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**Subject: State Aid SA.56403 (2020/N) – Romania
Compensation for indirect emission costs in Romania**

Sir,

1. PROCEDURE

- (1) Following pre-notification contacts, by electronic notification dated 21 April 2020, Romania notified to the Commission, in accordance with Article 108(3) of the Treaty on the Functioning of the European Union (TFEU), a scheme to compensate undertakings for a share of their indirect emission costs, that is to say the costs resulting from the EU Emission Trading System (ETS) passed on in electricity prices.
- (2) By letter dated 29 April 2020, Romania agreed to waive its rights deriving from Article 342 TFEU in conjunction with Article 3 of Regulation 1/1958 and to have the present decision adopted and notified in English.

2. DESCRIPTION OF THE MEASURE

- (3) The measure compensates certain undertakings for increases in electricity prices resulting from the inclusion of the costs of greenhouse gas emissions due to the EU ETS, so called indirect emission costs, as defined in the Guidelines on certain

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State aid measures in the context of the greenhouse gas emission allowance trading scheme post-2012 ('ETS Guidelines').¹

2.1. Legal basis, duration, budget and granting authority

- (4) The legal basis for the measure is the Government Emergency Ordinance N^o 81/2019 modifying and completing the Government Emergency Ordinance N^o 115/2011 (the "Act"). The application of the scheme is conditional to its approval by the Commission.
- (5) The notified measure covers indirect emission costs incurred in years 2019 and 2020. The estimated total budget for the duration of the scheme (expenditure incurred in the years 2019-2020) is approximately 291 million EUR.
- (6) The aid will be paid to the beneficiary in the year in which the costs were incurred or in the year following the one in which the costs were recorded (year t + 1). If the aid is paid in the year in which the costs are incurred, the payment is adjusted by the ex post mechanism of payment adjustment provided in Article VIII of the Act, so that any exceeding payment of the aid will be reimbursed before July 1 of the following year. First payments will be made in 2020 on the basis of eligible costs for year 2019. For the year 2020, aid will not be paid out after 2021.
- (7) The Ministry of Economy, Energy and Business Environment of Romania will be the competent authority to grant the aid on the basis of an application from an eligible undertaking.
- (8) The measure is financed from the revenues generated from the auctioning of greenhouse gas emission allowances attributed to Romania. Those revenues are transferred by the Ministry of Public Finances to the Ministry of the Economy, Energy and Business Environment in a separate State budget account dedicated to the financing of the measure.

2.2. Beneficiaries

- (9) The beneficiaries are companies active in one of the sectors or sub-sectors listed in Annex II to the ETS Guidelines. The maximum number of beneficiaries is 170 estimated by the Romanian authorities.
- (10) Aid is granted only for electricity including CO₂ costs in its price.
- (11) The Romanian authorities have explained that beneficiaries of the aid scheme must also comply with the following additional conditions for eligibility during the period of validity of the scheme:
 - (a) be registered according to Law N^o 31/1990 regarding the commercial companies, republished, modified and completed;
 - (b) does not register outstanding debts to the general consolidated budget of the State;

¹ Commission Guidelines on certain State aid measures in the context of the greenhouse gas emission allowance trading scheme post-2012, OJ C 158, 05.06.2012, p. 4. As modified by Communication 2012/C 387/06, OJ C 387, 15.12.2012, p. 5.

- (c) not be in the process of forced execution, insolvency, bankruptcy, judicial reorganization, dissolution, operational closure, liquidation or temporary suspension of the activity;
- (d) not be in difficulty within the meaning of point 2.2 of the European Commission Guidelines on State aid for rescuing and restructuring non-financial enterprises in difficulty²;
- (e) not be subject to an outstanding recovery order following a previous Commission decision;
- (f) during the period of payment of the aid, the possible layoffs do not exceed 25% of the number of employees at the time of the application for the aid was submitted;
- (g) to maintain the activity in the European Economic Area (EEA) for a period of three years after the last year in which the compensation was granted.

2.3. Aid amount calculation

- (12) The Romanian authorities explained that the maximum aid amount payable per installation will be calculated only for the products that are eligible for aid and according to the two formulas outlined in point 27 of the ETS Guidelines. Where electricity consumption efficiency benchmarks have been published, the formula of point 27(a) of the ETS Guidelines applies. If no product-related electricity consumption efficiency benchmarks are published, the formula of point 27(b) of the ETS Guidelines applies. For the purpose of calculating the aid under the formula set out in point 27(b), a fall-back electricity consumption efficiency benchmark of 80% of the baseline electricity consumption will be used, as envisaged by Annex I to the ETS Guidelines.
- (13) Romania also confirmed that, if an installation manufactures products for which an electricity consumption efficiency benchmark listed in Annex III is applicable and products for which the fall-back electricity consumption efficiency benchmark is applicable, the electricity consumption for each product is apportioned according to the respective tonnage of production of each product. If an installation manufactures products that are eligible for aid and products that are not eligible for aid, the maximum aid payable is calculated only for the products that are eligible for aid.
- (14) The measure adopts the definitions of Annex I of the ETS Guidelines for all the elements of the formulae. The measure also applies the electricity consumption efficiency benchmarks defined in Annex III³, as well as the maximum regional emission factor of Annex IV.

² Communication from the Commission — Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty, OJ C 249, 31.7.2014, p. 1–28.

³ Annex III to the ETS Guidelines has been modified by the Communication from the Commission amending the Guidelines on certain State aid measures in the context of the greenhouse gas emission allowance trading scheme post-2012, OJ C 387, 15.12.2012, p. 5.

- (15) The maximum aid intensity will be 75%, as foreseen by the ETS Guidelines for the years 2019 and 2020.
- (16) Romania stated that the aid granted under this scheme cannot be combined with another State aid within the meaning of Article 107(1) from the TFEU or other forms of financing from the European Union if such overlap results in State aid intensity greater than that provided for in the ETS Guidelines.

2.4. Reporting and monitoring of aid

- (17) The Romanian authorities undertake to comply with and apply the reporting requirements set out in points 48 and 49 of the ETS Guidelines. Romania also undertakes to comply with the requirements set out in points 52-54 of the ETS Guidelines on transparency and monitoring.

3. ASSESSMENT

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

- (18) In order for a measure to constitute State aid within the meaning of Article 107(1) TFEU it has to fulfil four conditions. Firstly, the aid must be granted by a Member State or through State resources. Secondly, the measure must confer a selective advantage to certain undertakings or the production of certain goods. Thirdly, the measure must be liable to affect trade between Member States. Fourthly, the measure must distort or threaten to distort competition in the internal market.
- (19) The compensation is granted by the Ministry of Economy, Energy and Business Environment of Romania, which is a public entity, and funded through the revenues of the auctioning of allowances. Hence, the measure is granted by the State and financed through State resources. It confers an advantage to the beneficiaries by compensating for costs they would have incurred under normal market conditions. The aid is selective since it is granted only to the undertakings active in certain sectors. These sectors are all exposed to international competition as noted in the ETS Guidelines⁴, making it likely the aid can affect trade between Member States and distort competition.
- (20) Based on the above, the Commission considers that the scheme constitutes State aid within the meaning of Article 107(1) TFEU.

3.2. Lawfulness of the aid

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

⁴ Annex II to the ETS Guidelines.

3.3. Compatibility

- (23) The Commission has assessed if the measure can be considered compatible with the internal market pursuant to Article 107(3)(c) TFEU.
- (24) The notified aid constitutes a compensation scheme for EU ETS allowance costs passed on in electricity prices. Pursuant to point 7 of the ETS Guidelines and in line with Article 10a(6) of the ETS Directive⁵ Member States may grant State aid in favour of sectors or subsectors deemed to be exposed to a significant risk of carbon leakage due to indirect emission costs and to avoid carbon leakage. Therefore, as the measure constitutes a specific aid measure provided for in the context of implementation of the ETS Directive, it falls within the scope of the ETS Guidelines (see point 20 the ETS Guidelines); hence, the Guidelines on State aid for environmental protection⁶ do not apply to this measure.
- (25) The Commission assessed the compatibility of the notified aid scheme on the basis of Section 3.1 of the ETS Guidelines, which sets out the conditions under which such aid may be deemed compatible.

3.3.1. Objective and necessity of the aid

- (26) Point 24 of the ETS Guidelines requires that the objective of the aid is to prevent a significant risk of carbon leakage due to EU ETS allowance costs being passed on in electricity prices supported by the beneficiary, if its competitors from third countries do not face similar CO₂ costs in their electricity prices and the beneficiary is unable to pass on those costs to product prices without losing significant market share. According to point 25 of the ETS Guidelines, a significant risk of carbon leakage is considered to exist only if the beneficiary is active in a sector or subsector listed in Annex II to the ETS Guidelines.
- (27) The beneficiaries of the notified aid scheme are companies in Romania active in one of the sectors listed in Annex II to the ETS Guidelines. Hence, the Commission concludes that the aid aims to realise the scheme's well-defined objective of common interest, namely addressing a significant risk of carbon leakage.

3.3.2. Proportionality

- (28) Point 45 of the ETS Guidelines requires Member States to demonstrate that the aid granted is limited to the minimum necessary.
- (29) The measure does not provide for full compensation, as this could remove the incentive to further reduce electricity consumption. The maximum aid intensity will be 75%, as foreseen by the ETS Guidelines for the years 2019 and 2020. The notified aid thus complies with point 26 of the ETS Guidelines.

⁵ Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (Text with EEA relevance), OJ L 275, 25.10.2003, p. 32–46

⁶ Communication from the Commission — Guidelines on State aid for environmental protection and energy 2014-2020, OJ C 200, 28.6.2014, p. 1–55

- (30) Pursuant to point 27 of the ETS Guidelines the maximum aid payable per installation for the manufacture of products within the sectors and subsectors listed in Annex II must be calculated according to the formulae specified in the ETS Guidelines. The formulae for the calculation of maximum aid payable under the notified aid are in line with the provisions of point 27 of the ETS Guidelines (see recital (12) above).
- (31) The notified aid also complies with points 28 and 29 of the ETS Guidelines for the following reasons. Romania confirmed that if an installation manufactures products for which an electricity consumption efficiency benchmark listed in Annex III is applicable and products for which the fall back electricity consumption efficiency benchmark is applicable, the electricity consumption for each product must be apportioned according to the respective tonnage of production of each product. If an installation manufactures products that are eligible for aid and products that are not eligible for aid, the maximum aid payable shall be calculated only for the products that are eligible for aid (see recital (13) above). The measure adopts the definitions of Annex I of the ETS Guidelines for all the elements of the formulae. The measure also applies the electricity consumption efficiency benchmarks defined in Annex III, as well as the maximum regional emission factor of Annex IV.
- (32) Since aid is granted only for electricity including CO₂ costs in its price, point 11 of the ETS Guidelines is also complied with.
- (33) Finally, aid will be paid to the beneficiary in the same year in which the costs are incurred or in the following year. First payments will be made in 2020 on the basis of eligible costs for year 2019. This is in line with point 30 of the ETS Guidelines.
- (34) In view of the above, the Commission considers that the aid is proportionate.

3.3.3. Incentive effect

- (35) According to point 31 of the ETS Guidelines, if all the conditions set out in section 3.1 of the ETS Guidelines are fulfilled, the aid is presumed to have an incentive effect. In the light of sections 3.3.1 and 3.3.2 above, the aid has an incentive effect.

3.3.4. Cumulation

- (36) The scheme's provisions on cumulation are in line with the requirements set out in point 47 of the ETS Guidelines as they prescribe the general prohibition to cumulate compensation under the scheme with support received from other schemes to cover the same eligible costs (see recital (17) above).

3.3.5. Annual reporting, transparency and monitoring

- (37) Romania committed to comply with the requirements set out in points 48 to 51 and 52 to 54 of the ETS Guidelines on reporting, transparency and monitoring of the notified scheme.

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.

Yours faithfully
For the Commission

Margrethe VESTAGER
Executive Vice-President