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**Subject: State aid SA.49631 – Romania
Prolongation of aid scheme for RO-LA Combined Transport for
2018-2020**

Sir,

1. PROCEDURE

- (1) On 23 November 2017, the Romanian authorities notified to the Commission, in accordance with Article 108(3) of the Treaty on the Functioning of the European Union (TFEU), their intention to prolong an existing aid scheme for Ro-La ¹which aims to provide support to railway undertakings to encourage shift of freight from road to rail.
- (2) The initial aid scheme was first approved by the Commission in 2015 for the period 2015-2017 ("the 2015 Decision")².

2. DESCRIPTION OF THE AID MEASURE

2.1. Main features and objective of the aid measure

- (3) A description of the scheme is set out in recitals 2 to 8 of the 2015 Decision. The features of the scheme and its objective remain unaltered, apart from an extended duration.
- (4) The aim of the scheme is to reduce the adverse impact of road transport on the environment by attracting freight to the Ro-La combined transport system.

¹ Ro-La means the transportation of lorries by rail on low-loader wagons, whereby the lorries drive onto the wagon at the start and drive off it at the end of their rail journey.

² Commission Decision of 22.04.2015, State aid case SA.39883 (2014/N), OJ C 219 of 03.07.2015, p. 1.

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2.2. Beneficiaries

- (5) The aid scheme applies to railway undertakings whose activity falls under code 49.20 – "Freight rail transport" according to the statistical classification of economic activities – NACE, revisions no.2.
- (6) The estimated number of beneficiaries ranges from 11 to 20 undertakings.
- (7) Romania has confirmed that no aid will be granted to companies in financial difficulties as defined in the "Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty"³.
- (8) Furthermore, the beneficiary may not or may not have received State aid which is subject to recovery after having been declared illegal and incompatible with the internal market. If an applicant has benefitted from such kind of aid, its debt arising from such decision must have been entirely recovered before aid subject to the present decision may be granted.

2.3. Form of the aid, eligible costs and aid intensity

- (9) The aid is granted in the form of a non-reimbursable grant which may amount up to 60% of the total cost of the railway part of the Ro-La combined journey.
- (10) A detailed description of the eligible costs is provided in recitals 6 to 8 and recitals 24 to 34 of the 2015 Decision.
- (11) A detailed description of the aid intensities is contained in recital 41 of the 2015 Decision.
- (12) Any call for application will be made by decision of the President of the Environment Fund and shall comprise the budget and the period during which applications may be filed. The President's decisions shall be published on the webpage of the Environment Fund Administration at least 10 days prior to the call launching date. A description of the procedure is set out in recitals 12 and 13 of the 2015 Decision.

2.4. Legal basis

- (13) The legal bases for the prolonged scheme is:
 - Ordonanța de urgență no. 196/2005 privind Fondul pentru mediu⁴, cu modificările și completările ulterioare (Government Emergency Ordinance no. 196/2005 for the Environment Fund, as amended);

2.5. Budget and Duration

- (14) The estimated initial budget of the scheme was RON 115 million (approximately EUR 25 million⁵) for the period from 1 January 2015 to 31 December 2017.
- (15) No call has been launched in 2015 and 2016 and one call for an amount of RON 10 million was launched in 2017. No expenditure has yet occurred under the 2017 call.

³ OJ C 249 of 31 July 2014, p. 1.

⁴ Official Monitor (Monitorul oficial) nr. 1.193 of 30 December 2005.

⁵ Exchange rate of 5 December 2017.

The budget for the whole duration of the scheme from 2015 until 2020 remains the same as under the initial scheme, namely RON 115 million (approximately EUR 25 million).

Table 1: *Budget of the scheme in million RON*

2017	2018	2019	2020	Total
10	50	30	25	115

- (16) The prolonged scheme is put in place for a period of three years from 1 January 2018 until 31 December 2020.

2.6. Cumulation

- (17) The aid can be cumulated with aid received under other local, regional, national or European Union schemes to cover the same eligible expenses as long as the applicable maximum aid intensities are respected.

2.7. Evaluation

- (18) The Commission takes note that the existing aid scheme was not implemented due to a lack of financial resources.

3. ASSESSMENT OF THE MEASURE

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

- (19) The Commission notes that the all elements in the scheme to be prolonged remain unchanged compared to the initial scheme.
- (20) In the 2015 Decision the Commission concluded that the measure constitutes State aid within the meaning of Article 107(1) TFEU⁶. Nothing in the notification alters this assessment as regards the prolongation of the scheme.

3.2. Compatibility of the aid

- (21) In the 2015 Decision, having assessed the appropriateness, necessity and proportionality of the scheme on the basis of the Community Guidelines on State aid to railway undertakings ("the Railway Guidelines")⁷, the Commission found the scheme compatible with the internal market under Article 93 TFEU.
- (22) Article 93 TFEU states that State aid shall be compatible with the internal market if it "*meets the needs of coordination of transport*". The concept of aid meeting the needs of co-ordination of transport refers to the need for government intervention arising in the absence of a competitive market or in the presence of market failures. In this regard, the Commission notes that measures of co-ordination of transport may be needed when certain modes of transport do not bear the costs of the negative externalities which they impose to the society. The concept of coordination of transport therefore implies an intervention by public authorities which is aimed at guiding the development of the transport sector in the common interest.

⁶ See recital 16 of the 2015 Decision.

⁷ Commission Communication 2008/C 184/07, OJ C184 of 22.7.2008, p.1.

- (23) Point 97 of the Railway Guidelines stipulates that in view of the rapid development of the transport sector the Commission has to re-examine the aid and the intended renewal in the light of the results obtained by the existing aid scheme.
- (24) According to a constant decisional practice⁸ and section 6.2 of the Railway Guidelines aid for the coordination of transport will be deemed compatible with the internal market under Article 93 TFEU if the following conditions are met:
- The aid must contribute to a well-defined object of common interest;
 - The aid must be necessary, must have an incentive effect and be proportionate to the intended objective;
 - Access to the aid in question must be open to all users on a non-discriminatory basis;
 - The aid must not lead to distortions of competition contrary to the common interest.
- (25) The Commission notes that the initial aid scheme was not implemented due to the lack of financial resources and that therefore the effectiveness and impact of the initial scheme cannot be assessed.
- (26) The Commission notes that the scheme aims at encouraging a modal shift of freight transport from road to rail by providing support to rail transport under the form of accompanied combined transport by compensating additional costs which are faced by rail transport but not by road transport. The Commission further notes that the aid measure aims at reducing the adverse impact of road transport on the environment. There is no reason to deviate from the assessment in the initial decision that the scheme contributes to a shift from road to rail and consequently, to reducing external costs (see recitals 46 and 47 of the 2015 Decision). The Commission therefore concludes that the renewal of the scheme for a three-year period is in line with point 97 of the Railway Guidelines.
- (27) In its 2015 Decision, the Commission concluded, on the basis of Article 93 TFEU and sections 6.2. and 6.3. of the Railway Guidelines that the initial scheme was compatible with the internal market. The reasoning set out in that decision on necessity and proportionality (see recitals 25 to 44 of the 2015 Decision) and the limitation of competition distortions (see recital 51 of the 2015 Decision) remains valid.
- (28) The Commission notes that the aid scheme is open on a non-discriminatory basis to all railway undertakings offering freight transport services.
- (29) The Commission further notes that as set out in recital 12 the amount allocated under each funding round shall be published at the same time as the launch of the call for applications, by order of the President of the Environmental Fund. The

⁸ Commission decision of 21.12.2016, SA.46720 – Germany – Guidelines on the construction, extension and reactivation of private railway sidings, OJ C 20, 20.01.2017, p. 14; Commission decision of 13.01.2009, N 415/2008 – Austria – Special Guidelines for the Programme of Aid for Innovative Combined Transport, OJ C 53, 06.03.2009, p.2; Commission decision of 15.06.2011, SA.32224, - Netherlands, Development of the Alblaserdam Container Transferium, OJ C 215, 21.07.2011, p. 22.

orders are to be published on the website of the funding authority⁹ at least ten days before the launch of the funding round. It is thus expected that potential business partners of the beneficiaries will demand in the business negotiations to participate in the advantage granted to the beneficiaries which in turn will encourage them - in line with point 110 of the Railway Guidelines - to make the choice for rail rather than for more polluting modes of transport such as road.

- (30) The Commission therefore concludes that the aid has the effect of encouraging the modal shift to rail and therefore provides an incentive effect and fulfils point 110 of the Railway Guidelines.
- (31) For the reasons set out above and as demonstrated in recitals 18 to 51 of the 2015 Decision which remain relevant for the assessment of the notified prolongation, the Commission considers that the aid scheme to be prolonged is compatible with the internal market based on Article 93 TFEU, as implemented by the Railway Guidelines.

4. DECISION

The Commission has accordingly decided not to raise objections to the prolongation of the aid scheme on the grounds that it is compatible with the internal market as it meets the needs of coordination of transport pursuant to Article 93 of the Treaty on the Functioning of the European Union.

Yours faithfully
For the Commission

Margrethe VESTAGER
Member of the Commission

⁹ www.afm.ro