transmission, Transelectrica and Transgaz carry out some additional activities, for which they keep a separate accounting.

21. Transelectrica is a statutory 74% State owned company whose activities are regulated by the Romanian legislation and subject to a licence being granted by ANRE (National Authority of Regulation in the field of Energy), which is the independent regulatory authority set up in pursuance to Article 23 of Directive 2003/54/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in electricity and repealing Directive 96/92/EC[3]. Its main activities are the operation, maintenance and development of the electricity transmission network. In addition, Transelectrica is allowed to offer some additional services in connection to its main activities, to operate electricity interconnectors linking the Romanian transmission network with other networks, and to perform a few margin commercial services (such as the lease of the fibre optics cable The commercial activities of Transelectrica apparently account for less than 10% of its turnover. The activity of Transelectrica is regulated by ANRE.

22. Transgaz is a 75% State owned company whose activity is regulated by the Romanian legislation. Its main activity is the operation, maintenance and development of the natural gas transmission network. Transgaz may also operate gas interconnectors linking the Romanian transmission network with other networks. Transgaz can also issue construction permits, but the weight of the revenues from this activity in the total revenues of the company is insignificant. The activity of Transgaz is regulated by ANRE, which is the independent regulatory authority set up in pursuance to Article 25 of Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas and repealing Directive 98/30/EC[4]. The National Authority for Mineral Resources (ANRM) is responsible for acting on behalf of the State in the context of the concession agreements, and for monitoring the implementation of the duties placed on the TSOs by these agreements. ANRM also approves the investment plans of Transgaz.

2.2.2. Projects eligibility and selection

23. The potential beneficiaries can submit projects according to the conditions set up in the call for proposals. The projects receiving support will be chosen on the basis of open competitions ensuring most efficient value for money.

24. The Romanian authorities have prepared detailed Guidelines for Applicants, laying down the eligibility criteria, the evaluation criteria, as well as other information on the selection procedure. The selection procedure is initiated by the publication of call for proposals. In order to be considered for financing, a project must meet all the eligibility criteria and requirements specified in the call for proposals and in the Guidelines for Applicants. Among others, in order to be

[3] OJ L 176, 15.7.2003, p. 37

[4] OJ L 176, 15.7.2003, p. 57

eligible, the aim and the objectives of the project must be in line with the objectives of the SOP IEC (including the objectives of the Energy Strategy of Romania 2007-2020), the project must be implemented before 31 July 2015; the project must be implemented on the territory of Romania, its activities must not have received financing from any other public funds on the same section of the infrastructure (except for preliminary studies). Only projects fully complying with national and European regulations in terms of environmental protection are eligible.

25. Another requirement concerns the procurement of goods and services from external providers by the TSOs for the realization of the supported projects. The beneficiaries will have to resort to competitive procedures to the extent required by the European and national rules on public procurement, as set out in OUG no. 34/2006.

26. Once submitted, a project will be rated by the Romanian authorities. In order to be eligible, the project must obtain a minimum of 65 points (out of 100), following an assessment based on the following criteria: relevance of the project (maximum 60 points, out of which maximum 25 points for the contribution of the project to achieving the objectives of the SOP IEC, and 35 points for the economic and financial indicators), quality and coherence of the project (maximum 20 points), and project maturity (maximum 20 points). Also, the projects must receive at least 12 points (out of 25) for their contribution to the objectives of the scheme, in order to ensure that only projects having a significant contribution to the objectives of common interests mentioned in section 2.1 above will be selected.

27. The projects are assessed from a financial and an economic point of view. The Romanian authorities explained that while the financial analysis considers the costs and benefits at the level of the TSO, the economic analysis also considers the external benefits of the projects (e.g. benefits for the consumers, such as avoided costs for energy losses and for interruptions – since such costs are covered by the tariffs, the TSO does not gain anything by reducing them). In other words, the financial value of a project reflects its benefits for the TSO, while the economic value reflects its aggregate benefits for the users of the network (especially consumers). Romania intends to support projects that generate insufficient benefits for the TSO (and therefore do not provide the necessary economic incentive for the TSO to implement them in the absence of aid), and which would generate, if aid is granted, reasonable benefits for the TSO if aid is granted and significant aggregate benefits for the users of the networks.

28. Accordingly, there are three sub-criteria in the evaluation grid, each containing an eliminatory option, whereby the project is rejected if it could be profitable in the absence of aid (as the aid is therefore not necessary), if the aid would lead to a profit considered too high or if the project proved to be economically weak (not generating significant external benefits). In case any of these sub-criteria is scored with 0 points, the 0 point scoring will entail the automatic rejection of the project (as further explained in section 3.3.3).

29. The relevance and importance of projects are assessed previously by ANRE or ANRM, and only projects that are part of a pre-approved list or investment program that received a favourable opinion from ANRE or ANRM are considered for financing.

2.2.3. Eligible costs

30. As the projects involve the use of Structural Funds, the Romanian authorities indicated that the calculation of the eligible costs will be in line with regulations governing the Structural Funds and Cohesion Fund, in particular with Regulation (EC) No 1083/2006 and with Regulation (EC) No 1080/2006. In particular, the eligible costs are established in compliance with the provisions of Government Decision No 759/2007 on the rules of eligibility of the expenditure incurred in connection with the operations financed under the operational programmes and by the order of the Ministry of Economy, Trade and Business Environment with regard to the eligible costs in the area concerned.

31. A detailed list of eligible costs was provided. Alongside land, and equipment expenditures, it includes costs incurred in design engineering (e.g. technical studies, technical expertise) and administration of the eligible investment projects (e.g. procurement procedures). Also a list of non-eligible costs was provided (e.g. VAT, interests and other financial costs).

2.2.4. Types of projects and aid intensity

32. The maximum intensity of the financing aid under the notified scheme is 85%., which will be applied, depending on the type of projects, either to the "funding-gap" of the project, or to the eligible costs, as determined in accordance with the principles described above (see below for more information). However, the financing methodology proposed by Romania imposes several restrictions (presented below), aimed to keep the aid granted to the minimum necessary. In the indicative list of projects provided by Romania, for all but one project the aid intensity does not exceed 50%, ranging from 18.02% to 62.28%.

33. For the projects generating revenues, whenever it is possible to estimate with sufficient accuracy the future expected generated revenues, the level of support will be calculated based on the funding-gap methodology, as defined at article 55 of the Regulation 1083/2006. The maximum aid intensity in these cases will be 85% of the funding-gap. This methodology is to be applied for all SCADA type projects, and line extension projects. Romania confirmed that all revenues will be considered for the calculation of the funding-gap, including cost savings.

34. For the projects for which the funding-gap methodology cannot be applied (that is to say, when it is impossible to estimate with sufficient accuracy the future expected generated revenues), the maximum aid intensity will be 50% of eligible costs. This methodology is to be applied for all projects consisting in

modernisation/refurbishment of existing stations[5]. Furthermore, for this type of projects, the maximum level of aid is capped at RON 50 million (around EUR 12 million).

35. The part of the project costs not financed through the aid (including all non-eligible expenses) shall be covered by the beneficiary, either from its own resources or from attracted sources, which shall not be the subject of any public aid. The Romanian authorities explained that even when cumulation of aid is possible (e.g. for preliminary studies), the maximum aid intensities mentioned above are respected, and therefore the contribution of the beneficiary would be the same.

36. The restrictions mentioned at point 34 limit the aid intensity for most projects to less than 50% of eligible costs. The estimated average value of the aid and the correspondent aid intensity, for each of the projects from the indicative list provided by Romania is presented in the following table.

Table 1 – Aid intensity for the projects in the indicative list[6]

No	Project Title	Total estimated value, VAT included (RON)	Estimated eligible amount (RON)	Non-reimbursable financing amount (RON)	Estimated intensity of the aid
1	2	3	4	5	6=5/4
1	Refurbishment of the station 400 kV Gadalin *	50 373 269	38 317 270	19 158 635	50%
2	Refurbishment of the station 400/110/20 kV Gura Ialomitei *	195 050 673	123 762 331	50 000 000	40.4%
3	Refurbishment of the station 400/220/110/20 kV Lacu Sarat – tehnological part *	176 889 927	143 310 881	50 000 000	34.89%
4	Refurbishment of the station 220/110 kV Mintia*	142 484 620	108 074 060	50 000 000	46.26%
5	SCADA **	181 524 947.16	152 541 972.4	95 002 378	62.28% (funding-gap)

5 The Romanian authorities have explained that in the case of refurbishment of electrical transformation stations it is not possible to determine the future revenues expected to be generated by each project. Indeed, the refurbishment or modernisation of electrical transformation stations is expected to a general improvement of the functioning of the whole network, and thus, to cost savings and possibly additional revenues stemming from the network tariffs paid by all network users, but it is technically impossible to forecast this effect in quantified terms. Furthermore, the elements included in the tariffs depend on the level of aid granted to the beneficiary (only the part of investment financed without the aid is a cost recognized in the tariffs), and therefore the revenues generated by such a project can only be calculated after the level of aid has been established.

6 As submitted on 31 May 2010.

6	Gas transmission pipeline Craiova – Segarcea- Băileşti - Calafat Ø 20" **	156 281 718.00	131 329 175	23 665 517	18.02% (funding-gap)

** Projects for which a maximum intensity of 50% and the maximum level of 50 million lei will be applied*

*** Projects for which funding gap method is applied; the aid amount and the aid intensity was recalculated by the Commission based on the aid intensity provided by Romania on 27 October2010 (namely 85% of the funding-gap)*

2.2.5. *Cumulation*

37. Only the projects which did not receive financing from other public funds (except for preliminary studies) are eligible under the notified scheme.

38. Romania has indicated that the maximum threshold of the intensity of the State aid under the notified scheme must be complied with when, for the same eligible costs, the aid is granted under other schemes or in combination with an ad hoc aid, irrespective whether the aid comes from local, regional, national or Community sources.

39. The State aid granted under this scheme cannot be aggregated with a *de minimis* aid granted pursuant to the legislation on the *de minimis* aid, which was in force on the date on which it was granted, related to the same eligible costs, if such an aggregation creates an intensity of the State aid which exceeds the gross maximum admissible intensity provided for under the notified scheme.

2.2.6. *Effect of aid on tariffs and beneficiaries' revenues*

40. The prices for transmission of electricity and natural gas are tariffs entirely regulated by ANRE.

41. The underlying principle for setting transmission tariffs is that such tariffs should cover all main running costs of company and a regulated return on capital. The main costs include operating and maintenance costs (including the grid's own consumption costs, and costs resulting from congestion or incurred in cross-border transactions) and investment costs. As regards the grid's own consumption costs, they correspond to the purchase of electricity/gas that the network operator must purchase and inject into the grid to compensate the technical losses of electricity/gas that occur on the grid. The investment costs made by the TSO and approved by the competent national authority form the regulated asset base (RAB), and the annual depreciation calculated for these assets is covered by tariffs.

42. According to this principle, for both the TSO, the tariffs cover all the operational costs, investments costs (only for the investments recognized as RAB, through annual depreciation) and a regulated return on capital. For both TSOs, the regulated return on capital is obtained by applying a regulated rate of return (equal to the weighted average cost of the capital recognised by the competent authority – ANRE) to the RAB. Currently this rate is 7.5% in the case of Transelectrica and 7.88% in the case of Transgaz.

43. The part of the investment costs that is financed from public sources, and not by the TSOs' own contributions, is not included in the RAB. Therefore, the network tariffs do not contain any component aimed at allowing the TSOs to recoup the part of the investment costs and obtain a return on the corresponding engaged capital.

44. According to the examples provided by Romania, in the case of transmission projects, both the revenues and the profits generated by the considered projects for the beneficiaries are lower when the aid is granted, compared to the situation when the projects would be financed from operators' own resources. This is because the amount of aid cannot be included in the RAB, based on which the profits are calculated as a fixed rate, and because the regulated revenues do not cover the depreciation of the assets financed through aid.

2.2.7. Financing and budget

45. The aid is financed mainly from Structural Funds under the SOP IEC. The total budget allocated to the scheme is EUR 57.7 million, out of which 88% is non-refundable EU grants provided through the European Regional Development Fund and the rest accounts for public co-financing funds ensured from the State budget by the budget of the Ministry of Economy, Trade and Business Environment. The estimated annual aid amounts are provided in the following table:

Table 2 - Indicative breakdown by years* (millions of EUR)

Year	Total: (Community funds and national public funds)
2011	38.25
2012	10.30.
2013	9.15
Total 2011-2013	57,7

* The amounts not used within a year shall be carried forward to the following year.

2.2.8. Duration

46. Romania notified the aid scheme until 31 December 2013.

2.3. Legal basis and standstill clause

47. The rules constituting the scheme are intended to be laid down in an Order of the Ministry of Economy, Trade and Business Environment. A draft of that decision was submitted to the Commission as part of the notification[7]. The draft Order indicates that the notified scheme will not enter into force before it has been approved by the European Commission.

48. The legal basis consists of the above mentioned Order of the Ministry of Economy, Trade and Business Environment, and the Sectoral Operational Program "Increased Economic Competiveness" (approved by the Commission Decision C (2007) 3472 / 2007).

[7] Draft Order on "Support for investments in the extension and modernisation of electricity and natural gas transmission networks "

49. Further details are established in the Guidelines for Applicants. Romania submitted to the Commission a draft of the Guidelines for Applicants.

3. ASSESSMENT

3.1. Existence of State aid

50. Article 107(1) of the TFEU provides that "any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods, shall, in so far as it affects trade between Member States, be incompatible with the internal market".

3.1.1. State resources and imputability to the State

51. The aid will be granted by a Member States and through State resources within the meaning of Article 107(1) of the TFEU because the transfer of Structural Funds resources is subject to the discretion of Romania.

3.1.2. Economic advantage to the Transmission System Operators

52. The transmission of electricity and gas is regulated in Romania via concession contracts with Transelectrica and Transgaz. The tariffs are regulated, providing no discretion for the TSO. The profits for the TSO are regulated and under the control of the public authorities (i.e. ANRE).

53. The networks are natural monopolies: it is economically and technically inefficient to construct separate networks. As it is normally economically inefficient to have two networks serving the same geographical area, regulation is the only way to prevent excessive monopolies rents for the services provided. Furthermore, pursuant to energy internal market legislation[8], the TSO do not have control over their customers portfolio (as the networks are subject to stringent third party access rules) and prices charged to network users are subject to strict regulatory monitoring: regulatory authorities must define tariff-setting methodologies or set tariffs themselves in a way which allows necessary investments to be carried out to ensure the viability of the network. Due to the natural monopoly character of gas transmission networks, it is likely that the regulatory authorities will in the future continue to be able to control the benefits which the TSO receive.

54. The aid provided under the notified scheme is aimed at ensuring that important investments are carried out by the TSO in a reasonable timeframe. Therefore the measure will enable the TSO to continue to provide transmission services of gas

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[8] Directive 2003/54/EC of 26 June 2003 concerning common rules for the internal market in electricity and repealing Directive 96/92/EC (OJ L 176 of 15.07.2003, page 37) and Directive 2003/55/EC of 26 June 2003 concerning common rules for the internal market in natural gas and repealing Directive 98/30/EC (OJ L 176 of 26 June 2003, p. 57).

for affordable prices to residential users and businesses, despite the investments in modernisation and extension of networks.

55. Furthermore the method to calculate the tariff ensures that the investment subsidy will not increase the engaged capital based on which the remuneration of the TSO is calculated. Romania provided concrete examples and simulations showing that in the case of aid being granted, the tariffs and the TSO's profits will remain lower than they would be if the investments were carried out without the aid, This is directly due to the fact that the TSO's profits and revenues are controlled through the setting of network tariffs by the regulatory authorities, which is a fundamental specificity of the electricity and gas network operation business.

56. However, the scheme confers an economic advantage to the beneficiaries as it relieves them from investment costs they should normally face in order to carry out the supported projects, for the following reasons.

57. First of all, the Commission notes that according to settled case-law, for the purposes of determining whether a measure constitutes an advantage within the meaning of Article 107(1) of TFEU, a distinction must be drawn between the obligations which the State must assume when exercising an economic activity and its obligations as a public authority. Furthermore, while it is clearly necessary, when the State exercises an economic activity, to analyse its conduct by reference to the "private investor principle", application of that principle must be excluded in the event that the State acts as a public authority. In the latter event, the conduct of the State can never be compared to that of an operator or private investor in a market economy[9]. Given that a financial contribution to investment projects aimed at improving or extending the electricity and gas transmission networks can be classified as an economic activity, such a measure can be considered not to confer an economic advantage to the recipients of the amounts paid out by the State if the behaviour of the State is in line with that that a prudent market operator, guided by profitability only, would have pursued in the same circumstances.

58. In this case, the concession agreements do not clearly foresee the conditions under which the necessary or desired investments should be financed by the State rather than by the network operators themselves. Therefore, the concession agreements provide the State with a wide margin of discretion as regards its decisions to provide financial support to investment projects in the electricity and gas transmission networks. In this situation, the State can be considered to behave like a prudent market operator, only guided by objectives of profitability, if it finances projects which are expected to be economically profitable to it. This condition could be met only if the State could reasonably expect to obtain itself revenues generated by the supported investments up to the extent necessary to recoup its own financial contribution to the projects, and to provide a reasonable profit in addition.

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[9] See for example case T-196/04 Ryanair Ltd v *Commission* [2008] ECR II-3643, paragraphs 84 and 85

59. The supported projects could generate revenues for the State in the form of dividends paid by the TSOs to their majority shareholder or, if the State decided to sell the networks, from such sales.

60. As regards the impact of the supported projects on dividends, it is uncertain. The supported projects could possibly increase the TSO's profits (and consequently, the dividends paid to their shareholders). It could be the case for projects resulting in reductions in energy losses. Indeed, while the methodology for the calculation of electricity transmission tariffs provides for a gain sharing mechanism in relation to reductions in energy losses (and therefore, reduction in the costs incurred in compensating these losses), it does not ensure that the entire gain is transferred to network users through a reduction in tariffs, but only 50% of it. Therefore, part of the advantage remains with the beneficiary (i.e. Transelectrica). As for gas transmission tariffs, the methodology allows Transgaz to keep the financial equivalent for the realised efficiency gains for a 5-year period from the year the efficiency gain was registered. However, the potential profits that the TSOs may enjoy through possible future energy gains are uncertain and cannot be quantified ex ante with precision. The same holds true for the potential profits that the TSO may draw from additional revenues generated by network extensions, given that the increase in the volume transported on the network tend to decrease the tariffs, as a consequence of the tariff-setting methodology. Therefore, the additional revenues that the State may obtain through additional profits enjoyed by the TSOs due to the supported projects are uncertain.

61. Whilst it must be noted that the supported investments will enhance the economic value of the electricity and gas transmission networks, nothing suggests that the State may be willing to sell these networks in a foreseeable future.

62. Finally, the Romanian authorities have at no point argued that the extra revenues generated by the projects for the State could cover the State's financial contributions to these projects and provide it with a profit in addition. Neither have they provided quantified indications which could lead to that conclusion. Instead, it transpires from their argumentation that by supporting these projects, the State is guided by public policy concerns (security of supply, environmental protection) and not by profitability prospects.

63. As regard the concession fees paid by the TSOs to the State, they constitute a source of revenues for the State, which might be influenced by the investments supported under the notified scheme. However, the Commission doubts that this source of revenues should be taken into account for the purposes of applying the market economy operator principle. Indeed, levying concession fees seems to fall within the scope of the State's public authority activities rather than within the scope of its economic activities.

64. Nevertheless, even if concession fees should be taken into consideration for the purposes of applying the market economy operator principle, the Commission considers that the impact of the supported projects on the amounts of concession fees is, depending on the supported projects, inexistent or uncertain. Indeed, the concession fees are calculated as a given percentage of the TSO's revenues.

Therefore, the amounts of concession fees will not be impacted by projects that are expected to result in costs savings for the TSOs (for instance by achieving reductions in energy losses through modernisation or refurbishment of certain part of the networks, without extending the network) rather than by additional revenues. Moreover, as regards projects which may lead to additional connection points or increase the volumes transported on the networks (such as projects resulting in extensions of the network), they will not necessarily lead to additional revenues impacting the amounts of concession fees paid to the State. Indeed, as indicated above, the network tariffs are set by the regulatory authorities in such a way that an increase in the volumes transported on the network tend to decrease the tariff paid by a given network user.

65. Therefore the State cannot be considered to behave like a prudent market operator guided by profitability. The financial support that the State will bring to the investment projects supported under the notified scheme will result in relieving the TSOs from the investment costs that they would have had to bear otherwise to finance these projects in the absence of the aid, and in possible additional profits, due for example to reductions in energy losses. The notified measure will thus confer an economic advantage on the TSOs.

3.1.3. Selectivity

66. The measure is selective, as it is intended only for 2 potential beneficiaries: Transelectrica and Transgaz.

3.1.4. Distortion of Competition - Effect on Trade between Member States

67. The markets for transmission of electricity and natural gas are by definition bound to the location of the network and therefore local by nature. It should also be noted that networks designed for the transmission of electricity and natural gas exhibit the properties of local "natural monopolies". It means that in all cases, it would be very unlikely that it would be economical to duplicate the network by creating a new one, even if of a much better quality than the existing one. Therefore the contemplated subsidies are unlikely to deter operators to invest themselves in new networks for transmission of electricity and/or natural gas.

68. However, as indicated above, the investment projects supported by the State may generate additional profits for the TSO, albeit to an uncertain extent. The notified measure may therefore strengthen the overall financial position of the TSOs, which might potentially reinforce their position vis-à-vis competitors in the rather marginal competitive markets where they operate (see points 21 and 22). Moreover, these additional profits could potentially be used to finance future interconnectors, which are revenue-generating installations. Interconnectors do not as such exhibit the properties of natural monopolies. The construction and operation of interconnectors between the Romanian transmission networks and other networks is therefore, in principle, an activity open to competition.

69. Furthermore, improved transmission networks, which could translate into reductions in network tariffs, may strengthen the financial position of the producers, and traders of electricity and natural gas, some of which are part of groups having commercial activities in other Member States.

70. In the view of the above, the Commission concludes that the measures may distort competition and affect the trade on the internal market.

3.1.5. Conclusion

71. Following the above assessment, the Commission concludes that the notified measure does constitute State aid within the meaning of Article 107 (1) of the TFEU.

3.2. Lawfulness of the aid

72. By notifying the aid measure before putting it into effect, the Romanian authorities have complied with Article 108(3) of the TFEU.

3.3. Compatibility under Article 107(3)(c) of the TFEU

73. As regards support for electricity and natural gas infrastructure, aid for such projects does not fall within the scope of the 2008 Environmental Aid Guidelines[10].

74. The areas covered by the measure are all located within areas eligible under the European Regional Development Fund, as well as Article 107 (3) (a) assisted areas within the meaning of the Guidelines on national regional aid for 2007-2013 (hereafter Regional Aid Guidelines (RAG))[11].

75. However, the notified scheme provides support to a specific sector of activity: transmission of electricity and natural gas. The investments proposed will improve the national electricity and gas transmission networks, contributing to energy savings, improved energy efficiency and higher environmental protection.

76. The Commission therefore considers that the assessment of the compatibility of the measure with the internal market needs to be based directly on Article 107(3)(c) according to which "*aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest*" may be considered compatible with the internal market.

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[10] OJ C 82 of 01.04.2008

[11] OJ C 54, 4.3.2006, p. 13

77. In order to be compatible under article 107(3)(c), an aid must pursue an objective of common interest in a necessary and proportionate way. In this regard, the Commission considers it appropriate to assess the following questions:

(1) Is the aid measure aimed at a well-defined objective of common interest (i.e. does the proposed aid address a market failure or another objective of common interest)?

(2) Is the aid well designed to deliver the objective of common interest? In particular:

Is the aid measure an appropriate instrument, i.e. are there other, better-placed instruments?

Is there an incentive effect, i.e. does the aid change the behaviour of firms?

Is the aid measure proportional, i.e. could the same change in behaviour be obtained with less aid?

(3) Are the distortions of competition and the effects on trade limited, so that the overall balance is positive?

78. The Commission will assess the compatibility of the notified aid with the internal market in light of these questions, in a manner consistent with its decisional practice in similar cases which also concerned modernisation, refurbishment and extension of electricity or gas networks[12].

3.3.1. Objective of Common Interest

79. It must be verified whether the aid measure aims at a well-defined objective of common interest. An objective of common interest is an objective which has been recognised by the EU as being in the common interest of the EU Member States.

80. The measure at hand aims at increasing energy savings by reducing energy losses. This will contribute in the first place to a higher environmental protection. Indeed, less electricity will need to be generated to compensate network losses, and therefore less pollutants, in particular less CO_2, will be emitted. Similarly, less methane will be emitted by the natural transmission network, which will reduce the impact of the latter on climate change[13]. By the same token, the supported projects will enhance Romania's energy efficiency.

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[12] See in particular Case N 594/2009 *Aid go Gaz-system S.A. for gas transmission networks in Poland* (OJ C 101, 20.04.2010, p. 9), Case N55/2009 *Aid for constructing and modernisation of electricity connection networks for renewable energies in Poland* (OJ C 206, 01.09.2009, p. 3)and Case N56/2009 *Aid for modernisation and replacement of electricity distribution networks in Poland* (OJ C 206, 01.09.2009, p. 4).

[13] Methane, which is the primary constituent of natural gas, has a Global Warming Potential of 72 over a time horizon of 20 years. The Global Warming Potential of a greenhouse gas measures the impact of a given mass of this gas on climate change with the impact of the same mass of CO_2.

81. Reductions in energy losses will also result in enhanced security of supply because Romania's available electricity and gas sources will have to be less used to cover network losses than if the projects concerned were not carried out. Moreover, the projects are expected to contribute to security of supply through reductions of risks of network failure and durations of periods of unavailability.

82. The objectives pursued by the scheme are in line with the Communication from the Commission to the European Council and the European Parliament – an energy policy for Europe[14] where security of supply, energy efficiency and environmental protection can be identified as objectives of common European interest.

83. The projects covered by the aid scheme have strategic value not only for Romania, but also as alternative elements of the system linking the markets in the Central and South-Eastern Europe. The rationale for implementation of these projects is therefore in line with the provisions of the "Communication from the Commission Green Paper – towards a secure, sustainable and competitive European energy network".[15]

84. According to the information provided by Romania, it can be estimated that the effects of the projects will be a reduction of electricity losses by ca. 30-55% (for the refurbished stations), and a reduction of the unavailability of the natural gas system by around 30%. Furthermore, Romania provided information showing that the implementation of four projects in the field of electricity will lead to a reduction of 12 401 t CO_2/year.

85. The contribution to the above-mentioned objectives of common interest expected from the notified scheme will thus be significant.

86. Moreover, it can also be noted that in the case of electricity line extension projects, the evaluation grid foresees extra points for the projects meant to allow the connection of producers of electricity from renewable energy sources to the grid.

87. In the case at hand, the aid will be granted on the basis of an open competition, after a careful assessment, ensuring that only the most efficient projects will benefit from the aid i.e. projects resulting with best value for money. While the scheme is open only for the two TSO, Transelectrica and Transgaz, having 2 beneficiaries competing for the same funds will create some pressure on the beneficiaries, providing them the incentive effect to propose for financing the most efficient projects.

88. The Commission took note of the fact that the estimated aid needed for the projects in the indicative list (see table 6 below) is EUR 72.73 million, largely

[14] COM(2007)1 10 January 2007

[15] COM(2008)782 of 13 November 2008

more than the budget for the operation (EUR 57.7 million). The list is open and the beneficiaries are allowed to apply with other projects as well. This indicates that there will be a real competition between the 2 beneficiaries, allowing the Romanian authorities to select the projects that offer the best value for money.

89. Furthermore, in order to ensure that only projects having a significant contribution to the objectives mentioned above will be selected, the Romanian authorities decided to finance only the projects obtaining a minimum of 12 points for the relevance of the project to the objectives of the scheme. The evaluation criteria for this section are presented in the table 3 and 4 below.

Table 3 – Evaluation of the compliance with the scheme's objectives, for electricity transmission projects (score)

1.1. Projects of refurbishment the transmission network:		**Max 25**
1.1.1	The project contributes to **environmental protection** by reducing the energy losses at the level of the project (compared to the situation in which the project is not implemented)	*Max. 5*
	For electricity transformation stations: 1-5% 5-10% 10-20% >20% For aerial electric lines: <1% 1-3% >3%	 2 3 4 5 1 3 5
1.1.2	The project contributes to the **increase of security of supply** for the users, through the refurbishment of stations/lines with a high level of wear:	*Max. 10*
	<50% 50-80% ≥80%	4 8 10
1.1.3	The project contributes to the takeover of electricity produced in new RES capacities and/or to the adaptation of the network to interconnections with other transmission networks The project does not contribute to the takeover of electricity produced in new RES capacities and/or to the adaptation of the network to interconnections with other transmission networks	10 1
1.2. Projects of extension of the transmission network:		**Max 25**
1.2.1	The project develops a potential consumption in the area where it is implemented (available active power) and/or integrates a new production capacity of:	*Max. 10*
	- 30 MW - 30-50 MW - 80-120 MW - >120 MW	2 4 8 10
1.2.2	The project contributes to the takeover of electricity produced in new RES capacities and/or to the adaptation of the network to interconnections with other transmission networks The project does not contribute to the takeover of electricity produced in new RES capacities and/or to the adaptation of the network to interconnections with other transmission networks	15 1

Table 4 – Evaluation of the compliance with the scheme's objectives, for natural gas transmission projects (score)

1.1. Projects aiming to modernise the natural gas transmission network:		**Max 25**
1.1.1	The project contributes to **environmental protection** by reducing the energy losses at the level of the project (compared to the situation in which the project is not implemented)	*Max. 5*
	1-5% 5-10% 10-20% >20%	2 3 4 5
1.1.2	The project contributes to the **increase of security of supply** for the consumers, through the modernising of the network with a high level of wear:	*Max. 10*
	<50% 50-80% ≥80%	5 8 10
1.1.3	The project foresees the complete or partial automatic control of the transmission network: - complete automatic control - partial automatic control	Max 5 5 1
1.1.4	The project contributes to adapting the national transmission network in view of its interconnection with other transmission networks (including for Nabucco)	5
	The project does not contribute to adapting the national transmission network in view of its interconnection with other transmission networks (including for Nabucco)	5
1.2. Projects of extension of the transmission network:		**Max 25**
1.2.1	The project assures the connection to the national transmission network of new areas in which the demand for gas is not covered by the existing transmission capacity (In view of creating the premises for the economic development of the respective areas):	*Max. 10*
	The area to be connected has: - > 50 000 inhabitants - between 15 000 and 50 000 inhabitants - < 15 000 inhabitants	 10 8 4
1.2.2	The project contributes to adapting the national transmission network in view of its interconnection with other transmission networks (including for Nabucco)	15
	The project does not contribute to adapting the national transmission network in view of its interconnection with other transmission networks (including for Nabucco)	1

90. These evaluation criteria will ensure that even if the list of projects actually supported under the notified scheme does not exactly coincide with the indicative list provided by Romania in the notification, the scheme will actually contribute to the above-mentioned objectives of common interest.

91. It can thus be concluded that the notified scheme aims at well-defined objectives of common interest.

3.3.2. *Appropriate Instrument*

92. Romania considers that the projects for modernising the infrastructure are highly needed, as the energy efficiency in Romania is extremely low (due to the primary energy intensity in Romania being three times higher than the EU average), and security in operating the transmission networks is a concern (because part of the installations exceeded their normal lifetime).

93. Romania has considered other possible alternatives, such as financing the projects by the TSO, without State involvement, but they concluded that these alternatives would not be viable. Romania explained that the TSO do not have the resources needed for such investments and their access to credits is restricted.

94. Following the recent economic crisis, the TSO experienced sharp and unexpected drops in revenues, due mainly to the drastic reduction of the quantity of transported electricity and gas, provoked by a drastic reduction of the consumption.

95. Transelectrica's own resources available for financing investments are estimated at 35% of the total value of the projects. The TSO contracted several credits in order to carry on its investment program, but the total available resources are still not sufficient to finance all investments considered necessary to improve the energy efficiency and the reliability of the network up to the requisite level. The financial crisis further restrained Transelectrica's access to the financial markets, because the financial ratings of both the company and the country worsened, keeping a negative perspective. As a consequence, the costs of credit increased for Transelectrica. It should be noted that according to the tariff-setting methodology for the electricity transmission network, the financial costs are not included in the tariffs, and are expected to be financed through the "regulated profit" applied to the investments taken into consideration in the RAB. Therefore, the increase of the financial costs led to the decrease of Transelectrica's return on own capital netted off financial costs (the return on own capital decreased from 2,25% in 2007 to 1,77% in 2008 and further to 0,25% in 2009), thereby reducing the own resources available for investments. Under the circumstances, Romania explained that Transelectrica cannot provide the financial funds needed for the foreseen investments in the absence of aid.

96. The situation of Transgaz is similar, as the rating of the company has worsened, with a negative perspective. As the natural gas national transmission system is not owned by Transgaz, it can not be used as a guarantee for contracted credits. Under these circumstances, Transgaz would be forced to pay interests much higher than the market level. Romania estimated that the funds that Transgaz could use for investments, in the absence of aid, are lower by RON 400 million (around EUR 95 million) as compared to the value of the projects included in the minimum investment program, and therefore will not allow the investments to be carried on.

97. If the TSOs financed themselves the whole of the investments considered necessary to improve the energy efficiency and the reliability of the networks, the network tariffs would allow them, in principle, to recoup these investment costs over the lifetime of the assets and obtain a reasonable return on engaged capital. The TSOs would nevertheless, prior to undertaking these projects; have to obtain the necessary capital (essentially in the form of loans), which for the reasons mentioned above, would be very difficult.

98. Therefore, the notified aid is an appropriate instrument to ensure that these projects are carried out in a reasonable timeframe.

3.3.3. Necessity of the aid and incentive effect

99. As further shown below, the aid granted for the envisaged measures provides the necessary incentive effect. State aid provides an incentive effect if the aid changes the recipients' behaviour towards reaching the objective of common interest.

100. According to Romania, the system of calculating the tariffs for transmission of electricity and natural gas does not provide enough incentives for companies to invest in modernisation of the electricity distribution networks up to the desired level.

101. In order to make sure that the aid is properly used under the notified scheme, and only for the financing of the projects for which the necessity of the aid can be proved, the Romanian authorities introduced several eliminatory criteria in the evaluation grid. As shown in the table below, 30 points (out of 100) are allocated to the financial-economic indicators, indicating the importance attached by Romania to this criterion.

102. For the projects for which it is not possible to calculate the funding-gap (see point 34), it is still possible to calculate these economic and financial indicators, as once the aid amount is known, it becomes possible to estimate the elements that will be covered by tariffs and therefore estimate the future revenues.

103. The financial analysis of the total capital invested (point 1.3.1. in table 5) shows the profitability of the investment, in the absence of aid. The financial analysis of the capital invested by the operator (point 1.3.2.) shows the profitability of the project with the aid, while the economic analysis (point 1.3.3.) shows the value of the project for the network users (e.g. consumers), as explained at point 27.

Table 5 – Justification of the public intervention (score)

For all types of projects		
1.3	**Justification of the public intervention for all types of projects, through indicators resulted from the cost-benefits analysis:**	**Max. 30**
1.3.1	Financial net present value and financial internal rate of return: NPVF(C)≤0, IRRF(C)[16]≤5% NPVF (C)>0, IRRF(C)>5%	 10 0
1.3.2.	IRRF(K)=5÷8% IRRF(K)=8÷10% IRRF(K)<5% IRRF(K)>10%	10 5 5 0
1.3.3.	Economic net present value and economic internal rate of return: NPVE(C)>0, IRRE(C)>25% NPVE (C)>0, IRRE(C)=15÷25% NPVE (C)>0, IRRE(C)=5,5÷15% NPVE (C)<0, IRRE(C) <5,5%	 10 6 3 0
1.4	Justification of incentive effect: The applicant demonstrates, using internal documents, that it would not undertake the targeted activity without the aid. - The justification is comprehensive - The beneficiary fails to prove in a comprehensive manner the incentive effect	 5 0
Where: (C) indicates the calculation of the performance of the investment (K) indicates the calculation of the performance on capital invested by operator		

104. Each sub-criterion, from 1.3.1. to 1.3.3., can be scored with 0 points, and the 0 point scoring means the automatic rejection of the project. Therefore, each of these sub-criteria contains an eliminatory option, allowing for the rejection of projects:

– for which the financial net present value, NPVF (C), is already positive and, implicitly, the financial internal rate of return on capital, IRRF (C), is higher than 5%[17]; as such a situation would indicate the project is profitable enough for the TSO and the aid is not necessary

– for which the operators, if the state aid was granted for the project, would finally obtain a high rate of return for the own resources invested, indicated by an internal rate of return for invested capital, IRRF(K), higher than 10%;

– for which the external benefits generated for the users of the network are not significant, as indicated by a negative economic net present value, NPVE (C), and an economic internal rate of return, IRRE (C) lower than 5.5%)[18]

[16] In case it could be established

[17] Since the financial net present value is calculated based on a discount rate of 5%, recommended by the Commission for the programming period 2007-2013, NPVF =0 when IRRF =5%.

[18] The economic net present value is calculated based on a discount rate of 5,5%. Therefore, NPVE = 0 when IRRE = 5,5%.

105. Taking into account all the above, the Commission considers that the aid is necessary to the realisation of the projects eligible under the notified scheme.

106. Romania provided a feasibility study, for one of the projects in the indicative list. The cost-benefit analysis highlights a negative net present value of the project, in the absence of aid (around EUR -10 million). The aid (limited in this case at RON 50 million, the equivalent of around EUR 12 million) would allow the net present value of the project to become positive, providing the needed incentive.

Table 6 – Financial indicators for the projects in the indicative list, with and without aid

No.	Title of the project	Estimated state aid (Mil. Euro)	NPVF (mil. Euro)		IRRF (%)		NPVE (mil. Euro)
			No state aid	With state aid	No state aid	With state aid	
0	1	2	3	4	5	6	7
1.	*Refurbishment of the electric station 400 kV Gadalin – Transelectrica*	4.6*	-3.83	+0.42	-0.10	+6.00	8.48
2.	*Refurbishment of the electric station 400/110/20 kV Gura Ialomitei - Transelectrica*	11.63*	-8.71	+2.36	+1.00	+6.00	26.29
3.	*Refurbishment of the electric station 400/220/110/20 kV Lacu Sarat – technological part*	11.63*	-10.09	+0.46	-0.60	+5.50	31.93
4.	*Refurbishment of the electric station 220/110 kV Mintia - Transelectrica*	11.63*	-10.54	+0.27	-3.00	+5.20	39.90
5.	*SCADA- Transgaz*	26.61**	-31.88	-6.36	N/A	-5.00	41.94
6.	*Gas transmission pipeline Craiova – Segarcea-Băileşti - Calafat Ø 20" - Transgaz*	6.63**	-5.73	-0.001	N/A	+5.00	N/A***

NPVF – Financial Net Present Value
NPVE – Economic Net Present Value
IRRF – Financial Internal Rate of Return
* exchange rate 1 euro = 4.3 lei at date of elaboration of the Cost-Benefit Analysis
** exchange rate 1 euro = 4.2 lei at the date of the elaboration of the Cost-Benefit Analysis
*** for this project the Economic analysis was not available

107. Romania provided the main financial indicators for all the projects in the indicative list. For most projects the net present value is negative in the absence of the aid, and positive with the aid, indicating that the aid has an incentive effect. In some cases (SCADA project and one gas transmission project) the financial net present remains slightly negative even with the aid. However, for the operator this project has a strategic value, as it is considered necessary in order to allow the interconnection with other transmission networks using SCADA type systems.

108. In order to make sure the aid is granted only for projects on which it has an incentive effect, the Romanian authorities have also introduced an evaluation criterion having an eliminatory option for the incentive effect (point 1.4. in table 5 above).

109. This criterion ensures that any project for which the beneficiary fails to prove the incentive effect of the aid will be automatically rejected (as a score 0 to any of the criteria in the evaluation grid means automatic rejection).

110. Considering all the above, it can be concluded that the scheme will provide for the necessary incentive effect.

3.3.4. Proportionality

111. A State aid measure is proportional if the measure is designed in a way that the aid amount is kept to the minimum necessary to enable the desired contribution to objectives of common interest to materialise.

112. As previously indicated, for the projects from the indicative list provided by Romania the aid intensity for this type of projects ranged from 18.02% to 62.28% of eligible expenses.

113. In the case of station modernising/refurbishment projects (for which the generated revenues cannot be accurately estimated, as indicated at point 34 above), the aid is limited to 50% of the eligible expenditure of the project. Furthermore, when this methodology is applied, the maximum amount of aid to be granted for a transmission project cannot exceed 50 million RON (about 12 million EUR). These limits lower the aid intensity for most of the projects considered (for the projects from the indicative list provided by the Romanian authorities the aid intensity for this type of projects ranged from 34.89% to 50% of eligible expenses).

114. For the revenue generating projects (all SCADA type projects and line extension projects), the maximum aid intensity is 85% of the funding gap[19]. By applying the funding gap methodology, all the benefits which can be predicted for the lifetime of the project will be deducted from the aid and will be financed by the operators. Such contribution of the beneficiary goes beyond the timeframe of the non applicable Environmental Aid Guidelines which require deducting benefits calculated in the first 5 years only.

115. Furthermore, Romania established a system for monitoring the revenue generating projects and a claw-back mechanism ensuring that all undue amounts are recuperated (e.g. in case the revenues generated by a project turn out to be

[19] Which was the maximum intensity approved also in the Polish cases N55/2009 and N56/2009.

higher than initially estimated)[20]. The system will be adapted to each project and it will be presented in detail in an annex to the financing contract.

116. Romania submitted that the monitoring system will be implemented for the whole lifetime of the investment. For the first 5 years, beginning from the commissioning of the investment, it will be monitored by the granting authority, and the eventual undue amounts will be recuperated in case differences exceeding 10% in the calculation of the updated funding-gap are observed. After the first 5 years, the project will continue to be monitored by ANRE and the eventual undue amounts will be deducted from the regulated revenues in the process of annual correction of the tariffs.

117. According to the financial indicators provided by Romania for the projects in the indicative list (presented in table 5 above), in case the aid is granted, the net present value of the projects usually becomes positive (sometimes it remains slightly negative), while its value remains very low. Therefore, the aid is not likely to lead to important profits for the beneficiaries.

118. The evaluation grid contains an eliminatory option, and all projects presenting a IRRF (K) higher than 10% are automatically rejected (as described in section 3.3.3. above). None of the projects financed under the notified scheme can have a IRRF(K) higher than 10%, while there is no minimum limit for this indicator. Furthermore, as there are only 2 beneficiaries and each of them submits several projects, it results that for each beneficiary, the average level of IRR(K) will be significantly lower than maximum admitted. Romania has also explained that many factors can influence the internal rate of return (e.g. interest rates for credits) and therefore a rate higher than the regulated rate of return should be used (as this is the theoretical maximum level allowed, in contrast with the regulated rate, which is certain). The Commission is of the opinion that 10% is slightly higher than the regulated rate of return, and that the difference is justified in the light of the uncertainty of future revenues.

119. For the projects from the indicative list provided by the Romanian authorities the financial internal rate of return, in the scenario of the aid being granted, does not exceed 6% for any of the projects and is significantly lower than the regulated return on profit for the 2 TSOs[21].

120. The Commission notes that some of the supported projects are expected to result in reductions in energy losses and in related costs. It results from the tariff-setting methodology that some of the corresponding financial gains will be transferred through network users through the network tariffs whilst the rest will

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20 It should be noted that, since the notified State Aid scheme involves also Structural Funds from the EU budget, Romania is obliged to introduce a monitoring system for all projects, in order to ensure the compliance with the European regulations in the field, respectively Regulation (EC) 1083/2006 as amended.

21 As already shown at point 42, the regulated return on capital is 7.5% for Transelectrica and 7.88% for Transgaz.

remain with the TSOs (see point 60). The Commission considers that this system also contributes to the proportionality of the aid, because not all the financial gains expected from projects reducing energy losses will be kept by the TSOs. Moreover, the Commission considers that it is justified not to transfer all these gains to the network users. Indeed, allowing the TSOs to keep part of these gains provide them with incentives for striving for energy efficiency.

121. The Commission also notes that the TSOs will be required to select the providers of equipment, works and services necessary to the projects through competitive processes. This will contribute to the minimisation of the costs of the projects, and consequently, of the aid amounts received by the TSOs.

122. In view of the above it can thus be concluded that the State aid granted for the envisaged measures is proportional.

3.3.5. Distortion of Competition and Balancing Test

123. The possible distortions of competition and trade resulting from the State aid for the envisaged measures are limited, so that the overall balance with regard to the objective of common interest is positive.

124. It should be noted that the networks designed for the transmission of electricity and natural gas are "natural monopolies". While in theory it could be argued that other companies than Transelectrica and Transgaz could apply for a TSO concession and invest themselves in the transmission infrastructures, it is highly unlikely for that to happen, as it is not reasonable from an economic point of view to duplicate the networks by creating new ones. Therefore the contemplated subsidies are unlikely to deter operators to invest themselves in new electricity distribution or transmission networks.

125. It is true that Transelectrica and Transgaz are, to a rather marginal extent, actually or potentially, operating in markets effectively open to competition, such as the provision of interconnection capacities. However, the supported projects will not fall within the scope of these operations. Furthermore, as it has been showed in the previous section, the aid amounts will be limited to the minimum necessary to enable the realization of these projects, thereby limiting to the minimum the profits that the TSOs could draw from these projects and use for operations others than those falling within the scope of their natural monopolies. If follows that the contemplated subsidies are not likely to entail significant distortions on the markets for electricity and gas transmission.

126. The modernisation and extension of the electricity and natural gas transmission networks is likely to benefit also to producers, distributors and suppliers of electricity and natural gas. Therefore it cannot be excluded that the aid may distort competition on markets where companies distributing and producing or trading gas are active. However, there are appropriate third party accession (TPA) provisions in place (the TSOs are obliged to grant access to third

parties, under equal and non-discriminatory conditions), ensuring that access to the networks is granted in a non-discriminatory manner.

127. As explained above suppliers of electricity and gas may derive benefits from the aid in getting the possibility to enter the electricity and gas market respectively, in Romania due to the construction of the new electricity lines and new gas pipelines. Therefore it cannot be excluded that the aid may distort competition on markets where companies distributing and producing or trading electricity and gas are active. However, the aid scheme ensures that the aid is proportionate and the aid amount is limited to the minimum necessary.

128. On the other hand appropriate TPA provisions and the fact that the TSOs are unbundled from any activities related to generation or supply of gas and electricity, ensure that access to the networks is granted in a non-discriminatory manner, the scheme ensures the positive effects in terms of energy saving, environment protection (through reduction of CO_2 and methane emissions), increased security of electricity and natural gas supply, as well as interpenetration of electricity and gas systems, within the internal market. Hence relatively low negative effects are outweighed by the identifiable positive effects of the aid.

129. Therefore it can be concluded that the possible distortions of competition and trade resulting from the State aid for the envisaged measures are limited, and that the overall balance with regard to the objective of common interest is positive.

4. CONCLUSION

130. The Commission thus concludes that the aid scheme is compatible with 107 (3) (c) of TFEU.

DECISION

131. The Commission has accordingly decided not to raise objections to the notified measure, because the aid can be found compatible with the internal market in accordance with Article 107 (3) (c) of the TFEU, since it pursues an objective of common interest in a necessary and proportionate way.

132. The Commission reminds Romania that, in accordance with article 108 (3) of the TFEU, plans to refinance, alter or change this aid have to be notified to the Commission pursuant to provisions of the Commission Regulation (EC) No 794/2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty now 108 of the TFEU (OJ L 140, 30.4.2004, p.1).

133. If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site:

http://ec.europa.eu/community_law/state_aids/state_aids_texts_pl.htm

Your request should be sent by registered letter or fax to:

European Commission
Directorate-General of Competition
State Aid Registry
B-1049 BRUSSELS
Telefax nº: + 32-2-296.12.42

Please, mention the name and number of the case in all the correspondence.

Yours faithfully,

For the Commission

Joaquin ALMUNIA
Vice-president of the Commission