EUROPEAN COMMISSION

Brussels, 24.2.2020
C(2020) 1068 final

In the published version of this decision, some information has been omitted, pursuant to articles 30 and 31 of Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union, concerning non-disclosure of information covered by professional secrecy. The omissions are shown thus […]		PUBLIC VERSION This document is made available for information purposes only.

Subject: State aid SA.56250 (2020/N) – Romania – Rescue aid in favour of Complexul Energetic Oltenia SA

Dear Sir,

The European Commission ("the Commission") wishes to inform Romania that, having examined the information supplied by your authorities on the State aid referred to above, it has decided not to raise any objections, as it is compatible with the internal market pursuant to Article 107(3)(c) of the Treaty on the Functioning of the European Union ("TFEU").

The Commission has based its decision on the following considerations:

1. PROCEDURE

(1) Following pre-notification contacts, on 6 February 2020, Romania notified to the Commission its plans to grant rescue aid in favour of Complexul Energetic Oltenia SA ("CE Oltenia" or "the beneficiary").

(2) The Romanian authorities agreed exceptionally to waive their rights deriving from Article 342 TFEU in conjunction with Article 3 of the EC Regulation 1/1958[1] and to have the decision adopted and notified pursuant to Article 297 of the Treaty in English language.

[1] Council Regulation No 1 of 15 April 1958 determining the languages to be used by the European Economic Community (OJ 17, 6.10.1958, p. 385, p.58).

2. DESCRIPTION

2.1. The beneficiary

(3) CE Oltenia was established on 12 October 2011 and registered on 31 May 2012, following the merger of four companies: Complexul Energetic Craiova SA, Complexul Energetic Turceni SA, Complexul Energetic Rovinari SA and Societatea Nationala a Lignitului Oltenia SA. CE Oltenia employs more than 13 000 persons and is headquartered in Targu Jiu, in the South-West Oltenia region of Romania. According to company reporting, the Romanian State, represented by the Ministry of Energy, controls CE Oltenia (77.15%). Other shareholders include Fondul Proprietatea SA (21.56%), Electrocentrale Grup SA (0.84%) and Inchidere si Conservare Mine (0.44%).

(4) CE Oltenia produces electricity and has an installed generation capacity of 3240 MW. CE Oltenia is active on the wholesale and retail electricity markets and also sells heat thermal energy. CE Oltenia power plants are fuelled with lignite for up to 99.5% of its electricity production. CE Oltenia extracts lignite from its own open pits for own consumption or for sale to other electricity producers[2]. CE Oltenia also supplies heating and domestic hot water to approximately 300 000 inhabitants of Craiova.

(5) According to the national energy regulator (Autoritatea Nationala de Reglementare in Domeniul Energiei), the largest Romanian power producers are Hidroelectrica (market share of 32.3%), followed by CE Oltenia (19.6%) and Nuclearelectrica (17.5%).[3] All three companies are controlled by the Romanian State. The Romanian authorities stress that CE Oltenia’s market share can increase to almost 35% during extreme periods of prolonged drought or during winter periods with low temperatures.

(6) Romania has electricity interconnections with Bulgaria and Hungary as well as with third countries including Ukraine, the latter connected to Poland and Serbia, which is in turn connected to Croatia. Romania regularly exports and imports electricity. Several projects of common interest for the European Union are planned or being implemented with the aim of increasing Romania's interconnection with Bulgaria and Serbia.

(7) CE Oltenia made profits in 2012, 2013 and 2017 and losses in 2014, 2015, 2016, 2018 and 2019 (estimates). The estimated loss for 2019 amounts to RON -1.109 million (EUR 232 million)[4]. According to Romania, the losses registered by the company are mainly caused by:

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[2] Lignite is a sedimentary fossil fuel rock formed from naturally compressed peat, with a carbon content around 60–70 percent. Lignite and coal extraction have different codes under the nomenclature of economic activities (NACE), respectively NACE codes 0510 (coal) and 0520 (lignite).

[3] Report Autoritatea Nationala de Reglementare in Domeniul Energiei, 2019 2nd quarter https://www.anre.ro/en/search?s=newsletter, accessed on 29 January 2020

[4] Exchange rate on 29 January 2020, RON 1 = 0.20904 EUR. Amounts in EUR are only for information purposes, except the amount of the rescue aid loan, which is denominated in EUR.

a) Non-collection of debts (over RON 700 million – EUR 146 million), from State-owned insolvent companies put in insolvency or bankruptcy proceedings, for example RAAN, CET Oradea and CET Govora.
b) exchange rate variations on loans for environmental investments contracted by the merged companies now part of CE Oltenia
c) the significant increase in the price of greenhouse gas (CO_2) emission allowances from EUR 7 per allowance in December 2017 to EUR 20 per allowance in 2018 and over EUR 27 per allowance in 2019[5].

(8) CE Oltenia has the obligation to surrender, no later than 30 April each year, the number of greenhouse gas emission allowances equal to the total quantity of greenhouse gas emissions emitted during the previous calendar year[6]. Failure to comply with the obligation triggers a penalty of EUR 100 for each equivalent ton of CO_2 emitted that has not been surrendered.

(9) Based on its 2019 production, CE Oltenia has to purchase over […] (*) million of allowances worth RON […] million (EUR […] million) before 30 April 2020. The cost represents […] of the 2019 turnover of the company. Taking into account the net operating losses in 2018 and 2019 and based on its cash flow projection for the months ahead, Romania indicated that CE Oltenia will not be able to meet this obligation. Failure to do so would trigger a penalty amounting to RON […] million (EUR […] million), pushing the company further to a risk of actually triggering of judicial insolvency proceedings.

2.2. The rescue loan

(10) As described in its notified legal basis in the form of an emergency Ordinance of the Romanian Government[7], the rescue aid consists of a loan amounting to EUR 251 046 025 in favour of CE Oltenia. The loan will be granted by the Ministry of Public Finance with money from a current foreign currency account opened with the National Bank of Romania.

(11) The loan shall be granted for the maximum period of six months on the basis of an economic and financial analysis carried out by Eximbank setting out the repayment capacity and the risk category of the company and the interest margin on top of 6 months EURIBOR. The interest charged on the loan will bear interest at a rate not lower than the reference rate set out in the Reference Rate Communication[8] for weak undertakings offering normal levels of collateralisation, which is currently 1-year IBOR plus 400 basis points.

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5 The company is subject to Commission Regulation N° 600/2012 of 21 June on the verification of greenhouse gas emission reports and tonne-kilometre reports and the accreditation of verifiers pursuant to Directive 2003/87/EC of the European Parliament and of the Council Text with EEA relevance.

6 Article 18(2) of the Romanian Government Decision n°780 of 4 June 2006

7 Emergency Ordinance establishing the legal framework for granting individual state aids for rescuing, Articles 9 to 17 relate to CE Oltenia.

8 Communication from the Commission on the revision of the method for setting the reference and discount rates, OJ C 14, 19.1.2008, p. 6.

* Confidential information

(12) The Romanian authorities have provided a liquidity plan setting out CE Oltenia's liquidity needs for a six month-period (March 2020 – August 2020) based on expected operating revenues and ordinary costs of the business. The projections of the company's cash flows for the next six months show a cash shortfall of RON 1.200 million (EUR 251 million) by August 2020 whereby the peak will be reached at the end of April 2020 and will amount to RON 1.300 million (EUR 272 million). The rescue loan is to be used to partly cover the costs of the greenhouse gas emission allowances due by CE Oltenia for the calendar year 2019. The amount is therefore below the expected cash flow shortfall of the company until August 2019.

(13) Romania does not expect that CE Oltenia will reimburse the rescue loan within six months of the disbursement of the aid. In any event, Romania has committed to, not later than six months after the rescue aid loan has been authorised, to communicate to the Commission, one of the following:

a) proof that that the rescue loan has been repaid; or
b) a restructuring plan; or
c) a liquidation plan setting out in a substantiated way the steps leading to the liquidation of the beneficiary within a reasonable time frame without further aid.

(14) Finally, the Romanian authorities confirmed that CE Oltenia has not received any rescue or restructuring aid in the past ten years.

2.3. Counterfactual to the Measure

(15) Romania explained that CE Oltenia cannot obtain bank loans for the amount of the aid because it does not meet creditworthiness criteria set by commercial banks:

a) CE Oltenia registered losses for the past financial years, 2018 and 2019;
b) CE Oltenia has a projected cash flow deficit in the coming months and without the implementation of a restructuring plan, the company will not be able to repay the loan.

(16) Romania also explained that CE Oltenia could not obtain the money by selling some of its available assets because their value is insignificant compared to the amount of cash needed. The assets are strictly specialised for their intended purpose, namely lignite extraction and electricity production.

(17) Therefore, in the absence of the rescue loan, Romania claims that CE Oltenia would go bankrupt. The Romanian authorities also indicate that CE Oltenia meets the criteria under Romanian law for being placed in collective insolvency proceedings at the request of its creditors, already as of 31 December 2019.[9] By that date, 46 of the 838 suppliers of CE Oltenia could have requested the opening of the insolvency procedure.

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[9] *Article 5, section 29 and section 72 of the Romanian Law No. 85/2014 on insolvency prevention procedures and insolvency proceedings,* as amended by the Government Emergency Ordinance No. 88/2018

(18) According to Romania, the bankruptcy of CE Oltenia would result in the direct loss of 13 000 jobs, with also significant indirect job losses. Eurostat data show that the region of South-West Oltenia, in which CE Oltenia is based, has the highest unemployment rate, namely 7.7% in 2017 and 6.4% in 2018 compared to the national average of 4.9% in 2017 and 4.2% in 2018. Romania has also evidenced that, over the last ten years, the unemployment rate in the Oltenia region has been persistent at a level significantly higher than the national average, which demonstrates the difficulty to create new jobs in the region.

(19) The Romanian authorities also explained that CE Oltenia plays an important role in the security of electricity supply at national and regional level. In addition to regular supplies, CE Oltenia is one of the main suppliers of ancillary services to Transelectrica, the operator of the transmission system in Romania. The interruption of CE Oltenia's power units would create a major problem for the adequacy of the national energy system. Given CE Oltenia's market share, its status as the country's largest lignite-based electricity producer and with the cross-border import capacity at its maximum, Romania claims that energy production would be insufficient to cover consumption. This effect would be aggravated in case of severe weather conditions and increased domestic consumption. Romania further stated that the security of supplies of heating and domestic hot water to Craiova could be threatened if CE Oltenia ceased to operate.

3. ASSESSMENT OF THE MEASURE

(20) The Commission first assesses whether the rescue loan under scrutiny entails State aid to CE Oltenia under Article 107(1) TFEU, and then whether such aid is lawful and compatible with the internal market.

3.1. Existence of State aid

(21) According to Article 107(1) TFEU, "[s]ave as otherwise provided in the Treaties, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market".

(22) The qualification of a measure as aid within the meaning of this provision therefore requires the following cumulative conditions to be met: (i) the measure must be imputable to the State and financed through State resources; (ii) it must confer an advantage on its recipient; (iii) that advantage must be selective; and (iv) the measure must distort or threaten to distort competition and affect trade between Member States.

(23) Prior to examining whether the rescue loan involves State aid pursuant to Article 107(1) TFEU, the Commission notes that Romania has notified it as constituting State aid.

(24) The EUR 251 million loan described in section 2.2, is to be granted by the Ministry of Public Finances with money deposited in its foreign currency account opened with the National Bank of Romania in implementation of an emergency ordinance of the Romanian Government. Therefore, the rescue loan is imputable to the State

and involves State resources.

(25) It is apparent that CE Oltenia could not contract bank loans, at market conditions, for the amount of the rescue loan (see recital (15)) neither, in the short term, sell assets to cover its cash deficit (see recital (16)). Therefore, the Romanian State provides necessary liquidity that CE Oltenia has not and could not have obtained at market conditions.

(26) The rescue loan has been granted through the exercise of discretion to the benefit of CE Oltenia for an ad hoc amount determined by reference to its specific liquidity needs. The loan is not part of a broader general economic policy measure to provide support to undertakings, in a comparable legal and economic situation, active in the electricity production or other economic sectors. As the Court has stated, where individual aid is at issue, the identification of the economic advantage is, in principle, sufficient to support the presumption that a measure is selective.[10] This is so regardless of whether there are operators on the relevant markets that are in a comparable factual and legal situation. Therefore, the Commission concludes that this loan is selective within the meaning of Article 107(1) TFEU.

(27) The energy production sector in which CE Otlenia is active is open to competition and trade between Member States and many other undertakings provide electricity throughout the Union and could do so in Romania. Romania currently has direct connections with other Member States and with third countries, which are connected with other Member States. Further direct connections with Bulgaria are being built. Therefore, the aid is liable to affect trade between Member States.

(28) By granting access to funding which it would not otherwise obtain at market conditions, the rescue loan is liable to improve the position of CE Oltenia in relation to other competing undertakings active within the internal market that finance their operations at market conditions. The loan consequently distorts or threatens to distort competition and affect trade between Member States.

3.2. Conclusion on the existence of aid

(29) In light of the above, the Commission concludes that the rescue loan in favour of CE Oltenia involves State aid under Article 107(1) TFEU and will therefore assess its lawfulness and compatibility with the internal market.

3.3. Lawfulness of the aid

(30) The planned State loan has not been granted to CE Oltenia yet and Romania is thus observing the stand-still obligation laid down in Article 108(3) TFEU. Therefore, the rescue loan to CE Oltenia does not constitute unlawful State aid.

3.4. Compatibility of the aid

(31) Under Article 107(3)(c) TFEU, the Commission can authorise aid if it is granted to promote the development of certain economic sectors and if this aid does not adversely affect trading conditions to an extent contrary to the common interest. In

[10] See judgment of 4 June 2015 *Commission* v *MOL*, C-15/14 P EU:C:2015:362, paragraph 60.

view of the nature and aims of the State aid at stake, the Commission will assess whether the rescue loan complies with the provisions on rescue aid laid down in the Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty ("R&R Guidelines").[11]

3.4.1. Eligibility

(32) In order to be eligible for rescue aid, an undertaking must qualify as an undertaking in difficulty pursuant to section 2.2 of the R&R Guidelines. In particular, point 20 of the R&R Guidelines stipulates that an undertaking is considered to be in difficulty when, without intervention by the State, it will almost certainly be condemned to going out of business in the short or medium term. This would be the case when at least one of the circumstances described in point 20 from letter a) to d) of the R&R Guidelines occurs.

(33) As explained in recital (17), CE Oltenia fulfils since 31 December 2019 the criteria for being placed in collective insolvency proceedings at the request of its creditors under domestic law. The company thus qualifies as a firm in difficulty pursuant to point 20(c) of the R&R Guidelines.

(34) According to point 21 of the R&R Guidelines, a newly created undertaking is not eligible for rescue aid. CE Oltenia is not a newly created undertaking since it was established more than three years ago (see recital (3)).

3.4.2. Contribution to an objective of common interest

(35) Under point 38(a) of the R&R Guidelines, in assessing whether the rescue aid can be declared compatible with the internal market, the Commission examines whether the State aid contributes to a well-defined objective of common interest in accordance with Article 107(3) TFEU. In this respect, the Member State must demonstrate that the aid aims to prevent social hardship or address a market failure. Under point 44 of the R&R Guidelines, this can be demonstrated in particular by showing that one of the circumstances listed from letter a) to g) are met.

(36) In this regard, Romania refers to circumstances mentioned under the second indent of letter a) of point 44 of the R&R Guidelines, i.e. the beneficiary is active in the region (at NUTS level II) with the unemployment rate higher than the national average, persistent and accompanied by difficulty in creating new employment in the region concerned (see recital (18)).

(37) Romania further refers to circumstances mentioned under letter b) of point 44 of the R&R Guidelines, i.e. there is a risk of disruption to an important service which is hard to replicate and where it would be difficult for any competitor simply to step in (see recital (19)).

(38) Romania also refers to circumstances mentioned under letter c) of point 44 of the R&R Guidelines, i.e. the exit of an undertaking with an important systemic role in a particular region or sector would have potential negative consequences (see recital

[11] Communication from the Commission - Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty (OJ C 249, 31.7.2014, p.1).

(19)).

(39) The Commission concludes that the information provided by Romania demonstrates that by averting an imminent and potentially disruptive formal insolvency process, the rescue aid contributes to a well-defined objective of common interest as provided by the second indent of letter a) of point 44 of the R&R Guidelines. Considering that letter a) of point 44 is fulfilled, the Commission does not need to assess or conclude on letter b) and c).

3.4.3. Appropriateness

(40) Under point 38(c) of the R&R Guidelines, the Commission will not consider an aid measure to be compatible with the internal market if other, less distortive measures allow the same objective to be achieved. In this respect, rescue aid must fulfil the conditions laid down in point 55 from letter a) to e) and 56 of the R&R Guidelines.

(41) As to point 55 letters a) and d) of the R&R Guidelines, the Commission notes that the rescue loan, covering net cash flow needs up to RON 1.200 million (EUR 251 million) is temporary in nature. Romania committed to communicating to the Commission, no later than six months after disbursement of the first instalment to the beneficiary, proof that that the rescue loan has been repaid or a restructuring plan or a liquidation plan has been adopted (see recital (13)).

(42) According to the Romanian authorities, the rate of the rescue loan will be at least equal to the reference rate set out in the Reference Rate Communication for weak undertakings offering normal levels of collateralisation, that is to say 1-year IBOR plus 400 basis points (see recital (11)), which is in line with requirements of point 55, letter b).

(43) The Commission notes the declaration by the Romanian authorities that the loan shall be used only to meet the identified urgent liquidity needs of CE Oltenia, and in particular will cover costs of greenhouse gas emission allowances due by CE Oltenia for the calendar year 2019 (see recital (12)). Accordingly, CE Oltenia will not use the rescue aid to finance structural measures nor other activities than its current operations (letter e) of point 55 of the R&R Guidelines).

(44) In view of the information provided by Romania, the Commission concludes that the rescue loan meets the conditions laid down in points 38(c) and 55 of the R&R Guidelines and therefore the form of the aid allows rescuing CE Oltenia in the least distortive way.

3.4.4. Proportionality of the aid / aid limited to the minimum

(45) Under point 38(e) of the R&R Guidelines, aid must not exceed the minimum needed to achieve the objective of common interest. As specified in point 60 of the R&R Guidelines, rescue aid must be restricted to the amount needed to keep the beneficiary in business for six months. In determining that amount, the Commission takes into account the outcome of the calculation under the formula set out in Annex I of the R&R Guidelines. The Commission will authorize any aid exceeding the result of that calculation only if it is duly justified by the provision of a liquidity plan setting out the beneficiary's liquidity needs for the coming six months.

(46) The EUR 251 million amount of the loan required by Romania to be approved as rescue aid exceeds the result of the formula set out in Annex I to R&R Guidelines. Therefore, in line with point 60 of the R&R Guidelines, the Romanian authorities provided a liquidity plan setting out CE Oltenia's liquidity needs for the 6 months to come, starting from March 2020 to August 2020.

(47) The Commission has reviewed the liquidity plan and found that it reasonably reflects the liquidity needs of CE Oltenia. In particular, it includes cash outflows related to legitimate expenses, such as e.g. payment of the greenhouse gas emission allowances for 2019, payment of outstanding trade and other payables, salaries, pension and social security contributions, etc. On the other hand, it also includes cash receipts related to expected revenues from sales and own liquidity. The company will cover from its own revenues its obligations for 2019 to suppliers, employees, banks and will purchase a part of the greenhouse gas certificates worth RON 160 million (EUR 33 million). The liquidity plan does not include uncommon or illegitimate expenses, such as e.g. financing of structural measures (see recital (43)). The aid does therefore not exceed the necessary minimum to keep CE Oltenia in business for the coming six months.

(48) The Commission therefore concludes that the notified rescue aid is restricted to a minimum amount, in line with point 60 of the R&R Guidelines and is consequently proportional.

3.4.5. Negative effects

(49) Under point 38(f) of the R&R Guidelines, the negative effects of the aid on competition and trade between Member States must be sufficiently limited, so that the overall balance of the measure is positive.

(50) Under points 70 and 71 of the R&R Guidelines, aid can be granted to undertakings in difficulty in respect of only one restructuring operation. Therefore, where less than 10 years have elapsed since rescue aid, restructuring aid or temporary restructuring support were granted to the beneficiary in the past (including any such aid granted before the entry into force of the R&R Guidelines and any non-notified aid) or the restructuring period came to an end or implementation of the restructuring plan was halted – whichever occurred the latest –, the Commission will not allow further aid (the 'one time, last time' principle).

(51) The Romanian authorities confirmed in the notification that CE Oltenia has not benefited from any rescue aid, restructuring aid or temporary restructuring support in the past 10 years. Therefore, the 'one time, last time' principle is respected.

3.4.6. Transparency

(52) According to point 38(g) of the R&R Guidelines, Member States, the Commission, economic operators and the public must have easy access to all relevant acts and pertinent information about the aid awarded. This means that Romania must respect the provisions on transparency laid down in point 96 of the R&R Guidelines. The Commission notes that Romania undertakes to respect those obligations. The relevant information shall be made available on the website: www.ajutordestat.ro.

3.5. Conclusion on the compatibility of the aid

(53) In the light of the findings above, the Commission concludes that the rescue loan meets the conditions of compatibility with the internal market set out in the R&R Guidelines. The Commission therefore considers that the rescue aid provided to CE Oltenia is compatible with the internal market.

(54) In addition, the Commission reminds Romania of its obligation to submit annual reports to the Commission, in accordance with point 131 of the R&R Guidelines.

4. CONCLUSION

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

If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site: http://ec.europa.eu/competition/elojade/isef/index.cfm.

Your request should be sent 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
Executive Vice President

CERTIFIED COPY
For the Secretary-General,

Jordi AYET PUIGARNAU
Director of the Registry
EUROPEAN COMMISSION