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Subject: State Aid SA.57969 (2021/N) – Romania – Modification of State Aid N 437/2009 and SA.45976 (2016/NN) for promoting high-efficiency cogeneration

Excellency,

1. PROCEDURE

- (1) Following pre-notification contacts, on 12 November 2021 Romania notified amendments ('notified amendments') of the high efficiency cogeneration support scheme approved by Commission Decision N 437/2009¹ ("2009 decision"), as amended following Commission decision SA.45976 ("2016 decision") ('existing aid scheme').
- (2) By letter dated 17 November 2021, Romania exceptionally agreed to waive its rights deriving from Article 342 Treaty on the Functioning of the European Union ('TFEU')² in conjunction with Article 3 of Regulation 1/1958³ and to have the present decision adopted and notified in English.

¹ https://ec.europa.eu/competition/state_aid/cases/232410/232410_1040780_53_1.pdf

² Treaty on the Functioning of the European Union, OJ C 326, 26.10.2014, p. 47.

³ Regulation No 1 determining the languages to be used by the European Economic Community, OJ 17, 6.10.1958, p. 385.

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2. DESCRIPTION

- (3) The subject of the notified amendments of the scheme concerns the duration of the combined heat and power ('CHP') support for the selected beneficiaries, an increase of the budget and an amendment to the rules applicable to companies in difficulty. The remaining elements of the existing aid scheme, as approved in the Commission decisions of 2009 and 2016, remain unaltered.

2.1. Main features of the scheme for the promotion of cogeneration⁴

- (4) The main objective of the approved aid scheme in the 2009 and the 2016 Commission Decisions is to promote high-efficiency CHP systems for saving primary energy. It aims at granting operating aid to CHP units to the extent that the CHP production costs for electricity exceed the predominant market prices.
- (5) The beneficiaries of the existing aid scheme are CHP units injecting electricity into the national grid, when produced from high-efficiency cogeneration, as defined in point 19(13) of the Guidelines on State aid for environmental protection and energy 2014-2020 ('EEAG')⁵.
- (6) Since its amendment in 2016, the existing aid scheme only applied to high efficient CHP plants complying with the criteria set out in Annex II of Directive 2012/27/EU⁶ (realising fuel savings of at least 10 % as compared to the reference values for producing electricity and heat separately). The scheme was closed for new beneficiaries since end 2016⁷.

2.1.1. Bonus calculation

- (7) The support scheme takes the form of operating aid granted through a premium ("bonus") per MWh. The bonus covers the difference between production costs of electricity from high efficient CHP and the market price of electricity, including a reasonable return on investment. The premium is calculated ex-ante separately for three types of CHP: solid fuel-based CHP, CHP fuelled by gas supplied directly through the transmission network and CHP fuelled by gas supplied through the distribution network. The bonus is calculated based on the following formula:

$$\text{Bonus} = (\text{Total costs} - \text{Revenues el.} - \text{Revenues h}) / \text{Electricity}$$

⁴ For a full description of the existing aid scheme, see the Commission's decisions C(2009)7085 corr. of 17.09.2009 and C(2016)7522 final of 16.11.2016.

⁵ Guidelines on State aid for environmental protection and energy 2014-2020, OJ C 200, 28.6.2014, p. 1.

⁶ Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC (OJ L 315 of 14.11.2012, p.1).

⁷ At the date of closing the access to the scheme, respectively 31.12.2016, capacities of approximately 3100 MWe in total were included in the list of cogeneration electricity and heat producers benefiting from the support scheme.

where:

- Total costs = variable costs⁸ + fixed costs⁹ + return on capital.¹⁰
 - Revenues el = income from the sale of the electricity delivered by the typical CHP plant at the electricity market price.
 - Revenues h = income from the sale of the heat produced in the typical CHP plant at the price for heat.
 - Electricity = electricity delivered annually by the CHP plant.
- (8) The Romanian Energy Regulatory Authority (ANRE) analyses on an annual basis the costs and revenues associated with the electricity and heat produced by each of the high-efficiency CHP plants benefiting from the scheme, and adjusts the value of the bonus to avoid overcompensation. This assessment is performed for each year based on the information submitted by the companies following the ANRE Methodology¹¹, which takes into account the revenues and the costs strictly related to the production of high efficiency thermal and electrical energy.
- (9) If the revenues from electricity and heat exceed the costs plus the return of investment¹² in a given year per beneficiary, ANRE considers that there is overcompensation, which the beneficiary should repay the year after.

2.1.2. Duration of the support and of the scheme

- (10) According to the 2009 decision, aid could be granted for a maximum of 11 consecutive years until 2023, and until full depreciation of the CHP plants. The national authorities explained that the mechanism in place with the 2009 decision should have facilitated the investment in new units and the replacement of existing CHP facilities.
- (11) Following the 2016 decision and in line with the EEAG, the existing aid scheme was closed for new beneficiaries on 31 December 2016 as the aid was not granted through a competitive tender. However, selected

⁸ Variable costs mainly include fuel costs.

⁹ Fixed costs are operating and maintenance costs (including personnel expenses) and depreciation costs.

¹⁰ The production costs also take into account a (maximum) 9 % return on capital.

¹¹ As mentioned in recital 8 of 2016 decision: ‘The Romanian Energy Regulatory Authority (ANRE) analyses on an annual basis the costs and revenues associated with the electricity and heat produced by each of the high-efficiency CHP plants benefiting from the scheme, and adjusts the value of the bonus to avoid overcompensation. Furthermore, ANRE analyses on an annual basis, at the level of each beneficiary, whether the aid granted to that beneficiary during the previous year gave rise to overcompensation. Should this be the case, ANRE defines the amount of overcompensation and orders the respective undertaking to repay it.’

¹² Return on the regulated base of assets (BAR) determined on the basis of the maximum acceptable rate of return, in accordance with Article 3 of GD no. 1215/2009 (9 %).

beneficiaries by 2016 could receive aid until the end of the duration of the scheme, i.e. until 2023.

2.2. Description of the amendments introduced to the approved aid scheme for the promotion of cogeneration

2.2.1. Purpose of the amendment

- (12) The duration of the existing aid scheme and the duration of the support were limited to 11 consecutive years and to 2023 at the latest. The support period applied independently of the date at which the plants entered the scheme.
- (13) However, Romania explained that ending the support would lead to stranded assets and would make CHP generation economically unviable. The Romanian authorities indicated that the electricity production costs of high-efficiency cogeneration plants continue to exceed the market price for electricity (see Tables 1 to 3). The bonus is determined based on the costs / revenues of a typical (reference) CHP, with a depreciation period of 25 years. This typical plant is depreciated (within 25 years) without adding new investments. Its calculation also includes other substantial cost elements (in addition to depreciation and return on capital).

Table 1: Simulation of a typical CHP plant using solid fuel at year 10 of the scheme

Cogeneration plant using solid fuel at year 10 of the scheme	
The equivalent cogeneration power plant characteristics	Operating on solid fuel
Produced electrical energy (MWh)	60.750,00
Delivered electrical energy (MWh)	48.600,00
Delivered thermal energy (MWh)	135.000,00
Equivalent cogeneration power plant costs	
Total variable costs, from which (euro/year)	5.130.834,00
Total fixed costs (euro/year)	3.641.623,92
Total costs (euro/year)	8.772.457,92
Equivalent thermal power plant characteristics	
Delivered thermal energy (MWh)	135.000,00
Equivalent thermal power plant costs	
Total variable costs of which (euro/year)	2464866,172
Total fixed costs (euro/year)	923.832,00
Total costs (euro/year)	3.388.698,17
Thermal energy price (euro/MWh)	25,10
Bonus calculation	
Electrical energy price (euro/MWh)	54,78
Electrical energy revenues (euro/year)	2.662.418,79
Thermal energy revenues (euro/year)	3.388.500,00
Bonus revenue (euro)	2.721.539,13
Bonus (euro/MWh)	56,00

Source: the Romanian authorities

Table 2: Simulation of a typical CHP plant using natural gas supplied from the grid at year 10 of the scheme

Cogeneration power plants using natural gas fuel supplied from the transmission network at year 10 of the scheme

The characteristics of the equivalent cogeneration power plant	operation on natural gas fuel from the transport network
Produced electrical energy (MWh)	135.000,00
Delivered electrical energy (MWh)	121.500,00
Delivered heat (MWh)	142.100,00
Equivalent cogeneration power plant costs	
Total variable costs, (euro/year)	10.442.073,34
Total fixed costs (euro/year)	5.723.912,97
Total costs (euro/year)	16.165.986,31
Equivalent thermal power plant characteristic	
Delivered thermal energy (MWh)	142.100,00
Equivalent thermal power plant costs	
Total variable costs of which (euro/year)	3.917.769,57
Total fixed costs (euro/year)	927.457,58
Total costs (euro/year)	4.845.227,15
Thermal energy price (euro/MWh)	34,097
Bonus calculation	
Electrical energy price (euro/MWh)	54,782
Electrical energy revenues (euro/year)	6.656.046,97
Thermal energy revenues (euro/year)	4.845.227,15
Bonus revenue (euro)	4.664.712,18
Bonus (euro/MWh)	38,393

Source: the Romanian authorities

Table 3: Simulation of a typical CHP plant using natural gas supplied from the grid at year 10 of the scheme

Cogeneration power plants that are using gas fuel from the distribution network at year 10 of the scheme

The characteristics of the equivalent cogeneration power plant	Operation on natural gas fuel from the distribution network
Produced electrical energy (MWh)	135.000,00
Delivered electrical energy (MWh)	121.500,00
Delivered heat (MWh)	142.100,00
Equivalent cogeneration power plant costs	
Total variable costs, from which (euro/year)	11.044.222,14
Total fixed costs (euro/an)	5.442.956,15
Total costs (euro/year)	16.487.178,29

Equivalent thermal power plant characteristics	
Delivered thermal energy (MWh)	142.100,00
Equivalent thermal power plant costs	
Total variable costs of which (euro/year)	4.173.514,05
Total fixed costs (euro/year)	897.847,58
Total costs (euro/year)	5.071.361,63
Thermal energy price (euro/MWh)	35,689
Bonus calculation (euro/MWh)	
Electrical energy price (euro/MWh)	54,782
Electrical energy revenues (euro/year)	6.656.046,97
Thermal energy revenues (euro/year)	5.071.361,63
Bonus revenue (euro)	4.759.769,69
Bonus (euro/MWh)	39,18

Source: the Romanian authorities

- (14) In addition to those standardised calculations, the Romanian authorities submitted to the Commission actualised calculations of all the costs and revenues for the typical power plants for a period of 21 years of support. The period of 21 years is justified by the typical amortisation period used for CHP plants of 25 years and the projected market prices developments. The Romanian authorities estimate notably that no support would be necessary after 2033 and after 21 years of operation. The tables above demonstrate that the bonus will be necessary to cover costs until the end of the support duration. Furthermore, Romania explained that, in case of electricity price increases in the centralised markets (Day ahead market and Intraday market) more than variable cost increases, or if the variable costs decrease (fuel and CO₂ costs), the bonus would be reduced.
- (15) Consequently, the Romanian authorities explain that the activity would not be economically viable without extending the duration of the support as the electricity and thermal energy revenues do not cover the costs for CHP generation. The calculations provided in the 2009 Decision were therefore updated taking into account the evolution of variable costs (in particular fuel and CO₂ costs) and of the electricity market prices.

2.2.2. Amendment of the duration of the support per beneficiary

- (16) Based on the above calculations and projections, the national authorities explain that it is necessary for each beneficiary to receive support for a period of 21 years in total. However, that period cannot exceed the depreciation of the plant. Finally, no support can be granted after 31 December 2033. The purpose of the notified amendments is therefore to substantially modify the existing aid scheme for the promotion of the high efficiency cogeneration support scheme N 437/2009, as amended in the 2016 by:
- allowing beneficiaries selected before 2016 in this scheme to apply for a prolongation of duration of the support for an additional period of up to 10 years without exceeding a maximum total support period of 21 years and only until full depreciation of the respective initial investment;
 - Allowing aid to be granted until 31 December 2033.

2.2.3. *Budget*

- (17) The notified amendments aim as well at extending the estimated budget of the scheme by 11.148 billion lei (around EUR 2.254 billion)¹³. The budget is increased from 10.735 billion lei (around EUR 2.169 billion) to 21.883 billion lei (around EUR 4.421 billion), in order to grant support to beneficiaries to cover the difference between the production costs and the revenues from electricity and heat generation.

2.2.4. *National legal basis*

- (18) The notified amendments of the existing aid scheme will be implemented through a legal act amending the following legal bases:
- Draft Government Decision for amending and supplementing GD no. 1.215 / 2009 on establishing the criteria and conditions necessary for the implementation of the support scheme for the promotion of high efficiency cogeneration based on the demand for useful heat.
 - Government Decision no. 1.215/2009 on the establishment of criteria and conditions necessary for the implementation of the support scheme for promoting high efficiency cogeneration based on heat demand, as modified and completed by the Government Decisions GD 494/2014, GD no. 925/2016, GD no. 129/2017 and GD no. 846/2018.

2.2.5. *Undertakings in difficulty and Degendorf*

- (19) In line with point 16 of the EEAG, the Romanian authorities have committed not to award aid, under the notified amendments, to firms in difficulty, as defined by the Guidelines on State aid for rescuing and restructuring firms in difficulty. Regarding undertakings subject to an outstanding recovery order following a previous Commission decision declaring an aid illegal and incompatible with the internal market, the Romanian authorities committed, in line with point 17 of the EEAG, to not award support to these undertakings, until that undertaking has reimbursed the total amount of unlawful and incompatible aid and the corresponding recovery interest.
- (20) Furthermore, the Romanian authorities explained that compliance with the above-mentioned conditions will be verified at the moment when the existing beneficiaries apply for a prolongation of the duration of their support through the CHP bonus. More specifically, the Romanian authorities will inform the current beneficiaries, who do not fulfill the above conditions, that they will not be selected to remain in the scheme, and that, consequently, the end date to receive support is approaching and that they will not receive aid during the scheme duration extension. Those applications should be submitted by 31 December 2023.

¹³ On the date of the notification of the notified amendments, the exchange rate was RON 1 equal to EUR 0,20.

2.2.6. *Transparency*

- (21) Romania confirmed that all transparency requirements set out in points 104-106 of the EEAG will be complied with. The information concerned by these requirements will be published on following websites: www.ajutordestat.ro; www.anre.ro and www.transelectrica.ro.

2.2.7. *Evaluation of the measure*

- (22) The Romanian authorities have notified, together with the notified amendments, an evaluation plan, taking into account the best practices recalled in the Commission Staff Working Document on a Common methodology for State aid evaluation. The main elements of the evaluation plan are described below.
- (23) The evaluation plan describes the objectives of the scheme subject to evaluation, as outlined in section 2.2, and comprises evaluation questions that address the direct effects of the aid scheme, the proportionality and appropriateness of the aid, and a range of indirect effects.
- (24) The questions addressing the direct effect of the aid will investigate the scheme's contributions to: the evolution of the CHP plants' electricity generation; the extent that support led to investments in the construction or retrofitting or modernisation of CHP plants; the impact of CHP support for new plants, retrofitting and modernisation on CHP electricity generation; the impact of the support for existing plants on the stock of CHP (prevention of closure) and on the cogeneration production of the supported existing CHP plants.
- (25) A set of questions will address the indirect impacts of the aid, both positive (a decrease in the level of primary non-renewable energy consumption, jobs' creation in the supplier industry) and negative (CO₂ emissions of companies), as well as the appropriateness and proportionality of the aid.
- (26) The evaluation plan describes the result indicators that will be used to measure the degree of achievement of the measure's objectives, and which are matched with the evaluation questions.
- (27) The direct effects of the scheme on the beneficiaries are to be identified by employing econometric methods, in particular a regression analysis of the type "Difference-in-Differences" (DiD), as described in the Commission Staff Working Document on Common methodology for State aid evaluation.
- (28) The DiD strategy is the one that, exploiting the longitudinal nature of the data available, is considered more robust to the presence of unobservable differences between firms/ undertakings benefitting from aid under the evaluated aid scheme, and firms/ undertakings belonging to a control group, provided that these differences remain constant over time (parallel trend assumption).
- (29) For the control group, non-aid recipients of the same industry are identified, which are as similar as possible to the beneficiaries in terms of essential characteristics to ensure that both aid recipients and non-aid recipients are

affected to the same extent by external factors (e.g. economic development). In order to avoid a distortion of the causal effect, non-aid recipients who applied but did not receive aid, as they did not meet the necessary requirements, would, if possible, be included in the control group.

- (30) The Romanian authorities have indicated that the choice of methodology is based on the current forecast concerning the implementation of the scheme. The methodology for the evaluation will be more precisely defined in close coordination with the Commission and in light of the results of the call for applications, by the end of 2022.
- (31) The entity, or entities, that will be responsible for carrying out the final evaluation, will be selected through an open, non-discriminatory and competitive selection process in accordance with national and EU public procurement rules. The evaluation will be carried out by an expert independent from the aid granting authority.
- (32) For the purpose of ensuring the quality and reliability of the evaluation, the evaluation will be conducted by an external independent evaluator to be selected through an open tender procedure.
- (33) Concerning the timeline for the evaluation, the Romanian authorities committed to submit to the Commission a first methodological interim report by the end of 2022; a second interim report by the end of 2027, which will present the results of the impact evaluation on the effectiveness of the scheme until 2025; and a final evaluation report in the second quarter of 2033.
- (34) The Romanian authorities confirmed that the final evaluation report will be published on the website of the Ministry of Energy.
- (35) The evaluation results and the data on which they are based will be published, unless there are predominant public or individual interests that oppose this. In any case, the data used for the evaluation will be made available to the European Commission for purposes of transparency and replicability of the analyses.

3. ASSESSMENT

- (36) The notified amendments consist in an extension of the duration of support, an extension of the budget and a new granting moment for the beneficiaries selected before 31 December 2016. The notified amendments are being assessed as regards their compliance with Article 107(3)(c) TFEU as interpreted in the EEAG.

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

- (37) Article 107(1) TFEU provides that “*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 common market*”.

- (38) In its 2009 decision and its 2016 decision (N 437/2009 and SA.45976), the Commission concluded that the support in the form of the bonus granted to the Romanian high-efficient CHP plants involves State resources and grants a selective advantage to high-efficient CHP producers, which may distort competition, and thus constitutes State aid. That conclusion remains unaltered in the present decision, as these elements will remain in the modified scheme.
- (39) The notified amendments therefore constitute State aid within the meaning of Article 107(1) TFEU.

3.2. Legality of aid

- (40) The Government decision constituting the legal basis of the notified amendments of the measure includes a clause indicating that the entry into force of the scheme is conditional to the prior Commission approval. By notifying the scheme before its implementation, Romania has fulfilled its obligation according to Article 108(3) TFEU.

3.3. Compatibility assessment

- (41) Article 107(3)(c) TFEU provides that the Commission may declare compatible “*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*”. Therefore, compatible aid under that provision of the Treaty must contribute to the development of certain economic activities (positive condition). Furthermore, the aid should not distort competition in a way contrary to the common interest (negative condition).
- (42) The Commission concluded in its 2009 and 2016 decisions that the support for high-efficient CHP complied with those conditions. The current compatibility assessment will therefore focus on the modification of the scheme, consisting in extending the duration and increasing the budget of the support and creating a new granting moment for the existing beneficiaries. All the remaining elements of the scheme remain unaltered (see recital 3).

3.3.1. Positive condition: the aid must facilitate the development of an economic activity

3.3.1.1. Economic activity supported by the aid

- (43) The notified amendments concern aid granted for producers of electricity through high efficient cogeneration.
- (44) The Romanian authorities have explained that there was a sizeable risk that the CHP plants would go out of operation if the beneficiaries of the existing aid scheme would not be able to market their electricity without the bonus scheme before their investment has been paid back (see recital 13). By ensuring the continuous operation of the CHP plants, the notified amendments of the existing scheme at stake contributes to the development of the economic activity of electricity production from high-efficient CHP.

3.3.1.2. Aid effectively facilitating the development of the economic activity

- (45) State aid has an incentive effect if it incentivises the beneficiary to change its behaviour towards the development of a certain economic activity pursued by the aid and if the change in behaviour would not occur without the aid¹⁴.
- (46) The calculations provided by Romania show that the economics behind the initial scheme, as approved in the 2009 and 2016 decisions, do not take sufficient account of market developments, such as the increase of the prices of the greenhouse gas allowances (ETS) (see variable costs in tables 1 to 3). It has also been demonstrated that the scheme, as approved in the 2009 and 2016 decisions, was necessary to trigger new investments, but insufficient to make such investments viable for the duration of amortisation of the newly built high efficient CHP plants. Furthermore, it has been demonstrated that a modification of the scheme is essential to avoid that the beneficiaries of the existing scheme go out of the market. By modifying the duration of support per beneficiary, the revised scheme incentivises the development of high efficient CHP units and allows these units to remain on the market.
- (47) In line with point 144 of the EEAG combined with point 49 of the EEAG, the incentive effect occurs if the aid induces the beneficiary to change his behaviour to facilitate the development of the economic activity being supported. The Commission notes that in the absence of an extension of the duration of support, high-efficient CHP plants would not be economically viable on the electricity market, as without the aid the electricity production costs would be higher than the revenues from its sale. The aid has therefore an incentive effect, since it determines the electricity installations operators to change their behaviour and maintain electricity production in high-efficient CHP mode.
- (48) Romania furthermore confirmed that the aid is given based on a request from the interested undertakings, and the application form would contain all the elements requested in point 51 of the EEAG. Initially, the beneficiaries of the scheme were selected based on a request from the interested undertakings, and an application form containing all the necessary elements, including a credible counterfactual scenario and costs description (see recital 30 of the 2016 decision). Beneficiaries would have to submit a separate application for being eligible to receive the prolongation of the support in compliance with the conditions of points 50 to 52 of EEAG (see recital 16).
- (49) Therefore, the Commission concludes that the notified amendments of the existing scheme has an incentive effect and facilitate the development of certain economic activities, as required by Article 107(3)(c) TFEU.

3.3.1.3. Compliance with EU law

- (50) The Commission has not identified any breach of EU by the modification of the aid to the supported activity of electricity generation from high efficient

¹⁴ Judgment of 22 September 2020, *Austria v Commission*, C-594/18 P, EU:C:2020:742.

CHP. The Commission's conclusion on compliance with Articles 30 and 110 TFEU (see recitals 43 and 44 of the 2016 decision and recitals 63 to 65 of the 2009 decision) remains unaltered.

3.3.2. *Negative condition: the aid measure cannot unduly affect trading conditions to an extent contrary to the common interest*

3.3.2.1. Market(s) affected by the aid

- (51) The prolongation of the support to electricity generation from high efficient CHP is likely to affect the national and interconnected electricity market as electricity is freely traded between Member States and all measures supporting national electricity production have the potential to distort competition and are liable to affect trade between Member States.

3.3.2.2. Positive effects of the measure

- (52) The cogeneration premium aims at incentivising production of electricity in high efficient CHP installations. High-efficiency cogeneration has been recognised by the Energy Efficiency Directive¹⁵ ("EED") as having significant potential for saving primary energy and thus contributing to energy efficiency and to CO₂ reduction efforts. In line with paragraph 139 of the EEAG, Romania limits the support to CHP electricity satisfying the definition of high-efficiency cogeneration pursuant to Annex II EED.
- (53) The Romanian authorities have also explained that continuing the support to the selected beneficiaries will continue reducing NO_x, SO_x, dust and CO₂ emissions (as compared to separate generation of heat and power), generating fuel savings of at least 10 %, diversifying the primary energy sources and promoting centralised district heating (which is more environmentally friendly than individual heating).
- (54) The Commission therefore considers that the aid contributes to a higher level of environmental protection (see point 141 of the EEAG).

3.3.2.3. Limitation of the negative effects of the measure

(a) Necessity

- (55) The Commission has further examined whether the aid measure is necessary to remedy a market failure that otherwise would have remained unaddressed.
- (56) The comparison of the production costs with the relevant market prices provided in the notification (see tables 1 to 3 above) shows that aid is necessary, since in the absence of the aid high-efficient CHP plants would not be able to cover their production costs through the revenues obtained from selling the electricity and the heat on the market and their operation would not be economically viable.

¹⁵ Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC (OJ L 315, 14.11.2012, p. 1).

(57) The Commission concludes that there was thus a residual market failure that the aid measure concerned aimed at addressing.

(b) Appropriateness

(58) In point 145 of the EEAG, the Commission notes that "*State aid may be considered an appropriate instrument to finance energy-efficiency measures, independently of the form in which it is granted*".

(59) The Commission finds that the aid is appropriate to address the residual market failure. In the absence of a prolongation of the duration of support, the CHP power plants would not have a sufficient incentive to remain on the market. The modification of the duration of the support is therefore appropriate.

(c) Proportionality

(60) The notified amendments consist of operating aid for the production of electricity in highly energy-efficient CHP installations, thus point 151 of the EEAG is applicable for the assessment of proportionality. For the assessment of proportionality, point 151 of the EEAG makes reference to the conditions applying to operating aid for electricity from renewable energy sources as established in section 3.3.2.1 of the EEAG, including point 128, which refers to point 133 EEAG. Thus, proportionality should be assessed based on point 133 EEAG.

(61) First, the aid is only granted for the production of cogenerated electricity (see point 133(a) of the EEAG) limited to the difference between the operating costs and the market price of electricity as the calculations show (see also point 133(b) and point 151(a) of the EEAG). The Commission observes in particular that the calculations include all types of revenues that the CHP installation can obtain. Second, the Commission considers the applied maximum rate of return appropriate.

(62) Second, the evolution of costs and level of the bonus payment is set on an annual basis to verify whether the operating costs are still higher than the market price of energy (see also point 133(c) of the EEAG). When the electricity market price rises, the bonus is reduced proportionately. Furthermore, in case of a bonus determination exceeding the return of investment allowed under the scheme, the beneficiaries are obliged to pay back the surplus, thus avoiding overcompensation issues.

(63) Finally, aid would only be granted until the plant has been fully depreciated according to normal accounting rules in order to avoid that operating aid based on LCOE exceeds the depreciation of the investment. Point 131 (d) of the EEAG is therefore complied with.

(64) In the light of the above, the Commission concludes that the aid is proportionate.

3.3.3. Distortion of competition and balancing test

3.3.3.1. Distortion of competition and balancing test

(a) Positive effects

- (65) The Commission notes that the prolongation of the duration of the existing aid scheme will contribute to energy efficiency and environmental objectives, as described in recital 4. Furthermore, high-efficiency cogeneration as promoted under this measure has been recognised by the Energy Efficiency Directive as having significant potential for saving primary energy and thus for energy efficiency.

(b) Negative effects

- (66) The distortions of competition on the heat and electricity markets remain limited. The bonus is given on top of the market price of electricity, on the basis of a standardised plant type calculation, thus incentivising undertakings to take electricity price signals into account and thereby optimise their individual revenues.
- (67) A limited number of the CHP plants concerned by the measure use coal as fuel and would be supported until the end of their respective depreciation periods. However, such support of existing high-efficient CHP capacity as allowed in the EEAG is not in contradiction with the objective of ensuring progressively the decarbonisation of electricity systems if planned well. As set out in its national energy and climate plan,¹⁶ electricity production from coal in Romania is set to decrease over time. EU funds can support Romanian decarbonisation efforts further, including in the area of CHP.

(c) Conclusions on distortion of competition and balancing test

- (68) In light of the above, the Commission concludes that the modification of the support duration to high efficient CHP installations has significant positive effects in terms of facilitating an economic activity and of environmental protection while not leading to undue distortions of competition and trade. It follows that the positive effects of the aid outweigh its negative effects on competition and trade.
- (69) Based on the above considerations, it can be concluded that the notified amendments do not alter the conclusion of the compatibility assessment in the 2009 and 2016 decisions.

3.3.4. The evaluation plan as part of the compatibility assessment

- (70) The EEAG (point 28 and Chapter 4) state that the Commission may require that certain aid schemes are subject to an evaluation, where the potential distortion of competition is particularly high, that is to say when the measure may risk significantly restricting or distorting competition, if their

¹⁶ Romanian 2021-2030 integrated national energy and climate plan, https://ec.europa.eu/energy/sites/default/files/documents/ro_final_necp_main_en.pdf.

implementation is not reviewed in due time. Given its objectives, evaluation only applies for aid schemes with large aid budgets, containing novel characteristics or when significant market, technology or regulatory changes are foreseen.

- (71) The scheme fulfils the criteria of being a scheme with a large aid budget; therefore, it will be subject to an evaluation.
- (72) The Commission considers that the notified evaluation plan contains all the necessary elements: the objectives of the aid scheme to be evaluated, the evaluation questions, the result indicators, the envisaged methodology to conduct the evaluation, the data collection requirements, the proposed timing of the evaluation including the date of submission of the final evaluation report, the description of the independent body conducting the evaluation and the criteria that will be used for its selection and the modalities for ensuring the publicity of the evaluation (see recitals 22 to 35).
- (73) The Commission notes that the scope of the evaluation is defined in an appropriate way. It comprises a list of evaluation questions with matched result indicators. Moreover, the evaluation plan sets out and explains the main methods that will be used in order to identify the impacts of the scheme.
- (74) The Commission acknowledges the commitments made by the Romanian authorities, pursuant to the Commission requirements, that the evaluation will be conducted according to the notified evaluation plan by an independent evaluation body. The procedures envisaged for selecting such evaluation body are appropriate in terms of independence and skills. Moreover, the proposed modalities for the publication of the evaluation results are adequate to ensure transparency.
- (75) The Commission notes the commitment made by Romania to submit to the Commission a first interim report by the end of 2022, a second interim report by the end of 2027, and a final evaluation report in the second quarter of 2033. The Commission notes that the evaluation method might be further fine-tuned in common accord between the Romanian authorities and the Commission, and it will be described in the first interim report.
- (76) The Commission notes the commitment made by Romania to communicate to the European Commission any difficulty that could significantly affect the agreed evaluation in order to work out possible solutions.
- (77) The Commission notes that the scheme should be suspended if the final evaluation report were not submitted in good time and sufficient quality.

4. CONCLUSION

The Commission has accordingly decided not to raise objections to the notified amendments to the scheme on the grounds that they are compatible with the internal market pursuant to Article 107(3)(c) of the Treaty on the Functioning of the European Union.

Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President