COMMISSION DECISION (EU) 2022/1920

of 26 January 2022

on the State aid SA.59974 – 2021/C (ex 2020/N, ex 2020/PN) which Romania partly implemented for Complexul Energetic Oltenia SA

(notified under document C(2022) 553)

(Only the English version is authentic)

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 108(2), first subparagraph, thereof,

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1), point (a), thereof,

Having called on interested parties to submit their comments pursuant to the provisions cited above ([1]) and having regard to the comments received from third parties in the course of the procedure,

Whereas:

1. PROCEDURE

(1) Following pre-notification contacts ([2]), on 4 December 2020 Romania notified its intention to grant restructuring aid to Complexul Energetic Oltenia S.A. ('CE Oltenia').

(2) By letter dated 5 February 2021, the Commission informed Romania that it had decided to initiate the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union ('TFEU') in respect of the restructuring aid. Romania submitted its comments on the observations contained in that letter on 8 March 2021.

(3) The Commission decision to initiate the procedure ('the opening decision') was published in the *Official Journal of the European Union* ([3]) on 19 March 2021. The Commission called on interested parties to submit their comments.

(4) The Commission received comments on this subject within the prescribed period from the following third parties: the European Environmental Bureau (EEB), Bankwatch Romania/ClientEarth, and Greenpeace. It forwarded those comments to Romania, which was given the opportunity to react; its comments were received by letter dated 1 June 2021.

(5) Romania sent further information to the Commission on 10 May, 1 and 24 June, 14 September, 21 October, and on 9, 14, 15, 20, 21, 22 and 29 December 2021 and 20 and 21 January 2022.

(6) Romania exceptionally, agrees to waive its rights deriving from Article 342 TFEU in conjunction with Article 3 of Council Regulation No 1/1958 ([4]), and to have this Decision adopted and notified pursuant to Article 297 TFEU in English ([5]).

([1]) OJ C 94, 19.3. 2021, p. 10.
([2]) Those exchanges started on 29 June 2020 when Romania pre-notified a draft restructuring plan and included, until the notification, exchanges of emails, technical discussions during video and teleconferences and preliminary feedback on the draft restructuring plan.
([3]) Cf. footnote 1
([4]) Regulation No 1 determining the languages to be used by the European Economic Community (OJ 17, 6.10.1958, p. 385/58).
([5]) By letter dated 29 December 2021.

2. DETAILED DESCRIPTION OF THE MEASURES

2.1. The beneficiary

(7) CE Oltenia is a public undertaking active in mining, fossil fuel power generation and local heat supply. The company 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 does not belong to a larger business group and it is not managed together with other public undertakings. It is an independent centre of decision-making within the State. According to Romanian authorities, the Romanian State, represented by the Ministry of Energy, controls CE Oltenia with a stake of 77,15 %. Other shareholders include the investment fund Fondul Proprietatea SA (holding a stake of 21,56 %) ([6]), and the remainder of the shares is owned by Electrocentrale Grup SA (0,84 %) and Inchidere si Conservare Mine (0,44 %). The supervisory board of CE Oltenia has seven members, of which Fondul Proprietatea can only appoint two, and the company is managed by a Directorate (five members of which the General Executive Manager appointed by the supervisory board). Decisions on key aspects of the business of CE Oltenia such as the budget, the business plan and the other financial and commercial decisions are taken by simple majority of the shareholders. Fondul Proprietatea does not have blocking or veto rights on them. The rights of Fondul Proprietatea are those typical of minority shareholders. Certain decisions such as changes in the subscribed share capital require 90 % of votes in the Shareholder General or Extraordinary assembly, thus require Fondul Proprietatea's approval. However, the State majority shareholding and representation in the supervisory board allow the Romanian State to exercise effective and sole control over CE Oltenia.

(8) CE Oltenia has its headquarters in South-West Oltenia (Sud-Vest Oltenia) (NUTS 2 code RO41), employs 12 268 staff in its mine pits (Rovinari, Motru, Jilt and Mehedinti) and has power plants located in the counties of Dolj or Gorj. The unemployment rate in the region stands at 5,5 %, which is above the national average, which is 3,4 %, and also the highest in the country ([7]). In recent years, as Table 1 shows, the unemployment rate in South-West Oltenia (8,2 % to 5,5 % in the years 2015 to 2020) has remained above the national unemployment rate (5 % to 3,4 % over the same period). Even though there is a slight difference in the data presented in Eurostat ([8]) and the National Statistical Institute, the trend shows that the unemployment rate in the concerned region remains consistently higher than the national one.

Table 1

Unemployment rate of macro-regions, development regions and country

	Year					
	2015	2016	2017	2018	2019	2020
	Unemployment rate: %					
	%	%	%	%	%	%
National	5	4,8	4	3,3	2,9	3,4
South-West Oltenia region	8,2	8,3	7,3	5,9	5,2	5,5

Source: INSTITUTUL NATIONAL DE STATISTICA

([6]) Fondul Proprietatea was established by law 247 of 22 July of 2005 in order to compensate persons abusively expropriated in the former regime and was endowed initially with stocks held in various companies. The shareholding structure in percentage of voting rights of Fondul Proprietatea as of 31 December 2021 is split between Romanian institutional shareholders (40,58 %) or private individuals (21,84 %), the Bank of New York Mellon (18,2 %), non-Romanian institutional investors (15,76 %) or private individuals (3,51 %) and the Ministry of Public Finance (0,11 %).

([7]) Data by *INSTITUTUL NATIONAL DE STATISTICA* available at http://statistici.insse.ro:8077/tempo-online/#/pages/tables/insse-table

([8]) https://ec.europa.eu/eurostat/databrowser/view/tgs00010/default/table?lang=en

(9) According to Romania, these high rates of unemployment are accompanied by the difficulty in creating new employment in the region. The Gorj County Just Transition Territorial Plan ([9]) shows that there is a certain reluctance of the population aged 45 to 65, former employees in the mining-energy sector who benefit from early retirement and/or compensatory allowances, to reskill and actively seek jobs. The negative effect is accentuated by the school curriculum, which does not match the requirements of the local labour market, current or future, employers mentioning the need for additional education in digitisation, automation of robotics processes, artificial intelligence, etc.

(10) CE Oltenia produces electricity in four power plants. These are Rovinari with four units totalling 1 320 MW aged more than 40 years, Turceni (four units, 1 320 MW, aged 33 years), Ișalnița (two units, 630 MW, aged 50 years) and Craiova II (two units, 300 MW in heat and power cogeneration, aged 30 years). Chișcani, a fifth plant with 415 MW capacity, is non-functional. CE Oltenia is active on the wholesale and retail electricity markets and also sells heat to the city of Craiova. Its power plants are fuelled with lignite for up to 99,5 % of its electricity production. It extracts lignite from its own open pits for own consumption or for sale to other electricity producers ([10]). It also supplies heating and domestic hot water to approximately 300 000 inhabitants of Craiova.

(11) According to the national energy regulator ANRE (Autoritatea Națională de Reglementare in Domeniul Energiei), the largest Romanian power producers are Hidroelectrica (market share of 31,3 %), followed by Nuclearelectrica (18,09 %) and, in third position, CE Oltenia (14,08 %) ([11]). All three companies are controlled by the Romanian State.

(12) Romania submits that CE Oltenia plays an important role on the Romanian electricity market. CE Oltenia's operation is also important for reasons of safety and adequacy of the National Energy System ('NES'). The Romanian energy system is located at the eastern end of the European Continental System, operating simultaneously on the borders with Bulgaria, Serbia, Hungary and the south-western part of Ukraine. Electricity imports are hampered by the fact that the Hungarian power system has power deficit at peak load and the use of tender capacity on the Ukrainian border is conditional on the written agreement of the Transmission System Operator (TSO) in Ukraine. In addition, the annual balance of the countries in the region is predominantly of electricity imports both for the EU Member States and for non-EU countries. Therefore, whenever there is a power deficit in the NES, resources are limited in neighbouring systems as well.

(13) Romania submits that, in the case of a shutdown of CE Oltenia's facilities, there would be an imminent and realistic risk of essential electricity supply interruptions, which could cause an economic disruption with harmful consequences for Romania. In this regard, an analysis ([12]) carried out by OPCOM ([13]) - the Romanian electricity and gas market operator – also shows that the closure of CE Oltenia would lead to a doubling of the annual average electricity price on the Day Ahead Market and to a 70 % price increase on the Centralised Market for Bilateral Contracts.

(14) In addition, in May 2021 the Romanian TSO, CNTEE Transelectrica S.A. ('Transelectrica') carried out an analysis of the adequacy of the NES under the assumption of the total closure of energy capacity of CE Oltenia in 2022, while keeping in operation three units in Rovinari in 2021. The conclusion was that the NES would have a major adequacy problem as it would no longer have the necessary resources to cover national electricity consumption even when taking into account the maximum use of cross-border import capacity.

([9]) The Gorj County Just Transition Territorial Plan, is prepared by external consultants supporting the local authorities. Gorj county is the most affected by the reduction of CE Oltenia's footprint (out of the entire region).

([10]) 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).

([11]) As at January – March 2021: Report Autoritatea Națională de Reglementare in Domeniul Energiei, 2021 1st quarter, https://www.anre.ro/en/press/newsletter/2021-1st-quarter-newsletter

([12]) The 'Analysis on the impact of CE Oltenia's closure on the prices related to the Day Ahead Market, Balancing Market and Centralised Market for Bilateral Contracts for 2019 – 2030' was carried out by OPCOM in 2020 upon the request of the Ministry of Energy.

([13]) OPCOM is a Romanian gas and electricity market operator which manages and administers the electricity trade markets such as day ahead market, intra-day market, organised framework for the competitive trading of bilateral electricity contracts by extended tender (PCCB-LE) and by continuous negotiation (PCCBNC), balancing market.

(15) According to Romania, the bankruptcy of CE Oltenia would result in the direct loss of more than 12 000 jobs and significant indirect job losses considering the large number of current partners across the value chain.

(16) Romania further submits that CE Oltenia is one of the main suppliers of technological ancillary services for Transelectrica delivered through participation in auctions organised by the TSO. As such, the company is important for providing ancillary services, by means of which a TSO can purchase from power producers reserves for covering the network losses, thus enabling the system security.

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

(18) Romania further submits that according to the data for 2019, CE Oltenia had business relations with about 120 companies from Gorj County. In total, their turnover amounts, according to the balance sheets submitted to the Ministry of Finance for 2019 is around RON 1 082 million (approximately EUR 218 million). According to the same source, the CE Oltenia had a turnover of RON 3 116 million (approximately EUR 630 million) in 2019. According to the information from the National Statistical Institute, the turnover of all companies in Gorj County in 2019 was approximately RON 9 100 million (approximately EUR 1 840 million). Thus, CE Oltenia and the main 120 providers support the county's economy by approximately 50 %. Moreover, almost half of CE Oltenia's business partners (such as security companies, service providers for mining equipment, transport or rental of equipment for works) depend on the company in the indicative proportion of 70 % and up to 90 %. […] (*).

(19) According to Romania the current COVID-19 crisis has affected CE Oltenia. Romania submits that its gross domestic product fell by approximately 4 % in 2020 compared to previous year. The most affected sectors were the services, construction and industry. According to the International Energy Agency (IEA) ([14]), the COVID-19 pandemic has lead in general to a decline in electricity demand driven by dramatic reductions in services and industry especially during the lockdown periods.

(20) In the case of CE Oltenia, Romania submits that the electricity production decreased from 12,4 TWh to 8,2 TWh as a result of energy demand reduction, technical availability of producing assets and temporary unemployment of personnel. The decline in electricity demand resulted in lower prices especially on the day ahead market, reaching at times the lowest levels of less than 20 EUR/MWh seen in the last ten years. In addition, due to the pandemic, CE Oltenia suffered a disruption along the value chain, e.g. delays or cancellations in the supply of spare parts and materials from suppliers, resulting in reduced or sometimes even completely stopped production. After resumption of spare parts production, there was a huge increase in their prices, which led to contract terminations. For example, the price of metal spare parts increased between 100 % and 300 %, while the methane gas surged by more than 700 %. In the context of the crisis, the beneficiary had to adopt safety measures, so that employees considered essential continue their work without further interruptions in the production process. In this respect, approximately 10 % of the employees had their contracts suspended, which was equal to approximately 192 500 days of activity interruption.

2.2. **The background to the measure**

2.2.1. *Rescue aid*

(21) In February 2020, Romania notified to the Commission its plans to grant rescue aid in favour of CE Oltenia. At the time of the notification, the estimated losses for 2019 amounted to approximately RON 1,1 billion (EUR 232 million) ([15]). According to Romania, these losses were mainly caused by: (i) non-collection of debts from State-owned insolvent companies; (ii) exchange rate variations on loans; (iii) the significant increase in the price of

(*) Confidential data.

([14]) See the International Energy Agency's report 'Covid-19 impact on electricity': https://www.iea.org/reports/covid-19-impact-on-electricity

([15]) Exchange rate used for the rescue aid decision referred to in footnote 17 was RON 1 = EUR 0.20904 as of 29 January 2020.

greenhouse gas emission allowances ('CO_2 allowances') ([16]). By its decision of 24 February 2020 ([17]), the Commission approved the EUR 251 million rescue loan in favour of CE Oltenia on the basis of Article 107(3), point(c), TFEU as interpreted by the Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty ('R&R Guidelines') ([18]).

2.2.2. *The financial difficulties of CE Oltenia and part of restructuring aid implemented*

(22) Romania submits that CE Oltenia is an undertaking in difficulty as it fulfils the criteria under national law for being placed in collective insolvency proceedings at the request of its creditors. As a consequence, CE Oltenia fulfilled the said criteria since end-2019 and at the time of the rescue aid decision its 46 suppliers could have requested the opening of the insolvency procedure. CE Oltenia does not have the capacity to repay the granted rescue loan plus interest and consequently is obliged to notify a restructuring plan, otherwise it automatically goes into liquidation under national law.

(23) Romania claims that there are several reasons for the financial difficulties of CE Oltenia. The first reason is related to the fact that CE Oltenia operates four aged power plants fuelled with lignite mined in nine lignite pits. The plants require costly regular maintenance and environmental compliance investments. The second one relates to the lack of investment capital due to the high costs needed to comply with environmental regulations (compliance with ash and slag deposits and compliance with SO_2, NOx and PM10 emission limits). In order to comply with EU and national environmental requirements CE Oltenia has invested approximately EUR 880 million since 2008. This investment has made it impossible to finance investment programmes aimed at increasing energy efficiency and thus at reducing CO_2 emission costs.

(24) The third reason for the difficulties stems from the fact that State-owned energy producing companies in Romania are organised by types of energy production, depending on the fuel used, and they are thus monofuel companies: hydroenergy (Hidroelectrica SA), nuclear energy (Nuclearelectrica SA), fossil fuel (CE Oltenia). This model together with the implementation of the system of CO_2 allowances has led to competitive imbalances, which have disadvantaged CE Oltenia. According to the current model, in which CE Oltenia's only source of power generation is lignite, it is impossible for the beneficiary to reach the same profitability levels as its competitors, which have lower marginal costs of production and use less polluting sources of power generation and therefore incur no or lower CO_2 allowance costs.

(25) CE Oltenia has the obligation to surrender, no later than 30 April each year, the number of CO_2 allowances equal to the total quantity of greenhouse gas emissions emitted during the previous calendar year. Failure to comply with the obligation triggers a penalty of EUR 100 for each equivalent tonne of CO_2 emitted that has not been surrendered ([19]). The prices of CO_2 allowances have been increasing steadily in recent years and months, for example, rising above EUR 60/tonne of CO_2 in September 2021 and reaching EUR 80/tonne of CO_2 in December 2021 ([20]).

(26) Additionally, Romania submits that another reason for the financial problems of CE Oltenia is related to its cost structure. Personnel costs formed 39 % of total operating costs for 2020, while environmental protection expenses, which are mainly related to the purchase of CO_2 allowances, represented 35 % of total cost. As a result of this cost structure, the company posted operating losses every year between 2014 and 2019 (with the exception of 2017).

([16]) Increase in the price of CO_2 allowance from EUR 7 per allowance in December 2017 to EUR 20 per allowance in 2018 and over EUR 27 per allowance in 2019.

([17]) Commission Decision of 24 February 2020 C(2020) 1068 final in case SA.56250 (2020/N) – Romania – Rescue aid in favour of Complexul Energetic Oltenia SA (OJ C 112, 3.4.2020, p. 1) ('the rescue aid decision').

([18]) OJ C 249, 31.7.2014, p. 1.

([19]) Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a system for greenhouse gas emission allowance trading within the Union and amending Council Directive 96/61/EC (OJ L 275, 25.10.2003, p. 32) ('Directive 2003/87/EC').

([20]) https://tradingeconomics.com/commodity/carbon

2.3. **The measures**

(27) This Decision concerns the restructuring aid to CE Oltenia consisting of the grant by the State of EUR 1 090 million, a State guarantee for a loan of EUR 195,8 million, equivalent in RON of up to EUR 226 million capital injection in CE Oltenia's, conversion into a grant of the rescue loan that became restructuring aid in the amount of approximately EUR 251 million and a grant from the Modernisation Fund ([21]) of EUR 895,3 million, pending submission of the corresponding proposals by Romania and their confirmation by the European Investment Bank or approval by the Modernisation Fund's Investment Committee as relevant (jointly, 'the measures'). The total amount of aid involved is EUR 2 658,1 million ([22]).

(28) The EUR 1 090 million grant will finance the acquisition of the necessary CO_2 allowances in the period 2021-2025, which will be distributed annually according to the funding needs, but not being perfectly correlated with the expenditure on CO_2 allowances each year. In March 2021, the Romanian government adopted an Emergency Government Ordinance approving a grant of approximately RON 1,18 billion (approximately EUR 241 million) to CE Oltenia to finance the purchase of CO_2 allowances. As a result, Romania submits that CE Oltenia complied with the obligation regarding CO_2 allowances on 26 April 2021, completing the purchase of CO_2 allowances for the energy produced in 2020 for the total price of EUR 315 million. As Romania submits, the difference of EUR 74 million between the total purchase price and the grant was borne by the company's own funds. The EUR 241 million grant forms part of the notified EUR 1 090 million grant and was financed from the State budget through the Ministry of Energy.

(29) A loan guaranteed by the State is planned to be contracted in 2022 in the amount of EUR 195,8 million to finance CE Oltenia's working capital of the same amount. The Romanian authorities submit that the loan will be remunerated according to market conditions prevailing at that moment. The estimated all-in interest rate […] is expected to be around […]%.

(30) The up to EUR 226 million capital injection into CE Oltenia will be made by means of a contribution provided by the Ministry of Energy in cash (EUR 180 million) and in kind (land with an estimated value of EUR 46 million).

(31) The Romanian authorities submit that the EUR 251 million rescue aid loan (see recital 21), which has become restructuring aid because it has not yet been repaid, will be converted into a grant once the restructuring plan has been approved by the Commission.

2.4. **Initial restructuring plan for CE Oltenia**

(32) On 4 December 2020, Romania notified the Commission of a restructuring plan ('the initial restructuring plan') supported by EUR 1,33 billion restructuring aid composed of EUR 0,25 billion rescue aid already granted, additional EUR 0,31 billion in the form of a State-guaranteed loan and EUR 0,77 billion in the form of a State grant. Furthermore, it was planned to obtain an additional EUR 711 million in State aid from the Modernisation Fund to diversify the energy mix by replacing lignite with (mostly) gas and renewables.

(33) The initial restructuring plan encompassed the period from 2021 to 2030, however the restructuring period covered only the years from 2021 until 2025. That restructuring plan foresaw CE Oltenia posting profits in 2022, attaining a return on capital employed ('ROCE') of […]% by 2025 and reaching long-term competitiveness in 2030 with […]% ROCE by then.

([21]) The Modernisation Fund is a dedicated Union funding programme to support Bulgaria, Croatia, Czechia, Estonia, Hungary, Latvia, Lithuania, Poland, Romania and Slovakia in their transition to climate neutrality by supporting investments in modernising energy systems and improving energy efficiency. It was established by Directive 2003/87/EC.

([22]) Exchange rate used for the present decision is RON 1 = EUR 0.2020 as of 21 December 2021.

(34) The initial restructuring plan included the following series of measures:

(a) Technical and technological measures, implementing an investment plan aimed at diversification of the energy mix. The plan included replacing 1 460 MW of six lignite-fuelled units with (i) 1 325 MW through two gas-fired units, (ii) 109 MW through eight photovoltaic units, and (iii) 9,9 MW through a hydropower unit. The closure of five mines was envisaged, halving the production by 2025;

(b) Organisational and managerial measures improving processes or IT support, avoiding overlaps or inefficiencies, including 41 % staff reduction or reallocation;

(c) Environmental protection measures, encompassing investments or temporary operating cost support in mining and power generation assets, including environmental compliance (such as CO_2 allowances and compliance costs for ash, NOx, SO_2);

(d) Financial measures, encompassing optimisation of the bank loan costs, disposal or sales of existing secondary assets, excluding, however, any major divestiture of assets that could be operated as a self-standing business and provide sales revenues supporting the plan.

(35) CE Oltenia foresaw that in 2022 and 2023 it would gradually add photovoltaic and hydropower energy generation as energy sources. The real decrease of lignite-based energy sales was forecast to happen as of 2026 when two natural gas-fired units at SE Turceni and SE Işalniţa would be installed, leading to the energy mix of 41 % lignite, 53 % gas and the remainder from photovoltaic and hydropower sources.

(36) The expected financial resources needed to cover the restructuring costs until the end of 2025 amounted to EUR […], of which CE Oltenia would allegedly contribute EUR […] from its own funds. CE Oltenia's own contribution would amount to 42 % of the total restructuring costs with the potential funding from the Modernisation Fund factored in, and to 53 % without the potential funding from the Modernisation Fund. The main sources of CE Oltenia's own contribution were to be (i) revenues based on electricity sales on the centralised OPCOM markets totalling EUR […] to be generated in the period 2020-2025, (ii) revenues from long-term bilateral power purchase agreements ('PPAs'), which are long-term contracts of more than 2 years, amounting to EUR […], and (iii) a sale of assets worth EUR […].

(37) Out of all shareholders of CE Oltenia, only the State was to contribute (either with funds or by absorbing losses) to CE Oltenia's restructuring, and none of CE Oltenia's creditors was to be providing any burden sharing.

(38) The following measures to limit distortions of competition were envisaged: (i) the outsourcing by transfer to the municipality of cogeneration energy group S.E. Craiova II (mostly producing thermal energy for Craiova) and (ii) the closure of energy groups or mining pits according to a timetable and leading to a reduction of lignite-based installed capacity by 1 605 MW between 2020 and 2025 (45 % of lignite-based capacity by the end of 2025). However, the overall production capacity of CE Oltenia would not materially change, as the loss in lignite-based production capacity was supposed to be compensated by the instalment of new photovoltaic and hydropower energy units. The initial restructuring plan further foresaw that certain mining pits would be closed or conserved, mostly for reasons of inefficiency, reduction in demand or depletion of lignite reserves. Mining capacity closure plan assumed a reduction of lignite production by approximately 3 700 000 tonnes (26 % by the end of 2026).

2.5. **Reasons for initiating the formal investigation procedure**

(39) As it had doubts as to whether the notified restructuring aid would be found compatible with the internal market under Article 107(3), point (c), TFEU as interpreted by the R&R Guidelines, the Commission decided to initiate a formal investigation procedure mainly for the following reasons:

2.5.1. *Doubts about the appropriateness of aid*

(40) According to the opening decision ([23]), the provision of restructuring aid in the form of a sizeable (non-remunerated) grant of EUR 768 million would not allow the State acting as aid grantor to reap any upsides from a successful restructuring, and therefore, would not be an appropriate financial instrument. Furthermore, a grant by the State to CE Oltenia would result in minority shareholders of CE Oltenia (which did not provide similar non-reimbursable financial instruments) also indirectly benefitting from the grant via a potential increase in the value of their shareholding, without contributing to the costs of restructuring. The planned grant would not allow proper remuneration for the State required under the R&R Guidelines nor allow the State alone appropriating the related upsides of the grant funding the plan.

2.5.2. *Doubts about the presence of real and actual own contribution free of aid from the beneficiary and the presence and effectiveness of burden sharing*

(41) The preliminary assessment of the initial restructuring plan showed that out of a purported own contribution of EUR […], at most EUR […] could be considered as real and actual. For the outstanding amount, Romania relied only on expected revenues from electricity sales in OPCOM centralised markets in 2021-2025, which were neither real nor actual as no firm commitments existed for the years 2022-2025. The maximum duration of the sales contracts concluded in OPCOM centralised markets was 1,5 years only. Although Romania indicated that it was in the process of updating its legislation to enable the players in the OPCOM centralised markets to conclude contracts for a longer duration, the compatibility of such changes with the Union legislation in the field of electricity supply was yet to be assessed. Moreover, Romania relied on the potential conclusion of bilateral power purchase agreements, which were being discussed with energy-intensive users and were expected to result in EUR […] of revenues during the restructuring period. However, Romania could not present any evidence of these agreements that would ensure actual financing of the initial restructuring plan ([24]).

(42) CE Oltenia's own contribution would at most be only 42 % of the restructuring costs, even assuming, contrary to point 63 of the R&R Guidelines, that future expected profits from regular sales and expected profits amount to a source of real and actual own contribution, because, as the Commission explained, the potential funds from the budget of the Modernisation Fund would qualify as State aid and, thus, cannot be qualified as CE Oltenia's own funds free of aid ([25]).

(43) No market investor or lender backed the initial restructuring plan. Firstly, no letter of intent was provided from banks that would accept to pre-finance payments relating to future supplies of electricity from CE Oltenia, the expected revenues from which account for almost all own contribution by CE Oltenia. Secondly, no bank or market investor has expressed interest to support or finance part of the investments in fuel switching from lignite to natural gas or to renewable power generation. Thirdly, no evidence was provided of potential external investors or banks supporting the plan, or that any such negotiations would materialise in a reasonable timeframe. Although Romania also put forward the sale of CE Oltenia's assets as another source of financing, estimating that such sale would bring EUR 2 million revenues, the sale procedure of these assets had not been started ([26]).

(44) Additionally, Romania acknowledged that neither minority shareholders of CE Oltenia (in particular Fondul Proprietatea SA) nor its creditors would provide adequate burden sharing in any form ([27]).

2.5.3. *Doubts about the restoration of long-term viability and restructuring within a reasonable timescale*

(45) Although the formal duration of the initial restructuring plan was the period 2021-2025, the first significantly positive net results of approximately EUR […] cumulated were expected only after the restructuring period, in 2026-2030. According to the initial restructuring plan, CE Oltenia could attain a ROCE of 4,3 % by 2025, which was much lower than the market-conform remuneration or opportunity cost of equity injected into Romanian companies in general. In addition, CE Oltenia's already low profitability was artificially inflated by the operating

([23]) Recital 45 of the opening decision.
([24]) Recitals 47 to 49 of the opening decision.
([25]) Recital 53 of the opening decision.
([26]) Recital 50 of the opening decision.
([27]) Recital 52 of the opening decision.

subsidies from State aid. Finally, CE Oltenia's projected results were premised on optimistic assumptions about external factors such as prices of the CO_2 allowances remaining relatively the same during the restructuring period, despite the sharp increase in such prices in 2018-2019. While CE Oltenia's projections expected the CO_2 allowance prices to range from […] in 2020 to […] in 2030, as of 24 January 2021 the price already amounted to […]. The Commission thus had doubts that the initial restructuring plan was of appropriate duration and would lead to the restoration of viability of CE Oltenia at the end of the restructuring period because it was not apparent that CE Oltenia would provide a sufficient return and would be capable of remaining on the market without further aid ([28]).

2.5.4. *Doubts about the presence and effectiveness of meaningful measures to limit distortions of competition*

(46) As regards the outsourcing of S.E. Craiova II cogeneration units by transfer to the Craiova municipality, the form and scope of such outsourcing were unclear. Even if such outsourcing as a capital contribution to the joint venture between CE Oltenia and the company owned by the local council of the municipality of Craiova was to materialise, it would allow CE Oltenia and the State to keep control in such a joint venture. That would frustrate the meaning of the divestiture as a measure limiting competition distortions as it would neither strengthen competition nor favour the entry of new competitors, the expansion of existing small competitors nor cross-border activity ([29]).

(47) Furthermore, as regards the reduction of CE Oltenia's production capacity (in terms of closing lignite burning units) and the closure of lignite mines, the overall corresponding loss in the production capacity of CE Oltenia would to a large extent be compensated by the installation of the new production capacities. Therefore, the overall production capacity of CE Oltenia would not materially change ([30]). The extraction of lignite would increase until the end of 2024, and would fall below the 2020 level only as of 2026. The gas-fired units would be operational by 2026, thus rendering the decrease in lignite extraction volumes meaningless in terms of capacity reduction ([31]).

(48) Finally, Romania did not propose additional behavioural measures, apart from restricting CE Oltenia from purchasing shareholdings in other enterprises during the restructuring period, except where indispensable to ensure its long-term viability, and from using the aid as publicity when selling its products ([32]).

3. **COMMENTS FROM OTHER PARTIES**

(49) In the course of the formal investigation procedure, the Commission received comments from the following third parties: the EEB ([33]), Bankwatch Romania/ClientEarth ([34]), and Greenpeace ([35]). The Commission treats these comments as market information, given that none of these third parties could show that it is an interested party within the meaning of Article 1, point (h) of Council Regulation (EU) 2015/1589 ([36]).

3.1. **European Environmental Bureau (EEB)**

(50) The EEB objected to allowing the use of State aid for complying with Union law in terms of CO_2, ash, NOx and SO_2 emissions. In its view, this would violate the principle that aid cannot be granted for complying with Union standards, in particular the obligations under Directive 2010/75/EU of the European Parliament and of the Council ([37]) on emissions levels and using the best available techniques (BAT). Excluding State aid investments for

([28]) Recitals 56 to 60 of the opening decision.
([29]) Recital 63 of the opening decision.
([30]) Recital 64 of the opening decision.
([31]) Recital 65 of the opening decision.
([32]) Recital 66 of the opening decision.
([33]) The EEB submitted its comments on 15 April 2021.
([34]) Bankwatch Romania and ClientEarth submitted their comments on 15 April 2021.
([35]) Greenpeace submitted its comments on 19 April 2021.
([36]) 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 (OJ L 248, 24.9.2015, p. 9).
([37]) Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) (OJ L 334, 17.12.2010, p. 17).

complying with the Union's environmental acquis is also in line with the State aid guidelines for environmental protection and energy ([38]). This was not complied with in the case of CE Oltenia, as according to the EEB, the compliance with emission limits for air pollution was part of the initial restructuring plan itself.

(51) The EEB also raised concerns about CE Oltenia's non-compliance with emission standards in recent years (NOx, SO_2, particulate matters, etc.). The EEB pointed out that CE Oltenia's lignite plants exceeded the emission levels under the regime of Directive 2010/75/EU ([39]).

(52) The EEB further submitted that CE Oltenia might always conclude bilateral contracts at fixed prices, but no private enterprise would agree to such a contract that would make it overpay energy generated by expensive fossil fuels. Given the absence of market investors' interest, any bilateral contracts with other public companies would not meet the 'market economy investor' principle and would most likely constitute State aid.

(53) The EEB also pointed out that CE Oltenia would remain locked-in in fossil fuels well after 2026, making it highly disputable that such a restructuring plan would be viable on the medium term in view of the increasing CO_2 prices.

3.2. **Bankwatch Romania/ClientEarth**

(54) Bankwatch and ClientEarth submitted that operating aid for environmental compliance costs violates EU environmental law and does not facilitate the development of an economic activity as required by the case-law on Article 107(3), point (c) TFEU (the judgment in Austria v Commission ([40]).

(55) Bankwatch also noted that CE Oltenia's initial restructuring plan was not consistent with Romania's path to decarbonisation, did not set a deadline for eliminating lignite from CE Oltenia's energy production and thus did not sufficiently tackle the reasons for the company's losses by not abandoning loss-making activities.

(56) Finally, Bankwatch submitted that the restructuring plan was based on unrealistic assumptions of future prices of CO_2 allowances, namely on the assumption that these prices would remain relatively stable during the restructuring period. According to the Bankwatch emission projections, the total costs to be paid by CE Oltenia for its CO_2 emissions between 2021 and 2030 should total EUR 4,76 billion, greatly exceeding CE Oltenia's projections.

3.3. **Greenpeace**

(57) Greenpeace found that CE Oltenia's continued reliance on lignite-based power generation contradicted the Union's policies and objectives as set out in the European Green Deal. Greenpeace submitted that State aid to buy CO_2 allowances would breach Union law, in particular the 'polluter pays' principle enshrined in Article 191(2) TFEU and in Directive 2003/87/EC, which required operators to pay for the CO_2 that they emit.

(58) According to the analysis by Greenpeace of publicly available information on the initial restructuring plan, the total annual emissions of CE Oltenia would increase from 7 Mt CO_2/year in 2020 to approximately 9 Mt CO_2/year in 2030. This would go against the Union's current climate and energy policies, and would also have direct negative repercussions on CE Oltenia's operating costs (of which the costs of CO_2 allowances formed a large part).

([38]) Communication from the Commission — Guidelines on State aid for environmental protection and energy 2014-2020 (OJ C 200, 28.6.2014, p. 1).

([39]) In particular this concerns (non-)compliance with the BAT Reference Document (BREF) for Large Combustion Plants (LCP) Conclusions adopted under the Industrial Emissions Directive. As the EEB submits, the Romanian government obtained time-limited derogations concerning the NO_x levels.

([40]) Judgment of the Court of Justice of 22 September 2020, *Austria v Commission*, C-594/18 P, ECLI:EU:C:2020:742, paragraphs 20, 44-45, 100 and 119.

4. COMMENTS FROM ROMANIA

(59) Romania significantly amended the initial restructuring plan and the aid planned to support that plan, in order to address the Commission's doubts. For ease of presentation, the comments by Romania are divided into three parts, corresponding to the observations on the main doubts raised by the Commission in the opening decision, the observations from third parties, and, the description of the revised restructuring plan and of the restructuring aid.

4.1. Observations on doubts raised in the opening decision

(60) Romania provided its comments on the opening decision ([41]); Romania did not contest the doubts raised in that opening decision and submitted a revised restructuring plan. The key elements of a revised restructuring plan were: (i) an earlier closure of the lignite generating capacities than in the initial restructuring plan, leading to the reduction of CO_2 annual emissions and achieving profitability starting in 2026; (ii) new investments in gas and photovoltaic production units modelled using a special purpose vehicles (SPV) concept, with CE Oltenia retaining 70 %, while 30 % would be opened for other strategic or financial investors; (iii) working towards firm agreements behind the own contribution – sales contracts, bank financing and capital from private investors; and (iv) engaging with Fondul Proprietatea with a view to having the fund contribute to the costs of the company's restructuring or alternatively exploring the option to dilute the fund's participation in a capital increase by the State.

(61) Romania highlighted the strategic importance of CE Oltenia for the security of the national energy supply. Romania claimed it could not afford to close more lignite capacities earlier than provided in the revised restructuring plan, for reasons of safety and adequacy of the National Energy System, as supported by analysis prepared by Transelectrica (as referred to in recital 14). It stressed the hardship and complexity of the restructuring process for a single fuel electricity producer, in an accelerated phase-out from lignite power plants, incurring significant restructuring costs, severely affected by the rapidly increasing CO_2 costs and constrained by the requirement to maintain production capacity, which ensures the security of the national grid. Romania added that replacing CE Oltenia's capacities with imported energy would expose Romania to a high risk as its neighbouring Member States are mainly importing energy countries (recital 17).

(62) Romania submitted in June 2021 another analysis, additional to the one submitted before, carried out by Transelectrica in May 2021 emphasising that:

(a) taking into consideration the investment uncertainties regarding the new power plants in Romania, the extremely low correlation between production in wind power plants and consumption in Romania and the regional context of electricity imports, in order to ensure an acceptable level of national but also regional energy security, over the 2021 - 2025 period, with a view up to 2030, it was necessary to maintain in commercial operation at least 1 500 MW in CE Oltenia's existing lignite-fired power plants. The decommissioning of these lignite-fired power plants would require a concomitant increase in installed power on natural gas power plants;

(b) the commissioning of two Combined Cycle Gas Turbines (CCGT), one in Işalniţa (850 MW) and one in Turceni (475 MW) would lead to an increase in electricity availability throughout the energy system of approximately 4,4 TWh/year, which would lead to a smaller and easier to manage energy deficit, including the timeframe regarding when the shutdown of Unit 1 from Cernavoda Nuclear Power Plant was planned.

4.2. Observations on third parties' comments

(63) In response to the EEB's comments that any bilateral contracts by CE Oltenia with other public companies would not meet the 'market economy investor principle', Romania noted that CE Oltenia's contracts are concluded on OPCOM platforms and so are market-based.

([41]) Submission by Romania of 8 March 2021.

(64) As for the estimation of the total cost of the CO_2 allowances, Romania clarified that an improved scenario would be submitted in the revised restructuring plan, which would take in account the latest market values. In addition, with regard to the comments by Greenpeace that the total volume of emissions would increase, Romania noted that in the revised restructuring plan, which it would later submit, the CO_2 annual emissions would decrease from 8,6 Mt in 2021 to 2,6 Mt in 2027.

(65) In reply to the observations by Bankwatch and ClientEarth on the elimination of lignite production, Romania noted that CE Oltenia would implement energy efficiency measures by replacing lignite units with new gas and renewables units.

4.3. **The revised restructuring plan of 24 June 2021**

(66) On 24 June 2021, Romania submitted to the Commission a revised restructuring plan and subsequently provided further updates to the plan and additional information.

(67) The revised restructuring plan is based on the decarbonisation plan whereby Romania aims to replace lignite-based electricity production with electricity produced from natural gas and from renewables (photovoltaic and hydropower) which are less costly in terms of CO_2 allowances. The restructuring period in the revised restructuring plan spans from the beginning of 2021 until the end of 2026. The plan provides for various operational measures to be implemented during the restructuring period, that CE Oltenia began implementing in January 2021.

4.3.1. *Description of restructuring operational measures*

(68) The revised restructuring plan includes technical and technological measures, organisational and managerial measures, environmental protection measures and financial measures.

(69) The first pillar is related to technical and technological measures, which aim at the diversification of the energy mix of Romania through the replacement of lignite fuel units with photovoltaic and gas power plants.

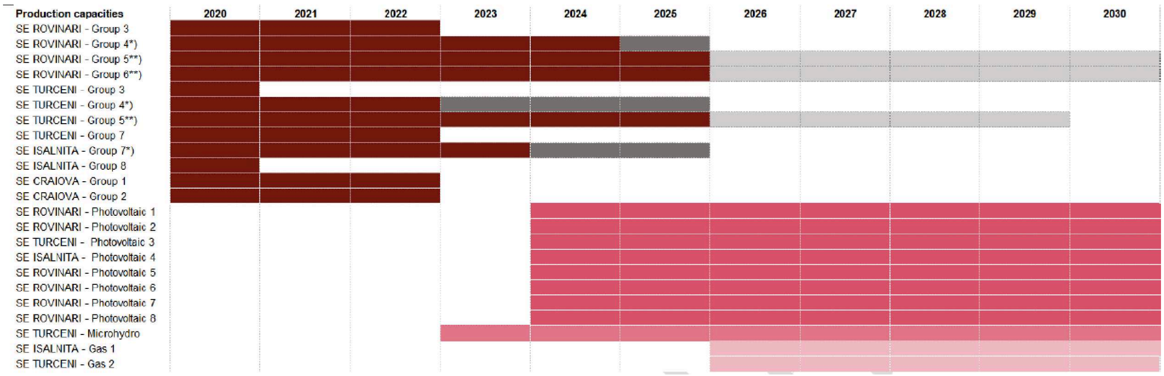
(70) One of the measures under the first pillar is closing or conserving in reserve the present energy units and mining pits. The plan outlines three phases of closing the lignite-based electricity generation with a commercial end date of […]. During the first phase-out period, […], the capacity would be reduced from […]MW to […]MW. During the second phase-out period from […], the capacity would be further decreased […]. In the period […].

(71) The estimated timeline for the commissioning of the new production capacities foresees eight photovoltaic parks to be operational by 2024, one micro hydropower plant by 2023 and the two natural gas-fired power blocks to start their operations by mid-2026. In 2023, the installed capacity of the planned less polluting new production facilities would represent only 0,6 % of total installed capacity of CE Oltenia, which will be generated by the hydropower plant. In 2026 the total production of the new facilities would reach 56 %, out of which 36 % generated by the gas installations, 20 % produced by the photovoltaic parks and 0,4 % would come from the hydropower plant.

(72) The total installed capacity of the new production capacities would be approximately 2 060 MW of which 1 325 MW gas, 735 MW photovoltaic and 9,9 MW hydropower. The net available capacity, taking into account the average utilisation factor of […]% of the photovoltaic parks, would be […] MW, of which […] MW gas and […] MW photovoltaic. Through the SPV scenario (see recital 110 and following) with CE Oltenia participation ranging between […]%, the net available capacity of approximately […]MW will be open to market competitors. The net available capacity of CE Oltenia will thus decrease from […] MW to approximately […] MW. Table 2 shows the timeline for closing the existing plants and commissioning the new ones.

Table 2

Timeline for closing/conservation of the existing capacities and for the commissioning of the new ones



Source: Restructuring plan of 24 June 2021

NB: existing MW capacity in recital 9; the grey colour indicates reserved capacity as per recital 70

(73) By […], all lignite fuelled power plants owned by CE Oltenia will be either definitively closed or maintained on stream but not active in regular supplies. This means an accelerated timeline compared to the one set out in the initial restructuring plan, according to which […] energy units were expected to continue operating until […]. As regards mining pits, […]. This means an accelerated timeline compared to the initial restructuring plan, according to which […] mining pits were supposed to close only by […].

(74) In addition, the restructuring plan will partially contribute to achieving the decommissioning milestones under the National Recovery and Resilience Plan of Romania (NRRP) ([42]). The decommissioned capacities for 2023-2025 are examples provided without prejudice to the level of detail or content required by the recovery and resilience plan and may not be interpreted to modify the milestones and targets as set out in that plan, nor to be construed as a confirmation that milestones are modified or fulfilled ([43]).

(75) The second pillar of the plan relates to organisational and managerial measures, which includes among others staff reduction and reallocation. The closure of production facilities during the period 2021 – 2026 would lead to both redundancies and redistributions of employees. CE Oltenia had […] employees at the end of 2020; their number is expected to decrease gradually by […]% (against […]% foreseen in the initial restructuring plan), reaching […] in 2026. The two main ways of achieving staff reductions would be layoffs due to facility closures (the number of employees laid off between 2021 and 2026 would be […]) and early retirements. The estimated number of employees needed to operate the new photovoltaic and gas facilities is […] and all of them would be taken from the current staff of CE Oltenia. Therefore, […].

(76) The third pillar of the plan consists of environmental protection measures. These include mostly measures to ensure compliance with the annual obligations regarding CO_2 emissions ([44]). Furthermore, the diversification of the energy mix would have a positive impact on the level of CO_2 emissions from the production of electricity, as the emissions of natural gas power plants (and even more so for photovoltaic plants) are lower than those of lignite power plants and therefore starting from 2026 the CO_2 emissions will be less than the ones at the beginning of the restructuring period.

([42]) Council Implementing Decision of 3 November 2021 on the approval of the assessment of the National Recovery and Resilience Plan for Romania (not yet published).

([43]) On 24 January 2022, Romania reconfirmed the commitments towards the National Recovery and Resilience Plan regarding the decommissioning of coal based electricity production capacities (lignite & hard coal) and stressed that the implementing measures, as well as the phase-out and greening calendar will be part of the decarbonisation law, to be completed in the second quarter of 2022, as provided by the plan.

([44]) Under the Romanian Government Decision No 780/2006 for greenhouse gas (GHG) emissions trading.

(77) In addition, during the restructuring period, CE Oltenia plans to implement the following environmental protection investments: (i) works for elevating the slag and ash deposits and (ii) works for reducing emissions of NOx, SO_2 as well as dust from flue gases up to the limits set by national law.

(78) The fourth pillar of the plan concerns financial measures, which include in particular bank loan costs and costs related to the SPV set-up. The financing costs (commissions and interest) in relation to existing loans for the period 2021-2026 would amount to EUR […]. For the period 2022-2025, the expenses with the interest and commissions related to the contracted credits increased compared to the initial restructuring plan reflecting increased interest rates charged on past loans. The restructuring costs also include approximately EUR […] of interest related to the new loans that would be reimbursed over the restructuring period. Another category of costs under the financial measures is related to the SPV creation and include costs for carrying out feasibility studies, acquiring certificates of urbanism, environmental permits, technical connection approvals.

4.3.2. *Financing of the restructuring plan*

4.3.2.1. Restructuring costs

(79) Romania submits that the restructuring costs associated with the implementation of the restructuring measures and those that are expected to be incurred in the restructuring period 2021–2026 would amount to EUR 3,94 billion including the investor contribution. Of these, approximately EUR 1,52 billion relate to the development of photovoltaic parks, natural gas power blocks, as well as for the rehabilitation and modernisation of the micro-hydropower plant; approximately EUR 48 million for closing/conservation of lignite production capacities; approximately EUR 210 million for investments in current assets (such as investment in rehabilitation of old equipment); further approximately EUR 67 million for organisational and managerial measures (most of which would be for personnel restructuring); approximately EUR 1,77 billion for acquiring CO_2 allowances; approximately EUR 60 million for financial measures (mainly loans) and approximately EUR 259 million of necessary liquidity to cover the minimum current expenses to support the company's activity.

4.3.2.2. Sources of financing of the restructuring measures

(a) Public funding

(80) The Romanian State would support the restructuring of CE Oltenia with up to approximately EUR 1,76 billion, which would take the form of a grant equal to EUR 1 090 million, a State guarantee for a loan of EUR 195,8 million, a capital injection equivalent to EUR 226 million (in RON), as well as a conversion into a grant of the rescue loan in the amount of approximately EUR 251 million (see recital 27). A further EUR 895,3 million of aid would be planned to be disbursed from the Modernisation Fund ([45]), subject to submission of the corresponding investment proposals by Romania and their confirmation by the European Investment Bank or the Investment Committee of the Modernisation Fund, as relevant. The total envisaged amount of restructuring aid for CE Oltenia would thus amount to EUR 2 658,1 million, of which EUR 492 million has already been granted (namely EUR 251 million of rescue aid and a grant of EUR 241 million which is part of the EUR 1 090 million grant, see recital 28).

(81) The Modernisation Fund distinguishes between priority investments and non-priority investments. In the case of priority investments, up to 100 % of the value of the relevant costs, subject to the applicable State aid rules, can be financed from the Modernisation Fund, while in the case of non-priority investments, up to 70 % of the value of the relevant costs can be covered from the Fund, subject to applicable state-aid rules and provided that the remaining costs are financed from private sources. Subject to confirmation of the investments' status (priority/non priority) by the European Investment Bank on the basis of official submissions, the investments in the two natural gas blocks, of 850 MW in Ișalnița and 475 MW in Turceni, are considered as non-priority investments, whereas the investments in the eight photovoltaic parks may be considered priority investments.

([45]) The budget of the Modernisation Fund is composed of: (i) revenues from the auctioning of 2 % of the total allowances for 2021-30 under the EU Emissions Trading System (EU ETS) and (ii) additional allowances by selected Member States (Czechia, Croatia, Lithuania, Romania and Slovakia).

(82) In order to achieve proper remuneration of the restructuring aid and increase the remuneration of the State aid support, the Romanian authorities have committed themselves to implementing a sufficient divestment of shares of the Romanian State in CE Oltenia by the end of the restructuring period in 2026. The divestment of shares would be done through a public offer of shares, which would be designed in a way that leads to the highest possible remuneration for the State. The final number of shares to be sold would be determined when the sale process begins, taking into account the structure of future SPVs, the processes of reduction and increase in share capital. In any event, the divestment of shares should be sufficient to remunerate the State contribution to the restructuring plan, which would mean no less than 20 % ownership rights.

(83) With regard to the commitment on reducing the Romanian State's participation in CE Oltenia (recital 82), Romania further specified that the legislative act based on which the sale process would be carried out would be a government decision approving the privatisation strategy of selling shares held by the Romanian State in CE Oltenia. After the adoption of that decision, a consultant would be selected to carry out the specific steps of this process starting in 2024, in view of completing the process before the end of 2026.

(84) Romania provided a valuation analysis prepared by PricewaterhouseCoopers (PwC) for the estimation of the market value of the 20 % shareholding in CE Oltenia's equity to be divested by the State by end-2026. The valuation is based on the income approach, namely the Discounted Cash Flows (DCF) method as it reflects the specific expected operating characteristics of CE Oltenia's activity after the implementation of the restructuring plan. According to the valuation analysis, the indicative market value of 20 % shareholding in CE Oltenia's equity as of 31 December 2026 was estimated at EUR […] in the base case scenario […] or EUR […] in the alternative case scenario (with cash flows forecasted over the entire operation period (i.e. 30 years), no perpetuity). Once implemented, this amount would constitute ex- post remuneration of the State to support CE Oltenia.

(b) Own contribution

(85) Romania presented the sources of CE's Oltenia's own contribution to the costs of restructuring, to an amount up to EUR 1,98 billion. Of that amount, EUR 1 275 million would come from the sales of electricity on the OPCOM market and through other existing channels (of which EUR 315 million based on contracts with a duration over 1 year), up to EUR 350 million from bank loans, EUR 250 million investor participation to the SPVs and EUR 104 million as CE Oltenia's in-kind contribution to the SPVs.

Sales of electricity

(86) The bulk of the own contribution put forward by Romania is derived from the sales of electricity on domestic market segments managed by the market operator (OPCOM) or the Transmission System Operator (Transelectrica): day ahead and intra-day market, competitive tender/contracts, regulated or balancing markets.

(87) Romania considers -as part of the own contribution- revenues from electricity sales amounting to EUR 1 275 million for the period between 2021 and 2025, out of which EUR 574 million has been cashed-in from electricity sales for 2021.

(88) In addition, CE Oltenia has been negotiating PPAs towards a targeted value of EUR […]. However, despite the fact that, as of mid-June 2021 several term sheets concerning potential PPAs were signed, no PPAs have been concluded. As the envisaged conclusion of PPA contracts has not materialised, including because these contracts are not currently allowed under Romanian law, it does not form part of the own contribution put forward by Romania.

Sale of non-core assets

(89) The initial restructuring plan assumed a sale of non-core assets, which was projected to result in an own contribution of EUR 2 million. However, the sale procedure for these assets has not yet started and the revised restructuring plan does not include such sale as a source of own contribution.

Partner participation in SPVs

(90) The revised restructuring plan further includes as own contribution the creation of SPVs for co-investing with other operators in new gas and photovoltaic power generation (see recital 110 and following). The total amount of investors' contribution to the share capital of […] SPVs is approximately EUR […], which – together with the total capital expenditure to be financed by investors of EUR […] – implies a total equity contribution by investors of approximately EUR […]. The contribution of investors to the costs connected with new power installations would be supplemented by financing from the Modernisation Fund, subject to submission by Romania of the corresponding investments proposals and their confirmation by the European Investment Bank or the Investment Committee of the Modernisation Fund, as relevant, banks, and CE Oltenia.

CE Oltenia in-kind contribution to SPVs

(91) CE Oltenia would bring an in-kind contribution to the share capital of the SPVs in the total amount of approximately EUR 104 million worth of tangible and intangible assets consisting of land, existing connectivity to electricity and gas networks, feasibility and solution studies leading to the connection to the grid, to existing utilities, to logistics facilities and to others. This amount derives from an evaluation by PwC and was confirmed and accepted by the (selected) investors in SPV projects as a fair value of CE Oltenia's contribution.

Bank loans

(92) The financing for the CCGT projects in the Ișalnița and Turceni will be raised with […] and with the […] acting as co-leaders of a syndicate with a total ticket of EUR […] ([46]). The financing for the construction and operation of eight photovoltaic parks will be raised under a syndication led by the European Bank for Reconstruction and Development (the 'EBRD'), which has collected interest from five commercial banks on syndicating the loan with a ticket size of EUR […] ([47]). In the case of bank financing of both CCGT and photovoltaic projects, there are no signed loan agreements in place yet and the banks have expressed their interest thus far by way of signing the indicative Heads of Terms ([48]). Those Heads of Terms signed by the syndicate leaders and expressions of interest by other banks to participate in the syndicates specify that the provision of any financing by the banks is to be conditional upon the approval of CE Oltenia's restructuring plan by the Commission. Romania informed the Commission that CE Oltenia intends to draw bank loans to the maximum amount of up to EUR […], despite the expression of interest by the banks to provide financing for CCGT and photovoltaic projects in a higher amount (EUR […]).

4.3.2.3. Burden sharing and contribution by Fondul Proprietatea

(93) In order to achieve the contribution of the minority shareholder Fondul Proprietatea (recital 7) to CE Oltenia's restructuring, a partial absorption of loss carried forward through a capital reduction would take place. The loss carried forward as at 31 December 2020 was approximately EUR 345 million (RON 1 710 million); this loss will be reduced to approximately EUR 100 million (RON 493 million) as a result of converting the rescue aid amounting to RON 1 217 million (equivalent to approximately EUR 251 million) from the loan to a grant. The coverage of the accounting loss, which is a cumulated loss carried forward, through a share capital reduction will be borne proportionally by all shareholders.

(94) The share capital reduction would be followed by a share capital increase of approximately EUR […], which would dilute the participation of Fondul Proprietatea in CE Oltenia from […]% to approximately […]%. A Memorandum of Understanding between CE Oltenia, Fondul Proprietatea and the Ministry of Energy to this effect was signed on 21 December 2021 to ensure that Fondul Proprietatea votes in favour of such an increase, as CE Oltenia's constitutive documents require a majority of 90 % of votes of its shareholders for a share capital increase.

([46]) The pool would include […].
([47]) The pool would include […].
([48]) The […] signed the indicative Heads of Terms on financing the 2 CCGT projects on 9 December 2021. The […] signed the indicative Heads of Terms on financing eight photovoltaic parks on 10 December 2021.

4.3.3. *Financial projections*

(95) The duration of the revised restructuring plan is increased from five to six years in order to reflect the phase-out calendar of the lignite-fired units combined with the commissioning date of the gas generation capacities. Therefore, while the restructuring plan covers the period from the beginning of 2021 until the end of 2026, the financial projections provided by CE Oltenia run until 2030.

Table 3

Selected financial data from the revised restructuring plan for the period from 2021 until 2026 with a perspective until 2028

(in million EUR)

	Restructuring period						Post-restructuring period (*)	
	2021	2022	2023	2024	2025	2026	2027	2028
Operating revenues	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Operating expenses	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
EBITDA	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Net result	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Total equity	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Return on equity	[…]%	[…]%	[…]%	[…]%	[…]%	[…]%	[…]%	[…]%
ROCE	[…]%	[…]%	[…]%	[…]%	[…]%	[…]%	[…]%	[…]%

(*) The restructuring period runs from 2021 until 2026. The post-restructuring data (for the years 2027 and 2028) is included in the table for illustrative purposes only.

(96) Sales of electricity represent the most important source of economic income for CE Oltenia, contributing historically (2017 to 2020) to approximately 85 % of its total operating revenues. Their estimation is based on the following assumptions: installed power, number of operating hours/average load factor, own technological consumptions, electricity sales volume by market segments and average selling price in each segment.

(97) The electricity production supplied by installed lignite capacities is estimated to be reduced from […] in 2021 to […] in 2025 and to […] in 2026, while the production from the micro hydropower plant and the photovoltaic parks would total approximately […] starting in […], and the electricity produced by the gas power plants is estimated to be […] at the end of 2026, after their commencement in mid-2026. In the post restructuring period (starting from 2027 onwards), the electricity production generated by those sources (and no longer by lignite) will reach […].

(98) At the end of the restructuring period in 2026, the sales of electricity by source of production will be only […] broken down as follows: […] from lignite, […] from renewables and […] from gas installations. It should be noted that […] is an exceptional year for CE Oltenia because […], but at the same time the gas power plants will start being operational […]. Therefore, […] will be the first year without lignite production and with full capacity production from gas installations and renewable plants. The total production will come to […] in […] as opposed to […] in […] and the operating revenues will respectively increase and reach EUR […] in […] compared to EUR […] in […].

(99) The revenues by market segment in 2021 are formed by sales on the OPCOM market (61 %), sales on the day ahead market (34 %) followed by the balancing market (5 %). In 2024 when the revenues from renewables will start arriving, there will be a decrease of 6 % on the OPCOM market, which will be compensated with an increase on the day ahead peak market (where electricity produced by the photovoltaic parks is assumed to be traded), where electricity trades between […]% and […]% higher than the average annual price. In addition, CE Oltenia foresees an increase in the average electricity price by […] % in 2026 compared to 2021.

(100) As shown in Table 3 the operating expenses are expected to exceed the operating revenues until 2025 inclusive, mainly due to the increased costs for CO_2 allowances. The revised restructuring plan was prepared in June 2021 with the assumption that the average price of CO_2 allowances for 2021 would be 44 EUR/tonne and would reach 63 EUR/tonne in 2026. CO_2 allowance costs for 2021 constitute 37 % of all operating costs of CE Oltenia. These values for a long-term projection covering five years are to be compared with the average price of CO_2 allowances of the five-year period between 2017 to 2021, which is 27,05 EUR/tonne.

(101) On 21 December 2021, Romania submitted a sensitivity analysis, which reflect the increase in the electricity prices over the previous months of 2021 and the further increase of CO_2 allowance costs using EUR 80/tonne as the average allowance price. This resulted in an increase in EU-Emissions Trading System compliance costs to EUR […] for the period 2021-2026 as compared to EUR […] for the same period in the restructuring plan from June 2021.

(102) According to Romania, and further confirmed by the sensitivity analysis, the steep increase in CO_2 allowance costs in the final months of 2021 will be offset partly by an increase on the amount of aid and, mainly, by a sharp rise in electricity prices leading to higher revenues. Romania emphasised that 75 % of the total contracted revenues to be generated for the period 2021-2025 are based on variable prices, which means that in case of further increase in CO_2 allowance costs, CE Oltenia would be able to revise upwards the electricity price set out in contracts. Only 25 % of total electricity revenues are based on contracts with a fixed price. The majority of the contracts will expire in June 2022 at the latest so that thereafter, CE Oltenia can even more flexibly direct its supplies and cater for changed input costs in the course of the restructuring period.

(103) A sizeable part of the operating costs are the personnel costs, which would decrease from EUR […] in 2021 to EUR […] in 2026. This gradual drop in the staff costs is in line with the commitment of CE Oltenia to reduce its personnel by […]% by the end of 2026. Starting from 2026, the overall yearly operating expenses of the company will become lower due to the lower amount of CO_2 allowances to be purchased as the electricity production from fossil fuel will be replaced by renewable facilities and gas installations, the latter being less carbon-intensive than lignite (recital 76).

(104) As shown in Table 3, until 2025 the company will have a negative EBITDA (earnings before interest, taxes, depreciation, and amortisation), but positive net results (with the exception of 2022). Starting from 2026 when the phase-out of the lignite capacities is expected to take place, CE Oltenia will start posting positive EBITDA and positive cash flow. According to the sensitivity analysis provided in December 2021, the net result and the EBITDA will be positive from 2026.

(105) Moreover, towards the end of the restructuring period in 2026, CE Oltenia expects to attain a return on equity (ROE) in the range of […]% for the period 2025 and 2026, which would further increase in the post-restructuring period when the beneficiary will no longer bear the burden of the high CO_2 allowance costs. These returns are well above the cost of equity for CE Oltenia, which amounts to […]% ([49]). The return on capital employed will reach […]% in 2026. The debt to equity ratio and EBITDA interest coverage ratio would be respectively […] and […] by 2026.

(106) In addition, the Romanian authorities have provided projections under a pessimistic scenario based on more adverse assumptions: (i) decrease of electricity prices by 5 %; (ii) increase in gas acquisition costs by 5 % and (iii) increase in CO_2 allowance costs by 5 %. These projections would lead to positive net income, return on equity and EBITDA at the end of 2026. The debt to equity ratio would be […] and the EBITDA interest coverage ratio would reach […].

([49]) […].

4.3.4. *Measures to limit distortions of competition*

(107) Romania puts forward the following measures limiting distortions of competition by CE Oltenia: (i) the closure of the lignite power units and of lignite mines (recital 70 and the creation of 'the lignite subsidiary' (recital 108), (ii) creating SPVs for new investments (recitals 110 to 113), and (iii) the Craiova spin-off (recitals 116 to 117).

Lignite phase-out

(108) The restructuring plan entails the phasing-out of lignite through the closure of the lignite power units and of lignite mines (see recitals 70 to 73). While Romania put forward as a measure to limit competition distortions the closure of the lignite-based units accompanied by the corresponding closure of lignite mines, at the same time it acknowledges that, based on the new CO_2 allowance price assumptions, none of the existing units operated by CE Oltenia are viable.

(109) In connection with the lignite phase-out, the Romanian authorities have committed themselves to creating a distinct subsidiary of CE Oltenia ('the lignite subsidiary'), which will comprise and operate the existing lignite power units and related assets of CE Oltenia that are not intended for transition to gas or renewables. The accounts of the lignite subsidiary will be clearly separated from the accounts of CE Oltenia. Such lignite capacities should decrease over time and eventually be phased-out in line with national lignite phase-out calendar. The Romanian authorities have further committed themselves to initiating the process of creating the lignite subsidiary after the approval of the restructuring plan of CE Oltenia by the Commission and be completed before the end of the restructuring period according to the following indicative schedule: decision for initiation of the lignite spin-off by February or March 2023, preparation of lignite spin-off project by March or April 2023, implementation of the lignite spin-off by September or October 2023. In any event, the Romanian authorities have committed themselves to creating the lignite subsidiary before the end of the restructuring period i.e. before the end of 2026. The creation of the lignite subsidiary will take into consideration the interdependency with other measures provided by the restructuring plan, such as capital operations (increase/decrease in the share capital, the spin-off of Craiova II) or establishing SPVs for the new investments.

SPVs for new investments

(110) Under the restructuring plan, SPVs will be created for new two gas and eight photovoltaic power generation projects, one SPV per project. Romania submits that the establishment of the SPVs enhances competition by enabling the creation of the new competitors.

(111) Romania carried out market consultation (its binding phase was launched in October 2021) with the objective of finding co-investors in SPVs for new (gas and renewables) projects. Three binding offers were received by the deadline of 6 December 2021, namely from Tinmar Energy SA ('Tinmar Energy'), OMV Petrom SA ('OMV Petrom') and Electrica. After evaluating the bids, Tinmar Energy and OMV Petrom were selected and awarded 9 out of the 10 SPV projects. No offer was received for the Işalniţa CCGT.

(112) Tinmar Energy is a Romanian-based private supplier of electricity, natural gas and oil products. It owns 13 photovoltaic parks with 75 MW installed capacity and it has plans to grow further its portfolio. OMV Petrom is an integrated oil, gas and chemicals company that forms part of the Austrian-based OMV group and is one of the largest companies in Romania, with international activities. It owns and operates 860 MW of CCGT capacity and plans to invest in 1 GW of renewable energy.

(113) OMV Petrom has been selected as the winning bidder for 4 photovoltaic projects (Işalniţa, Tismana Rosia Rovinari, Tismana 1 TPP Rovinari and Rovinari Est) and will contribute 50 % to the share capital of each respective SPV while the remaining 50 % contribution will be borne by CE Oltenia. Tinmar Energy SA has been selected for 1 natural gas project (Turceni CCGT) and 4 photovoltaic projects (Rovinari, SE Turceni, Pinoasa SE Rovinari and Bohorelu SE Rovinari), and it will participate in the share capital of the respective SPVs at 55 % (the remaining 45 % will be borne by CE Oltenia).

(114) The total amount of investors' contribution in the share capital of 9 SPVs is approximately EUR […]. The participation rate of investors in the share capital of SPVs will vary between 50-55 %. Together with the total capital expenditure to be financed by investors of EUR […], the total equity contribution by investors for the 9 SPVs would be of EUR […].

(115) No offer was received for the Ișalnița CCGT, mainly due to the uncertainty regarding its potential funding from the Modernisation Fund, but there was a strong interest expressed by several bidders and Romania signalled that the bidding process for this project would be restarted. Romania expects that the project will be backed by financing under the Modernisation Fund and plans to relaunch the bidding process. The total investment cost amounts to EUR […], out of which the financing from the Modernisation Fund is expected to be 50 % of the total cost (EUR […]), subject to submission of corresponding investment proposal(s) by Romania and to subsequent confirmation by the Investment Committee of the Modernisation Fund. If there will be a private investor contributing to the Ișalnița CCGT project, this is expected to bring approximately an additional EUR […] contribution to the share capital of the respective SPV and additional EUR […] investment expenditures by the investor. The rest will be financed through a bank loan. In case there is no private interest, the total remaining amount will be borne by CE Oltenia and financed through a bank loan. Given that it is uncertain whether any bidder will be selected and will contribute to this project, Romania puts forward as own contribution by investors only the contribution to the 9 SPVs of EUR […].

Craiova spin-off

(116) Under the restructuring plan, the co-generation energy group S.E. Craiova II (supplying heat to the City of Craiova) would be spun off and transferred to the Craiova municipality. CE Oltenia is the only economic operator supplying heat in Craiova municipality in Dolj country. The General Assembly of shareholders of CE Oltenia approved the (partial) spin-off of Craiova II in August 2021, and the implementation of the transaction follows a clear timeline with a conclusion date in mid-May 2022. In any case, the spin-off could be implemented no later than June 2022.

(117) Romania submits that the outsourcing of Craiova II should be considered as a measure to limit competition distortions, given that it will create a viable competitor on the electricity market with the capacity of 120 MW.

Behavioural measures

(118) In addition, Romania undertook that the beneficiary would refrain from: (i) acquiring shares in any company during the restructuring period, except where indispensable to ensure its long-term viability and subject to Commission approval, and (ii) publicising State support as a competitive advantage when marketing its products and services.

5. **ASSESSMENT OF THE MEASURES**

(119) The Commission will first assess whether the measures to be provided to finance CE Oltenia's restructuring plan as defined in recital 27 entail State aid within the meaning of Article 107(1) TFEU, and if so, whether such aid is lawful and compatible with the internal market.

5.1. **Existence of State aid**

(120) 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'.

(121) The qualification of a measure as aid within the meaning of Article 107(1) TFEU 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.

5.1.1. *State resources and imputability to the State*

(122) As set out in recital 31 of the rescue aid decision, the EUR 251 million loan in favour of CE Oltenia was to be granted by the Ministry of Public Finances with money deposited in its foreign currency account, which is opened with the National Bank of Romania in implementation of an emergency ordinance of the Romanian government. Therefore, the rescue loan was imputable to the State and involved State resources. As part of the restructuring aid, the rescue loan will be converted into a grant, which will be provided by the State and borne by the State budget.

(123) As set out in the (draft) Emergency Ordinance on the establishment of the legal framework for granting a state aid for the restructuring of CE Oltenia S.A., the funding of the grants, of the capital increase (recital 30) and of the loans will be provided by the Ministry of Public Finance or the Ministry of Energy and come from the State budget, whilst the State guarantee on loans from the Export-Import Bank of Romania EXIMBANK - S.A. (recital 29) will also be granted by the Ministry of Public Finance on behalf and for the account of the State. The grant of April 2021 in the amount of EUR 241 million that was already provided also involved resources from the State budget and was decided by Government Emergency Ordinance No. 21/2021 with subsequent amendments and completions.

(124) As regards the grant from the Modernisation Fund (recital 27), it involves State resources given that the budget of the Modernisation Fund is partially formed from additional allowances provided by selected Member States including Romania (recital 80). Furthermore, this grant can be provided only subject to submission by Romania of the corresponding investments proposals and their confirmation by the European Investment Bank or the Investment Committee of the Modernisation Fund (recital 90). In that regard, Romanian authorities have discretion as to the selection of investment proposals to be submitted to the Fund and the resources of the Modernisation Fund, once transferred, are under control of Romania. In the light of the above, the funding from the Modernisation Fund involves State resources the use of which is imputable to the State.

(125) The Commission therefore concludes that the measures as defined in recital 27 involve State resources and the decision to grant the measures is imputable to the State.

5.1.2. *Advantage*

(126) The Commission notes that Romania has notified the measures as constituting State aid. That notification does not discharge the Commission from examining itself whether the measures involve State aid and, in particular, whether they favour the beneficiary in that a market operator holding shares in a situation as close as possible to that of Romania would not take a similar decision and grant the same measures at the same conditions, leaving aside any benefits expected in its situation as public authority ([50]).

(127) The Commission has to examine whether the measures qualify as aid in that they confer an economic advantage on the beneficiary ([51]). The presence of such an advantage can be inferred from the fact that the beneficiary cannot obtain sufficient capital or raise debt finance (recital 92) at market conditions without public support.

(128) The measures will help CE Oltenia finance the continuation of its operations and the implementation of its restructuring plan by giving it access to finance that CE Oltenia, given its specific situation and the current circumstances, has not been able to obtain on the market. In particular, a large portion of restructuring aid are non-remunerated direct grants provided by the State, which would be unavailable in the market. While CE Oltenia has been able to attract some market funding in the form of investors contribution to SPVs (recital 90) and of bank financing (recital 92), absent public funding this would not be sufficient to carry out the necessary transition to gas and renewables needed for the long-term viability of the beneficiary. In this regard, it is doubtful that the beneficiary would be able to attract the same market funding absent the public funding of SPVs for new investments.

(129) In the same vein, whereas Romania will provide funding to CE Oltenia through instruments of capital increase and guarantees that could also be provided by a shareholder in the same position, these are combined in a single intervention along with grant instruments which are not available on the financial markets set out in the (draft) Emergency Ordinance on the establishment of the legal framework for granting a state aid for the restructuring of CE Oltenia S.A., as well as the potential grant from the Modernisation Fund, and with a prolongation of a rescue loan entailing aid.

([50]) Judgment of the Court of Justice of 20 September 2017, *Commission* v *Frucona Košice*, C-300/16 P, ECLI:EU:C:2017:706, paragraph 59; judgment of the Court of Justice of 5 June 2012, *Commission* v *EDF*, C-124/10 P, ECLI:EU:C:2012:318, paragraphs 78, 79 and 103.

([51]) Judgment of the Court of Justice of 11 July 1996, *SFEI and others*, C-39/94, ECLI:EU:C:1996:285, paragraph 60; judgment of the Court of Justice of 29 April 1999, *Spain v Commission*, C-342/96, ECLI:EU:C:1999:210, paragraph 41.

(130) Although the combination of instruments overall provides remuneration and potential upsides to the State shareholding, the losses expected at the beginning of the restructuring period cause the aggregate returns to be insufficient to be considered market conform. The notified measures are part of a single intervention by the State: first, the share capital increase, guarantees and grants provided by the State are set out altogether in a single legal act to be adopted at the same time, although their implementation may occur and be spread over different time-spans. Second, the return on the shares or on the guarantees cannot be examined in isolation from non-remunerated and non-reimbursable grants, which reduces below any expectation of market conformity the stand-alone remunerations that Romania could expect from the guarantee and from the capital increase taken in isolation. Furthermore, the public funding cannot be ascribed to market-conform behaviour of a shareholder because the single intervention is based on various grounds that are extraneous to a market investor, as described in the (draft) Emergency Ordinance on the establishment of the legal framework for granting a state aid for the restructuring of CE Oltenia S.A and not on prior assessments of a sufficient return for the State. The grounds that Romania sets out in the draft ordinance include, for instance, CE Oltenia being the largest economic operator in the Oltenia region, so that the interruption of its activity could increase unemployment and worsen the living conditions in the local communities or the high probability for the National Energy System to be seriously disrupted as well as the appearance of some major social difficulties within the communities from Oltenia region, if CE Oltenia would not have the necessary financing for the activity restructuring.

(131) The Commission therefore concludes that the measures confer an economic advantage on CE Oltenia within the meaning of Article 107(1) TFEU.

5.1.3. *Selectivity*

(132) The measures will be granted solely to the benefit of CE Oltenia. As the Court of Justice has stated ([52]), 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. This is so regardless of whether there are operators on the relevant markets that are in a comparable situation. Whilst Romania might still provide State aid to other energy operators competing with CE Oltenia, in any event, the notified measures are not part of a broader measure of general economic policy to provide the same type of ad hoc support to all undertakings that are in a comparable legal and factual situation in the light of the objective of the measures, active in the energy sector or other economic sectors, but is made available only to CE Oltenia.

(133) Therefore, the Commission concludes that the measures are selective within the meaning of Article 107(1) TFEU.

5.1.4. *Distortion of competition and effect on trade*

(134) When aid granted by a Member State strengthens the position of an undertaking compared with other undertakings competing in intra-Union trade, the latter must be regarded as affected by that aid. It is sufficient that the recipient of the aid competes with other undertakings on markets open to competition. In that regard, the fact that an economic sector has been liberalised at Union level is an element which may serve to determine that the aid has a real or potential effect on competition and on trade between Member States. CE Oltenia provides electricity, and to a lesser extent heat, to consumers in Romania; and Romania has electricity transmission interconnections with the neighbouring countries. The electricity market is open to competition in the Union and service provision from one Member State to another.

(135) The measures are therefore liable to distort or threaten to distort competition and to affect trade between Member States.

5.1.5. *Conclusion on the existence of State aid*

(136) In view of the above, the Commission concludes that the measures constitute State aid to CE Oltenia within the meaning of Article 107(1) TFEU.

([52]) Judgment of the Court of 4 June 2015, *Commission* v *MOL*, C-15/14 P, ECLI:EU:C:2015:362, paragraph 60.

5.2. **Lawfulness of the measures**

(137) While the rescue loan, which will now be converted into a grant in order further to support the restructuring, was granted lawfully, Romania communicated to the Commission the restructuring plan of CE Oltenia more than six months after the rescue aid decision (recital 32) was handed down on 24 February 2020.

(138) In addition, Romania provided a grant of EUR 241 million to CE Oltenia in March 2021 to partially cover the costs of CO_2 allowances of CE Oltenia for 2020 when the formal investigation procedure into restructuring aid to CE Oltenia was ongoing. That grant forms part of the measures, namely: of the EUR 1 090 million grant to partially cover the cost of CO_2 allowances in the period 2021-2026 (recital 28).

(139) Accordingly, Romania did not observe the standstill obligation laid down in Article 108(3) TFEU and therefore the restructuring aid to the benefit of CE Oltenia constitutes partly unlawful State aid.

5.3. **Compatibility of the aid with the internal market**

(140) Article 107(3), point (c), TFEU provides that aid to facilitate the development of certain economic activities or of certain economic areas may be considered compatible with the internal market where such aid does not adversely affect trading conditions to an extent contrary to the common interest.

(141) Thus, in order to be capable of being considered compatible with the internal market under Article 107(3), point (c), TFEU, State aid must meet two conditions: (i) it must be intended to facilitate the development of certain economic activities or of certain economic areas, and (ii), it must not adversely affect trading conditions to an extent contrary to the common interest. The two conditions are without prejudice to the fact that decisions adopted by the Commission on that basis must ensure compliance with Union law ([53]). Under the first condition, the Commission examines whether the aid is intended to facilitate the development of certain economic activities. Under the second condition, the Commission balances the positive effects of the proposed aid against the negative effects that the aid may have on the internal market ([54]).

(142) In the light of the notification and the information collected in the course of the formal investigation into the restructuring aid, it does not follow that the restructuring aid or the conditions attached to it, nor the economic activity of electricity generation facilitated by the aid, could entail a violation of a relevant provision of Union law. In particular, the Commission has not sent a reasoned opinion to Romania on a possible infringement of Union law, nor opened a formal procedure on this aspect, that would bear a relation to this case. The Commission has not received any relevant complaints either.

(143) The Commission received information from third parties (recitals 49 to 58) alleging that the State aid, the conditions attached to it or the economic activities facilitated by the aid might be contrary to Union law. In particular, third parties indicated that CE Oltenia has not complied with emission limits (concerning NOx, SO_2, particulate matters etc.) in recent years.

(144) The Commission finds that compliance with applicable emission standards that third parties refer to is severable from and not inextricably linked either to the aid and the conditions attached to it, or to the development of the activity of power generation that the aid supports. Appropriate technologies of pollution control and abatement de-correlate emissions of NOx, SO_2, particulate matters or other noxious pollutants from electricity generation. Therefore, the Commission considers that the restructuring aid does not support an activity contrary to Union law and that it is not inextricably linked to any possible breach of other provisions of Union law. Moreover, the restructuring plan includes investments aimed at improving the environmental performance of the installations in reducing noxious pollutants (recital 77). Based on the information available, there is no indication that CE Oltenia would be in breach of its obligations regarding relevant emissions of NOx, SO_2, particulate matters or other noxious pollutants or other environmental provisions.

([53]) Judgment of the Court of Justice of 22 September 2020, *Austria v Commission*, C-594/18 P, ECLI:EU:C:2020:742, paragraphs 18 to 20.
([54]) Judgment of the Court of Justice of 22 September 2020, *Austria v Commission*, C-594/18 P, ECLI:EU:C:2020:742, paragraph 19.

(145) The Commission further assessed the claim that restructuring aid for CE Oltenia to cover CO_2 allowance costs would contradict the ‘polluter pays’ principle enshrined in Article 191(2) TFEU and in Directive 2003/87/EC that would require operators to pay for the CO_2 that they emit (recital 57). The ‘polluter pays’ principle is set out in Article 191(2) TFEU, whereby Union policy on the environment shall be based on the principle that the polluter should pay, among other principles.

(146) The preamble of Directive 2003/87/EC refers to Article 175(1) of the Treaty establishing the European Community (current Article 192(1) TFEU), which set out the procedure that the Council follows to decide what action the Union should take to achieve the objectives referred to in Article 174 of the Treaty establishing the European Community (current Article 191 TFEU), which included, along with the ‘polluter pays’ principle the aim to take into account the diversity of situations in the various regions of the Union and other principles.

(147) The claim from third parties could be construed as implying that Directive 2003/87/EC implicitly implements the ‘polluter pays’ principle by considering that CO_2 is an air pollutant in that its concentration induces environmental problems and that emitters of CO_2 covered in the scope of the Directive should necessarily bear the costs incurred for CO_2 allowances.

(148) The claim builds on the assumption that Directive 2003/87/EC implicitly implements the ‘polluter pays’ principle and that this implementation should be made without taking into account regional situations to which Article 174 of the Treaty establishing the European Community (current Article 191 TFEU) also refers. Even if the assumption was correct, it should be noted that the ‘polluter pays’ principle is not an absolute and unconditional principle that overrides all other considerations. It needs to be balanced against the other objectives of Directive 2003/87/EC, whose overarching aim is the environmental objective of bringing the emissions of the sectors it covers below a pre-agreed cap. The Commission notes that in the present case the accelerated and guaranteed closure of lignite power plants and their partial replacement by natural gas and photovoltaic energy sources achieve emission reductions are relevant to achieving the environmental objective of the Emissions Trading System. The Commission furthermore notes that, even for undertakings that are not in difficulty, support possibilities exist that reduce the carbon price signal, but result in emission reductions and other environmental benefits, such as support for new technologies. The Commission also notes that CE Oltenia, despite the fact that part of the allowances it requires will be financed by the State, will continue to pay for part of its allowances and therefore will continue to face a carbon price signal, because emission reductions will continue to allow it to save carbon costs. As soon as the beneficiary returns to viability it will resume incurring the full carbon cost. Accordingly, the Commission does not consider that the restructuring aid to CE Oltenia - which entails also the temporary and partial financing of CO_2 allowances, in line with the R&R Guidelines - breaches Directive 2003/87/EC.

(149) As regards the view put forward by third parties that State aid cannot cover costs of compliance with emission standards, the Commission notes that the relevant framework for assessing the compatibility of restructuring aid notified in favour of CE Oltenia is the assessment under Article 107(3), point (c), TFEU in application of the R&R guidelines and not the State aid guidelines for environmental protection and energy to which third parties refer (recital 50). The latter guidelines are not applicable to the notified restructuring aid, given the situation of CE Oltenia as undertaking in difficulty and taking into account that restructuring aid is not environmental or energy aid subject to the same set of compatibility conditions ([55]). While State aid to comply with binding regulatory standards would not have an incentive effect in the case of environmental protection aid (as operators are sufficiently incentivised to comply with such binding regulation), such aid may be necessary to enable the restructuring of an undertaking which, in the absence of such aid, would not have been able to cover its costs during the period needed to achieve that restructuring.

(150) Rescue or restructuring aid under the R&R Guidelines can be used for various types of costs such as operating costs or costs of compliance with social obligations or environmental obligations, including the costs to cover the purchase of CO_2 allowances, like was the case with the rescue aid that CE Oltenia lawfully received. In practice,

([55]) Communication from the Commission — Guidelines on State aid for environmental protection and energy 2014-2020, point 16, whereby environmental and energy aid may not be awarded to firms in difficulty as defined for the purposes of these Guidelines by the applicable Guidelines on State aid for rescuing and restructuring firms in difficulty.

compatible rescue or restructuring aid earmarked for purposes other than for the payment of CO_2 operating costs would have the effect of freeing revenues that the company could use for the payment of the related CO_2 allowances with the same practical effect as aid that is earmarked for such costs.

(151) Moreover, the restructuring aid will support a fuel switch towards less polluting fuels and does not have the consequence that CE Oltenia is not sufficiently incentivised to comply with environmental rules. Without the aid package, including its component covering environmental compliance, CE Oltenia will abruptly exit the market in a way that would not properly safeguard the development of the activity of electricity production in the region where CE Oltenia is located. Therefore, given the temporary nature, the plan to decrease CO_2 emissions and the regional situation to which Article 191 TFEU also refers, the restructuring aid at issue is not in breach of Article 191 TFEU with respect to the ‘polluter pays’ principle.

(152) Romania also considers that the restructuring aid can be declared compatible with the internal market pursuant to the R&R Guidelines.

(153) In view of the nature and aims of the State aid at stake and the claims of the Romanian authorities, the Commission will assess whether the planned restructuring aid complies with the relevant provisions laid down in the R&R Guidelines. In the R&R Guidelines, the Commission sets out the conditions under which State aid for rescuing and restructuring non-financial undertakings in difficulty may be considered to be compatible with the internal market on the basis of Article 107(3), point (c), TFEU.

(154) In examining whether restructuring aid has an adverse effect on trading conditions to an extent that is contrary to the common interest, the Commission carries out a balancing test according to Article 107(3), point (c), TFEU and the R&R Guidelines. In carrying out that test, if the beneficiary is eligible to receive restructuring aid, the Commission weighs the positive effects of the aid against the negative effects on competition and trade between Member States created by the impact of the State aid. When making that assessment, it considers the need for State intervention, the appropriateness, proportionality, transparency of the aid, the one- time last- time principle and measures to limit distortions of competition set out in the R&R Guidelines.

Eligibility: undertaking in difficulty

(155) In order to be eligible for restructuring aid, a beneficiary must qualify as an undertaking in difficulty as defined in section 2.2 of the R&R Guidelines. In particular, point 20 of the R&R Guidelines explains 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 points 20 (a) to (d) of the R&R Guidelines occurs.

(156) As explained in the opening decision ([56]) and the rescue aid decision ([57]), since 31 December 2019, CE Oltenia has fulfilled the criteria for being placed in collective insolvency proceedings at the request of its creditors under national law, as at least as from 31 December 2019, 46 suppliers of CE Oltenia could have requested the opening of the insolvency procedure. As set out in recital 22, CE Oltenia does not have the capacity to repay the granted rescue loan plus interest and in the absence of notifying a restructuring plan it would automatically go into liquidation. It follows that CE Oltenia fulfils the criteria under national law for being placed in collective insolvency proceedings at the request of its creditors and qualifies as an undertaking in difficulty pursuant to point 20(c) of the R&R Guidelines since 2019.

(157) According to point 21 of the R&R Guidelines, a newly created undertaking is not eligible for restructuring aid. The beneficiary in this instance, namely, CE Oltenia, is not a newly created undertaking for the purposes of the R&R Guidelines, since it was established in 2011 (see recital 7), so more than 3 years ago.

([56]) Recital 40 of the opening decision.
([57]) Recitals 17 and 33 of the rescue aid decision.

(158) According to point 22 of the R&R Guidelines, a company belonging to or being taken over by a larger business group is not normally eligible for restructuring aid, unless it can be demonstrated that the company's difficulties are intrinsic and are not the result of an arbitrary allocation of costs within the group, and that the difficulties are too serious to be dealt with by the group itself.

(159) CE Oltenia's difficulties mainly stem from its own business model and input fuel for the production of electricity in the competitive setting of the Romanian electricity market (recitals 23 to 26). CE Oltenia does not belong to a larger business group and the State has sole control over it through the Ministry of Energy (recital 7) so that it is a public undertaking in which the State is exercising a sole control by virtue of its ownership and financial participation ([58]). It follows from the situation of sole control by the State that, in the present case, any financial support from the State to CE Oltenia to assist it with its difficulties would qualify as aid unless carried out at market conditions. Therefore, while CE Oltenia's difficulties are intrinsic, the question of whether they are not the result of an arbitrary allocation of costs within the group, and that the difficulties are too serious to be dealt with by the group itself does not arise.

(160) On the basis of the above, the Commission concludes that CE Oltenia is an undertaking in difficulty and is eligible for restructuring aid.

5.3.1. *The aid facilitates the development of certain economic activities or certain economic areas*

(161) Under Article 107(3), point (c), TFEU, for State aid to be considered compatible with the internal market, it must facilitate the development of certain economic activities or certain economic areas.

(162) In that regard, to show that restructuring aid is intended to facilitate the development of such activities or areas, the Member State granting such aid must demonstrate that the aid aims to prevent social hardship or address a market failure. In the specific context of restructuring aid, the Commission notes that, as acknowledged in point 43 of the R&R Guidelines, in fact, market exit is important to the wider process of productivity growth, thus merely preventing an undertaking from exiting the market does not sufficiently justify State aid. On the contrary, rescue and restructuring aid are among the most distortive types of State aid, as they interfere with the process of market exit. However, in certain situations, restructuring an undertaking in difficulty may contribute to the development of economic activities or areas, also beyond the very activities carried out by the beneficiary. This is the case where in the absence of such aid, the beneficiary's failure would lead to situations of market failure or social hardship, inhibiting the development of the economic activities and/or areas that would be affected by such situations. A non-exhaustive list of such situations is provided in point 44 of the R&R Guidelines.

(163) Such situations occur, inter alia, where the beneficiary's whose failure the aid seeks to avert, is located in a region (at NUTS 2 level) where the unemployment rate is higher than the national average, persistent and accompanied by difficulty in creating new employment, or where the beneficiary plays an important systemic role in a particular region or sector from which its exit would have potential negative consequences (points 44(a) and (c) of the R&R Guidelines). By enabling the beneficiary to continue its operations, the aid thus prevents such market failure or social hardship. In the case of restructuring aid, however, this is only true where the aid enables the beneficiary to compete in the marketplace on its own merits, which can only be ensured if the aid is premised on the implementation of a restructuring plan that restores the beneficiary's long-term viability.

(164) The Commission, hence, will first assess whether the aid is intended to prevent a situation of market failure or social hardship (section 5.3.1.1) and whether it is accompanied by a restructuring plan restoring the beneficiary's long-term viability (section 5.3.1.2).

([58]) See Article 2 b) of Commission Directive 2006/111/EC of 16 November 2006 on the transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertakings (OJ L 318, 17.11.2006, p. 17).

5.3.1.1. Prevention of social hardship or market failure contributing to the development of economic activity or an economic area

(165) Among the situations where rescuing an undertaking in difficulty may contribute to the development of economic activities or areas, points 44(a) and 44(c) of the R&R Guidelines mention cases where the unemployment rate in the region where the beneficiary is active is higher than the national average, persistent and accompanied by difficulty in creating new employment in the region concerned (second indent of point 44(a) of the R&R Guidelines), or where aid is intended to avert the risk of economic growth being hampered by the failure of an undertaking with an important systemic role in the sector or region concerned (point 44(c) of the R&R Guidelines).

The unemployment rate in the region where the beneficiary is active

(166) In this regard, Romania refers to circumstances mentioned under the second indent of point 44(a) of the R&R Guidelines, i.e. submits that the beneficiary is active in a region (at NUTS 2 level) where the unemployment rate is higher than the national average, persistent and accompanied by difficulty in creating new employment in the region concerned. In the opening decision, the Commission concluded that the restructuring aid aims at preventing social hardship in the circumstances mentioned under the second indent of point 44(a) of the R&R Guidelines ([59]). This conclusion has not been questioned by third parties commenting in the proceedings.

(167) The unemployment rate in the region of South-West Oltenia has been persistently higher than the national average at least since 2015. In fact, the unemployment rate in South-West Oltenia has been ranging between 8,2 % to 5,5 % in the years 2015 to 2020, while the national average rate ranged between 5 % to 3,4 % over the same period, with South-West Oltenia's unemployment rate always being above the national average (recital 8). In this respect, CE Oltenia employs staff in activities of lignite mining and power generation for which an abrupt exit of the market would certainly imply that their professional skills would not allow them to find suitable employment in the region in the absence of alternative mining or power generation activities therein. That unemployment has been accompanied by difficulty in creating new employment in the region, as evidenced by the Gorj County Just Transition Territorial Plan (recital 9).

(168) The Commission therefore finds that the circumstances referred to in point 44 (a) of the R&R Guidelines are present.

The aid supports an undertaking with systemic role in the region South-West Oltenia

(169) The aid also seeks to avert the risk of exit of an undertaking with a systemic role within the meaning of point 44(c) of the R&R Guidelines.

(170) CE Oltenia is the third biggest electricity producer in Romania with an important share of production capacity installed (recital 11). Romania raised the argument that if CE Oltenia exited the market, there could be a risk of endangering the security of electricity supply in Romania (see recital 61). While Romania did not submit a resource adequacy assessment pursuant to the methodology in Article 24 of Regulation (EU) 2019/943 of the European Parliament and of the Council ([60]) on the internal market for electricity, the Commission cannot exclude potential negative consequences on energy supply at the regional level in South-West Oltenia where the plants are located. The abrupt cessation of the activity of the plants, which supply electricity and, for Craiova, also heat, or the abrupt cessation of its mining activities would be capable, at least temporarily, of leading to additional costs for companies and households to ensure stable energy supplies at regional level. At the same time, the Commission does not consider it necessary to take a position on the argument of security of supply on the Romanian national market taken as a whole in this context.

(171) The potential negative consequences that are additional to the role of CE Oltenia as supplier of energy in the region include a negative spill-over effect on the economic activity and situation in the region, and in particular the Gorj County. As mentioned in recital 18, CE Oltenia has business relations with about 120 companies in Gorj County, which together account for around 50 % of the county's economy in terms of total turnover generated annually in 2019. In the case of CE Oltenia's exit, the region and particularly the Gorj County would likely see a reduction in economic activities and reduction in economic value created.

([59]) Recital 41 of the opening decision.

([60]) Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity (OJ L 158, 14.6.2019, p. 54).

(172) In addition, with approximately 12 268 employees, CE Oltenia is a significant employer in the region of South-West Oltenia (recital 7). The closure of the beneficiary would lead not only to the direct loss of more than 12 000 jobs but also to a loss of a significant number of indirect jobs, considering the large number of current partners across the value chain. The likely insolvency that CE Oltenia would face in the absence of the restructuring aid would thus have a significant negative spill-over effect on the region and beyond.

(173) The Commission thus considers that the beneficiary undoubtedly plays a key systemic role on the regional level, not only for the development of its production and supply, but also for the development of the wider economic activities that rely on such supply as set out in point 44(c) of the R&R Guidelines.

Conclusion on prevention of social hardship or market failure

(174) While Romania also invoked the circumstances referred to in points 44(b) and (g) of the R&R Guidelines, the Commission is satisfied that those points are met and it is thus not necessary to assess Romania's arguments in this regard. Also, it is to be noted that the Commission did not raise doubts as regards the fulfilment of this compatibility criterion in its opening decision, nor did it receive any comments on non-compliance with this condition in third-party observations.

(175) In the light of the above, the Commission concludes that the aid contributes to the development of the economic activity of electricity production and of South-West Oltenia region. The aid prevents the exit of an undertaking active in the South-West Oltenia region, which has an unemployment rate that is higher than the national average, persistent and accompanied by difficulty in creating new employment in the region concerned, and furthermore that it prevents potential negative consequences of the exit of an undertaking with an important systemic role in Romania's energy production sector (points 44 (a) and (c) of the R&R Guidelines).

5.3.1.2. Restructuring plan and return to long-term viability

(176) Under point 46 of the R&R Guidelines, the granting of restructuring aid must be conditional on the implementation of a restructuring plan that would restore the viability of the beneficiary. The remedying of the causes that led to the difficulty of the beneficiary, by facilitating its return to long-term viability, is a necessary condition for the restructuring aid to serve the development of the economic activities and areas where the beneficiary operates.

(177) Under points 45 to 48 of the R&R Guidelines, restructuring aid should only be granted to support a realistic, coherent and far-reaching restructuring plan, the measures of which must be designed to restore long-term viability within a reasonable timescale, excluding any further aid beyond the one supporting the beneficiary's restructuring plan. The restructuring plan must identify the causes of the beneficiary's difficulties and the beneficiary's own weaknesses, and outline how the proposed restructuring measures will remedy the beneficiary's underlying problems.

(178) The results of the restructuring must be demonstrated in a variety of scenarios, in particular by identifying performance parameters and the main foreseeable risk factors. The return to viability of the beneficiary must result in an appropriate return on capital invested after covering costs, without depending on optimistic assumptions about factors such as variations of price or demand. Long-term viability is achieved when an undertaking is able to provide an appropriate projected return on capital after having covered all its costs including depreciation and financial charges and is also able to compete in the marketplace on its own merits.

(179) CE Oltenia's revised restructuring plan has been designed to tackle the difficulties identified by the beneficiary after a thorough assessment of the reasons for its financial difficulties (see recitals 22 to 26) and with the purpose to make it viable again.The 6-year duration of the plan, encompassing the period between 2021 and 2026, is not unreasonably long, given that: […].

(180) In the next section, the Commission will first assess the credibility of the assumptions underlying the beneficiary's restructuring plan and then the evidence of the beneficiary's return to viability at the end of the restructuring plan.

Assessment of the assumptions underlying financial projections

(181) The Commission has carefully reviewed the key assumptions underlying the financial forecasts of the revised restructuring plan submitted by Romania.

(182) With regard to the credibility of the assumptions underlying the revenue projections, the Commission notes that the total production capacity of CE Oltenia will gradually decrease from […] in 2021 to […] in 2025 and to […] in 2026 (recital 97) and the revenues for the same period will follow a similar trend (Table 3). The total production capacity will be reduced by […]% between 2021 and 2025, while the revenues for the same period will decrease by […]%. The reason for the slower drop in revenues compared to capacity reduction is twofold: on the one hand, it is due to the increase in the average electricity price by […] % between 2021 and 2026 and on the other hand, CE Oltenia will replace part of the electricity sales currently performed on the less lucrative OPCOM market to the more lucrative day ahead peak market (recital 99).

(183) Moreover, the projections reflect revenues from the hydropower plant, the photovoltaic parks and the gas installations starting respectively from 2023, 2024 and 2025. The gradual reduction from lignite is considered in the revenues forecast, as well as its standing as reserve in stand-by mode in 2026 (recital 97).

(184) The projections reflect a sudden drop in revenues by more than […]% in 2026, […] and the gas installations will be operational only for a half of the year 2026 (recital 98). In 2025, the total capacity of CE Oltenia will be […] and in 2027 it will reach […] with the full capacity of gas installations taken into account, which represents a […]% increase in total capacity between 2025 and 2027. The upward trend is confirmed by the revenues, which are supposed to rise by the same percentage for the same period (recital 98).

(185) In addition, in its revenue projections, CE Oltenia took into account other important factors such as average load factor, technological assumptions and electricity sales volume by market segment (recital 96). Therefore, the Commission considers the beneficiary's revenue projections as to be reasonable.

(186) As far as the CO_2 allowance costs are concerned, it should be emphasised that the initial restructuring plan, with respect to which the Commission has opened the formal investigation procedure, was based on underestimated CO_2 allowance prices ([61]). That plan was established using CO_2 allowance prices ranging from EUR 25,3 to EUR 31,2/tonne for the period between 2020 and 2030, while, as of 24 January 2021 the price had already reached EUR 33/tonne (recital 45). The revised restructuring plan from June 2021 was based on prices between 44 and 63 EUR/tonne for the period 2021-2026 (recital 100). In the long-term perspective within which the plan is to be assessed, the projections of the CO_2 allowance prices for 2026 are 57 % higher than the average prices for the period 2017-2021. Hence, the Commission finds these projections reasonable. If CO_2 allowance prices increased further, the Commission considers that it will not impact the viability of CE Oltenia because CE Oltenia would be able to pass on increases to its clients through higher electricity price (recital 102) and confirmed by the sensitivity analysis provided (recitals 101 and 191).

(187) With regard to labour cost projections, the Commission notes that the beneficiary intends to gradually decrease the number of its staff due to the closure of lignite energy groups, which will be achieved through lay-offs and early retirements (recital 73). The personnel cost […] from 2021 to 2025 (recital 103), which corresponds to the staff reductions by more than […]% for the same period. Therefore, the Commission finds those projections credible.

Assessment of the beneficiary's return to viability

(188) Having established the credibility of the assumptions underlying the financial projections, the Commission will now assess whether, based on those projections, the beneficiary is able to return to viability by the end of the restructuring plan. More specifically, the Commission will verify whether, by the end of 2026, the beneficiary expects to generate a sufficient rate of return from its operation and be able to compete on its own merits.

([61]) Opening decision, recital 59 and footnote 17.

(189) Under the baseline scenario (Table 3) during the first years of the restructuring plan CE Oltenia will post negative EBITDA mainly due to the high CO_2 allowance costs. Nevertheless, it will be able to cover all of its operating and depreciation costs starting from 2021 (with the exception of 2022), which is demonstrated by the positive net earnings. At the end of the restructuring period, which coincides with the decommissioning of the lignite based power units, the EBITDA will become positive and will further improve in the post-restructuring period (recital 104).

(190) The short-term profitability of CE Oltenia is hampered by the high CO_2 allowance prices, but in the long term the projections indicate a return on equity ranging between […]% and […]% for the period 2025-2026, i.e. significantly above CE Oltenia's cost of equity of […]% (recital 105). The ROCE remains low by 2026, which is due to the investment costs in new plants having been recently incurred and not yet amortised. Therefore, the expected returns sustain the argument that the restructuring plan would secure the long-term viability of the beneficiary.

(191) In the provided sensitivity analysis, the Romanian authorities have accounted for CO_2 prices, which are closer to the current prices (recital 186) and considered the higher electricity prices. Romania submitted projections in the sensitivity analysis based on a price of EUR […] (recital 101). It should be observed that the CO_2 allowance price as of December 2021 amounted to EUR […] (recital 25). As stated in recital 101, […]% of the total expected revenues to be generated during the restructuring period come from contracts with variable prices, which will give Romania the opportunity to fully reap the benefits of the increased electricity prices starting from June 2022, when the majority of the contracts with the fixed price come to an end. This fact confirms Romania's statement that the higher CO_2 costs may be offset by higher electricity prices and will not seriously jeopardise the beneficiary's long-term profitability (recital 102).

(192) In addition, even taking into account the updated data, which reflects the higher CO_2 allowance costs, CE Oltenia will be able to fully cover all of its operating and amortisation costs by 2026. Moreover, the beneficiary is expected to achieve solid ratios of debt to equity […] and EBITDA interest coverage […] by 2026 (recital 106). This demonstrates the ability of CE Oltenia to service its short- and long-term obligations, which is a sign that the beneficiary will be able to perform its operations in the long-term without further aid.

(193) In accordance with point 50 of the R&R Guidelines, the Romanian authorities have prepared a pessimistic scenario (see recital 106) in order to observe the impact on the company's financial results. The scenario is based on more adverse assumptions: (i) decrease of electricity prices by 5 %; (ii) increase in gas acquisition costs by 5 % and (iii) increase in the cost of CO_2 allowances by 5 %. In this scenario, the company can expect positive net earnings and a return on equity slightly above 3 % at the end of 2026. Moreover, the two indebtedness indicators (recital 106) will remain solid to allow access to additional (loan) market funding at market conditions, should the need arise. These indicators show that, in the pessimistic scenario, CE Oltenia would still be able in 2026 to cover all of its costs, including depreciation and service of its debt obligations, and stand on the market without need additional restructuring aid at the end of the restructuring plan.

(194) In view of the above, the Commission concludes that the proposed restructuring plan is feasible, coherent and far-reaching and is capable of restoring the long-term viability of CE Oltenia within a reasonable timeframe, taking into account the specificity of its business and the time needed to implement and reap the benefits of the planned investments. In that respect, and given the duration and contents of the restructuring plan and the market on which CE Oltenia operates, it is appropriate that Romania sees to it that CE Oltenia timely and effectively implements the measures included in the restructuring plan as condition for the compatibility of the aid. Romania or CE Oltenia as the case should take any action needed to address possible deviations from the financial trajectory and projections that inform the restructuring plan.

5.3.2. *Positive effects of the aid on the development of economic activities or of economic areas outweigh the negative effects, in terms of distortions of competition and adverse effects on trade*

(195) In order to assess whether the aid does not unduly affect the competition and trading conditions it is necessary to examine the necessity, appropriateness and proportionality of the aid, and to ensure transparency. It is also necessary to examine the effects of the aid on competition and trade and weight the positive effects of the aid for the development of the economic activities and areas that the aid intends to support, as well as other positive effects of that aid, against its negative effects on the internal market.

5.3.2.1. Necessity of the aid

(196) Under point 53 of the R&R Guidelines, Member States that intend to grant restructuring aid must provide a comparison with a credible alternative scenario not involving State aid, demonstrating that the development of the economic activities or areas sought by the aid, referred to in section 3.1.1 of the R&R Guidelines will not be attained or would be attained to a lesser degree.

(197) The objective of the restructuring aid is to avoid that CE Oltenia goes out of business, and thereby to avert a situation of market failure and social hardship, which would inhibit the development of electricity production services in Romania. That objective is achieved through the implementation of the restructuring plan, partially financed by the restructuring aid, which averts insolvency and cease of operations that would certainly occur in the absence of aid. The restructuring plan shows that both liquidity and solvency issues of the beneficiary need to be addressed to resolve its financial problems. In the short term, CE Oltenia is not able to comply with its obligations in incurring environmental protection costs or have access to financial markets with the exception of its future projects structured as SPVs with co-investors and planned to be co-funded with aid. In the long term, given the accumulated losses of approximately EUR 345 million that will in the absence of aid continue for a prolonged period, CE Oltenia is unable to fulfil its financial obligations. It needs to be recalled that CE Oltenia already meets, at least since 31 December 2019, the criteria for being placed in collective insolvency proceedings at the request of its creditors (see recital 22). tTherefore, in the absence of the restructuring aid, its market exit would be inevitable. The restructuring aid is therefore necessary for the successful completion of the restructuring plan, the implementation of which in turn seeks to facilitate the development of electricity production services in Romania and of the region of South-West Oltenia.

5.3.2.2. Appropriateness of the aid

(198) Restructuring aid will not be considered compatible with the internal market if less distortive measures allow the same objective to be achieved; the aid must be properly remunerated and the instruments chosen must be appropriate to the solvency or the liquidity issue it intends to address ([62]).

(199) The restructuring aid takes the form of grants, a State guarantee for a loan, a capital injection, and a loan-to-grant conversion (recital 27).

(200) As described in recital 79, Romania submits that the restructuring costs that are expected to be incurred in the period 2021 – 2026 amount up to EUR 3,94 billion. Of this amount, approximately EUR 1,76 billion would be provided by the State (including a rescue loan of EUR 251 million to be converted in a grant to reduce losses carried forward; a EUR 226 million capital increase; a State guarantee for a loan of EUR 195,8 million and a grant of EUR 1 090 million) ([63]) while a EUR 895,3 million grant for new investments would be provided from the Modernisation Fund, subject to submission of the corresponding investment proposals by Romania and their confirmation by the European Investment Bank or the Investment Committee of the Modernisation Fund, as relevant.

(201) The remuneration of the State will be achieved through expected positive net earnings increasing the value of the State's stake in CE Oltenia (approximately 95 % after the share capital increase) and through the divestment of at least 20 % shareholding by the State in CE Oltenia. Namely, as a result of the share capital reduction and the ensuing capital injection, the State's stake in CE Oltenia will increase from the current 77,15 % to approximately 95 % (recitals 93 and 94). This capital injection, which was not part of the initial notification, will allow the State to recoup any upside generated by CE Oltenia, regardless of the fact that part of the aid is channelled to the beneficiary through direct grants. Given the new shareholder structure, the 95 % ownership will in fact allow the State benefiting from and being remunerated for the aid in the form of the capital injected into CE Oltenia, in the form of direct grants or in the form of guarantee, since increased net earnings of CE Oltenia caused by low or no remuneration of the financial instruments as compared to funding at market conditions increase the value of the shareholding.

([62]) Opening decision, recital 59 and footnote 17.
Points 38 (c), and points 54 and 58 of the R&R Guidelines.

([63]) This includes a grant of EUR 241 million by the State for the purchase of CO_2 allowances for 2020 which has been already granted, and part of the notified restructuring aid package.

(202) In addition, as set out in recital 81, the Romanian authorities have committed themselves to implementing a sufficient divestment of shares of the Romanian State in CE Oltenia, meaning no less than 20 % ownership rights, before the end of the restructuring period in 2026. Romania provided a valuation analysis according to which the indicative market value of 20 % shareholding by the State in CE Oltenia's equity as of 31 December 2026 was estimated to be EUR […] on the base case scenario or EUR […] in the alternative case scenario (recital 84). Once implemented, the amount of EUR […], which is indicative, will constitute ex post remuneration of the State for the support in favour of CE Oltenia. Therefore, while Romania firmly committed itself to divesting minimum 20 % ownership rights, it did not commit itself to achieving a specific minimum price for such divestment; rather, the range provided is indicative. The Commission takes EUR […] as the conservative valuation for the purpose of calculating the ex post remuneration of the State. The divestment at market terms reduces the amount of ex post aid. Such ex post remuneration to the State can be considered appropriate and the planned restructuring aid is thus appropriately remunerated.

(203) In addition, in line with point 58 of the R&R Guidelines, the instruments chosen must be appropriate to the solvency or the liquidity issue that they are intended to address. The restructuring aid takes the form of a variety of instruments (grants, a State guarantee for a loan for liquidity support and a capital injection for equity support), which provide to CE Oltenia the necessary funding in equity to strengthen its solvency and balance sheet position whilst supporting the necessary investments to fundamentally modify its fuel mix and covering its CO_2 costs until the new power generation assets are fully operational. In this connection, the Commission considers that the instruments chosen address both the liquidity and solvency problems of the beneficiary.

(204) In these circumstances, the Commission considers that the restructuring aid is appropriate.

5.3.2.3. Proportionality, own contribution and burden-sharing

(205) Under point 38(e) of the R&R Guidelines, restructuring aid must not exceed the minimum needed to achieve the objective sought by that aid. The amount and intensity of restructuring aid must be limited to the strict minimum necessary to enable the restructuring to be undertaken, in the light of the existing financial resources of the beneficiary, its shareholders or the business group to which it belongs (point 61 of the R&R Guidelines). In particular, a sufficient level of own contribution to the costs of the restructuring must be ensured and, where State support is given in a form that enhances the beneficiary's equity position, burden sharing. The assessment of those requirements will take account of any rescue aid granted beforehand.

(206) The own contribution of the beneficiary to the restructuring plan must be real and actual and should normally be comparable to the aid granted in terms of effect on the solvency or liquidity position of the beneficiary. Pursuant to point 63 of the R&R Guidelines, the Commission needs to assess whether the various sources of own contribution are actual and aid-free. According to point 64 of the R&R Guidelines, the Commission normally considers the own contribution to be adequate if it amounts to more than 50 % of the restructuring costs.

(207) The Commission needs to verify whether the various sources of funding of the revised restructuring plan described in recitals 79 to 91 are free of aid and real, that is sufficiently certain to materialise in the course of the implementation of the revised restructuring plan, excluding expected future profits.

(208) As mentioned in recital 81, the investments in new CGGT and photovoltaic plants may be partially financed from the Modernisation Fund, subject to subject to submission of the corresponding investment proposals by Romania and their confirmation by the European Investment Bank or the Investment Committee of the Modernisation Fund, as relevant. The grants provided from the Modernisation Fund constitute State aid (see recital 124) and are, therefore, counted as an aid amount, and not as a source of own contribution.

(209) The main source of own contribution provided by CE Oltenia comes from revenues from electricity sales. The expectation of total sales revenues in the period 2021-2025 is EUR 1 275 million. Although point 63 of R&R Guidelines states that expectation of future revenues cannot be considered as sufficiently certain and actual own contribution to back the sheer investments and other costs, it should however be taken into account that EUR 574

million of the amount of approximately EUR 1 275 million has already been cashed-in (see recital 87). Therefore, from the whole amount of sales revenues considered by CE Oltenia as own contribution, the Commission accepts only the cashed-in amount of EUR 574 million as real and actual own contribution.

(210) In order to facilitate the phasing-out of lignite, CE Oltenia has committed itself to investing in photovoltaic and gas energy projects. They will be financed through (i) bank loans; (ii) private investors; and (iii) CE Oltenia's contribution in kind.

(211) As far as the bank financing is concerned, CE Oltenia received indicative Heads of Terms amounting to total EUR […] signed by financial institutions that expressed interest to participate in the renewable and gas projects (recital 92). While the Heads of Terms constitute neither binding commitment of financing by the banks nor represent signed financial agreements, they show a serious interest on the part of the banks to participate in the financing of the projects. Moreover, the amount of financing that those banks have expressed their interest in providing is well above the EUR […] that Romania intends to draw from the bank loans. In those circumstances, the Commission is satisfied that financing by the banks is sufficiently likely to materialise. The Commission can therefore conservatively accept an amount of up to EUR […] as a real own contribution to be provided through bank loans.

(212) Furthermore, the commitments of private investors, which have been selected in a tender procedure, amount up to EUR […] (recital 90). These are binding offers provided by the selected market investors, and therefore can be considered as a sufficiently certain source of own contribution. As stated in recital 115 there was no binding offer received for the Ișalnița CCGT project. Taking into account the fact that Romania plans to carry out the Ișalnița CCGT project with or without private participation, the Commission considers that the total amount of own contribution committed to be provided by banks and private investors totalling EUR […] will not change regardless of the outcome of relaunching the tender for the Ișalnița CCGT project. Therefore, while there might be an increase in own contribution by private investors if a binding offer is received on this project, this does not have a bearing on the assessment of own contribution. Therefore, the Commission considers that EUR […] own contribution to be provided by third parties (private investors (EUR […]) and financial institutions (EUR […])) is real and actual and out of all sources of own contribution, and thus the amount of EUR […] represents fresh funding.

(213) CE Oltenia will contribute to the capital of the SPVs with land and various other assets with a total fair value of EUR 104 million. The amount has been confirmed by PwC and by the (selected) investors in SPV projects' (recital 91) and is therefore considered as a real own contribution.

(214) In the light of the above, the total amount that can be considered real and actual contribution by the beneficiary is EUR 1 278 million, equal to approximately 32 % of the restructuring costs of EUR 3,94 billion, thus below 50 %.

(215) However, where the specific circumstances of assisted areas, as described in Article 107(3), point (a), TFEU, so require, for example, where a beneficiary faces particular difficulties in raising new market financing as a result of its location in an assisted area, the Commission may accept a contribution which is less than 50 % of the restructuring costs (point 98 of the R&R Guidelines). CE Oltenia is located in the region of South-West Oltenia, which is an assisted area under Article 107(3), point (a), TFEU ([64]).

(216) Furthermore, in line with point 64 of the R&R Guidelines, the Commission may accept a contribution that does not reach 50 % of the restructuring costs in exceptional circumstances and in cases of particular hardship. Those circumstances and cases must be demonstrated by the Member State, if the amount of that contribution remains significant.

([64]) See Commission Decision of 20 December 2021 in SA.100199 (2021/N) – Regional aid map for Romania (1 January 2022 – 31 December 2027), *not yet published*.

(217) In the current circumstances, following the outbreak of the COVID-19 pandemic, the Commission considers that it may be justified, in the case of CE Oltenia and following the guidance provided in the Temporary Framework for State aid measures of 19 March 2020 to support the economy in the current COVID-19 outbreak, that the own contribution remains below the threshold of 50 % of the restructuring costs, because it remains significant and includes additional fresh funding at market conditions ([65]).

(218) The Commission acknowledges that the COVID-19 pandemic and the measures taken to contain it have created exceptional circumstances for the beneficiary, in the context of a serious disturbance of the economy within the meaning of Article 107(3), point (b), TFEU. In this context and since 2020, the activity of CE Oltenia was hit by the pandemic in the demand and in the supply side (recital 19). The COVID-19 pandemic has further brought the situation that debt funding markets have been largely shut down or limited for certain sectors and financial institutions in general have reduced their credit limits.

(219) Since the own contribution amounts to 32 % of the restructuring costs and half of it is provided as fresh finance, and taking into account that the beneficiary is located in an assisted area in accordance with Article 107(3), point (a), TFEU, and the exceptional circumstances created by a serious disturbance of the economy within the meaning of Article 107(3), point (b), TFEU, the Commission concludes that in the present case an amount of contribution lower than 50 % is acceptable.

(220) Pursuant to points 65 to 67 of the R&R Guidelines, State support given in a form that enhances the beneficiary's equity position can have the effect of protecting shareholders and subordinated creditors from the consequences of their choice to invest in the beneficiary, thus creating moral hazard and undermining market discipline. Consequently, aid to cover losses should only be granted on terms that involve adequate burden sharing by existing investors and State intervention should take place after losses have been fully accounted for and attributed to the existing shareholders and subordinated debt holders. Adequate burden sharing will also mean that any State aid that enhances the beneficiary's equity position should be granted on terms that afford the State a reasonable share of future gains in value of the beneficiary, in view of the amount of State equity injected in comparison with the remaining equity of the company after losses have been accounted for.

(221) The restructuring aid does not incentivise moral hazard or excessive risk taking having benefitted shareholders or creditors. Indeed, the Romanian State that is now the aid provider has been overseeing and taking as majority shareholder all the strategic and commercial decisions of CE Oltenia, whilst the company's operation has not been funded with subordinated debt or hybrid (loss-absorbing) funding likely to be partly written-off in line with the burden sharing requirements of the R&R Guidelines. In that setting, burden sharing by Fondul Proprietatea will be achieved by way of a partial absorption of losses followed by capital increase. First, CE Oltenia's loss carried forward of approximately EUR 251 million (RON 1 217 million), i.e. part of the loss carried forward at 31 December 2020 of approximately EUR 345 million (RON 1 710 million), will be absorbed through capital reduction (recital 93). This will be followed by a share capital increase by the State of up to EUR […], which will dilute the participation of Fondul Proprietatea in CE Oltenia from […]% to approximately […]% (recital 94). In that respect, Fondul Proprietatea contributes to the restructuring by way of its shareholding's absorbing losses and appropriate dilution of its participation, thus diminishing the need for State aid and reducing moral hazard.

(222) The Commission therefore concludes that the restructuring aid is proportionate and involves appropriate burden-sharing.

5.3.2.4. 'One time, last time' principle and limitation of distortions of competition

(223) To ensure that the negative effects of the aid are limited in order to avoid undue effects on competition and trade and to ensure that the overall balance is positive ([66]), aid must be granted to undertakings in difficulty in accordance with the 'one time, last time' principle limiting such aid for a period of ten years.

([65]) Communication from the Commission - Temporary framework for State aid measures to support the economy in the current COVID-19 outbreak (OJ C 91 I, 20.3.2020, p. 1), as amended by Commission Communications C(2020) 2215 (OJ C 112 I, 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 340 I, 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), points 3 and 14bis.

([66]) Point 38 (f) of the R&R Guidelines.

(224) The Commission allows restructuring aid in support of only one restructuring operation and provided, if appropriate, that more than ten years has elapsed after an earlier granting of restructuring aid or after the restructuring plan has come to an end or was halted ([67]). The Commission permits exceptions to that rule where restructuring aid follows rescue aid as part of a single restructuring operation ([68]).

(225) The restructuring aid to CE Oltenia supports only one restructuring operation. CE Oltenia, including its controlled subsidiaries, did not receive rescue or restructuring aid in the past ten years, apart from the measures already granted and mentioned in recitals 28 and 31, which form part of the restructuring aid under assessment. A continuum also exists with the rescue aid approved in February 2020 and granted for six months in a single restructuring operation. Therefore, the 'one time, last time' principle is respected.

(226) As set out in recital 107, Romania puts forward the following measures to limit distortions of competition: (i) the closure of energy groups or mining pits, (ii) the creation of SPVs for new investments, and (iii) the outsourcing by transfer to the municipality of cogeneration energy group S.E. Craiova II.

(227) As for measures identified in points (i) and (iii) of recital 226, the Commission considers that these cannot be accepted as measures limiting competition distortions. Namely, the proposed closure of underperforming energy groups or mining pits is in any event inevitable given they are not viable (see recital 108) and S.E. Craiova II group, which mostly produces thermal energy for Craiova, is loss-making and with no expected proceeds from the transfer.

(228) As regards the measure identified in point (ii) of recital 226, the creation of SPVs for new investments will mean that with CE Oltenia's participation in SPVs ranging between 45 % to 50 %, the net available capacity of CE Oltenia (based on new projects in natural gas and renewables) will decrease from […] to approximately […] (recital 72). This will create the net available capacity of approximately […] which will be available to market competitors participating in the SPVs. This measure will thus reduce the beneficiary's net available capacity and will open significant capacity to its competitors.

(229) With regard to behavioural measures, Romania has committed itself to those referred to in point 84 of the R&R Guidelines, namely: (i) that CE Oltenia will not acquire shares in any company during the restructuring period, except where indispensable to ensure the company's long-term viability and subject to Commission approval, and (ii) that CE Oltenia will refrain from publicising State support as a competitive advantage when marketing its products and services (recital 118). In line with point 83 of the R&R Guidelines, those measures will ensure that aid is used only to finance the restoration of long-term viability and that it is not abused by prolonging serious and persistent market distortions or by shielding the beneficiary from healthy competition.

(230) Therefore, the Commission considers that the measures to limit distortions of competition are appropriate for reducing the negative effects of the restructuring aid.

5.3.2.5. Transparency and reporting

(231) 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. To this effect, the Romanian authorities have committed to applying the provisions on transparency laid down in point 96 of the R&R Guidelines by making the relevant information available on the website www.ajutordestat.ro.

(232) The Commission considers it necessary for Romania to provide regular reports on the implementation of the restructuring plan every six months from the date of adoption of this Decision until the end of the restructuring period. These reports will specify, in particular, the dates of the actual disbursement of the funding committed by the State and of the own contribution, any deviations from the financial or operational trajectories of the restructuring plan, containment of costs and cost reductions and earnings achieved by the restructuring measures, and the corrective measures envisaged or taken by Romania or the beneficiary where appropriate.

([67]) Points 70 and 71 of the R&R Guidelines.
([68]) Point 72 (a) of the R&R Guidelines.

5.3.2.6. Balancing positive and negative effects

(233) A carefully designed State aid measure must ensure that the overall balance of the effects of the measure is positive by avoiding adversely affecting trading conditions to an extent contrary to the common interest.

(234) In the R&R Guidelines, the Commission laid down the criteria that it examines when assessing the compatibility of restructuring aid with the internal market, ensuring that the development of the economic activity in question does not adversely affect trading conditions to an extent contrary to the common interest. As explained in sub-sections 5.3.2.1, 5.3.2.2 and 5.3.2.3, the restructuring aid is necessary, appropriate and proportionate. Furthermore, there are sufficient safeguards in place to minimise distortions to competition (sub-section 5.3.2.4), including transparency (sub-section 5.3.2.5).

(235) The proposed competition measures, together with the overall decrease of CE Oltenia's production capacity, will reduce CE Oltenia's presence on the market where it will remain active after the restructuring and lead to a certain degree of market opening.

(236) In the light of the above, the Commission considers that the measures to limit the distortions of competition generated by the aid are appropriate for reducing the negative effects of the restructuring aid.

(237) Consequently, the positive impact of the restructuring aid on the development of the economic activity and the economic area in question outweighs the potential negative effects on competition and trade, which are therefore not adversely affected to an extent contrary to the common interest.

5.4. **Conclusion on compatibility**

(238) Pursuant to Article 9(6) of Regulation (EU) 2015/1589, decisions closing the formal investigation procedure are to be taken as soon as the doubts raised on the compatibility with the internal market of a notified measure have been removed.

(239) In light of the above, the Commission concludes that, whilst the doubts it raised in the opening decision have been removed, the negative effects of the restructuring aid on competition and trade are limited, given in particular the measures limiting the distortions of competition, of which Romania should ensure implementation. Consequently, the positive effects of the restructuring aid on the development of energy production activity and of the region of South-West Oltenia, provided Romania ensures implementation of the restructuring plan ([69]), outweigh the remaining negative effects on competition and trade, which are therefore not adversely affected to an extent contrary to the common interest. The commitments provided by Romania should be laid down, therefore, as conditions for the compatibility of the aid.

(240) In its assessment, taking into account the comments received from third parties and from Romania as well as the modifications to the restructuring plan and supporting restructuring aid introduced to address the doubts raised, the Commission concludes that the restructuring aid complies with Article 107(3), point (c), TFEU as it facilitates the development of electricity production activities and of the region of South-West Oltenia and does not distort competition and trade between Member States to an extent contrary to the common interest.

(241) Finally, the Commission considers it necessary for Romania to provide regular reports on the implementation of the restructuring plan every six months until the end of the restructuring period. Those reports will specify, in particular, the dates of disbursement of the funding committed by Romania and of the own contribution of the beneficiary, any deviations from the financial or operational trajectories of the restructuring plan in terms of revenues, containment of cost and cost reductions from the restructuring measures and earnings, and the corrective measures envisaged or taken by Romania or the beneficiary where appropriate.

([69]) Point 122 of the R&R Guidelines.

6. **CONCLUSION**

(242) The Commission finds that Romania has unlawfully implemented part of the aid in question in breach of Article 108(3), TFEU. However, the Commission concludes that the restructuring aid is compatible with the internal market pursuant to Article 107(3), point (c), TFEU,

HAS ADOPTED THIS DECISION:

Article 1

The restructuring aid to Complexul Energetic Oltenia S.A. ('CE Oltenia'), which Romania has partly implemented, in the form of grants, a State guarantee for a loan, a capital injection, and a loan-to-grant conversion, amounting to EUR 2 658,1 million is compatible with the internal market within the meaning of Article 107(3), point (c), of the Treaty on the Functioning of the European Union, subject to the conditions set out in Article 2.

Article 2

(1) Romania should ensure that CE Oltenia, within the timelines included in the revised restructuring plan or, as appropriate, at the latest by the end of the restructuring period, fully implements the measures included in the restructuring plan as well as the related measures limiting the distortions of competition, as follows:

(a) Closure or temporary conservation as reserve of all lignite production capacities and launching the new production capacities between 2023 and 2026, without prejudice to the decommissioning of capacities stipulated in the National Recovery and Resilience Plan of Romania; the capacities that Romania will ultimately decommission shall be those approved under the National Recovery and Resilience Plan;

(b) gradual reduction of personnel;

(c) gradual decrease of CO_2 emissions combined with investments to reduce other environmentally harmful emissions;

(d) share capital reduction and subsequent implementation of share capital increase;

(e) establishment of special purpose vehicles as joint ventures with co-investors;

(f) signature of financial agreements with banks;

(g) spin-off of the Craiova power plant;

(h) Creation of a distinct subsidiary of CE Oltenia, which will comprise and operate the existing lignite power units and related assets of CE Oltenia that are not intended for transition to gas or renewables.

(2) Romania will divest no less than 20 % of its shareholding in CE Oltenia by 31 December 2026.

(3) Romania should provide the Commission with regular reports on the implementation of the restructuring plan every six months starting from the date of adoption of this Decision until the end of the restructuring period on 31 December 2026. These reports should specify, in particular, the dates of the actual disbursement of the funding committed by State and the own contribution of the beneficiary, the fulfilment of the conditions set out in this Decision, any deviations from the financial or operational trajectories of the restructuring plan, containment of costs and cost reductions and earnings achieved by the restructuring measures, and the corrective measures envisaged or taken by Romania or, where appropriate, the beneficiary.

Article 3

Romania shall inform the Commission, within two months of notification of this Decision, of the measures taken to comply with it.

Article 4

This Decision is addressed to Romania.

Done at Brussels, 26 January 2022.

For the Commission
Margrethe VESTAGER
Member of the Commission