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**Subject: State aid SA.39042 (2014/N) – Romania
RES support reduction for energy-intensive users**

Sir,

1. PROCEDURE

- (1) By an electronic notification validated on 2 July 2014, registered at the Commission on the same date, the Romanian authorities have notified a planned aid in the form of reduced funding of support for electricity from renewable sources for energy-intensive users (EIUs).
- (2) Further to requests from the Commission, the Romanian authorities provided additional information on 14 August 2014, and 24 September 2014.

2. DETAILED DESCRIPTION OF THE MEASURES CONCERNED

2.1. The support system for promoting the production of electricity from renewable sources

- (3) Law 220/2008 established a system for promoting the production of electricity from renewable energy sources (RES), approved by the Commission's decision on 13 July

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2011 in the case SA.33134 (2011/N) (the "RES support scheme")¹. The RES support scheme is a green certificate support system, under which eligible producers of electricity from RES (E-RES producers) receive a specific number of green certificates, depending on the technology used, for each MWh produced and delivered to the grid. An obligation is imposed on the electricity suppliers to purchase a mandatory quota of green certificates.

- (4) Green certificates are granted monthly to E-RES producers by the Transmission System Operator (TSO). They can be traded on the green certificates market, and the validity of the green certificates granted to the producers is 12 months. The trading value of green certificates is determined by competitive mechanisms and can vary between the limits set out by the law: a) a minimum trading value of EUR 27 per green certificate, and b) a maximum trading value of EUR 55 per green certificate, indexed annually since 2011.
- (5) The Romanian Authority of Regulation in the field of Energy ("ANRE") issued the *Methodology for setting of the annual quota of green certificates acquisition* (approved by ANRE Order No 45/2011) in accordance with Article 8(8) of Law 220/2008 republished. According to this methodology, the estimated annual mandatory green certificate quota represents the number of green certificates that a supplier is required to purchase for each MWh of electricity he sells to end consumers (including that used for their own final consumption other than their own technological consumption), and it is determined as the ratio between the total number of green certificates issued and the final electricity consumption in the year of analysis.
- (6) If suppliers do not achieve the annual mandatory quota of green certificates, calculated based on the number of green certificates purchased and the electricity supplied to end customers, they are required to pay a penalty for the green certificates not acquired, at the value of EUR 110 (indexed from 2011) for each green certificate not acquired.
- (7) Law No 220/2008, as amended and supplemented, in Article 8(8)², provides for the possibility that a percentage of the amount of electricity delivered to end consumers be exempted from the application of the provisions of the same law.
- (8) Based on these provisions, the Government has issued the Government Decision No. 495/2014 (the "Government Decision") for the establishment of a state aid scheme partially exempting certain categories of end consumers from the application Law No 220/2008 on the establishment of the promotion system for the production of energy from renewable energy sources (the "notified measure")³.

¹ Romania notified amendments to the approved RES support scheme. These are assessed separately, in the case SA.37177 (2014/N) and are outside the scope of the current decision.

² This provision has been introduced by GEO No 57/2013, approved as amended and supplemented by Act No 23/2014.

³ The Government Decision was amended both by act published in the Official Journal no. 582/4.08.2014 and the government decision no. 620/2014 published in the Official Journal no. 573/31.07.2014

2.2. Reduction in RES support funding for EIUs

- (9) The end consumers bear the costs of the RES support scheme, as the costs of green certificates must be passed on by suppliers to the end consumers. The RES support scheme resulted in an increase in electricity production from renewable sources. Since 2011, end users have faced rising electricity costs. According to Romania, the consequences of these price increases are significant, especially for EIUs, endangering their competitiveness on the European internal market and on the global market.
- (10) Based on the information submitted by Romania, EIUs account for approximately 20% of the gross final consumption of electricity and are the largest generators of jobs in the country. Most of these large industrial consumers compete on the global markets, and cannot transfer to their clients the increase of costs related to the support of renewable energy resources without jeopardizing their competitive position, as they face fierce competition from companies located in non-EU areas with less stringent environmental constraints.
- (11) Romania argues that as a result of the RES support scheme, the high cost of electricity triggers a risk of losing competitiveness for the EIUs, and therefore leads to an increased risk of relocation of the EIUs, the largest generator of jobs in the year of 2012 directly providing approximately 760 000 jobs and indirectly approximately 1 500 000. At the same time, relocation could have a negative impact on the global environment. There would also be a negative economic effect, given that the largest consumers of electricity contribute with approximately 5.8% to Romania's GDP (the figure is for the year of 2011), and a negative social effect, as the reduction of the number of jobs due to relocation would lead to a higher unemployment rate.
- (12) According to the Romanian authorities, the notified measure has been designed in accordance with Section 3.7.2. of the Environmental and Energy Aid Guidelines 2014-2020 ("EEAG")⁴.
- (13) The methodology for establishing the mandatory acquisition quota of green certificates, as approved by ANRE Order No. 45/2011 and revised by ANRE Order No. 49/2014, foresees that this quota is calculated as the ratio between the total number of estimated green certificates and the estimated final electricity consumption. Romania explained that by exempting part of the electricity supplied to EIUs, the respective part will no longer be taken into account in the estimated final electricity consumption, for the purpose of calculating the mandatory acquisition quota. As a consequence the respective quota will increase, and the costs previously born by the EIUs for the exempted part of the electricity they consume, will be redistributed to the non-exempted part of electricity (electricity consumed by non-exempted users, plus the non-exempted part of the electricity consumed by the EIUs).
- (14) The Romanian authorities have estimated that the exemption may be granted for an annual consumption of approximately 9 TW/year. The estimation is based on the

⁴ OJ C 200 of 28 June 2014, p. 1.

NACE codes set out in Annex 3 of the EEAG, combined with data from the National Institute of Statistics, by summing the estimated annual consumption of the maximum potential number of beneficiaries of the scheme. Notwithstanding the above estimation, Romania indicated that this is not a cap, and aid will be granted to all beneficiaries fulfilling the eligibility conditions.

- (15) The beneficiaries of the notified scheme are industrial companies whose main activity or secondary activity, comply with the NACE codes stipulated in the Annex 3 of the EEAG.
- (16) Romania explained that it included eligible beneficiaries having only secondary activities covered by Annex 3 of the EEAG to ensure that the activities which fulfil the electro-intensity percentage benefit from support under the scheme, if they are developed by a beneficiary which has a different main activity, not covered by Annex 3 of EEAG. Those beneficiaries would receive aid only for the electricity consumption related to the eligible secondary activity, not for their total electricity consumption.
- (17) To be eligible, the activities must be carried out in premises registered with the Trade Registry as secondary branches/points of sale, for which the undertaking declares specific activities when establishing the secondary branch/point of sale. Romania confirmed that only the consumption of such secondary branches/points of sale shall be taken into consideration when approving the exemption. The applicant will have to present certificates from the Trade Registry attesting that the respective activities have been declared for specific secondary branches/points of sale. The undertakings with secondary activity eligible for the notified measure will be requested to keep a separate balance sheet on the respective secondary activity. Romania estimates that presently only one beneficiary will qualify for aid for its secondary activity (the secondary activity is manufacture of refined petroleum products, while its main activity is crude oil extraction).
- (18) The EIUs benefitting from the notified aid scheme will pay (i.e. cover the cost of) the green certificates related to the mandatory quota for varying percentages of their electricity consumption, depending on their electro-intensity, namely:
- i. 15% in the case of electro-intensities greater than 20%,
 - ii. 40% in the case of an electro-intensity between 10%-20%, and
 - iii. 60% in the case of an electro-intensity between 5%-10%.
- (19) It follows that the beneficiaries are exempted from the payment of green certificates corresponding to 85%, 60% or 40% of the electricity they consume.
- (20) The electro-intensity is calculated according to Annex No 4 of the EEAG:

$$\frac{\text{Electricity consumption} * \text{price of electricity}}{(\text{GVA n} + \text{GVA n-1} + \text{GVA n-2})/3}$$

where:

- *GVA* = turnover plus capitalized production plus other operating income plus/minus variation of inventory minus acquisition of goods and services (not including costs with staff) minus taxes on products corresponding to turnover that are not deductible minus taxes and duties corresponding to production;
 - *n* = the financial year prior to the year when the exemption is requested;
 - *electricity consumption* = arithmetic mean of electricity consumption of the enterprise in the last 3 years;
 - *electricity price* = the average retail selling price of electricity applicable to enterprises with similar level of consumption, as it results from the most recent annual Report regarding the surveillance of the electricity market, published on the website of the National Regulatory Authority in Energy, hereinafter named *ANRE*. The electricity price also includes the full cost of funding support for electricity from renewable sources that would be passed on the enterprises in the absence of the reductions⁵.
- (21) For new undertakings that have been operating for less than one year, the estimated data for the first year of operation will be used for the first year. In year 2 of operation, the data relating to the first year of operation will be used. In year 3 of operation the arithmetic mean of the data relating to years 1 and 2 of operation will be used. Starting from year 4, the arithmetic mean of the 3 previous years will be used.
- (22) The Romanian authorities subject the reduction in RES support funding to further eligibility criteria in addition to the ones foreseen in the EEAG, namely the eligible companies:
- i. should not record debts/arrears to the component budgets of the general consolidated budget at the state budget;
 - ii. must ensure that energy audit are carried out by independent accredited experts and must implement measures to improve their energy-efficiency;
 - iii. must maintain their activities in the EEA during the aid scheme and cannot lay off more than 25% of the number of the employees at the time of qualification for the notified measure⁶;

⁵ Article 2(5) (iv) of the Government Decision no. 495/2014 referred initially only to 2013 as the reference year for the electricity price. Upon Commission's request, the Romanian authorities undertook to amend the condition, and a new draft, including the amendment, was submitted to the Commission on 24 September 2014.

⁶ Initially the condition included in the Government Decision no. 495/2014 was to maintain their activities in Romania. However, following discussions with the Commission and in view of alleviating any concerns related to potential restrictions of the freedom of establishment, on 24 September 2014 Romania submitted an amended draft to the Commission and undertook to amend the condition and request beneficiaries to maintain their activities in the EEA.

- iv. must conclude and carry out partnerships with educational institutions for specializations in their field of activity (vocational schools, on-the-job training, scholarships, etc.), finance equipment for laboratories in high schools and universities, as well as professional training programs for students and teachers, in order to narrow the theory-practice gap, increase professional level and attract skilled personnel.
- (23) Article 8 of the Government Decision states that the beneficiaries' incompliance with the conditions stipulated in the respective shall entail the Ministry of Economy to apply the necessary measures for the recovery of State Aid, according to European and national regulation. Romania explained that if a beneficiary is found not to comply anymore with the eligibility requirements, it will lose the right to get the aid for the future. However, no repayment of granted aid shall be asked for the previous period, during which the beneficiary complied with all conditions. Furthermore, if the same beneficiary will fulfil again all conditions later on and during the duration of the notified measure, it will regain eligibility from the moment all conditions are met.
- (24) Romania explained that the condition under (ii) above will be considered met if the beneficiary implements all or part of the measures identified in the initial energy efficiency audit. The beneficiary decides which measures it intends to assume to implement, and all the assumed measures have to be implemented in order to fulfil the energy efficiency criterion, regardless of the number of the assumed measures (e.g. even when only one measure is assumed).
- (25) Romania also indicated that the condition under (iv) will be deemed fulfilled irrespective of the location of the institution and irrespective of the monetary quantification of the partnership agreement and its duration.
- (26) The companies wishing to obtain the aid shall submit an application for approval of the exemption⁷ to the authority in charge for granting the aid scheme (i.e. the Ministry of Economy). The application must include supporting documents able to prove that all eligibility conditions are complied with pursuant to the Annex to the Government Decision.
- (27) As a result of the assessment of the applications which is foreseen to be concluded in 30 working days as of the date of registration of the application, the Ministry of Economy shall send to the applicants either the approval of the exemption or notification specifying that the application for exemption is incomplete, or a letter of rejection.
- (28) The beneficiaries of the aid scheme shall notify the approval of the exemption to ANRE and to their electricity suppliers. The supplier is then exempted from the obligation to purchase a certain number of green certificates corresponding to the quantity of exempted electricity delivered to his client, beneficiary of the notified

⁷ This was annexed to the draft Government decision submitted by Romania on 24 September 2014.

measure. However, as the annual estimated quota of green certificates acquisition is calculated as the ratio between the total number of estimated green certificate and the final electricity consumption, by exempting an amount of electricity supplied, the mandatory acquisition quota of green certificate is increased for the non-exempted part of the consumption (including the non-exempted part of the beneficiaries' consumption). Romania states that the overall number of green certificates sold on the market will not change due to the exemption. The redistribution will be done at national level and not at the level of each electricity supplier.

2.3. Duration, granting authority, legal basis and budget

- (29) The duration of the notified measure is until 31 December 2024 and the Ministry of Economy is the granting authority.
- (30) Initially Romanian planned to implement the notified measure as of 1 August 2014. However, Romania confirmed that the measure will not be implemented before it is approved by the Commission. In the draft Government Decision submitted by Romania on 24 September 2014 it is indicated that the measure will be implemented as of 1 December 2014.
- (31) The Romanian authorities have estimated that an annual consumption of approximately 9 TW/year would be eligible for the exemption. The annual consumption exempted from the payment of renewable energy subsidies has been calculated based on the NACE codes set out in Annex 3 of the Guidelines, combined with data from the National Institute of Statistics, by summing the estimated annual consumption of the maximum potential number of beneficiaries of the notified measure.
- (32) The estimated number of beneficiaries is 300 and the total budget allocated to the notified measure is EUR 750 million, while the annual budget is estimated at EUR 75 million.

2.3.1. Transparency and monitoring by the State

- (33) The Romanian authorities shall modify the Government Decision in order to comply with the transparency requirements set forth in points 104-106 of the EEAG, in line with the draft amended Government Decision submitted on 24 September 2014.
- (34) The information requested in points 104-106 of the EEAG will be published in the website of the Ministry of Economy.
- (35) The Ministry of Economy, together with ANRE, has been entrusted with various monitoring tasks. It has *inter alia* to monitor that the conditions imposed by the European and national legislation, including the ones set forth in the Government Decision, are complied with. According to the draft Government Decision submitted on 24 September 2014, the Ministry of Economy monitors the notified measure, with particular regard to the calculation of the electro-intensity and the fulfilment of the conditions as specified in the documents filed by the beneficiaries by every 15th of May. If during ex-post monitoring, an over-payment is recorded, the Ministry of

Economy takes the necessary measures so that the respective over-payment is repaid before the 1st July of the following year.

2.4. Other elements

2.4.1. Cumulation

- (36) The Romanian authorities have indicated that the aid granted under the notified measure cannot be cumulated with other types of aid to cover the same eligible costs.

2.4.2. No new aid as long as past incompatible aid has not been recovered.

- (37) The Romanian authorities committed to suspend the payment of the notified measure if the beneficiary still has at its disposal an earlier unlawful aid that was declared incompatible by a Commission Decision (either concerning an individual aid or an aid scheme), until that beneficiary has reimbursed or paid into a blocked account the total amount of unlawful and incompatible aid and the corresponding recovery interest.

3. ASSESSMENT OF THE MEASURE

3.1. Existence of aid within the meaning of Article 107 (1) of the TFEU

- (38) Under Article 107(1) TFEU, 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, in so far as it affects trade between Member States, is incompatible with the internal market unless otherwise provided in the Treaties.
- (39) Romania notified the measure qualifying it as state aid to EIUs, therefore it does not challenge the existence of state aid.
- (40) Measures which, in various forms, mitigate the charges which are normally included in the budget of an undertaking and which, without therefore being subsidies in the strict meaning of the word, are similar in character and have the same effect are considered to constitute aid⁸.
- (41) The Court has also ruled that in the case of exemptions from charges, in order to prove that an advantage is selective, the Commission has to prove that the measure at stake creates differences between undertakings which, with regard to the objective of the measure in question, are in a comparable factual and legal situation. The concept of aid does not encompass measures creating different treatment of undertakings in relation to charges where that difference is attributable to the nature and general scheme of the

⁸ Judgements in *Banco Exterior de España*, C-387/92, EU:C:1994:100, paragraph 13, and in *Belgium v Commission*, C-75/97, EU:C:1999:311, paragraph 23.

system of charges in question⁹. The burden of proof for that latter part of the test is on the Member State.

- (42) In the case at hand, EIUs are advantaged because they are partially exempted from covering the cost of the mandatory green certificate quota. The Government Decision therefore relieves them from a burden that they would normally have to bear.
- (43) As set out in Law 134/2012 (amended by Law 23/2014), the normal rule is that energy suppliers have to acquire a mandatory quota of green certificates, whose cost they then recover from the end consumers through a component of the electricity bills. More precisely, the national legislation (Law 134/2012 as amended by Law 23/2014) imposes the electricity suppliers to include in the bills sent to the consumers the cost of green certificates, indicated distinctively from the cost of energy, stating the legal basis, and calculating the respective cost as the annual quota imposed by the energy regulator, multiplied with the quantity of energy provided and the average price of the green certificates acquired. Therefore normally consumers would have to bear the cost of financing RES paying the respective component included in the electricity bill.
- (44) In order for a measure to fall under Article 107(1) TFEU, it must be selective, i.e. favour certain undertakings or the production of certain goods.
- (45) The measure is selective because only EIUs as defined in the Government Decision can benefit from it. Romania estimates that around 300 undertakings active in mining and manufacturing sectors will benefit of aid under the notified scheme.
- (46) The potential beneficiaries are producers of energy-intensive goods (e.g. ferrous and non-ferrous metal producers, paper industries, chemical industry, cement producers) and are active in sectors in which trade between Member States takes place. The measure is therefore liable to distort competition and affect trade between Member States.
- (47) The reduced RES financing for EIUs is imputable to the State, as it is established by laws, implementing government decisions and acts. In addition, it is the State (through the Ministry of Economy and ANRE) that grants the entitlements to EIUs and that monitors its correct implementation.
- (48) For advantages to be categorised as aid within the meaning of Article 107 TFEU, they must be granted directly or indirectly through State resources. The concept of "intervention through State resources" is intended to cover not only advantages which are granted directly by the State but also "those granted through a public or private body appointed or established by that State to administer the aid"¹⁰. In this sense,

⁹ Judgement in *Netherlands v Commission*, C-159/01, EU:C:2004:246, paragraph 42; Judgement in , *NOx emission trading scheme*, C-279/08 P, EU:C:2011:551, paragraph 62.

¹⁰ Judgement in *Steinike & Weinlig v Germany*, Case 76/78, EU:C:1977:52, paragraph 21; Judgement in *PreussenElektra*, C-379/98, EU:C:2001:160, paragraph 58; Judgement in *Doux Elevage and Cooperative agricole UKL-ARREE*, C-677/11, EU:C:2013:348, paragraph 26; Case *Vent de Colère*, C-262/12,

Article 107(1) TFEU covers all the financial means by which the public authorities may actually support undertakings, irrespective of whether or not those means are permanent assets of the public sector¹¹.

- (49) The reduction in RES financing (which in the present case corresponds to the partial exemption from the cost of the green certificates) is financed through private means only. However, the mere fact that the advantage is not financed directly from the State budget is not sufficient to exclude that State resources are involved¹². It results from the case-law of the Court that it is not necessary to establish in every case that there has been a transfer of money from the budget or from a public entity¹³.
- (50) The relevant criterion in order to assess whether the resources are public, whatever their initial origin, is that of the degree of intervention of the public authority in the definition of the measures in question and their methods of financing¹⁴. Hence, the mere fact that a subsidy scheme benefiting certain economic operators in a given sector is wholly or partially financed by contributions imposed by the public authority and levied on certain undertakings is not sufficient to take away from that scheme its status of aid granted by the State¹⁵. Equally, the fact that the resources would at no moment be the property of the State does not prevent that the resources might constitute State resources, if they are under the control of the State¹⁶, in particular when aid is granted by public or private bodies designated or established by the State¹⁷. The Court found State resources in case of funds financed through compulsory contributions imposed by State legislation and they were managed and apportioned in accordance with the provisions of that legislation¹⁸.
- (51) This has been confirmed by the Court in the *Vent de Colère* case¹⁹ where the Court has also ruled that a mechanism for offsetting in full the additional costs imposed on undertakings because of an obligation to purchase wind-generated electricity at a price

EU:C:2013:851, paragraph 20; *Sloman Neptune*, joined cases C-72/91, C-73/91, EU:C:1993:97, paragraph 19.

¹¹ Judgement in *Doux Elevage*, EU:C:2013:348, paragraph 34, Judgement of 27 September 2012, *France v Commission*, T-139/09, EU:T:2012:496, paragraph 36, *Vent de Colère*, C-262/12, EU:C:2013:851, paragraph 21.

¹² Judgement of 12 December 1996, *Air France v Commission*, T-358/94, EU:T:1996:194, paragraphs 63 to 65.

¹³ *Doux Elevage*, EU:C:2013:348, paragraph 34, *France v Commission*, EU:T:2012:496, paragraph 36; Judgement in *Bouygues Telecom v Commission*, C-399/10 P et C-401/10 P, EU:C:2013:175, paragraph 100; *Vent de Colère*, C-262/12, EU:C:2013:851, paragraph 19.

¹⁴ *France v Commission*, EU:T:2012:496, point 63 and 64.

¹⁵ *France v Commission*, EU:T:2012:496, paragraph 61.

¹⁶ Judgment of 12 December 1996, *Compagnie nationale Air France v Commission*, T-358/94, EU:T:1996:194, paragraphs 65 to 67; *France v Commission*, C-482/99, EU:C:2002:294, paragraph 37; *Doux Elevage SNC*, EU:C:2013:348, paragraph 35.

¹⁷ *Sloman Neptun*, EU:C:1993:97, paragraph 19.

¹⁸ Judgement in *Italy v Commission*, 173/73, EU:C:1974:71, paragraph 16. Judgement in *Essent*, C-206/06, EU:C:2008:413, point 66.

¹⁹ *Vent de Colère*, EU:C:2013:851.

higher than the market price that is financed by all final consumers of electricity in the national territory, constitutes an intervention through State resources.

- (52) In the light of those principles, the Commission has examined whether the financing of the RES support reduction for EIUs involves State resources.
- (53) The Commission observed that the State has established a special bill component in order to finance mandatory acquisition quota of green certificates. In other words, this bill component serves to finance the support of RES electricity under Law 220/2008. In addition, the Commission observes that the State has entrusted the electricity suppliers with the task to, on the one side, purchase predefined quantity of green certificates from the producers and, on the other, to pass the respective cost on to customers.
- (54) Moreover, the State has established detailed rules for determining the green certificate quota, the allocation of the bill component and of the increased component in case of part of the consumers being partially exempted. The Commission notes that the mechanism put in place by Romania offsets in full the additional costs arising from the obligation for the electricity suppliers to purchase mandatory quota of green certificates. The exact methodology of the calculation of the bill component is laid down in implementing provisions. The level of the bill component results automatically from the methodology established by the Law 134/2012 as amended by Law 23/2014 and its implementing provisions.
- (55) Given that the bill component in a certain year is calculated based on forecasts, Romania has also established a correction mechanism, whereby deficits or surpluses are corrected the following year. This ensures that electricity suppliers do not have to bear any financial burden for the purchase obligation but it ensures as well that they cannot raise funds through the bill component that would serve other purposes than the support of renewables as decided by the State.
- (56) The national legislation imposes to the electricity suppliers to include the cost of green certificates in the bills sent to the consumers, indicated distinctively from the cost of energy, indicating the legal basis, and calculating the respective cost as the annual quota imposed by the energy regulator, multiplied with the quantity of energy provided and the price of the average price of the green certificates acquired. The Commission notes that all electricity consumers are under the obligation to pay the bill component to their respective electricity suppliers for each kWh of electricity consumed.
- (57) On the basis of the above elements, the Commission considers that the electricity suppliers are administering the cost of green certificates and that they have been entrusted with specific task and all related operations by the State. The Commission notes in addition that the State is monitoring the way the electricity suppliers are administrating the cost of the green certificates.
- (58) The Commission further notes that, in the implementation of the notified scheme, Romania not only establishes the reductions of the bill components but also verifies eligibility of companies and delivers the administrative order approving them. Indeed, the potential beneficiaries submit an application to the Ministry of Economy, which

verifies the request, and finally grants the reductions to EIUs. This decision is then imposed on electricity suppliers who are not allowed to charge EIUs the full bill component but only the reduced one.

- (59) The monitoring powers of the Ministry of Economy and ANRE are thus extensive and correspond at least to the monitoring powers that the State had in respect of the levy at stake in the *Essent* case²⁰.
- (60) The bill component is a charge imposed on the consumption of electricity. It does not correspond to a price for a good.

Conclusion

- (61) For all the reasons set out above, the Commission comes to the conclusion that the notified measure involves State resources. The Commission observes in particular that the State can control, direct and influence the administration of the RES support reductions at stake: the State intervenes at both the level of the advantage and its financing. The State has defined to whom the advantage is to be granted, the eligibility criteria and the level of support, but it has also determined the financial resources to cover the costs of the support.

3.2. Lawfulness of the aid

- (62) The reduction in RES support for EIUs was notified to the Commission on 2 July 2014. Romania confirmed it has not been implemented and will not be implemented before the approval of the Commission. Romania has therefore complied with its obligations under Article 108 TFEU.

3.3. Compatibility

- (63) The Commission has assessed the notified aid scheme on the basis of the EEAG²¹, and in particular section 3.7.2. (Aid in the form of reductions in the funding of support for energy from renewable sources).
- (64) Under Art. 8(8) of Law 220/2008, as amended, EIUs are granted a reduction in the funding of the support for electricity from renewable energy sources. Therefore the notified measure should be assessed under section 3.7.2. of the EEAG.
- (65) Points 185-186 of the EEAG provide that the aid should be limited to sectors that are exposed to a risk to their competitive position due to the costs resulting from the funding of support to energy from renewable sources as a function of their electro-intensity and their exposure to international trade. Accordingly, the aid can be granted if the undertaking belongs to the sectors listed in Annex 3 to the EEAG. In addition, point 187 of the EEAG provides that Member States can impose additional eligibility

²⁰ *Essent*, EU:C:2008:413.

²¹ OJ C 200 of 28 June 2014, p. 1.

criteria provided that within the eligible sectors the choice of beneficiaries is made on the basis of objective, non-discriminatory and transparent criteria and that the aid is granted in principle in the same way for all competitors in the same sector if they are in a similar factual situation.

- (66) Pursuant to the Government Decision, only undertakings belonging to the sectors listed in Annex 3 to the EEAG are eligible for a reduction provided they can demonstrate the compliance with all the additional eligibility conditions.
- (67) The requirement that companies are eligible for 85%, 60% and 40% reduction in RES support only if they demonstrate an electro-intensity of minimum 20%, between 10% and 20%, and between 5% and 10% respectively, is an additional eligibility requirement which is objective, transparent and does not discriminate between undertakings in a similar factual situation.
- (68) Moreover the Commission comes to the conclusion that the additional eligibility criteria outlined in recital (22) are objective and transparent and do not discriminate between undertakings in a similar factual situation in light of detailed explanation and the amendments submitted by the Romanian authorities as described in recitals (23) to (25).
- (69) Point 188 of the EEAG provides that the aid is considered proportionate if the aid beneficiaries pay at least 15 % of the additional costs without reduction. The system Romania established complies with this condition, and the maximum reduction that can be granted, to beneficiaries with an electro-intensity greater than 20%, is 85%.
- (70) For the calculation of the gross added value, the Government Decision uses the gross added value at factor costs and refers to the arithmetic mean over the most recent last 3 years for which GVA data is available, in accordance with Annex 4 of the EEAG. As described under recital (21) above the Government Decision contains a specific rule for new undertakings. It corresponds to the rule provided under Footnote 3 of Annex 4 to the EEAG. Finally, for the calculation of the electricity price, the Government Decision uses average retail electricity prices, from the most recent year for which data is available, in accordance with Annex 4 of the EEAG.
- (71) The monitoring system put in place by Romania as described in recital (35) is in line with requirements set out in point (192) of the EEAG.
- (72) Member States are required under Section 3.2.7. of the EEAG to publish as of 1 July 2016 certain information related to beneficiaries of aid. The Commission takes note of Romania's commitment that it will comply with the transparency requirements as of 1 July 2016 as described in recitals (33) and (34).
- (73) Romania undertook to re-notify the measure after 10 years.

4. CONCLUSION

The Commission has accordingly decided not to raise objections to the aid on the grounds that it is compatible with the internal market pursuant to Article 107 (3) (c) of the Treaty on the Functioning of the European Union.

The Commission reminds the Romanian authorities that, in accordance with article 108 (3) TFEU, any 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 Article 108 TFEU).²²

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/competition/elojade/isef/index.cfm>.

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

European Commission
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Directorate for State Aid
State Aid Greffe
B-1049 Brussels
Belgium
Email: stateaidgreffe@ec.europa.eu
Fax No: (0032) 2-296.12.42

Yours faithfully,

For the Commission

Joaquín ALMUNIA
Vice-president

²² OJ L 140, 30.4.2004, p. 1.