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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 […].		PUBLIC VERSION This document is made available for information purposes only.

Subject: State Aid SA.37169 (2016/NN) – Romania
Fantanele Vest Wind Power Plant

Sir, /Madam,

The Commission wishes to inform Romania that, having examined the information supplied by your authorities on the matter referred to above, it has decided not to raise objections to the proposed aid measure.

1. PROCEDURE

(1) Following pre-notification contacts, Romania notified the above mentioned measure on 31 July 2013. The project concerns granting of green certificates to a wind project that exceeds the threshold for individual notification, namely Fantanele Vest Wind Power Plant (FVWPP).

(2) On 11 October and 20 December 2013 Romania provided additional information. Since Romania introduced several amendments to its green certificates scheme, and the respective amendments were under assessment and had an impact on the notified project, the Commission suspended the assessment of the notified project and informed Romania about this by letter of 29 October 2013.

Lazar COMANESCU
Ministrul Afacerilor Externe
Aleea Alexandru 31, Sector 1
RO-011822-BUCUREŞTI

(3) On 4 May 2015 the Commission adopted a decision (C(2015) 2886 cor) on the amended Romanian green certificates support scheme for renewable energy installations in the case SA.37177 (2015/NN) Amendments to the green certificates support system for promoting electricity from renewable sources[1]. By letter of 15 June 2015 the Commission requested the Romanian authorities to provide updated information about FVWPP. A reminder was sent on 18 January 2016. Romania provided additional information on 2 February 2016. A videoconference took place on 25 February 2016. Romania provided additional information on 1 April 2016 and on 27 April 2016.

(4) On 11 December 2015 also the beneficiary of the measure, the CEZ Group (CEZ)[2], submitted information to the Commission concerning FVWPP. A meeting was organised on 16 February with representatives of CEZ. Additional information was provided by CEZ on 3 April 2016.

2. DESCRIPTION

2.1. Objective

(5) The primary objective of the Romanian green certificates support scheme is to ensure compliance with the mandatory renewable energy target of Directive 2009/28/EC on the promotion of the use of energy from renewable sources (the Renewables directive)[3] by 2020. In the case of Romania this target was set at the level of 24% of the final energy consumption. At national level the Romanian energy strategy for the period of 2007-2020, as approved by the Government Decision No 1069/2007, establishes the level of national targets concerning the shares of electricity generated from renewable energy sources in the final consumption of electricity at 35% (2015) and 38% (2020).

(6) The granting of green certificates to FVWPP is expected to contribute to the fulfilment of the general targets sought by the Romanian green certificates support scheme,[4] i.e. environmental protection by reducing greenhouse gas emissions through the promotion of electricity generation from renewable energy sources. According to data provided by the Romanian authorities, the operation of FVWPP would result in a significant decrease in CO_2 emissions compared to conventional power plants based on fossil fuels. The aid to FVWPP is granted as part of this green certificates support scheme and is subject to all the conditions set by that scheme.

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1 The original scheme was approved by the Commission by its decision C (2011) 4938 of 13 July 2011 (case SA. 33134 (2011/N) - Green certificates for promoting electricity from renewable sources.

2 CWPP was developed, and is operated by Tomis Team, which is a company belonging to CEZ Group.

3 Directive 2009/28/EC on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC, OJ L 140, 5.6.2009, p. 16.

4 Approved by the Commission under cases SA.33134 (2011/N) and SA.37177 (2015/NN) – decisions C (2011) 4938 of 13 July 2011 and (C(2015) 2886 cor) of 4 May 2015.

2.2. National legal basis

(7) The national legal basis is the Law 220/2008. Romania modified the legal basis for the scheme repeatedly, through the Ordinance OUG 88/2011, the Law 134/2012, the Ordinance OUG 57/2013, the Ordinance OUG 79/2013, the Law 23/2014, the Order no. 49/2014 of the National Regulatory Authority in the Field of Energy (ANRE) President and the Order no.144/2014 of the ANRE.

(8) Pursuant to this national legislation, green certificates have been granted in the past to FVWPP based on the decision no. 469/2012 of the ANRE (issued on 24 February 2012) and the decision no. 1871/2015 of the ANRE (issued on 2 September 2015).

2.3. Functioning of the green certificate system, granting mechanism

(9) Electricity suppliers have the obligation to acquire annually a certain number of green certificates determined for each year by ANRE. The level of the obligation corresponds to the value of the mandatory renewable quota established for the respective year multiplied by the quantity of electricity (expressed in MWh) supplied to the final consumers during the respective year.

(10) The green certificates are granted to producers of electricity from renewable sources of energy as established by the national legislation, according to objective criteria, in particular based on the technology used and the volume of electricity generated and delivered to the national electricity system (i.e. a certain number of green certificates per MWh). The green certificates, granted to producers on a monthly basis by the transport and system operator (TSO), can be sold to the electricity suppliers on the centralised green certificate market, and/or on the bilateral contract market. The producers sell their electricity on the electricity market at the price established on this market. The sale of green certificates to suppliers brings additional income to the producers, allowing them to cover the additional costs linked to the use of renewable energy sources. The electricity market and the green certificates market are separate and operate independently.

(11) The green certificates trading value on the centralized green certificate market is established based on demand and supply, and can vary between a minimum trading value of EUR 27 per certificate and a maximum trading value of EUR 55 per certificate. The same price limits are imposed on the bilateral trading. The green certificate price limits are indexed on an annual basis by ANRE, according to the average inflation parameter in the previous year.

(12) The suppliers shall demonstrate to ANRE on an annual basis that they acquired the required number of certificates. In case the suppliers do not comply fully with their obligation, ANRE imposes a penalty, which is established at the level of EUR 110 for each certificate that has not been acquired. The penalties are collected by the TSO and subsequently transferred to the Environmental Fund , to be used for granting support to the production of electricity from renewable energy sources by individuals who invest in energy facilities with installed power of up to 100 kW. This support, for production of electricity from renewable energy sources by individuals who invest in energy facilities with installed power of up to 100 kW, is granted by the Romanian authorities under *de minimis* rules.

2.4. Beneficiary

(13) By means of the measure under assessment, aid will be granted to FVWPP, a wind power plant with a total electricity generating capacity of 262.5 MW consisting of 105 new wind turbines, each with a capacity of 2.5 MW. The power plant has been operational since June 2010, when the first 14 turbines, representing an installed capacity of 35 MW, were commissioned. The capacity was then gradually increased, until reaching full capacity in February 2012.

(14) FVWPP was developed, and is operated by Tomis Team, which is a company belonging to CEZ Group. CEZ a.s. holds 95% of the share capital of Tomis Team, while the remaining 5% is held by CEZ Poland BV. CEZ Group has several other investments in Romania, in the renewable energy generation sector, notably:

- Fantanele Est Power Plant - held by MW Team Invest SRL (wind power plant with an installed capacity of 85 MW)
- 4 micro-hydro power plants (total capacity of approximately 18 MW)
- Cogealac Power Plant[5] (wind power plant with a total capacity of 252.5 MW).

(15) FVWPP has a very small market share in the Romanian electricity market. During its first year of operation, 2010, the electricity generated by FVWPP and delivered into the national electricity system was [150.000 – 200.000][*] MWh, representing approximately [0.1 – 0.5] % of the aggregate electricity output of 2010 in Romania. In 2011, the electricity produced and delivered into the national electricity system by FVWPP amounted to [400.000 – 500.000] MWh, representing a market share of approximately [0.5 – 1] % from the aggregate electricity output of 55.64 TWh. According to the Romanian authorities´ calculations, the market share of FVWPP is not expected to exceed [1 – 1.5] % during the period in which the power plant will benefit from green certificates.

(16) As regards CEZ Group, the calculations provided by the Romanian authorities show that the company´s market share of the Romanian electricity market is not expected to exceed [2 – 5] % within the duration of the aid measure.

(17) As regards the impact of the notified measure on the market for green certificates, the calculations provided by the Romanian authorities show a gradually decreasing market share on the green certificates market for FVWPP, [25 – 35] % being the maximum market share obtained in 2011, dropping to [5 – 15] % in 2012 already. CEZ Group held a [35 – 45] % market share of the green certificates market in 2011, but based on the information provided the company´s market share has dropped to [5 – 15] % in 2013, and is not expected to exceed 15% at any point in the future[6].

[5] Assessed by the Commission in the case SA.36728 (2016/NN).

[*] Business secrets

[6] This evolution is explained by the rapid development producers of electricity from renewable energy sources (in particular wind power plants) in the recent years in Romania, which exceeded the initial expectations of the Romanian authorities.

2.5. Duration, budget

(18) According to information provided by the Romanian authorities, the duration of the period in which FVWPP will be benefitting from green certificates is set in a differentiated manner due to the fact that the installation was commissioned in four separate stages. In August 2010, FVWPP received accreditation for […] MW. Then, at each stage, FVWPP's generating capacity was increased until reaching a full capacity of 262.5 MW in February 2012. In accordance with Law 220/2008, the capacity achieved under each stage will be eligible for green certificates for a total period of 15 years, as of the date of commissioning of the respective stage. As regards FVWPP, the beneficiary would have been entitled to green certificates for its total production capacity until August 2025, after which the capacity eligible for green certificates would have been gradually reduced until February 2027. However, the Romanian authorities explained that the period during which FVWPP did not receive green certificates (between October 2013 and September 2015) could have an impact on how the certificates are allocated over time, and they were considering several possible scenarios, detailed below.

(19) As regards the budget (estimate of revenues from the green certificates) of the notified measure, the Romanian authorities have estimated that FVWPP will receive green certificates of a total value of maximum EUR 640.5 million. The initial estimation of the budget was higher, but the changes introduced by Romania to the green certificates support scheme and the evolution of prices on the electricity and green certificates market reduced the estimation.

2.6. Form and levels of support

(20) FVWPP receives support in the form of green certificates, from which the company can subsequently generate income by selling them on the green certificates market.

(21) From the moment of the first accreditation by ANRE, FVWPP was supposed to receive 2 green certificates per each MWh produced and delivered into the national electricity system until 2017. As of 2018, the amount of green certificates allotted to FVWPP would have been reduced to 1 per MWh. However, the changes introduced by the Government Ordinance 57/2013 apply to FVWPP as well, therefore from the 2 green certificates per each MWh received until the 2017 one was "suspended", and will be recovered in the period 1 January 2018 – 31 December 2020.

(22) The following green certificates were already granted to FVWPP: from 26 August 2010 until 31 October 2011 FVWPP received 1 green certificate per MWh, based on a previous support scheme[7] (preceding the scheme approved by the Commission in the case SA.33134). Under the current green certificates support scheme, FVWPP received green certificates based on 2 temporary accreditations.

(a) First, FVWPP benefitted of a temporary accreditation from November 2011 until October 2013. During this period, the beneficiary received 2 green certificates per MWh produced, between 1 November 2011 and 30

[7] The respective scheme was put in place before Romania joined the EU and is outside the scope of this decision.

June 2013. From 1 July 2013 until 30 October 2013 the beneficiary received one green certificate, while the second one was "suspended" until 2018 (meaning the beneficiary receives the respective certificate for the electricity produced, but cannot trade this certificate on the market before 2018, and therefore can only receive the revenues associated with this second certificate at a later date).

(b) When this temporary accreditation expired, FVWPP no longer received green certificates, until a new temporary accreditation was given to it in 2015.

(c) Based on the second temporary accreditation, the beneficiary received green certificates from 2 September 2015. This temporary accreditation will expire on 2 September 2016 or when a decision of the Commission concerning the project will be adopted. During this period, FVWPP receives 1 green certificate per MWh, as a second one is "suspended" until 2018.

(23) If the State aid to the FVWPP project is authorised by the Commission, FVWPP will continue to receive 1 green certificate per MWh, plus a second "suspended" one, until 31 March 2017. It will then receive 2 green certificates per MWh between 1 April 2017 and 31 December 2017. From 1 January 2018 until the end of the support period, it will receive one certificate per MWh. Finally, between 2018 and 2020 the beneficiary will be able to sell the "suspended" certificates.

(24) A final issue would be the settlement for the period during which FVWPP has not received any certificates for the electricity it produced, namely from 31 October 2013 until 1 September 2015.

(25) Romania considered four possible scenarios for the settlement, and provided simulations for all of them. The scenarios are the following:

1) The first scenario (scenario 1) would be to grant the certificates corresponding to the period 31 October 2013 – 1 September 2015 in a period following the initial duration of 15 years (i.e. starting with 2027); however, only 1 certificate would be granted per MWh, because the scheme foresees that as of 1 January 2018 only one certificate is granted per MWh (while during 2013-2015, there were 2 certificates per MWh). Under this scenario, while the total period from the first accreditation until the moment when the last certificate is granted would exceed 15 years, when considering only the periods during which the beneficiary actually received certificates (i.e. excluding the period 31 October 2013 – 1 September 2015) the duration would be 15 years.

2) The second scenario (scenario 2) would be very similar, but would allow the beneficiary to receive 2 certificates per MWh during the period that is added at the end of the initial 15 year duration, to compensate for the certificates that were not granted during the period 31 October 2013 – 1 September 2015: one certificate would be granted in the period immediately following the Commission's decision, while the second one (the "suspended" one) will be recovered at the end, by prolonging the

duration of support with a period of the same duration as the one during which no certificates were granted.

3) The third scenario (scenario 3) would consist in prolonging the period during which the beneficiary receives 2 certificates per MWh beyond 1 January 2018 (with a period of the same duration as the one during which no certificates were granted). Then the period during which "suspended" certificates are recovered would be postponed: it would start once the new period during which FVWPP receives 2 certificates ends, and would continue until all the "suspended" certificates can be recovered.

4) Finally, the fourth scenario (scenario 4) would be to grant the green certificates that FVWPP would have been entitled to during the period 31 October 2013 – 1 September 2015 immediately after the decision of the Commission. During a 24 months period following the adoption of the Commission decision, FVWPP would receive one of the certificates corresponding to the period 31 October 2013 – 1 September 2015 per MWh, while the second one will be "suspended" and recovered from 2018 until 2020, like all the other "suspended" certificates. Under this scenario the certificates would be granted during the normal 15 years period, until 2027, without any further prolongations.

(26) In line with Article 1(2) of Law 122/2015, in the case of producers of electricity from renewable energy sources that received a temporary accreditation, any negative differences between the number of green certificates received and the number of green certificates due in accordance with the decision of the Commission, will be settled by way of a decision of ANRE by the issuance of additional certificates for trading within a maximum period of 24 months from the decision of the Commission.

(27) The Romanian authorities have not decided on the scenario to be used for the settlement. They explained that legislative changes would be required for any of the four scenarios.

(28) At the same time, the beneficiary informed the Commission that scenario 4 is the only scenario they consider appropriate as it results from the application of Law 220/2008 and of Article 1(2) of Law 122/2015.

(29) Romania submitted a mathematic model illustrating the Internal Rate of Return (IRR) of the project, for the 4 scenarios considered. As described in Table 1 below, Romania provided data showing that the expected IRR for the project is much lower than the average IRR considered for the green certificates support scheme approved by the Commission. The Romanian authorities have initially provided the financial data based on the International Financial Reporting Standards (IFRS) that were applicable inside the CEZ group. On 27 April the Romanian authorities provided the financial calculations based on the national financial and accounting rules. Furthermore, Romania also submitted the financial data taking into account the total electricity produced by the 2 power plants owned by Tomis Team (FVWPP and Fantanele East Wind Power Plant). For all these different scenarios submitted the IRR for the project is positive and does not exceed [5 – 7] % in any scenario.

(30) The mathematical model provided by the Romanian authorities is based on the assumption that the project will be operational and will generate revenues from the sale of electricity until 2035. However, revenues from the sale of green certificates will be obtained only until 2029 maximum.

(31) While the certificates corresponding to the period 31 October 2013 – 1 September 2015 would be recovered quicker under scenario 4, the Romanian authorities consider this would not be the most advantageous scenario for the beneficiary. In the mathematical model the IRR is lower in scenario 4 as compared with scenarios 2 and 3. For scenario 1, the IRR is even lower than for scenario 4. This is mainly explained by the fact that currently the green certificates are traded at their minimum legal value, and the Romanian authorities expect this situation to persist until 2020. As of 2021 the Romanian authorities expect the green certificates to be traded at their maximum legal value (therefore scenarios 2 and 3 would lead to a higher IRR).

Table 1 – Expected rate of return for FVWPP

		Data from the green certificates support scheme		FVWPP
	MU	2011	2015	Min – Max, based on the four scenarios
IRR	%	10.9	8.6	≤ [5- 7]
Levelised costs	Euro/MWh	93.5	104	[125 – 135]
Revenues, from which:	Euro/MWh	100.2	98	[85 – 95]
From the sale of electricity (price of electricity)	Euro/MWh	39.7	37	[40 – 50]
From the sale of green certificates	Euro/MWh	60.5	61	[35 – 45]

(32) According to the Romanian authorities, the support is essential and indispensable for allowing FVWPP to operate. The support does not dissuade the beneficiary from becoming more competitive as FVWPP has to sell its electricity in the electricity market and its green certificates in the green certificates market. The beneficiary thus needs to establish its bidding strategies in the two separate markets in order to generate revenues.

(33) Pursuant to Law 220/2008, the support in the form of green certificates can be cumulated with investment aid. FVWPP has not received other forms of State aid and does not seek to obtain the benefit of State aid (including *de minimis)* or financing from European investment funds to expand its activities or cover additional costs. The Romanian authorities confirmed that they will notify the Commission of any changes in this respect.

3. ASSESSMENT

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

(34) 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.

(35) In its 2015 decision on the Romanian green certificates scheme (SA.37177), the Commission concluded that the support in the form of green certificates granted to the Romanian producers of electricity from renewable sources of energy constitutes State aid. Since the assessed measure concerns granting of green certificates under the respective scheme, to a large wind project, the conclusion reached by the Commission on the existence of aid in the case SA.37177 does not change and is applicable also to the individual measure at hand. The support granted to FVWPP in the form of green certificates constitutes State aid.

3.2. Legality of the aid

(36) Romania granted green certificates already to FVWPP. The Commission regrets that Romania put the aid measure into effect, in breach of Article 108(3) TFEU.

3.3. Compatibility of the aid

(37) The Commission notes that FVWPP received green certificates since 2010, and it started to receive green certificates for its full capacity already in 2012. FVWPP benefitted of two temporary accreditations, from November 2011 until October 2013, and from 2 September 2015 onwards. Once the Commission decision is adopted, this second temporary accreditation will be replaced by a final one, covering the whole the duration of the project. The Commission further notes that according to the Law 220/2008 (as amended) and to the Law 122/2015, the Romanian authorities are obliged to modify and adjust, if necessary, the support granted in the past. This adjustment will be made through a decision of ANRE, within 24 months after the adoption of the Commission decision.

(38) While there are several documents granting aid to the FVWPP (the two temporary accreditations issued in 2012, 2015, and other to be issued in 2016), the Commission notes that the FVWPP project will receive a number of green certificates corresponding to the level of support given to beneficiaries who entered the support scheme in 2011-2012. Romania modified (reduced) the number of certificates for beneficiaries who entered the support scheme as of 1 January 2014, but has at no point indicated that such levels could be applied to FVWPP. While the project has not received yet a permanent accreditation, the national law is clear that projects exceeding the threshold for individual notification are entitled to receive support from the moment they start to operate for a period of 15 years. This is confirmed by the temporary accreditations given to such projects[8], and by the fact that in all scenarios analysed, the certificates corresponding to the period 31 October 2013 – 1 September 2015 are supposed to be recovered.

[8] Besides the FVWPP project, there was another project that received temporary accreditations – the Cogealac Wind Power Plant (see case SA.36728).

(39) The Law 220/2008 ensures a certain level of support to wind plants to be granted for 15 years since their accreditation. Although the Romanian authorities amended the provisions regarding the green certificates support scheme, they never amended the level of support (i.e. the number of green certificates), for installations that already entered the support scheme, including for FVWPP.

(40) Therefore, the Commission considers that aid has been granted to the beneficiary from the moment of the first temporary accreditation. While this accreditation was limited in time, the beneficiary is entitled, on its basis, to receive aid for the whole duration of 15 years in line with the provisions of Law 220/2008. The adjustments foreseen by the national law to be implemented within 24 months from the Commission's decision ensure that the overall level of support to the project is in line with national legislation and the Commission's decision.

(41) The Commission has therefore assessed the compatibility of the notified measure according to Article 107(3)(c) TFEU and in the light of the 2008 Community Guidelines on State Aid for Environmental Protection[9] (EAG).

(42) The Romanian authorities confirmed that they will comply with the annual reporting and monitoring obligations as laid down in sections 7.1 and 7.3 of the EAG.

(43) The measure concerns the granting of operating aid, in the form of green certificates to a renewable electricity installation with a generating capacity exceeding the 125 MW threshold established by the EAG for individual notification. The green certificates are granted under an existing aid scheme, which was already assessed by the Commission and found to be compatible with the Treaty. However, due to the fact that the capacity of the installation exceeds the threshold for individual notification, the measure is subject to a detailed assessment.

(44) In accordance with point 165 of the EAG, the assessment the Commission must perform entails an assessment of the compatibility with the criteria set out in Chapter 3 of the EAG, and an assessment of the positive and negative elements specified the sections 5.2.1 and 5.2.2.

3.3.1. Assessment under Chapter 3 of the EAG

(45) The aid to the FVWPP project is part of a general green certificates' scheme approved by the Commission in 2011 and 2015[10] under the criteria of Chapter 3 of the EAG. The scheme was assessed under the compatibility conditions laid down in point 110 (Option 2 for operating aid to renewable energy sources) of the EAG since the scheme concerned operating aid for electricity produced from wind, which is a renewable energy source, namely:

a) Support is essential to ensure the viability of the renewable energy sources concerned;

b) Support does not in the aggregate result in overcompensation;

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9 OJ C 82, 1.4.2008, p. 1.

10 Cases SA.33134 (2011/N) and SA.37177 (2015/NN) – decisions C (2011) 4938 of 13 July 2011 and (C(2015) 2886 cor) of 4 May 2015.

c) Support does not dissuade renewable energy producers from becoming more competitive; and

d) The aid system has a duration which does not exceed 10 years.

(46) The Commission therefore verified whether the support granted to the FVWPP project falls within the parameters of the approved scheme as assessed under Chapter 3 of the EAG.

(47) As regards the first condition concerning the necessity of support for the viability of renewable energy sources concerned, the Commission notes that, according to calculations provided by the Romanian authorities, the estimated levelised unit production costs for FVWPP exceed the market price of electricity. The Commission thus concludes that the support to be granted in the form of green certificates complies with the above mentioned condition of necessity for its viability.

(48) In order to assess whether there is no overcompensation in the aggregate, the Commission needs to verify that the revenues of the generators do not exceed the costs of production and a reasonable benefit in the aggregate of the measure.

(49) The Romanian authorities have submitted calculations comparing the levelised production costs of FVWPP (over the period of 25 years, which represents approximately the lifetime of the installation concerned) with the revenues stemming from FVWPP´s sale of green certificates and the market price of electricity. The calculations are based on a mathematical model and the data presented relates to the four different possible scenarios the Romanian authorities are considering. The figures show that the total revenues generated by the operation of FVWPP do not exceed in the aggregate the levelised production costs in any of the four scenarios and the expected IRR is very low (in all scenarios below [5 – 7] %, which is significantly lower than the average IRR estimated for the green certificates support scheme, as illustrated in Table 1 above).

(50) According to the conditions of the green certificate support scheme, the support in the form of green certificates can be cumulated with other forms of aid. In case of cumulation with other aid, the number of green certificates allotted will be reduced accordingly to exclude overcompensation. The Romanian authorities have, however, informed the Commission that FVWPP has not received and will not seek to obtain any additional state aid (*de minimis* included) or financing from European investment funds. In case of any change in this respect, the Romanian authorities have undertaken to notify the Commission in order to evaluate the presence of overcompensation.

(51) In the light of the above mentioned considerations, the Commission finds that the notified measure is in line with the condition of absence of overcompensation in the aggregate.

(52) As for the compliance with the third compatibility condition requiring that the measure does not dissuade the beneficiaries from becoming more competitive, the Commission has considered the arguments of the Romanian authorities concerning the fact that the measure is a market based mechanism in which the

revenue is not fixed but in which the beneficiary has to sell its electricity and green certificates in two separate markets in order to generate actual income.

(53) In addition, the Commission recalls that the green certificates support scheme rewards the output and therefore provides an incentive for generators to increase efficiency of their production. The Commission thus considers the third compatibility condition as complied with.

(54) Finally, the Commission recalls that the aid scheme was authorised for not more than 10 years, i.e. until 31 December 2016. The projects entering the scheme before 31 December 2016 are allowed to receive support for 15 years. In the case of FVWPP the final act authorising the granting of green certificates for the whole 15 years duration of the support will be issued in 2016, which is 4 years after the first temporary accreditation received by FVWPP under the green certificates support scheme. Even when the support granted under the previous support scheme for part of the plant (that became operational before 2012) is considered, the final granting act should come 6 years later. The Commission considers therefore that the fourth compatibility condition is complied with.

3.3.2. Assessment under Chapter 5 of the EAG

(55) Section 5.2 of the EAG sets out the criteria for the detailed assessment. The assessment is conducted on the basis of the positive and negative elements specified in Chapter 5 of the EAG, in order to balance the effects of the measure and determine whether the resulting distortions adversely affect trading conditions to an extent contrary to the common interest.

Existence of a market failure and pursuit of a common objective

(56) The Commission considers that the notified measure addresses a market failure, in line with point 167 of the EAG. Production of energy from wind has been shown to involve higher production costs than the conventional methods of producing electricity, based on the cost calculations provided by the Romanian authorities for the assessed project, as well as previously for the green certificates support scheme, as illustrated in Table 1 above. It would not come on the market, and bring the environmental benefits associated to it, without support.

(57) The support measure benefiting FVWPP will contribute to achieving the mandatory renewable energy targets for 2020. Furthermore, according to estimates submitted by the Romanian authorities, the operation of FVWPP is expected to lead to a reduction of CO_2 emissions of 330,000 tonnes per year at an annual output of 0.66 TWh. Moreover, the figures show an expected annual reduction of SO_2 emissions of 15,480 tonnes, and an annual reduction of NOx emissions of 132,000 tonnes.

Appropriate instrument

(58) The measure at hand is granted on the basis of a green certificates support scheme which has been approved by the Commission, as being compatible with the internal market. Support schemes based on certificates, such as green certificates, are acknowledged in the EAG as appropriate instruments to provide support for the production of electricity from renewable energy sources.

(59) In light of these considerations, and in line with points 169 and 170 of the EAG, the Commission considers the measure at hand to be an appropriate instrument to address the market failure related to the production of electricity from renewable energy sources.

Incentive effect and necessity of the aid

(60) According to point 171 of the EAG, State aid *'must result in the recipient changing its behaviour to increase the level of environmental protection'*. As set out in point 172 of the EAG several elements will be taken into account in addition to the calculation of the extra costs outlined in Chapter 3 of these Guidelines.

(61) First, the Commission notes that green certificates are granted to FVWPP according to objective criteria, in particular based on the volume of electricity generated and delivered to the national electricity system (as indicated in recital 10). This means that the beneficiary will have an incentive not only to produce but also to deliver electricity, making the aid efficient in incentivising the behaviour sought.

(62) The Romanian authorities provided the business model for the operation of FVWPP, which includes its capital expenditure, operating costs and revenues stemming from the sale of electricity and green certificates. The model is based on four different scenarios differentiated based on how the certificates corresponding to the period 31 October 2013 – 1 September 2015 (when the beneficiary has not received any certificates for the electricity produced) will be recovered. For the four scenarios the IRR is situated below [5 – 7] %.

(63) The Commission notes that the expected IRR is significantly reduced as compared to the initial estimations provided by Romania in the notification documents (where the IRR was estimated between [6 – 8] % and [8 – 12] %). To a large extent the change is determined by the amendments introduced by the Romanian authorities in the green certificates scheme, and by the evolution on the green certificates market, where the price of green certificates has reached its lowest level allowed by the national legislation, and a number of certificates remain unsold, due to insufficient demand.

(64) The model provided by the Romanian authorities uses the same assumptions made under the green certificates support scheme and the same methodology. Some estimates have however been updated, to take into account the real values of certain variables in the recent years, and the most updated estimations available.

(65) The model makes the following assumptions:

(a) Installed capacity of FVWPP 262.5 MW, or 105 turbines of 2.5 MW, commissioned in various stages starting in July 2010;

(b) Inflation of 2% per year (only to update the green certificates price, as per Law 220/2008);

(c) Price of green certificates estimated to remain at the minimum legal value until 2020, and reach the maxim legal value from 2021 onwards[11];

(d) Electricity price estimated to increase by 2.5% per year, starting from the 2015 electricity price of 37.1 EUR/MWh[12];

(e) Uniform variable operating cost per MWh during the estimated life-time of the power plant[13];

(f) A discount rate of 10%.[14]

(66) Based on the model results (as submitted by Romania on 27 April 2016), the FVWPP project would have a negative IRR ([-5 – -1] %) in the absence of revenues related to the sale of green certificates (i.e. in the absence of aid).

(67) The Commission considers that, based on these data, there would be an insufficient incentive for FVWPP to undertake the generation of electricity from renewable energy sources in the absence of aid, as such activity would not be economically viable.

(68) The Romanian authorities have explained that the decision of the beneficiary to build and operate FVWPP in Romania relied on the projections concerning the granting of 2 green certificates per MWh electricity generated.

(69) The Commission also considers that the IRR of the FVWPP project is very low, much lower than the expected IRR for similar projects (as illustrated in Table 1 above).

(70) The discount rate used is 10%, in line with the one used in the model underpinning the assessment of the green certificates support scheme.

(71) The lifetime of the project is 25 years. However green certificates will be granted for 15 years, in line with the maximum duration of support to individual projects under the green certificates support scheme. The Commission notes that the lifetime of FVWPP appears to be longer than the average lifetime of the installations considered under the green certificates support scheme.

(72) The Commission notes that the settlement of the certificates afferent to the period 31 October 2013 – 1 September 2015 will need to ensure that the period during which the project receives support does not exceed 15 years since support was first granted, as provided by Law 220/2008, so that the support for the project is in line with the green certificates scheme as authorised by the Commission.

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11 Initial estimations were based on several scenarios for the green certificates, ranging from considering the maximum price for the whole period to considering the minimum price for 2015 onwards. The Romanian authorities indicated (like for the green certificates scheme) that they expect the price of the green certificates to reach its minimum legal value in 2025 and 2016, and staying at the maximum level allowed by the law for the rest of the years.

12 Initially the electricity price was expected to reach a level of 44.7 EUR/MWh in 2015.

13 [5 – 15] EUR/MWh, unchanged as compared to initial estimations.

14 Unchanged as compared to initial estimations.

(73) The Commission considers that the estimates used by the Romanian authorities are reasonable and concludes that the unit cost of producing electricity through the operation of FVWPP would make the business unviable in the absence of aid.

(74) In line with points 172 and 173 of the EAG, the Commission has assessed the information provided by the Romanian authorities and considers that:

(a) Romania demonstrated that in the absence of the aid the project would not have been implemented, as there would have been no economic incentives for that;

(b) The expected environmental benefits were estimated and quantified, and show that the FVWPP project contributes to reducing CO_2, SO_2 and NOx emissions;

(c) There don't appear to be any production advantages and Romania has taken into account in its analysis and modelling not only the support period of 15 years, but the whole lifetime of the project (25 years) and the associated revenues;

(d) Electricity is sold on the electricity market the same way regardless of the sources of energy used for its production;

(e) There are no future mandatory standards foreseen in this field;

(f) The level of risk is the normal level of risk for this type of projects;

(g) The estimated profitability level is positive, but very low.

(75) Taking account of the above mentioned considerations, the Commission finds that the measure at hand has an incentive effect and is necessary to achieve the common environmental objective sought.

Proportionality

(76) With reference to point 174 of the EAG, a State aid measure is proportional if the Member State can demonstrate that the aid amount is kept to the minimum and the selection process is proportional. In its analysis, the Commission will consider the following elements: (i) the eligible costs must be limited to the extra costs necessary to achieve the level of environmental protection, (ii) the selection process should be conducted in a non-discriminatory, transparent and open manner, and (iii) the aid should be limited to the minimum, i.e. the aid amount does not exceed the expected lack of profitability including a normal rate of return over the time horizon for which the investment is fully depreciated.

(77) The calculations demonstrate that the aid does not exceed the difference between FVWPP's production costs and the market price of electricity, as estimated by the model submitted by the Romanian authorities.

(78) The FVWPP project qualified for aid based on the technology used for producing electricity (wind), in line with the national legal provisions. Therefore it was selected in a non-discriminatory, transparent and open manner.

(79) The aid results in an IRR which is significantly below the one allowed under the green certificates support scheme (which was considered by the Commission a reasonable IRR requested by investors for wind energy projects), and this is the case under all plausible assumptions.

(80) Also, the FVWPP model uses an increase in electricity prices of 2.5%, which is higher than the one used in the green certificates support scheme. Hence the resulting overall amount of the aid to FVWPP is lower in the project under consideration than in the generic wind project considered under the green certificates support scheme.

(81) On the basis of the above, the Commission finds that the eligible costs are limited to the extra costs, necessary to achieve the level of environmental protection, calculated under various plausible and reasonable assumptions. Thus, the Commission concludes that the aid measure at hand, under any of the proposed scenarios, is proportional.

Distortion of competition and trade

(82) The aid measure is unlikely to introduce a serious distortion of competition or affect the trade between Member States to an extent contrary to the common interest, given in particular the beneficiary´s relatively modest share of the relevant market.

(83) According to the Romanian authorities, Tomis Team (FVWPP) only operates on two markets: the electricity generation market and the green certificates market. Any possible impact of the aid would therefore be limited to these markets, in line with point 175 of the EAG.

(84) As explained above, in recitals 76 – 81, the Commission considers the aid to be proportional, and therefore, in line with point 176 of the EAG, the negative impact of the aid is presumed to be limited.

(85) In line with point 177, the Commission has assessed the likelihood that the beneficiary will be able to maintain or increase sales as a result of the aid. The aid is granted to a new wind power plant, FVWPP. In the absence of aid, the project was not economically viable and would not have been built. The aid will therefore enable the beneficiary to increase its sales (namely with the quantity of electricity produced by FVWPP). However, the aid is unlikely to have any further impact on the beneficiary, in particular it is unlikely to have a positive impact on other activities of the CEZ group, i.e. the aid does not affect the production costs of other power plants owned by the CEZ group, it does not improve the production process (from an environmental point of view) for other power plants owned by the CEZ group, and since onshore wind is an established technology for producing electricity from renewable energy sources, there is no new product that could provide an advantage such as a "first mover" advantage.

(86) Since onshore wind is an established technology for producing electricity from renewable energy sources, the Commission considers that the aid is unlikely to distort dynamic incentives or crowd out investments in the respective technology in other Member States. In particular, with reference to points 178 and 179 of the EAG, the aid is limited to the amount necessary to make the project viable, is granted as operating aid over 15 years, it is decreasing over time, it does not cover

the whole lifetime of the power plant, and it is not related to any existing or future standards. There is no obligation for the beneficiary to produce electricity from renewable energy sources, the beneficiary (CEZ group) is active in Romania only in the electricity sector and the risk of cross-subsidisation is therefore reduced. The aid is granted under a scheme that provides support for a wide range of technologies. The project developed does not qualify as innovative project and the aid is unlikely to distort dynamic incentives for foreign competitors developing competing technologies.

(87) The Commission verified that the aid is not aimed to maintain inefficient firms afloat, based on the criteria set out in point 180 of the EAG and concludes that this is not the case. The beneficiary is under no obligations to adjust to new standards and has no productivity and financial problems. There is no overcapacity in the electricity sector and there is an environmental target to decarbonise this sector. All other similar projects (based on onshore wind technologies) are entitled to receive aid under the Romanian green certificates support scheme (this can be considered a normal behaviour), as without support such projects would not be economically viable. As illustrated in Table 1, under the Romanian green certificates support scheme the revenues generated by the aid (revenues from the sale of green certificates) were expected to represent about 60% of the total revenues of wind projects, while for the FVWPP project they represent less than 50% of the total revenues, indicating a lower relative importance of the aid. As explained in recital 78, the FVWPP project qualified for aid based on the technology used for producing electricity, in line with the national legal provisions and therefore the Commission considers it was selected in a non-discriminatory, transparent and open manner.

(88) As shown in recitals 15-17, the market shares of both the FVWPP project and the CEZ group, on both the electricity and the green certificates market, are far below 25%, and are not expected to exceed such threshold. Only on the green certificates market, the market share of the CEZ group exceeded 25% before 2013, mainly due to the underdevelopment of the renewables sector. In line with point 181 of the EAG, the Commission considers that the aid does not raise significant competition concerns.

(89) The Commission further notes, with reference to point 182 of the EAG, that although the CEZ group had a strong position on the market before 2013, the aid did not reinforce a dominant position – as the aid was available under the Romanian green certificates scheme to all producers of electricity from renewable energy sources, the market share of the CEZ group was reduced significantly. The aid is granted for electricity produced from renewable energy sources to allow it to compete with electricity produced from non-renewable energy sources. In Romania the CEZ group is not active in producing electricity from non-renewable energy sources and does not have any market power on the electricity market. The electricity is sold on the electricity market in a non-differentiated manner, and the electricity price does not take into account the technology used for producing the electricity or green certificates market, the beneficiary does not have market power and therefore the aid is unlikely to harm consumers. Moreover, the price of green certificates is capped by law, so even when the demand of green certificates was higher than the supply, and even during the years when the CEZ group had a significant market share on the green certificates market, the CEZ Group could not raise the price of green certificates above the maximum allowed by the law.

(90) The Commission has assessed the possible effects of the aid on trade and location, based on points 183-185 of the EAG. The Commission notes that the aid granted under the Romanian green certificates support scheme covers the whole territory of Romania. The Commission further notes that in view of their 2020 targets, all Member States put in place support mechanisms for electricity produced from renewable energy sources, and onshore wind is one of the most widespread technologies receiving support.

(91) On basis of the above, the Commission concludes that any distortion of competition is likely to be limited.

Balancing test

(92) As shown above, the measure is aimed at covering part of a cost disadvantage of electricity generated from wind compared to electricity generated from conventional, more polluting sources. At the same time, the aid ensures positive environmental effects as it will contribute towards realisation of the targets set by the EU and Romania for reducing CO_2 emissions and increasing the share of renewable energy.

(93) Furthermore, the Romanian authorities have provided information which demonstrates that the establishment and operation of FVWPP significantly contributes to the reduction not only of CO_2, but also of SO_2 and NOx emissions.

(94) Additionally, the aid is kept to the minimum necessary, and it provides the necessary incentive to the beneficiary, in particular by allowing it to achieve a positive profitability rate, which is, however, lower than the level considered reasonable for the specific type of activity undertaken. In the absence of aid, the project would not have been viable, as it would have had a negative IRR.

(95) Against this background, the Commission considers that the distortions to competition are limited. The company operating FVWPP has a low market share in electricity generation and a decreasing market share on the green certificates market (from a level of [5 – 15] % in 2012). Also the market share of the group the beneficiary belongs to (CEZ) is very low on the electricity market and is not expected to exceed 15% at any time in the future on the green certificates market (not even in the years when the certificates for the period 31 October 2013 – 1 September 2015 should be recovered).

(96) For these reasons, it is concluded that the positive environmental effects of the aid outweigh the possible negative effects of the limited distortion of competition. Accordingly, the Commission comes to the conclusion that the notified scheme complies with the EAG and is therefore compatible with the internal market in accordance with Article 107(3)(c) TFEU.

(97) The Commission reminds the Romanian authorities that the aid project must be implemented in full compliance with the EU law, including EU Environmental legislation. For the notified measure compliance with the Habitats Directive[15] and

[15] Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, OJ L 206 of 22.7.1992, p.7

the Wild Birds Directive[16], in particular taking into account its vicinity to Natura 2000 sites, seems to be particularly relevant.

4. CONCLUSION

The Commission regrets that Romania put the measure into effect, granting already green certificates to FVWPP, in breach of Article 108(3) of the Treaty on the Functioning of the European Union.

However, it has decided, on the basis of the foregoing assessment, 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.

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Your request should be sent electronically to the following address:

European Commission,
Directorate-General Competition
State Aid Greffe
B-1049 Brussels
Stateaidgreffe@ec.europa.eu

Yours faithfully
For the Commission

Margrethe VESTAGER
Member of the Commission

16 Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds, OJ L 20 of 26.1.2010, p.7