EUROPEAN COMMISSION

Brussels 9.8.2022
C(2022)5855 final

PUBLIC VERSION

This document is made available for information purposes only.

Subject: State Aid SA.103503 (2022/N) – Romania
COVID-19: Scheme for the award of grants for investment in re-technologisation of SMEs to restore resilience

Excellency,

1. PROCEDURE

(1) By electronic notification of 21 July 2022, Romania notified an aid scheme in the form of direct grants for investment support towards a sustainable recovery (the "measure") under section 3.13 of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak (the "Temporary Framework")[1]. Romania provided additional information on 22 July 2022.

[1] Communication from the Commission - Temporary framework for State aid measures to support the economy in the current COVID-19 outbreak (OJ C 91I, 20.3.2020, p. 1), as amended by Commission Communications C(2020) 2215 (OJ C 112I, 4.4.2020, p. 1), C(2020) 3156 (OJ C 164, 13.5.2020, p. 3), C(2020) 4509 (OJ C 218, 2.7.2020, p. 3), C(2020) 7127 (OJ C 340I, 13.10.2020, p. 1), C(2021) 564 (OJ C 34, 1.2.2021, p. 6), and C(2021) 8442 (OJ C 473, 24.11.2021, p. 1).

Bogdan Aurescu
Ministru al Afacerilor Externe
Aleea Alexandru nr. 31, sector 1
011822 Bucureşti
ROMÂNIA

(2) Romania exceptionally agrees to waive its rights deriving from Article 342 of the Treaty on the Functioning of the European Union ("TFEU"), in conjunction with Article 3 of Regulation 1/1958[2] and to have this Decision adopted and notified in English.

2. DESCRIPTION OF THE MEASURE

(3) Romania considers that the COVID-19 pandemic has severely impacted the real economy. The measure forms part of an overall package of measures and aims to support private investment as a stimulus to overcome an investment gap accumulated in the economy due to the pandemic. The Romanian authorities note that small and medium-sized enterprises[3] have been particularly affected by the consequences of the COVID-19 pandemic, among which, the restrictions imposed on their economic activities, the low level of demand and the lack of support measures to upgrade production lines, thereby affecting their production and service capacities. Therefore, the Romanian authorities refer to the need for support for investments in equipment and machinery needed for production and service provision processes and capacities, which would enable a significant number of enterprises to strengthen their economic activities.

(4) Romania confirms that the aid under the measure is not conditioned on the relocation of a production activity or of another activity of the beneficiary from another country within the EEA to the territory of the Member State granting the aid. This is irrespective of the number of job losses actually occurred in the initial establishment of the beneficiary in the EEA.

(5) The compatibility assessment of the measure is based on Article 107(3)(c) TFEU, in light of sections 2 and 3.13 of the Temporary Framework.

2.1. The nature and form of the aid

(6) The measure provides aid in the form of direct grants.

2.2. Legal basis

(7) The legal basis for the measure is the Government Emergency Ordinance No 82/2022 on some measures for the award of grants from non-reimbursable external funds for investment in service capacities and re-technologisation to restore resilience ("GEO No 82/2022") and the draft Order of the Minister of Investments and European Projects for the approval of the State aid scheme "State

---

[2] Regulation No 1 determining the languages to be used by the European Economic Community (OJ 17, 6.10.1958, p. 385).

[3] According to the notification, an estimated 99.7% of companies in Romania are small and medium-sized enterprises that contribute approximately 60% of gross domestic product and employ approximately 60% of the workforce.

aid for the award of grants for investment in re-technologisation of SMEs to restore resilience" (the "draft Order")[4].

(8) The Romanian authorities confirmed that the draft Order will be adopted and published in the Official Gazette of Romania only after the notification of the Commission decision approving the measure. Moreover, Article 2(2) of the annex to the draft Order provides that the aid will be granted only after the Commission decision approving the measure.

2.3. Administration of the measure

(9) The Ministry of Investments and European Projects is the granting authority under the measure and, as the managing authority of the Competitiveness Operational Programme 2014-2020, it is responsible for receiving and assessing the aid applications.

(10) The aid may only be granted on the basis of a written application to the managing authority of the Competitiveness Operational Programme 2014-2020 (i.e. the Ministry of Investments and European Projects) submitted before works on the investment start.

2.4. Budget and duration of the measure

(11) The estimated budget of the measure is the equivalent in RON[5] of EUR 179 070 298, which may be increased up to EUR 358 140 596[6]. It will be co-financed by resources of the European Regional Development Fund ("ERDF") and the Recovery Assistance for Cohesion and the Territories of Europe ("REACT-EU")[7] under the Competitiveness Operational Programme 2014-2020[8]. The Romanian authorities confirm that the rules applicable under the ERDF and REACT-EU will be respected.

(12) Aid may be granted under the measure as from the notification of the Commission's decision approving the measure until no later than 31 December 2022.

---

[4] The GEO No 82/2022 regulates the general framework and the annex to the draft Order set outs the specific conditions of the measure based on section 3.13 of the Temporary Framework.

[5] Approximately RON 1.77 billion.

[6] The exchange rate established in the legal basis is the InforEuro rate valid in June 2022 (EUR 1 = RON 4.9441).

[7] Regulation (EU) 2020/2221 of the European Parliament and of the Council of 23 December 2020 amending Regulation (EU) No 1303/2013 as regards additional resources and implementing arrangements to provide assistance for fostering crisis repair in the context of the COVID-19 pandemic and its social consequences and for preparing a green, digital and resilient recovery of the economy (REACT-EU) (OJ L 437, 28.12.2020, p. 30).

[8] The ERDF/REACT-EU funding amounts to EUR 300 million. The remaining amount will be financed by the national State budget.

2.5. Beneficiaries

(13) The beneficiaries of the measure are micro, small and medium-sized enterprises (“SMEs”)[9] whose business activity falls under the NACE codes listed in the annex to the draft Order[10]. Credit and financial institutions as well as enterprises active in the primary production of agricultural products, fisheries and aquaculture sectors, and in gambling and betting activities are excluded as eligible beneficiaries.

(14) The Romanian authorities estimate the number of beneficiaries to be approximately 1 000.

(15) Aid may not be granted under the measure to enterprises that were already in difficulty within the meaning of the GBER[11] or the Agricultural Block Exemption Regulation (“ABER”)[12] on 31 December 2019.

2.6. Sectoral and regional scope of the measure

(16) The measure applies to SMEs active in the sectors referred to in recital (13) and footnote 10, such as manufacturing (except the manufacture of beverages, tobacco, and weapons and ammunition), construction, wholesale and retail trade, and repair of motor vehicles and motorcycles. It does not apply to the financial sector. Activities relating to the primary production of agricultural products, to the fishery and aquaculture sectors, and to gambling and betting are also excluded. However, activities relating to the processing and marketing of agricultural products are covered by the measure, provided the aid is not partly or entirely passed on to primary producers, and is not fixed on the basis of the price or quantity of products purchased from primary producers or put on the market by the undertakings concerned.

(17) The measure applies to the whole territory of Romania.

2.7. Basic elements of the measure

(18) The objective of the measure is to restore the resilience of SMEs affected by the economic crisis resulting from the COVID-19 pandemic by providing financial

---

9 As defined in Annex I to Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (OJ L 187, 26.6.2014, p. 1) (“GBER”).

10 The activities include those in Section C – Manufacturing (except Class 11: manufacture of beverages, Class 12: manufacture of tobacco, and Class 25.4: manufacture of weapons and ammunition); Section F – Construction; Section G – Wholesale and retail trade; Repair of motor vehicles and motorcycles; Section H – Transportation and storage; and Section I – Accommodation and food service activities.

11 As defined in Article 2(18) of the GBER.

12 Commission Regulation (EU) No 702/2014 of 25 June 2014 declaring certain categories of aid in the agricultural and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union (OJ L 193, 1.7.2014, p. 1).

support, under the Competiveness Operational Programme 2014-2020, for investments in upgrading[13].

(19) The aid is granted on the basis of a scheme. The Romanian authorities confirm that the maximum individual aid amount that may be granted per undertaking will not exceed 1% of the total budget available referred to in recital (11).

(20) The eligible costs under the measure are only the costs of investments in tangible and intangible assets[14], such as machinery, technological equipment, specific equipment for energy-saving purposes and systems using renewable/alternative energy sources in order to increase the efficiency of the activities for which funding is requested, patents and licences. Costs related to purchasing land and financial investments are therefore not eligible.

(21) The aid intensity may not exceed 15% of the eligible costs. However:

(a) for investments made by small enterprises, the aid intensity may be increased by 20 percentage points;

(b) for investments made by other SMEs, the aid intensity may be increased by 10 percentage points; or

(c) for investments in assisted areas that comply with the conditions of Article 14 of the GBER, excluding Article 14(14) of the GBER, the aid intensity may be increased by the aid intensity established in the regional aid map[15], which is in force at the time the aid is granted in the area concerned, but may in no event exceed 75% for small enterprises and 65% for medium-sized enterprises[16].

(22) The maximum aid amount per undertaking will be a value of up to five times the turnover of that undertaking in the financial year 2019, within the range between EUR 50 000 (minimum value)[17] and EUR 500 000 (maximum value). Consequently, the aid granted will not exceed the limit of 1% of the total budget available referred to in recital (11), and *a fortiori*, it will not exceed EUR 10 million per undertaking in nominal terms or the maximum aid amount calculated in accordance with Article 14 of the GBER, with the exception of

[13] According to Article 3(l) of the annex to the draft Order, ‘investments in upgrading’ mean investments in tangible and intangible assets, which are necessary to ensure production capacity and/or service delivery capacity to restore resilience.

[14] The eligible value of intangible assets may not exceed 20% of the eligible value of the tangible assets.

[15] Commission Decision C(2021) 9750 final, of 20 December 2021, State aid SA.100199 (2021/N) – Romania – Regional aid map for Romania (1 January 2022 – 31 December 2027) (OJ C 60, 4.2.2022, p. 1).

[16] The maximum aid intensities for investments in assisted areas are more specifically identified in the annex to the draft Order.

[17] The Romanian authorities confirm that projects for which the aid amount calculated in accordance with recitals (21) and (22) would be below EUR 50 000 will not be financed by the aid under the measure.

Article 14(14) of the GBER and based on the applicable regional aid map[18], increased by EUR 10 million in nominal terms.

(23) The Romanian authorities confirm that aid under the measure does not support activities in breach of the ‘do no significant harm’ (“DNSH”) principle. Notably, applicants will be required to declare that their investment project will not do significant harm to environmental objectives within the meaning of Article 17 of Regulation (EU) 2020/852[19]. Furthermore, a checklist with the criteria to be met during the project implementation will be annexed to this guide, based on the criteria established in Annex I of Commission Delegated Regulation (EU) 2021/2139[20] and in the Commission Notice Technical guidance on the application of DNSH under the Recovery and Resilience Facility Regulation[21]. Compliance with the DNSH principle will be checked by the internal monitoring services of the managing authority during the monitoring process, which will include progress reports and on-site monitoring visits.

(24) The aid will only concern investments made after the notification of the Commission’s decision approving the measure.

2.8. Cumulation

(25) The Romanian authorities confirm that aid granted under the measure may be cumulated with aid under the de minimis Regulations[22] or the GBER or ABER, provided the provisions and cumulation rules of those Regulations are respected.

(26) The Romanian authorities also confirm that aid granted under the measure may be cumulated with aid granted under other measures approved by the Commission under other sections of the Temporary Framework provided the provisions in those specific sections are respected.

(27) The Romanian authorities also confirm that aid under the measure may be added to notifiable regional investment aid and may be cumulated with other types of

[18] Commission Decision in case SA.100199, see footnote 15.

[19] Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (OJ L 198, 22.6.2020, p. 13).

[20] Commission Delegated Regulation (EU) 2021/2139 of 4 June 2021 supplementing Regulation (EU) 2020/852 of the European Parliament and of the Council by establishing the technical screening criteria for determining the conditions under which an economic activity qualifies as contributing substantially to climate change mitigation or climate change adaptation and for determining whether that economic activity causes no significant harm to any of the other environmental objectives (OJ L 442, 9.12.2021, p. 1).

[21] Commission Notice Technical guidance on the application of ‘do no significant harm’ under the Recovery and Resilience Facility Regulation 2021/C 58/01 (OJ C 58, 18.2.2021, p. 1).

[22] Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid (OJ L 352, 24.12.2013, p. 1), and Commission Regulation (EU) No 1408/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the agriculture sector (OJ L 352, 24.12.2013, p. 9).

aid under the conditions specified in point 20 of the Temporary Framework. Under no circumstances may the total aid amount exceed 100% of eligible costs. As a result, cumulation with other aid instruments that allow the coverage of a funding gap is excluded.

2.9. Monitoring and reporting

(28) The Romanian authorities confirm that they will respect the monitoring and reporting obligations laid down in section 4 of the Temporary Framework (including the obligation to publish relevant information on each individual aid above EUR 100 000 granted under the measure on the comprehensive national State aid website or Commission's IT tool within 12 months from the moment of granting[23]).

3. ASSESSMENT

3.1. Lawfulness of the measure

(29) By notifying the measure before putting it into effect (see recital (8)), the Romanian authorities have respected their obligations under Article 108(3) TFEU.

3.2. Existence of State aid

(30) For a measure to be categorised as aid within the meaning of Article 107(1) TFEU, all the conditions set out in that provision must be fulfilled. First, the measure must be imputable to the State and financed through State resources. Second, it must confer an advantage on its recipients. Third, that advantage must be selective in nature. Fourth, the measure must distort or threaten to distort competition and affect trade between Member States.

(31) The measure is imputable to the State, since it is administered by the Ministry of Investments and European Projects (recital (9)), and it is based on the national legal bases mentioned in recital (7). It is financed through State resources, since it is co-financed by the ERDF and REACT-EU funds which are under the control of the State, as well as by the State budget itself (recital (11)).

(32) The measure confers an advantage in the form of grants on its beneficiaries which they would not have had under normal market conditions (recital (6)).

(33) The advantage granted by the measure is selective, since it is awarded only to certain undertakings, namely SMEs engaged in the activities referred to in recital (13), and excludes from its scope undertakings active in certain sectors and/or activities[24], such as the financial sector, primary agricultural production, fisheries,

[23] Referring to information required in Annex III to the GBER or in Annex III to the ABER.

[24] Romania confirms that those undertakings are entirely excluded if they perform a given excluded activity.

aquaculture, and the manufacture of beverages, tobacco, weapons and ammunition (recital (16)).

(34) The measure is liable to distort competition, since it strengthens the competitive position of its beneficiaries. It also affects trade between Member States, since those beneficiaries are active in sectors in which intra-Union trade exists.

(35) In view of the above, the Commission concludes that the measure constitutes aid within the meaning of Article 107(1) TFEU. The Romanian authorities do not contest that conclusion.

3.3. Compatibility

(36) Since the measure involves aid within the meaning of Article 107(1) TFEU, it is necessary to consider whether that measure is compatible with the internal market.

(37) Pursuant to Article 107(3)(c) TFEU, the Commission may declare compatible with the internal market "*aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest*".

(38) When it amended the Temporary Framework on 18 November 2021, the Commission sought to provide options for Member States, to avoid a repetition of the post-crisis investment drop that occurred in the Union in the wake of the 2008 crisis, with the potential to hold back long-term growth. Investment support measures under section 3.13 of the Temporary Framework seek to overcome the negative economic effects of the crisis, including a widening of the investment gap. The measure aims at supporting private investment in assets as a stimulus to overcome an investment gap accumulated in sectors of the economy of significant importance for a sustainable recovery (recitals (13) and (16)). The measure has been designed to meet the requirements of the specific category of aid ("*Investment support towards a sustainable recovery*") described in section 3.13 of the Temporary Framework. The Commission therefore assesses the compatibility of the measure based on Article 107(3)(c) TFEU, in light of sections 2 and 3.13 of the Temporary Framework.

(39) The Commission considers that the measure facilitates the development of certain economic activities (recitals (13) and (16)) that are important for the economic recovery, is appropriate and necessary to address the economic consequences arising from the crisis induced by the COVID-19 pandemic. In particular:

(a) The aid is granted on the basis of a scheme and the maximum individual aid amount that may be granted per undertaking does not exceed 1% of the total budget of the scheme (recital (19), read in conjunction with recitals (11) and (22)). The measure therefore complies with point 89(a) of the Temporary Framework.

(b) Eligible costs include only the costs of investments in tangible and intangible assets as referred to in recital (20), excluding financial investments. Costs related to purchasing land are also excluded (recital

(20)). The measure therefore complies with point 89(b) of the Temporary Framework.

(c) The measure applies to the whole territory of Romania (recital (17)). Furthermore, the sectoral scope of the measure is not designed in a manner that leads to an artificial limitation in the sense of point 89(c) of the Temporary Framework. The sectoral scope encompasses a considerable number of activities listed in the annex to the draft Order (recital (13)) and the potential beneficiaries are defined in a broad manner since a considerable number of enterprises are expected to benefit from the measure (as noted in recital (14), the Romanian authorities estimate that approximately 1 000 beneficiaries will likely make use of the measure). Furthermore, the range of eligible investments is sufficiently wide (recital (20)). For these reasons, the measure complies with point 89(c) of the Temporary Framework.

(d) The aid intensities under the measure may not exceed the limits laid down in point 89(d) of the Temporary Framework (recitals (21)).

(e) The overall limit of EUR 10 million per undertaking on the basis of this measure and any other measure under section 3.13 of the Temporary Framework in nominal terms or the maximum aid amount calculated in accordance with Article 14 of the GBER, with the exception of Article 14(14) of the GBER and based on the applicable regional aid map, increased by EUR 10 million in nominal terms (recital (22), read in conjunction with recital (27)) will not be exceeded. The measure therefore complies with point 89(e) of the Temporary Framework.

(f) The aid is granted in the form of direct grants (recital (6)). The measure therefore complies with the first condition in point 89(f) of the Temporary Framework.

(g) Aid may not be granted under the measure to enterprises that were already in difficulty within the meaning of the GBER or ABER on 31 December 2019 (recital (15)). The measure therefore complies with point 92 of the Temporary Framework.

(h) Aid may be granted under the measure as from the notification of the Commission’s decision approving the measure until no later than 31 December 2022 (recital (12)). Aid will only concern investments made after approval of the measure by the Commission (recital (24)). The measure therefore complies with point 93 of the Temporary Framework.

(i) Aid may only be granted on the basis of a written application submitted before works on the investment start (recital (10)). The aid under the measure therefore has an incentive effect pursuant to point 94 of the Temporary Framework.

(40) The Romanian authorities confirm that the aid under the measure is not conditioned on the relocation of a production activity or of another activity of the beneficiary from another country within the EEA to the territory of the Member State granting the aid. This is irrespective of the number of job losses actually occurred in the initial establishment of the beneficiary in the EEA (recital (4)).

(41) The Romanian authorities confirm that the monitoring and reporting rules laid down in section 4 of the Temporary Framework will be respected (recital (28)).

(42) The Romanian authorities further confirm that the aid under the measure may only be cumulated with other aid, provided the specific provisions in the sections of the Temporary Framework and the cumulation rules of the relevant Regulations are respected (recitals (25) and (26)); they also confirm that the total aid amount cannot exceed 100% of the eligible costs (recital (27)). The measure therefore complies with points 20 and 91 of the Temporary Framework.

(43) The measure will facilitate the development of certain economic activities referred to in recital (13) which are of importance for a sustainable economic recovery. The measure will have positive effects on the development of these activities, as it will contribute to a reduction of the investment gap that could hamper long-term economic growth. The measure will however strengthen the financial situation of certain undertakings operating in sectors where there is cross border competition; it will thus have negative effects on competition and trade (recital (34)).

(44) In weighing the positive effects of the aid against its negative effects on competition and trade (point 90 of the Temporary Framework), the Commission has paid particular attention to the fact that the measure does not support activities in breach of the DNSH principle. To this effect, as explained in recital (23), applicants will be required to ensure that their investment project will not do significant harm to environmental objectives, which will be checked by the internal services of the managing authority during the monitoring process. Moreover, the projects will need to comply with the criteria set out in Annex I of the Commission Delegated Regulation (EU) 2021/2139 and with the Commission Notice Technical guidance on the application of DNSH under the Recovery and Resilience Facility Regulation (recital (23)). In addition, the measure was designed to meet the conditions laid down in section 3.13 of the Temporary Framework: as the measure is necessary, proportionate and appropriate, it is unlikely to have undue negative effects on competition and trade and such effects are limited to the minimum necessary. In particular, aid under section 3.13 can only finance investment costs relating to tangible and intangible assets, it benefits a broad range of beneficiaries (SMEs), the aid amount is capped and the maximum aid intensity is lower when the size of the undertaking increases.

(45) The Commission has taken due consideration that the measure facilitates the development of certain economic activities and of the positive effects of that measure on supporting the recovery from the crisis provoked by the COVID-19 pandemic when balancing those effects against the potential negative effects of the measure on the internal market. The Commission considers that the positive effects of that measure outweigh its potential negative effects on competition and trade.

4. CONCLUSION

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

The decision is based on non-confidential information and is therefore published in full on the Internet site: http://ec.europa.eu/competition/elojade/isef/index.cfm.

Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President