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<p>In the published version of this decision, some information has been omitted, pursuant to articles 24 and 25 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty, concerning non-disclosure of information covered by professional secrecy. The omissions are shown thus [...].</p>		<p style="text-align: center;">PUBLIC VERSION</p> <p>This document is made available for information purposes only.</p>
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**Subject: State Aid SA.43414 (2016/N) – Romania  
Closure of hard coal mines in Romania**

Sir,

I am pleased to inform you that the European Commission ("the Commission") has assessed the notified support to the Romanian hard coal mining sector and has decided not to raise objections to it on the ground that the measure constitutes state aid which is deemed to be compatible with the internal market on the basis of the Council Decision 2010/787/EU<sup>1</sup> ("the Council Decision").

#### **1. PROCEDURE**

- (1) Following pre-notification contacts, by electronic notification of 10 November 2016, the Romanian authorities notified, in accordance with Article 108(3) of the Treaty on the Functioning of the European Union ("TFEU"), a State aid measure designed to finance the closure of two coal mining units.

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<sup>1</sup> Council Decision 2010/787/EU of 10 December 2010 on State aid to facilitate the closure of uncompetitive coal mines (OJ L 336, 21.12.2010, p.24-29).

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- (2) By letter dated 15 November 2016, Romania agreed exceptionally to waive its rights deriving from Article 342 TFEU in conjunction with Article 3 of Regulation No 1/1958<sup>2</sup> and to have the present decision adopted and notified in English.

## 2. DESCRIPTION OF THE MEASURE, THE CLOSURE PLAN

- (3) The Romanian coal mining sector has undergone a major restructuring in recent years that has led to a considerable reduction in the number of viable mines in the sector, their production outputs and workforce.
- (4) In 2013 in Romania, there remained only four mines that were operated by the National Hard Coal Company (i.e. Lonea, Livezeni, Lupeni and Vulcan) which employ approximately 4 700 miners<sup>3</sup>. In 2013 the National Hard Coal Company merged with Hunedoara Energy Complex. The latter also operates two electricity production units: Electrocentrale Deva and Electrocentrale Paroşeni.
- (5) The decreasing demand for coal resulting from the proliferation of renewable generation over the period 2011-2016 and the downward pressure on coal prices caused by overcapacity in international coal markets have threatened the economic survival of the few remaining Romanian coal mining units.
- (6) Several economic indicators<sup>4</sup> prompted the Romanian authorities to undertake measures to ensure the winding down of two mines (i.e. Lonea and Lupeni<sup>5</sup>) out of the four in operation. The extracting activity in the two mines counts headcount of 2 285 workers and, for 2016, a yearly production capacity of 1 090 000 tonnes of coal.
- (7) **Lonea mine** operates under a licence, which for 2016 set a maximum production capacity of 485 000 tonnes; while under the annual general programme, the production capacity was set at 232 000 tonnes<sup>6</sup>.
- (8) **Lupeni mine** operates under a licence, which for 2016 set a maximum production capacity of 605 000 tonnes; while under the annual general programme, the production capacity was set at 296 000 tonnes<sup>7</sup>.
- (9) The conclusion of the Romanian authorities was that the two mines cannot become viable and therefore they required for the approval of the State aid to

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<sup>2</sup> Regulation No 1 determining the languages to be used by the European Economic Community (OJ 17, 6.10.1958, p. 385).

<sup>3</sup> <http://www.cenhd.ro/index.php/date-generale/>.

<sup>4</sup> Among the economic indicators used, Romanian authorities cited: productive coal reserves, efficiency of opening works, effectiveness of active mining works, quantity of opened reserves and their share in total developed reserves, forecast level of output and the calorific value of the coal, physical labour productivity and the unit cost of production.

<sup>5</sup> In the first 6 months of 2016, on average, the mines Lonea and Lupeni produced coal more expensively than the coal produced in the mines Livezeni and Vulcan (i.e. Lonea mine: RON 139.21 / gcal, Lupeni mine RON 139.66 / gcal, Vulcan mine RON 88.55 / gcal, Livezeni mine RON 84.94 / gcal)

<sup>6</sup> Lonea mine has currently prepared reserves of 139 700 tonnes.

<sup>7</sup> Lupeni mine has currently prepared reserves of 486 900 tonnes.

close the mines under the conditions set by the above mentioned Council Decision.

### 3. OBJECTIVE AND SCOPE OF THE NOTIFICATION

- (10) On 22 February 2012 the Commission approved closure aid and aid to cover exceptional costs for the closure of three mines owned by the National Hard Coal Company (i.e. Petrila, Uricani and Paroseni)<sup>8</sup>, which totalled RON 1 169 million.
- (11) The Romanian authorities consider that two additional mines (i.e. Lonea and Lupeni) need State aid for their closure in line with the Council Decision. Therefore, on 10 November 2016 the Romanian authorities notified a closure plan for Lonea and Lupeni coal mines ("the Closure Plan").
- (12) In accordance with the rules set out in the above mentioned Council Decision, the objectives of the notified State aid measure are the following:
- to assist the closure by 31 December 2018 of Lonea and Lupeni production units by covering current production losses arising from the operation of mining units in the period 2016 - 2018 (under Article 3 of the Council Decision);
  - to grant aid to cover exceptional costs arising from the definitive closure of these two mining units in the period 2016 – 2018 (under Article 4 of the Council Decision).

- (13) Table 1 below presents the total production figures of the additional mining units included in the Closure Plan for the period 2016 - 2018.

**Table 1: Evolution of the aggregated production under the Closure Plan (thousand tonnes)**

Mine	2016 (November– December)	2017	2018	Total
Lonea mine	[...]	[...]	[...]	[...]
Lupeni mine	[...]	[...]	[...]	[...]
<b>Total units closed</b>	[...]	[...]	[...]	[...]

Source: Romanian authorities

- (14) Table 2 below presents the evolution of headcount for the additional mining units included in the Closure Plan for the period 2016 - 2018.

**Table 2: Evolution of headcount (end of period)**

Mine	2016	2017	2018	2019	2020	2021	2022	2023	2024
Lonea	903	784	784	335	50	5	3	3	3
Lupeni	1 382	415	415	50	5	5	2	2	0
<b>TOTAL</b>	<b>2 285</b>	<b>1 199</b>	<b>1 199</b>	<b>385</b>	<b>55</b>	<b>10</b>	<b>5</b>	<b>5</b>	<b>3</b>

Source: Romanian authorities

- (15) The Romanian authorities claim that the two mines are extended over large areas and operate on several premises. Therefore, they claim that it is necessary to maintain the employment of staff carrying out the closure works in stages in order to prevent flooding and to evacuate underground water from the galleries. The

<sup>8</sup> Decision of 22.2.2012 in Case SA.33033 — Romania — National Hard Coal Company Petroșani (OJ C/23/2013, 25.01.2013, p.3).

Closure Plan includes also the safely containment of several facilities. Finally, according to the legislation in force on mine closing, it is also mandatory to bring the mining equipment up (i.e. machinery engines, rectifiers, transformer station, etc.) as they contain lubricants which can pollute underground waters.

(16) The permanent ceasing of coal production dates in the two mines are:

- Production Unit Lonea Colliery: 31 December 2018
- Production Unit Lupeni Colliery: 30 September 2017

#### **4. GRANTING AUTHORITY**

(17) The Ministry of Energy is the granting authority for the notified measure; the measure will be implemented through the National Company for Mine Closures Jiu Valley.

#### **5. BENEFICIARY AND DURATION**

(18) The beneficiary is the Hunedoara Energy Complex (see recital (4)).

(19) Subject to approval from the Commission, the closure aid as specified in the Table 3 will cover production losses until the end of 2018 and the aid specified in the Tables 7 - 12 will cover exceptional costs arising from the closure of coal mines between 2016 and 2024.

#### **6. ELIGIBLE COSTS, FORM OF THE AID AND AID AMOUNT**

(20) The notification concerns aid to cover:

- the positive difference between current production costs of Lupeni and Lonea not covered with revenues from coal sales, including costs related to the production, enrichment and sale of coal, such as labour costs, costs of materials, energy, external services, depreciation, capital costs and other costs (production losses) ("closure aid"); and
- costs arising from or having arisen from the closure of coal production units and which are not related to current production (exceptional costs).

##### **6.1. Total amount of aid**

(21) The total amount of aid under the Closure Plan is RON 447 862 000 and covers the closure aid which will be granted until 31 December 2018 and the aid to cover exceptional costs in the period 2016 – 2024.

(22) Table 3 below presents the overall amount of State aid under Articles 3 and 4 of the Council Decision, broken down by year.

**Table 3: State aid payments per year (in thousands RON)**

Type of aid	2016 (November – December)	2017	2018	2019	2020	2021	2022	2023	2024	Total
Aid under Article 3 of Council Decision	25 000	132 226	56 864							214 090
• Lonea mine	9 775	57 293	56 864							123 932
• Lupeni mine	15 225	74 933								90 158
Aid under Article 4 of Council Decision	0	66 604	69 178	69 387	26 611	591	405	479	517	233 772
• Lonea Mine										
– Point 1 (b) of the Decision		4 427	16 703	10 602	1 674	74			112	33 592
– Point 1 (d) of the Decision		2 530	1 370	0	0	0				3 900
– Point 1 (e) of the Decision		226	371	557	0	0				1 154
– Point 1 (g) of the Decision		4 438	2 800	4 055	716	0				12 009
– Point 1 (i) of the Decision		2 694	5 524	9 768	4 540	0				22 526
– Point 1(m) of the Decision		1 237	2 206	2 272	638	203	244	244	244	7 288
• Lupeni Mine										
– Point 1 (b) of the Decision		35 972	13 578	1 674	0	112		74		51 410
– Point 1 (d) of the Decision		2 925	1 525	0	0	0				4 450
– Point 1 (e) of the Decision		357	628	915	0	0				1 900
– Point 1 (g) of the Decision		2 575	2 877	4 167	1 508	0				11 127
– Point 1 (i) of the Decision		5 817	15 306	23 899	10 020	0				55 042
– Point 1(m) of the Decision		3 406	6 290	11 478	7 515	202	161	161	161	29 374
<b>Total aid (Article 3 + Article 4)</b>	<b>25 000</b>	<b>198 830</b>	<b>126 042</b>	<b>69 387</b>	<b>26 611</b>	<b>591</b>	<b>405</b>	<b>479</b>	<b>517</b>	<b>447 862</b>

Source: Romanian authorities

**6.2. Aid to cover production losses (Article 3 of the Council Decision)**

- (23) The Romanian authorities decided that, in order to safely close the mines, the production of coal in the two mines will take place until the exhaustion of the open reserves. The termination of production will be differentiated from a mine to another, depending on the complexity and difficulty of the works.
- (24) The total amount of aid for production losses to be granted under the Closure Plan is RON 214 090 000 for the period 2016 - 2018. Table 4 presents the aggregated production losses per year for all additional mining units included in the Closure Plan.

**Table 4: Evolution of production costs, revenues and net losses during the Closure Plan (in thousands RON)**

	2016 (November – December)	2017	2018	Total
Revenues	9 406	50 747	19 885	80 038
Costs	34 406	182 973	76 749	294 128
<b>Net loss</b>	<b>(25 000)</b>	<b>(132 226)</b>	<b>(56 864)</b>	<b>(214 090)</b>

Source: Romanian authorities

- (25) Since the current measure foresees to cover production losses of two uncompetitive additional mines (i.e. Lonea and Lupeni) which will close no later than 31 December 2018, the aid amount will be added to amounts initially approved by the Commission in by the decision of 22 February 2012, as following:

Specification/year	2011	2012	2013	2014	2015	2016	2017	2018	Total
Closure of Petrila, Uricani and Paroseni mines (Commission's Decision of 2012)	178 718	158 379	134 028	122 451	93 314	52 558	44 646	0	784 094
Closure of Lupeni and Lonea mines						25 000	132 226	56 864	<b>214 090</b>

- (26) The forecast of the production costs in the Closure Plan took into consideration: (1) the materials needed to reach the planned production and (2) the provision of the necessary services concerning safe operation of machinery and installations underground. Evolution of production costs and net losses during the period 2016-2018 stands as follows:

**Table 5: Details of production costs and net losses of Lonea mining unit (in thousands RON)**

<b>Lonea mine</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>
<b>Production costs, of which:</b>	<b>13,430</b>	<b>82,728</b>	<b>76,749</b>
Material expenses and services, of which:	2,518	20,440	18,906
- energy, water	952	5,351	4,745
- depreciation	682	4,860	4,860
- transportation	228	1,525	1,525
Personnel expenses, of which:	10,203	57,897	53,854
- salaries	6,779	39,621	36,851
- electrical and thermal energy	768	2,750	2,521
- other payments	2,475	13,898	12,914
Other expenditure	709	4,391	3,989
<b>Revenues</b>	<b>3,655</b>	<b>25,435</b>	<b>19,885</b>
<b>Net loss</b>	<b>(9,775)</b>	<b>(57,293)</b>	<b>(56,864)</b>

Source: Romanian authorities

**Table 6: Details of production costs and net losses of Lupeni mining unit (in thousands RON)**

<b>Lupeni mine</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>
Production costs, of which:	20,976	100,245	
Material expenses and services, of which:	5,138	31,887	
- energy, water	1,677	10,303	
- depreciation	2,239	10,656	
- transportation	141	653	
Personnel expenses, of which:	14,776	63,460	
- salaries	9,763	43,849	
- electrical and thermal energy	1,174	3,066	
- other payments	3,563	15,277	
Other expenditure	1,062	4,898	
<b>Revenues</b>	<b>5,751</b>	<b>25,312</b>	<b>0</b>
<b>Net loss</b>	<b>(15,225)</b>	<b>(74,933)</b>	<b>0</b>

Source: Romanian authorities

#### 6.2.1. *Anti-dumping*

- (27) The Romanian authorities have committed that a relevant provision will be inserted in the annual Government Decision on granting aid, stipulating that the Ministry of Energy shall monitor the level of granting subsidies, so that the price of coal delivered from the coal production units benefiting of State aid may not be lower than prices for coal of a similar quality from third countries.
- (28) Therefore, the Romanian authorities committed to ensure that supported national coal will not have any dumping effect on international coal prices.

#### 6.2.2. *Plan of measures to mitigate the environmental impact of coal production*

- (29) The Romanian authorities have put in place an extensive suite of policy measures aimed at mitigating the environmental impact of coal production in Romania. Given that all the indigenous coal receiving aid is used for electricity production, some of the measures intended to combat the environmental impact of the coal

sector are incorporated in Romania's energy and environmental policy. These include environmental improvements through:

- gradual introduction of renewable energy sources;
- promotion of energy savings and efficiency;
- promotion of biofuels.

#### 6.2.2.1. General measures mitigating the environmental impact of coal extraction during the periods of operation and closure

- (30) To mitigate environmental impacts, efforts were directed primarily in the following areas:
- (31) **Protection of water:** Sewage treatment plants were constructed for the two mines at issue. In addition, water treatment stations were constructed to service all four mines in operation. The coal preparation plants in Petrila and Lupeni were closed and this activity was moved to Coroesti, a fact which mitigated the potential pollution of the Jiu River. Finally, the upgrade of the Coroesti coal preparation plant in 2003 ensured recirculation of water process up to 98 %, thus improving the water quality of the Jiu River.
- (32) **In the area of soil protection:** The waste resulted from processing of coal is disposed of in dumps. These heaps are drawn up for stability studies and technical projects carried out by a specialised firm which set concrete measures to ensure stability and storage of waste. In line with the provisions of Government Decision 856/2008 transposing Directive 2006/21/EC<sup>9</sup> and the implementing rules, waste management plans for active dump areas from mining branches were drawn up and have received regulatory approval.
- (33) **Protection against noise and vibration:** The main sources of noise and vibrations resulting from the activities are produced by the operation of compressor stations and fans. In order to reduce noise and vibrations, old compressors and fans were replaced by new, modern stations ensuring noise reduction even below applicable limits.

#### 6.2.2.2. Specific measures mitigating the environmental impact of coal extraction during the periods of operation and closure

- a) Plan for the capture and recovery of hard coal bed methane
- (34) The National Hard Coal Company has established a plan for the 4 mining units (Lonea, Livezeni, Lupeni and Vulcan) aimed at the capture and recovery of hard coal bed methane in the Jiu Valley in order to reduce emissions of methane into the atmosphere. The Romanian authorities have explained that in the present situation, the absolute volumes of methane released into the atmosphere due to hard coal extraction amount to approximately 24 million m<sup>3</sup>/year.
- (35) There are currently three central degassing stations of underground methane capturing and using a mine gas (a mixture of air/gas with 40-70 % CH<sub>4</sub>) to

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<sup>9</sup> Directive 2006/21/EC of the European Parliament and of the Council of 15 March 2006 on the management of waste from extractive industries and amending Directive 2004/35/EC (OJ L 102, 11.4.2006, p. 15).

produce heat for own consumption at the Lupeni mine. This translates into approximately 466 tonnes of combustion of methane per year with direct effect on emissions of methane into the atmosphere, the equivalent of 9 800 tonnes of CO<sub>2</sub> per year. Surveys carried out on the basis of multi-annual estimations of gas concentration indicate the opportunity to capture for energy purposes of a volume of 6 million m<sup>3</sup>/year (40-70% concentration of CH<sub>4</sub>).

- (36) The Romanian authorities have explained that in the post-closure period, the methane accumulated in the underground voids produced as a result of the exploitation tends to migrate towards the surface through the fracture systems (cracks) generated by the exploitation of coal, and the closure of mining works connected with surface by any method whatsoever cannot solve this problem. The negative impact of coal mining on the environment cannot be reduced in the post closure period (in terms of coal bed methane) in the absence of a recovery and drainage system already in place at the moment when coal exploitation is permanently ceased.
- (37) In terms of environmental impact, the Romanian authorities have clarified that the plan for the capture and recovery of hard coal bed methane will reduce emissions of greenhouse gases from coal mining by about 90 000 tonnes of CO<sub>2</sub> equivalents per year. The project will be implemented over the period of 5-7 years and its budget totals EUR 6 million.

b) Project carried out by ELECTROCENTRALE PAROSENİ (Paroseni thermal power station)

- (38) The Romanian authorities have also explained that Paroseni thermal power station will undertake a change of collection, transportation and storage technology for ashes and sludge. The technology for the evacuation and storage of slag and ashes involves the following steps: construction of an installation for the capture, transportation, separation and storage of dry ash; the reception facilities, installations used to mix water, ashes and slag in order to produce the sludge; pumping installations, transportation and distribution of the sludge and the storage and fitting facilities for ash and slag.
- (39) In addition, the above mentioned facility currently undertakes a project in order to desulphurize the gas from group No 4 and CAF. The desulphurization installation consists of: facility to exhaust gas combustion, facility to absorb SO<sub>2</sub>, the installation of storage and preparation of absorbent and gypsum dewatering installation. The completion of this projects will lead to the following emissions values:
- SO<sub>2</sub> less than 200 mg / Nmc
  - NO<sub>x</sub> less than 200 mg / Nmc
  - Powder less than 20 mg / Nmc

### **6.3. Aid to cover exceptional costs (Article 4 of the Council Decision)**

- (40) Coal mining units included in the Closure Plan are eligible to benefit from aid to cover the costs arising or having arisen from the closure of coal production units and which are not related to current production – exceptional costs. The total amount of aid for exceptional costs to be granted in the period 2016 – 2018 is RON 233 772 000.



- (41) The Romanian authorities confirmed that costs taken into account in calculating state aid granted under Article 4 of Decision 2010/787/ EU are not resulting from non-compliance with environmental regulations.
- (42) State aid granted under Article 4 of the Decision is intended to:
- cover the costs arising from the closure of coal production units, and
  - cover the costs arising from the restructuring and conversion programmes, following the closure of the mines.

*Costs to cover compensation salaries for the laid off personnel*

- (43) This category includes compensation salaries for the laid off personnel, as follows:

**Table 7: Headcount decrease and costs to cover their compensation salaries (in thousands RON)**

	2016	2017	2018	2019	2020	2021	2022	2023	2024	Total
Personnel laid off	0	1 086	814	330	45	5	0	2	3	2 285
Amount <sup>10</sup> (RON thousand)	0	40 399	30 281	12 276	1 674	186	0	74	112	85 002

Source: Romanian authorities

- (44) The right for compensation for the laid off personnel is set by the collective labour contract and shall be granted in accordance with the legislation in force.

*Costs related to the professional conversion of employees*

- (45) This category includes the costs related to the professional conversion of a number of 1,670 employees, as shown in the following table:

**Table 8: Headcount decrease and costs to cover the related professional conversion (in thousands RON)**

	2016	2017	2018	Total
Employees	0	1 091	579	1 670
Amount <sup>11</sup> (RON thousand)	0	5 455	2 895	8 350

Source: Romanian authorities

*Cost related to the facilities provided to the laid off personnel*

- (46) This category includes the costs related to the facilities provided to the laid off personnel, set by the legislation in force in Romania, as follows:

**Table 9: Costs related to the facilities provided (in thousands RON)**

	2016	2017	2018	2019	2020	Total
Amount (RON thousand)	0	583	999	1 472		3 054

Source: Romanian authorities

<sup>10</sup> The gross amount compensation cost was set at RON 37 200 / employee

<sup>11</sup> The professional conversion cost was calculated at RON 5 000 / employee / course

*Costs of necessary underground works related to the closure*

(47) The exceptional costs covered by the above mentioned provision include the following types of works:

- *Underground mining works closure:*
  - implementation of containment isolation in the underground;
  - siltation of enclosed spaces;
  - traffic and transportations works.
- *Closure of mining works relating to the area:*
  - dismantling of transportation facilities;
  - assembly/dismantling of backfilling facilities;
  - backfilling of mines.
- *Equipment assembly/dismantling to safely close the mine:*
  - recovery of the workings of the machinery and equipment;
  - assembly/dismantling of ventilation equipment and facilities;
  - general utilities works (i.e. ventilation, water evacuation, transportation);
  - energy, maintenance and control.

(48) The amount of these costs are set out in the following table:

**Table 10: Costs of necessary underground works related to the closure (in thousands RON)**

	2016	2017	2018	2019	2020	2021	2022	2023	2024	Total
Amount (RON thousand)	0	7 013	5 677	8 222	2 224	0	0	0	0	23 136

Source: Romanian authorities

*Costs related to the rehabilitation of the mining sites*

(49) These exceptional costs cover the costs for the following types of work:

- *Building decommissioning and demolition of the premises;*
- *Railway lines and dismantling networks of premises and connections;*
- *Decommissioning of roads and platforms;*
- *Decommissioning networks (pipelines and power grids).*

(50) The amount of these costs are set out in the following table:

**Table 11: Costs related to the rehabilitation of the mining sites (in thousands RON)**

	2016	2017	2018	2019	2020	2021	2022	2023	2024	Total
Amount (RON thousand)	0	8 511	20 830	33 667	14 560	0	0	0	0	77 568

Source: Romanian authorities

*Costs of surface recultivation*

(51) These exceptional costs cover the costs for the following types of work:

- *Landscaping and surface cultivation with flora;*
- *Arrangement of the coal dumps;*
- *Fitting-out and soil cultivation of temporary storages.*

- (52) The amount of these costs are set out in the following table:

**Table 12: Costs of service recultivation (in thousands RON)**

	2016	2017	2018	2019	2020	2021	2022	2023	2024	Total
Amount (RON thousand)	0	4 643	8 496	13 750	8 153	405	405	405	405	36 662

Source: Romanian authorities

- (53) The Romanian authorities committed to deduct any increase in the value of the land stemming from the planned remediation works as set out in recitals (47) to (52).

#### **6.4. Cumulation**

- (54) The Romanian authorities confirmed that the aid to be granted under the notified measure will not be cumulated with other types of aid for the same eligible costs.

### **7. ASSESSMENT OF THE MEASURE**

#### **7.1. State aid in the sense of Article 107(1) TFEU**

- (55) State aid is defined in Article 107(1) TFEU as "*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*".

- (56) The notified aid measure favours a specific economic undertaking – Hunedoara Energy Complex. The measure covers the production losses and certain exceptional costs arising from the closure of Lonea and Lupeni mining units. The measure allows Hunedoara Energy Complex to be relieved, by means of State resources transferred directly from the State budget, of a part of the production, social and safety costs which they would normally have to bear themselves. The market for coal is fully open to competition and coal is traded across borders. Consequently, the financial aid from the State strengthens the position of the Hunedoara Energy Complex in relation to their competitors in the EU and therefore has potentially distorting effects on competition and is liable to affect intra-EU trade.

- (57) Accordingly, the Commission concludes that the notified measure in favour of Hunedoara Energy Complex constitutes State aid within the meaning of Article 107(1) TFEU.

#### **7.2. Lawfulness of the aid**

- (58) By notifying the aid measure before its implementation, the Romanian authorities fulfilled their obligation according to Article 108(3) TFEU.

#### **7.3. Compatibility of the aid**

- (59) The Commission has assessed the compatibility of the notified aid measure (closure aid and aid to cover exceptional costs), according to the Council Decision 2010/787/EU.

- (60) According to Article 2, paragraph 2 of the Council Decision, "*aid shall cover only costs in connection with coal for the production of electricity, the combined production of heat and electricity, the production of coke and the fuelling of blast*

*furnaces in the steel industry, where such use takes place in the Union". The closure aid the Romanian authorities intend to grant concerns the production of coal used for the combined generation of electricity and heat. Therefore, this criterion is complied with.*

(61) The Romanian authorities intend to grant closure aid in the context of the notified Closure Plan. As defined in Article 1(c) of the Council Decision, the closure plan drawn up by the Member State must provide for measures culminating in the definitive closure of coal production units. The Closure Plan submitted by the Romanian authorities includes the measures adopted by Romania described in sections 2 to 6 which facilitate the definitive and irrevocable closure of the units concerned, thus leading to an orderly winding down of activities of such units at the planned dates.

(62) Moreover, Article 7(2) of the Council Decision specifies the minimum elements that a closure plan must contain:

- a. *Identification of the coal production units;*
- b. *Real or estimated production costs for each coal production unit per coal year;*
- c. *Estimated coal production, per coal year, of coal production units forming the subject of a closure plan;*
- d. *The estimated amount of closure aid per coal year.*

(63) The notified Closure Plan contains all the elements required by Article 7(2) of the Council Decision (as set out in recital (62)).

#### 7.3.1. *State aid to cover the production losses*

(64) According to Article 3(1) of the Council Decision, aid to an undertaking intended specifically to cover the current production losses of coal production units may be considered compatible with the internal market only if it satisfies the following conditions:

- a) *the operation of the coal production units concerned must form part of a closure plan the deadline of which does not extend beyond 31 December 2018;*

(65) The Romanian authorities have explained that the coal production at Lonea and Lupeni forms part of the notified Closure Plan for which deadline does not go beyond 31 December 2018.

- b) *the coal production units concerned must be closed definitively in accordance with the closure plan;*

(66) The submitted Closure Plan provides for a gradual reduction of the activity (production and headcount) until the definitive closure of the coal mining units in September 2017 and December 2018. The Commission can conclude from this that the requirement provided by Article 3(1)(b) is met.

- c) *the aid notified must not exceed the difference between the foreseeable production costs and the foreseeable revenue for a coal year. The aid*

*actually paid must be subject to annual correction, based on the actual costs and revenue, at the latest by the end of the coal production year following the year for which the aid is granted;*

(67) As could be seen from Tables 4, 5 and 6, the annual amount of the closure aid notified for production losses in the production of the two mining units does not exceed the difference between the foreseeable costs and foreseeable revenues.

(68) The Romanian authorities have committed to ensure that the aid actually paid will be subject to annual correction, based on the actual costs and revenues in the year following the year for which the aid is granted. The aid amounts will be subject to an ex-post adjustment in the year following the year for which the aid is granted.

*d) the amount of aid per tonne coal equivalent must not cause prices for Union coal at utilisation point to be lower than those for coal of a similar quality from third countries;*

(69) The Ministry of Energy shall monitor the level of subsidies granted, so that the price of coal delivered from the coal production units benefiting of State aid is not lower than the prices for coal of a similar quality from third countries (recital (27)).

(70) The Commission takes note of the Romanian authorities' commitment to monitor the prices of the coal delivered by the closing mining units and considers that the system in place in Romania shall ensure that the amount of aid per tonne coal equivalent does not cause prices for Union coal at utilization point to be lower than those for coal of a similar quality from third countries.

*e) the coal production units concerned must have been in activity on 31 December 2009;*

(71) The Lupeni and Lonea mining units part of the Closure Plan were in activity in 2009.

*f) the overall amount of closing aid granted by a Member State must follow a downward trend: by the end of 2013 the reduction must not be less than 25%, by the end of 2015 not less than 40%, by the end of 2016 not less than 60% and by the end of 2017 not less than 75% of the aid granted in 2011;*

(72) The Romanian authorities have to date not granted any closure aid to the two additional mining units included in the Closure Plan.

(73) The Commission observes that the closure aid granted under Article 3 of the Council Decision to these two additional mines is degressive over time, bearing in mind that the aid amount foreseen for the year 2016 will only cover production losses over a two months period (November – December 2016). If one extrapolates the corresponding closure aid level for a full year, the percentage reductions in the years 2016 and 2017 are as follows.

	2016 (November – December)	2017	2018
Amount of State aid to be paid under Article 3 of the Council Decision in thousands of RON	25 000 (estimated hypothetical aid for the entire year: 150 000)	132 226	56 864
The effective reduction of State aid notified pursuant to Article 3 of the Council Decision	-	27 %	69 %

- (74) Without taking into account the amount of closure aid approved in 2012, the closure aid as foreseen in the notified Closure Plan for Lupeni and Lonea coal mines follows a steep downward trend<sup>12</sup>. However, the Commission notes that if the overall amount of closure aid granted by the Romanian authorities would be taken into account (including the amounts of closure aid approved under the Commission's decision of 22 February 2012) as follows from the wording of Article 3(1)(f) Council Decision, the percentage reductions for the years 2016, 2017 and 2018 are lower than those which are required by Article 3(1)(f) for these years.
- (75) However, the Commission considers that if Lupeni and Lonea coal mines became uncompetitive after the approval of the initial closure plan on 22 February 2012 and if the Romanian authorities decide to definitely and irrevocably close the coal mines by the end of 2018 the rationale of Article 3(1)(f) of the Council Decision would not prevent an approval of the closure aid for Lupeni and Lonea mines as set out in recital (73). Taking into account recital (5) of the Preamble to the Council Decision stating that Member States should be able to take measures to alleviate the social and regional consequences of the closure of those mines, the Commission considers that the closure aid aims at ensuring the orderly winding down of mining activities in the context of an irrevocable closure plan.
- (76) This objective is met in the present case as the amounts of closure aid for Lupeni and Lonea mining units will be degressive (i.e. taking into consideration the estimated hypothetical aid for the entire year 2016) and will be paid out during a limited period (for Lupeni mine until 30 September 2017 and for Lonea mine until 31 December 2018) leading up to their definitive closure by the end of 2018 at the latest.
- (77) Article 3(1)(f) of the Council Decision should be interpreted as not preventing Member States from closing additional mining units and granting closure aid to these units during a limited period of time if it can show that these additional mining units have become uncompetitive only after the drawing up of the initial closure plan.
- (78) The Commission therefore considers that Article 3(1)(f) of the Council Decision is complied with.
- g) *the overall amount of closure aid to the coal industry of a Member State must not exceed, for any year after 2010, the amount of aid granted by that Member State and authorised by the Commission in accordance with Articles 4 and 5 of Regulation (EC) No 1407/2002 for the year 2010;*

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<sup>12</sup> Since Romania did not grant any closure aid to Lonea and Lupeni mines before October 2016, the last year (2018) in which closure aid is to be granted should be subject to the first reduction of 25 % as set out in Article 3(1)(f) the Council Decision as compared to the hypothetical amount of aid to be granted in the first year (2016) - RON 150 million.

- (79) In 2010, Romania granted RON 249 784 000 of aid under Articles 4 and 5 of Regulation (EC) No 1407/2002 for the coal mining industry<sup>13</sup>.
- (80) The figures provided in Table 3 demonstrate that the overall amount of RON 249 784 000 is not exceeded, as the highest overall annual closure aid granted by Romania is RON 176 872 000. Therefore, the requirement of Article 3(1)(g) is complied with.
- h) the Member States must establish a plan to take measures aimed at mitigating the environmental impact of the production of coal by production units to which aid is granted pursuant to this Article, for example in the field of energy efficiency, renewable energy or carbon capture and storage.*
- (81) The Romanian authorities have provided a list of environmental protection measures (as described in Section 6.2.2 above) to mitigate the environmental impact of coal production in mining units Lonea and Lupeni which includes environmental measures during the period of operation and environmental measures during the period of mine closure.
- (82) In light of the above, the Commission considers that the conditions laid down in Article 3(1)(h) of the Council Decision are satisfied.
- (83) The assessment above demonstrates that all substantive criteria of Article 3 of the Council Decision regarding the closure aid to be granted for the implementation of the Closure Plan are complied with.

#### *7.3.2. State aid to cover the exceptional costs*

- (84) According to Article 4(1) of the Council Decision, State aid granted to coal mines to cover the costs arising from the closure of coal production units and which are not related to current production may be considered compatible with the internal market provided the amount paid does not exceed such costs.
- (85) The Commission takes the view that the costs set out in recitals (43) to (46) notified by the Romanian authorities cover the costs stemming from social welfare and other social compensation of employees working or having worked in the coal production units destined for closure defined in letters (b), (d) and (e) of paragraph 1 from the Annex to the Council Decision.
- (86) The Commission considers that the costs set out in recitals (47) to (53) notified by the Romanian authorities cover costs arising from the closure of mining units in accordance with the submitted Closure Plan, as defined in letters (g), (i) and (m) of paragraph 1 from the Annex to the Council Decision.
- (87) Romania has confirmed that the costs covered by the aid for exceptional costs do not result from non-compliance with environmental regulations as per Article 4(2) of the Council Decision, such as:
- Directive 2006/21/EC on the management of waste from extractive industries;

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<sup>13</sup> See Commission decision on restructuring aid to coal mining in Romania in case N239/2007 approved on 10.10.2007, JOCE C/16/2008.

- Directive 2004/35/EC on environmental liability with regard to the prevention and remedying of environmental damage;
  - The Framework Directive 2000/60/EC establishing a framework for Community action in the field of water policy;
  - Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora;
  - Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment.
- (88) Consequently, measures undertaken in order to comply with mandatory requirements from relevant environmental legislation will not be included in eligible costs.
- (89) As stated in recital (53), the Romanian authorities committed to deduct any increase in the value of the land (stemming from the planned remediation works) from the eligible costs for categories (g), (i) and (m) of the Annex to the Council Decision as provided therein.
- (90) The aid will not be combined with other State aid within the meaning of Article 107(1) TFEU or with other forms of European Union financing of the same eligible costs. Therefore, Article 5 of the Council Decision is complied with.
- (91) Moreover, the Romanian authorities committed to ensure that all aid received by Hunedoara Energy Complex shall be shown in the profit-and-loss accounts as a separate item of revenue distinct from turnover.
- (92) Likewise, the Romanian authorities committed to ensure that Hunedoara Energy Complex shall keep precise and separate accounts for the mining units receiving aid and for other economic activities which are not related to coal mining and shall take all the necessary measures to comply with the provisions of Article 6 of the Council Decision.
- (93) It follows that the aid measure in question meets the conditions laid down in the Council Decision as to cumulation and separation of accounts of Hunedoara Energy Complex.
- (94) Romania has provided detailed costs estimates for the mines, broken down by individual cost items, for each year covered by the Closure Plan in accordance with Article 7(2) of the Council Decision. The Commission takes the view that the information provided by Romania satisfies also the requirements of Article 7(4) of the Council Decision for the entire period covered by the Closure Plan.
- (95) The Commission has therefore concluded that both the Closure Plan and the aid to be granted each year on the basis of that Plan comply with the relevant conditions laid down in the Council Decision, and, therefore, are compatible with the internal market pursuant to Article 107(3)(e) TFEU.

## **8. CONCLUSION**

- (96) The Commission has decided, on the basis of the foregoing assessment, that the aid granted under the notified Closure Plan is compatible with the internal market pursuant to Council Decision 2010/787/EU of 10 December 2010 on State aid to facilitate the closure of uncompetitive coal mines, and has therefore decided not to raise objections to the notified measure.



- (97) If the mines to which aid has been granted are not closed at the date fixed in the Closure Plan, i.e. by 31 December 2018, as authorised by the Commission, the Romanian authorities shall recover all aid granted plus interest under the Council Decision in respect of the whole period covered by the Closure Plan.
- (98) The Commission also reminds the Romanian authorities that, in accordance with Article 7(3) and 7(5) – 7(6) of the Council Decision, they shall notify any amendments to the Closure Plan to the Commission and they shall inform the Commission of the amount and of the calculation of the aid actually paid during a coal year no later than six months after the end of that year. Where any corrections are made to the amounts originally paid during a given coal year, the Romanian authorities shall inform the Commission before the end of the following coal year.

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 English on the Internet site:

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Yours faithfully  
For the Commission

Margrethe VESTAGER  
Member of the Commission

