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<p>In the published version of this decision, some information has been omitted, pursuant to articles 30 and 31 of Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union, concerning non-disclosure of information covered by professional secrecy. The omissions are shown thus [...]</p>		<p>PUBLIC VERSION</p> <p>This document is made available for information purposes only.</p>
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**Subject: State aid SA.46312 (2016/N) – Romania**  
**Rescue aid to Compania Nationala a Uraniului SA**

Dear Sir,

## 1. PROCEDURE

- (1) On 8 September 2016, Romania notified rescue aid for Compania Nationala a Uraniului SA (further referred to as "CNU" or "the Company"). By a letter of 7 September 2016, the Romanian authorities accepted that the present decision be adopted in the English language.

## 2. THE BENEFICIARY

- (2) CNU is a Romanian company (headquartered in Bucharest) active in the nuclear cycle and more precisely in exploitation of Romanian uranium mines and production of raw material for nuclear power plants. CNU was established in 1997 as a fully State owned limited liability company. CNU extracts uranium ore, processes it to form uranium octoxide and, after further refinery, transforms it into uranium dioxide.

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- (3) CNU has two operating sites. The uranium mining site is located in Crucea (Suceava County, North-East region) and employs [...] <sup>(\*)</sup> persons while the preparation-refining plant is located in Feldioara (County Brasov, Centre region) and employs [...] persons. The total revenue of the company amounted to RON [...] million in 2014 and to RON [...] million in 2015 while the net result of the company amounted to RON [...] million in 2014 and to RON [...] million in 2015.
- (4) CNU's sales are targeted at two buyers, SN Nuclearelectrica (further referred to as "SNN") and National Administration of State Reserve and Special Problems (further referred to as "the National Reserve") which account together for 95% of its revenues.
- (5) CNU sells uranium dioxide to SNN, which uses it in the manufacture of the nuclear fuel for its nuclear power plant in Cernavoda. This nuclear power plant uses natural uranium ("CANDU" technology) instead of enriched uranium, which is used in all other nuclear reactors in Europe.
- (6) CNU also sells uranium octoxide to the National Reserve. This product, unlike uranium dioxide, can be stored in stable form, with the aim of building up a State reserve. In case of need, CNU can use the uranium octoxide from the National Reserve to produce the uranium dioxide in order to ensure a continuous supply of nuclear fuel to SNN.
- (7) In 2016, these two clients decided not to conclude any contract with CNU which was consequently not able to sell its products. Due to the decrease in the uranium price on the international market, CNU became less competitive than external suppliers of uranium ore and SNN decided to select, after a tender procedure, a Canadian supplier of uranium dioxide instead of CNU. The contract between SNN and CNU ended in December 2015. In parallel, the contract with National Reserve for uranium octoxide has not been renewed.
- (8) CNU's revenue fell significantly in 2016, coming only from minor side activities, such as a service contract with SNN for its waste treatment, and does not cover its current expenses. CNU is not able to pay its outstanding bills to its suppliers and other creditors. According to Romania, [...].
- (9) In view of the above, the Romanian authorities claim that CNU urgently needs liquidity in order to maintain operations, including the implementation of mandatory environmental and nuclear safety measures foreseen in the Euratom Treaty.

### **3. DESCRIPTION OF THE RESCUE MEASURE**

- (10) Due to the risks linked to cessation of CNU's activities and having regard to its cash flow needs, Romania intends to grant CNU a six-month rescue loan amounting to RON 62 million.

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<sup>(\*)</sup> Confidential information

- (11) The Romanian authorities declare that the loan will bear interest at a rate not lower than the reference rate set out in the Reference Rate Communication<sup>1</sup> for weak undertakings offering normal levels of collateralisation, which is currently 1-year ROBOR plus 400 basis points.
- (12) The loan aims at providing CNU with the necessary liquidity for its survival in the next 6 months and thus afford it sufficient time for preparing and launching a comprehensive business and financial restructuring plan. Romania commits to communicating a restructuring plan to the Commission no later than six months after the rescue loan has been authorised.

#### **4. ASSESSMENT OF THE MEASURE**

- (13) The Commission assesses under Article 107(1) TFEU whether the planned loan entails State aid to CNU and, if so, whether such aid is lawful and compatible with the internal market.

##### **4.1. Existence of State aid**

- (14) 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 shall, in so far as it affects trade between Member States, be incompatible with the internal market.
- (15) In order to conclude whether State aid is present, the Commission must assess whether the cumulative criteria of Article 107(1) TFEU are met (i.e. transfer of State resources, selective advantage, potential distortion of competition and affectation of intra-EU trade).
- (16) The Romanian authorities consider that the planned loan involves State aid under Article 107(1) TFEU.
- (17) As regards the presence of State resources, the loan shall be granted directly by the State from its budget and thus clearly involves State resources and is imputable to the State.
- (18) The loan will be granted solely to the benefit of CNU and is thus not part of a general measure available to all undertakings in Romania. It will be granted on terms that CNU, being in a difficult financial condition and facing acute liquidity problems, would not have been able to obtain under normal market conditions. Otherwise, the company would have applied for a loan to a private financing institution instead of obtaining it from the State. Therefore the planned loan provides a selective advantage to CNU.

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<sup>1</sup> Communication from the Commission on the revision of the method for setting the reference and discount rates, OJ C 14, 19.1.2008, p. 6.

- (19) If aid granted by a Member State strengthens the position of an undertaking compared to other undertakings competing in intra-Union trade, the latter must be regarded as affected by that aid.<sup>2</sup>
- (20) In that respect, although no other European company than CNU produces raw material for CANDU-based technology nuclear power plants, the market is open for competition. SNN has already signed a supply contract with a Canadian competitor of CNU. Any European company may also decide to enter this market in the future or to offer substitute products sourced from elsewhere, especially if CNU ceases production.
- (21) The planned loan, which allows CNU to stay on the market, is consequently liable to improve its competitive position in the internal market. It consequently distorts or threatens to distort competition and affects trade between Member States.

#### *Conclusion on the existence of aid*

- (22) In light of the above, the Commission concludes that the six-month loan of RON 62 million planned to be granted by Romania to CNU involves State aid under Article 107(1) TFEU and will therefore assess its lawfulness and compatibility with the internal market.

#### **4.2. Legality of the aid**

- (23) The Commission takes note that Romania commits to respecting the stand-still obligation laid down in Article 108(3) TFEU by not granting the aid until the Commission reaches a decision authorising the notified measure.

#### **4.3. Compatibility of the aid**

- (24) The measure at stake consists of State aid under Article 107(1) TFEU which Romania intends to grant to CNU, an undertaking active in areas covered by the Euratom Treaty.
- (25) The Euratom Treaty describes the instruments and responsibilities in the area of nuclear energy necessary in order to reach specific objectives. The Commission has to ensure the application of the Treaty provisions. In particular, Article 2(b) of the Euratom Treaty states that it is the task of the Community to «*establish, and ensure the application of, uniform safety standards to protect the health of workers and of the general public*».
- (26) The TFEU defines the conditions under which planned aid can be declared compatible with the internal market and, in particular, under Article 107(3)(c), the Commission can authorise aid if it is granted to promote the development of

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<sup>2</sup> See, in particular, Judgment of the Court of 17 September 1980, *Philip Morris Holland BV v Commission of the European Communities*, Case 730/79, EU:C:1980:209, para.11; Judgment of the Court (Sixth Chamber) of 22 November 2001, *Ferring SA v Agence centrale des organismes de sécurité sociale (ACOSS)*, Case C-53/00, EU:C:2001:627, para.21; Judgment of the Court (Sixth Chamber) of 29 April 2004, *Italian Republic v Commission of the European Communities*, Case C-372/97, EU:C:2004:234, para.44.

certain economic sectors and if this aid does not adversely affect trading conditions to an extent contrary to the common interest. For rescue aid such as that notified in the present case, the Commission will assess whether the planned aid complies with the provisions on rescue aid laid down in the Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty<sup>3</sup> ("R&R Guidelines").

#### 4.3.1. Eligibility

- (27) In order for an undertaking to be eligible for rescue aid, it must qualify as an undertaking in difficulty pursuant to section 2.2 of the R&R Guidelines. In particular, point 20 of the R&R Guidelines states that an undertaking is considered to be in difficulty when, without intervention by the State, it will almost certainly be condemned to going out of business in the short or medium term. This would be the case when at least one of the circumstances described in point 20 of the R&R Guidelines occurs:
- (a) In the case of a limited liability company, where more than half of its subscribed share capital has disappeared as a result of accumulated losses. This is the case when deduction of accumulated losses from reserves (and all other elements generally considered as part of the own funds of the company) leads to a negative cumulative amount that exceeds half of the subscribed share capital.  
  
(...)
  - (c) Where the undertaking is subject to collective insolvency proceedings or fulfils the criteria under its domestic law for being placed in collective insolvency proceedings at the request of its creditors.  
  
(...)
- (28) CNU is a limited liability company which, according to its financial statements, as of 31 December 2015, had [...] amounting to RON [...] million. This means that CNU has [...]. According to Romania, [...]. Therefore, CNU is a firm in difficulty according to point 20 of the R&R Guidelines.
- (29) According to point 21 of the R&R Guidelines, a newly created undertaking is not eligible for rescue aid even if its initial financial position is insecure. An undertaking will in principle be considered as newly created during the first three years following the start of operations in the relevant field of activity. Only after that period it will become eligible for aid, provided that: (a) it qualifies as an undertaking in difficulty within the meaning of the R&R Guidelines, and (b) it does not form part of a larger business group except under the conditions laid down in point 22 of the R&R Guidelines.

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<sup>3</sup> Communication from the Commission – Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty, OJ C249, 31.7.2014, p.1.

- (30) CNU was established in 1997 and exploits and operates the Romanian uranium mines since then. Consequently, CNU cannot be considered as a newly created undertaking.
- (31) Point 22 of the R&R Guidelines states that a company belonging to or being taken over by a larger business group is not normally eligible for aid, except where it can be demonstrated that the undertaking's difficulties are intrinsic and are not the result of arbitrary allocation of costs within the group, and that the difficulties are too serious to be dealt with by the group itself.
- (32) CNU does not belong to or is not being taken over by a larger business group. Therefore, the criteria set out in point 22 of the R&R Guidelines do not therefore preclude it from being eligible for rescue aid.
- (33) On this basis, the Commission concludes that the conditions of section 2.2 of the R&R Guidelines are met and therefore CNU is eligible to receive rescue aid.

#### 4.3.2. *Contribution to an objective of common interest*

- (34) The Euratom Treaty identifies, in particular, in Article 2 and Chapter 3, the need to *«establish, and ensure the application of, uniform safety standards to protect the health of workers and of the general public»*.
- (35) By ensuring the survival of CNU, which due to its systemic nature could not be replaced immediately, the rescue aid allows CNU to take all necessary and mandatory safety measures related to its production facilities. The compliance with these obligations is to avoid negative consequences on the population, the environment and the installations of the company which, if not met, would trigger a situation in manifest contradiction with the objective of the Euratom Treaty referred to above. As further shown below, the attainment of this objective is not compromised by the application of Article 107(3) TFEU.
- (36) Indeed, under point 38(a) of the R&R Guidelines, the Commission assesses whether the rescue aid can be declared compatible with the internal market by considering whether the State aid contributes to a well-defined objective of common interest in accordance with Article 107(3) TFEU.
- (37) To that end, the Member State must provide clear evidence showing that the aid aims to prevent social hardship or address a market failure. Under point 44 of the R&R Guidelines, this can be demonstrated in particular by showing that:

(...)

- c. the exit of an undertaking with an important systemic role in a particular region or sector would have potential negative consequences (for example as a supplier of an important input);

(...)

- (38) The Romanian authorities argue that CNU [...] helps Romania to mitigate the risks related to importing uranium: price volatility, supply shortages or a blocking of supply routes.
- (39) Since it can be acknowledged that CNU plays a systemic role for Romania as regards mining and supply of uranium dioxide, in particular given the lack of EU-based alternative supplier, the Commission concludes that the information provided by the Romanian authorities demonstrates that the aid contributes to a well-defined objective of common interest, as defined in point 44(c) of the R&R Guidelines.

#### 4.3.3. *Appropriateness*

- (40) Under point 38(c) of the R&R Guidelines, the Commission will not consider an aid measure to be compatible with the internal market if other less distortive measures allow the same objective to be achieved. In this respect, rescue aid must fulfil the conditions laid down in point 55 of the R&R Guidelines, in particular:
- (a) it must consist of temporary liquidity support in the form of loan guarantees or loans;
  - (b) the financial cost of the loan must be set at a rate not less than the reference rate set out in the Reference Rate Communication<sup>4</sup> for weak undertakings offering normal levels of collateralisation (currently 1-year IBOR plus 400 basis points);
  - (c) except as otherwise specified in point (d) below, any loan must be reimbursed and any guarantee must come to an end within a period of not more than six months after disbursement of the first instalment to the beneficiary;
  - (d) the Member State must undertake to communicate to the Commission, not later than six months after the loan has been authorised: (i) proof that the loan has been reimbursed in full or (ii) a restructuring plan as set out in section 3.1.2 of the R&R Guidelines if the beneficiary qualifies as an undertaking in difficulty; or (iii) a liquidation plan setting out in a substantiated way the steps leading to the liquidation of the beneficiary within a reasonable time frame without further aid.
  - (e) Rescue aid may not be used to finance structural measures, such as acquisition of significant businesses or assets, unless they are required during the rescue period for the survival of the beneficiary.
- (41) In the case at hand, CNU will use the loan of RON 62 million to run operations for the next 6 months, as a buffer to prepare a restructuring plan in order to restore its profitability. According to the Romanian authorities, the rate of the loan will be at least equal to the reference rate set out in the Reference Rate

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<sup>4</sup> Communication from the Commission on the revision of the method for setting the reference and discount rates, OJ C 14, 19.1.2008, p. 6.

Communication for weak undertakings offering normal levels of collateralisation, that is to say 1-year ROBOR plus 400 basis points.

- (42) The Romanian authorities declare that the loan will not be reimbursed within six months after the disbursement of the first instalment to CNU, but they undertake to communicate to the Commission, not later than six months after the loan has been authorised, a restructuring plan as set out in section 3.1.2 of the R&R Guidelines. Romania also provides assurances that CNU will not use the funds to finance structural measures.
- (43) In view of the information provided by Romania, the Commission concludes that the condition laid down in points 38(c) and 55 of the R&R Guidelines is met and therefore the form of the aid allows rescuing CNU in the least distortive way.

#### *4.3.4. Proportionality of the aid / aid limited to the minimum*

- (44) Under point 38(e) of the R&R Guidelines, aid must not exceed the minimum needed to achieve the objective of common interest. As specified in point 60 of the R&R Guidelines rescue aid must be restricted to the amount needed to keep the beneficiary in business for six months. In determining that amount, the Commission will take into account the outcome of the formula set out in Annex I of the R&R Guidelines. The Commission will authorise any aid exceeding the result of that calculation only if it is duly justified by the provision of a liquidity plan setting out the beneficiary's liquidity needs for the coming six months.
- (45) Based on the information provided by Romania, the result of the formula set out in Annex I of the R&R Guidelines amounts to RON -21.8m. As the amount of the rescue aid exceeds the result of the calculations on the basis of the formula, in line with point 60 of the R&R Guidelines, the Romanian authorities provided a liquidity plan setting out CNU's liquidity needs for the 6 months to come.
- (46) The Commission has reviewed the liquidity plan and found that it reasonably reflects the liquidity needs of CNU. In particular, it includes cash outflows related to legitimate expenses, such as e.g. payment of outstanding trade and other payables, salaries, pension and social security contributions, taxes, electricity, water and gas costs. On the other hand, it also includes cash receipts related to expected revenues from sales and own liquidity. It does not include uncommon or illegitimate expenses, such as e.g. financing of structural measures (see recital (42)). The aid does therefore not exceed the necessary minimum to keep CNU in business for the coming six months.
- (47) The Commission therefore concludes that the notified rescue aid is restricted to a minimum amount, in line with point 60 of the R&R Guidelines and is consequently proportional.



#### 4.3.5. *Negative effects*

- (48) Under point 38(f) of the R&R Guidelines, the negative effects of the aid on competition and trade between Member States must be sufficiently limited, so that the overall balance of the measure is positive.
- (49) Under points 70 and 71 of the R&R Guidelines, aid can be granted to undertakings in difficulty in respect of only one restructuring operation. Therefore, where less than 10 years have elapsed since rescue aid, restructuring aid or temporary restructuring support were granted to the beneficiary in the past (including any such aid granted before the entry into force of the R&R Guidelines and any non-notified aid) or the restructuring period came to an end or implementation of the restructuring plan was halted – whichever occurred the latest –, the Commission will not allow further aid (the 'one time, last time' principle).
- (50) The Romanian authorities confirmed in the notification that CNU has not benefited from any rescue aid, restructuring aid or temporary restructuring support in the past 10 years. Therefore, the 'one time, last time' principle is respected.

#### 4.3.6. *Transparency*

- (51) According to point 38(g) of the R&R Guidelines, Member States, the Commission, economic operators and the public must have easy access to all relevant acts and pertinent information about the aid awarded. This means that the provisions on transparency laid down in point 96 of the R&R Guidelines must be respected.
- (52) The Commission observes that the Romanian authorities have provided assurances that the transparency conditions of point 96 of the R&R Guidelines will be respected and that all mandatory information will be published on the Romanian Competition Council State Aid website ([www.ajutordestat.ro](http://www.ajutordestat.ro)).

#### 4.3.7. *Conclusion on the compatibility of the aid*

- (53) In the light of the findings above, the Commission concludes that the measure meets the compatibility conditions laid down in the R&R Guidelines. The Commission therefore considers the rescue aid compatible with the internal market.
- (54) In addition, the Commission reminds Romania of its obligation to submit annual reports to the Commission, in accordance with point 131 of the R&R Guidelines.

## 5. 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) of the Treaty on the Functioning of the European Union.

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:

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Yours faithfully,  
For the Commission

Margrethe VESTAGER  
Member of the Commission

