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Subject: State Aid SA.108510 (2023/N) – Romania
TCTF/RRF: Contracts for Difference support scheme for the production of renewable electricity from onshore wind and solar photovoltaic

Excellency,

1. PROCEDURE

- (1) By electronic notification of 26 January 2024, Romania notified aid for accelerating the rollout of renewable energy relevant for REPowerEU (*Contracts for Difference support scheme for the production of renewable electricity from onshore wind and solar photovoltaic*, the ‘measure’ or the ‘scheme’) under the Temporary Crisis and Transition Framework for State aid measures to support the economy following the aggression against Ukraine by Russia (the ‘Temporary Crisis and Transition Framework’) ⁽¹⁾.

⁽¹⁾ Communication from the Commission on the Temporary Crisis and Transition Framework for State Aid measures to support the economy following the aggression against Ukraine by Russia (OJ C 101, 17.3.2023, p. 3), as amended by Commission Communication C(2023)8045 (OJ C1188, 21.11.2023, ELI: <http://data.europa.eu/eli/C/2023/1188/oj>). This Temporary Crisis and Transition Framework replaces the Temporary Crisis Framework adopted on 28 October 2022 (OJ C 426, 9.11.2022, p. 1), (‘Temporary Crisis Framework’), which had already replaced the previous Temporary Crisis

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- (2) A meeting between the Commission and the Romanian authorities took place on 8 February 2024, after which Romania sent clarifications in written on 14 February 2024. The Commission sent follow up requests for further clarifications on 15 February 2024, 16 February 2024, 22 February 2024, 29 February 2024, 1 March 2024, and 4 March 2024. Romania sent replies to these requests on 16 February 2024, 20 February 2024, 22 February 2024, 29 February 2024, 1 March 2024, and 5 March 2024 respectively.
- (3) Romania exceptionally agrees to waive its rights deriving from Article 342 of the Treaty on the Functioning of the European Union ('TFEU'), in conjunction with Article 3 of Regulation 1/1958 ⁽²⁾ and to have this Decision adopted and notified in English.

2. DESCRIPTION OF THE MEASURE

- (4) Romania considers that the Russian aggression against Ukraine and its direct and indirect effects, including the sanctions imposed and the counter-measures taken for example by Russia have economic repercussions on the entire internal market ('the current crisis'). The current crisis created significant economic uncertainties, disrupted trade flows and supply chains and led to exceptionally large and unexpected price increases, especially in natural gas and electricity, but also in numerous other input and raw materials and primary goods.
- (5) The increase in the prices of energy caused by the current crisis proved the urgency to quickly reduce dependency on fossil fuels imports and accelerate the energy transition, by expanding the availability of renewable energy in a cost-effective way in line with the REPowerEU Plan ⁽³⁾.
- (6) The Romanian authorities explain that since 2019 onwards, Romania has become a net importer of electricity, which means that it cannot currently cover electricity demand from available national sources and capacity. In 2020, Romania's net electricity imports increased by about 45.6 % compared to 2019, as explained in the annual report of the National Regulatory Authority in the Energy sector (ANRE) ⁽⁴⁾. Moreover, for the production of electricity, Romania is still dependent on natural gas obtained, amongst others, from Russia. Romania therefore needs to respond to the challenge of the current crisis by increasing its electricity production capacity from renewable sources at a fast pace. In this context, the notified measure aims at responding to the immediate need to accelerate the development of green energy sources.

Framework adopted on 23 March 2022 (OJ C 131I, 24.3.2022, p. 1), as amended on 20 July 2022 (OJ C 280, 21.7.2022, p. 1). The Temporary Crisis Framework was withdrawn with effect from 9 March 2023.

- ⁽²⁾ Regulation No 1 determining the languages to be used by the European Economic Community (OJ 17, 6.10.1958, p. 385).
- ⁽³⁾ Communication from the Commission to the European Parliament, the European Council, the European Economic and Social Committee and the Committee of the Regions, REPowerEU Plan (COM/2022/230 final).
- ⁽⁴⁾ Available at https://anre.ro/wp-content/uploads/2023/02/Raport_anual_ANRE_2020.pdf lastly accessed on 22 November 2023).

- (7) In addition, the measure also aims to accelerate the deployment of renewable electricity generation projects that are needed for the transition towards a net-zero economy in line with the Green Deal Industrial Plan ⁽⁵⁾. Romania explains that its National Energy and Climate Plan (‘NECP’) ⁽⁶⁾ for 2021-2030 sets out a target for renewable energy sources in the electricity sector of 49.4 % by 2030. The NECP also includes Romania’s target of reducing its Union Emission Trading System emissions by 43.9 % by 2030 compared to the level recorded in 2005.
- (8) The Romanian authorities argue that the measure is necessary to meet the renewable energy targets set in the NECP. They explain that solar and wind capacities have been stagnant in Romania since 2014 although they grew considerably elsewhere in Europe. In this context, a measure to accelerate the deployment of investments in renewable energy production, more specifically in solar photovoltaic and onshore wind, is necessary to overcome the stagnant growth of wind and solar in Romania and meet the renewable energy targets.
- (9) The measure aims also to support the implementation of the Romanian Recovery and Resilience Plan (‘RRP’), specifically Reform 1 – *Electricity market reform, replacement of coal in the energy mix and support for a legislative and regulatory framework for private investment in renewable electricity production*. In particular, the measure supports the fulfilment of milestones 117, 118 and target 120 of the Component 6 on energy. The objective of the measure is to help the country achieve its decarbonisation targets whilst maintaining security of its electricity supply.
- (10) Thus, the measure aims to accelerate the deployment of investment in renewables (wind and solar). Romania confirms that the aid under the measure is not conditioned on the relocation of a production activity or of another activity of the beneficiary from another country within the European Economic Area (‘EEA’) to the territory of the Member State granting the aid. This is irrespective of the number of job losses actually occurred in the initial establishment of the beneficiary in the EEA.
- (11) The compatibility assessment of the measure is based on Article 107(3), point (c) TFEU, in light of sections 1 and 2.5 of the Temporary Crisis and Transition Framework.

2.1. The nature and form of aid

- (12) The measure provides operating aid for accelerating the rollout of renewable energy.

⁽⁵⁾ Communication from the Commission to the European Parliament, the European Council, the Council, the Economic and Social Committee and the Committee of the Regions, A Green Deal Industrial Plan for the Net-Zero Age, COM(2023) 62 final.

⁽⁶⁾ Introduced by Regulation (EU) 2018/1999 of the European Parliament and of the Council of 11 December 2018 on the Governance of the Energy Union and Climate Action (OJ, L 328, 21.12.2018, p. 1), NECPs are documents outlining how each EU Member State intends to address the different dimensions of the Energy Union namely: decarbonisation, energy efficiency, energy security, internal energy market and research, innovation and competitiveness.

- (13) Under the measure, aid is granted on the basis of a scheme in the form two-way contracts for difference ('CfD') ⁽⁷⁾ as described in section 2.7.

2.2. Legal basis

- (14) The legal basis for the measure consists of:
- (a) Article 6 paragraph (d) of Law 123/2012 on electricity and natural gas issued by the Parliament on 10 July 2012, whereby the Ministry of Energy develops, in collaboration with the regulator, the Ministry of Environment, Water and Forests and the Ministry of Finance, the mechanisms and the primary and secondary legal framework for the implementation of investments through contracts for difference.
 - (b) The draft Government Decision regarding the approval of the general legal framework for the implementation and functioning of the CfDs support mechanism for low carbon technologies which will establish the general operating framework of the Contracts for Difference support mechanism for all eligible technologies and the implementation of the operating aid scheme through Contracts for Difference for the production of electricity from renewable sources.
 - (c) The draft Ministry Order regarding the approval of a Contracts for Difference scheme for the production of electricity from renewable sources of onshore wind and solar photovoltaic energy.
 - (d) The draft Ministry Order regarding the initiation of an auction for a CfD scheme for the production of electricity from renewable sources of onshore wind and solar photovoltaic energy. This order regulates the first auction round. A similar order will be issued with respect to the second auction round and will not introduce changes to the main aspects of the measure described in this decision.
- (15) Aid will only be granted after the Commission has notified a decision authorising the measure, as specified in Article 21, paragraph 1 of the draft Ministry Order described in recital (14)(c) above, and in Article 3, paragraph 10 of the draft Government Decision described in recital (14)(b) above.

2.3. Administration of the measure

- (16) The Romanian Ministry of Energy is responsible for administering the measure with the assistance of Transelectrica, the Romanian Transmission System Operator ('TSO'), as the CfD scheme operator for the implementation of the competitive bidding process and OPCOM, *Operatorul Pieței de Energie Electrică și de Gaze Naturale S.A.* (hereinafter the 'CfD counterparty'), which will conclude the CfDs with the selected beneficiaries.

⁽⁷⁾ A two-way contract for difference means a contract signed between a power generating facility operator and a counterpart, usually a public entity, that provides both minimum remuneration protection and a limit to excess remuneration. The contract is designed to preserve incentives for the generating facility to operate and participate efficiently in the energy markets.

2.4. Budget and duration of the measure

- (17) The estimated budget of the measure is RON 15.222 billion, corresponding to around EUR 3 billion ⁽⁸⁾, and the volume is 5 000 MW of new renewable electricity capacity.
- (18) The measure will be financed through a CfD Liquidity Fund. This fund will be primarily financed through the Modernisation Fund ⁽⁹⁾.
- (19) Should funding from the Modernisation Fund not be sufficient to cover the needs of the measure, Romania will decide in the future how to cover this financing deficit and commits to notify to the Commission any alteration to existing aid within the meaning of Article 4(1) of Regulation 794/2004 ⁽¹⁰⁾. For administrative costs of running the scheme, a CfD levy will be applied to all final consumers, according to a mechanism defined by the electricity regulator ANRE.
- (20) Aid may be granted under the measure as from the notification of the Commission's decision approving the measure until 31 December 2025.

2.5. Beneficiaries

- (21) The beneficiaries of the measure are companies of all sizes located in the territory of Romania ⁽¹¹⁾.
- (22) To be eligible under the measure, aid applicants will need to demonstrate at the moment of the submission of the aid application that:
 - (a) they are legally constituted entities in accordance with the legislation of the member state where they are established;

⁽⁸⁾ Exchange rate taken from https://www.ecb.europa.eu/stats/policy_and_exchange_rates/euro_reference_exchange_rates/html/index.en.html on 26 January 2024 (1 EUR = 4.9765 RON).

⁽⁹⁾ The Modernisation Fund supports the modernisation of energy systems and the improvement of energy efficiency in 13 lower-income EU Member States. Commission Implementing Regulation (EU) 2020/1001 of 9 July 2020 laying down detailed rules for the application of Directive 2003/87/EC of the European Parliament and of the Council as regards the operation of the Modernisation Fund supporting investments to modernise the energy systems and to improve energy efficiency of certain Member States (OJ L 221, 10.7.2020, p. 107) lays down detailed rules on the operation of the Modernisation Fund as regards the submission of proposals for financing of investments; the assessment of priority investments and non-priority investments; management, disbursement and payment of the resources from the Modernisation Fund; the composition and operation of the Investment Committee for the Modernisation Fund; monitoring, reporting, evaluation, and auditing; information and transparency.

⁽¹⁰⁾ Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ L 140, 30.4.2004, p. 1).

⁽¹¹⁾ The Romanian authorities explained that aid applicants are not required to have their headquarters, or their principal activity in Romania to be eligible under this measure. This means, for example, that a Romanian branch of a legal person established in another Member State can be a beneficiary of aid under the measure. The Romanian authorities confirmed that a company that is not present in Romania remains eligible if it incorporates a local project company in Romania before the signature of the CfD.

- (b) they have as a primary or secondary activity, as registered in the company's statute, the production of electricity ⁽¹²⁾;
- (c) they are not in a state of insolvency or unable to pay according to the provisions of Law no. 85/2014 on insolvency prevention and insolvency procedures;
- (d) they are not bankrupt or in liquidation, their activities are not under judicial administration, they are not the subject of a preventive arrangement, ad hoc mandate or any other agreement concluded with creditors, their activity is not suspended, it is not the subject of a procedure related to these issues and it is not in any other similar situation that would result from a similar procedure provided for by national and European legislation;
- (e) they have fulfilled their obligations to pay taxes, fees and social security contributions, in accordance with the legal provisions applicable in Romania or in the country where they have their head office or are established;
- (f) they are not in a serious situation of violation of the provisions of the legislation on public procurement and/or of the obligations assumed through a contract or agreement for financing from public funds;
- (g) neither the applicant nor its legal representative have been convicted by a final judgment of a court of law for an act affecting professional ethics or for making a mistake in professional matters;
- (h) neither the applicant nor its legal representative have been convicted by a final judgment of a court of law for fraud, corruption, participation in a criminal organization, money laundering or terrorist financing, crimes related to terrorism or any other illegal activity that harms the financial interests of the European Union;
- (i) they are not the subject of a decision to an outstanding recovery order following a previous Commission decision declaring an aid illegal and incompatible with the internal market;
- (j) they are not an undertaking in difficulty within the meaning of the definition in point 20 of the Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty ⁽¹³⁾;
- (k) neither the applicant, its direct or indirect shareholders, controllers, parent undertakings, subsidiaries nor its legal representative, including any of their respective directors, officers, employees or agents, is or has been subject to any international sanctions imposed by the United Nations, the European Union, or any other authority with jurisdiction over them.

⁽¹²⁾ If the applicant is a Romanian company, the primary or secondary activity, shall also correspond to NACE sector D35.1.1.

⁽¹³⁾ Communication from the Commission — Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty (OJ C 249, 31.7.2014, p. 1).

- (23) In addition, aid applicants will need to demonstrate expertise in the last 10 years in the development, construction or operation of projects with the same technology for which they apply for aid under the measure. Compliance with this requirement may be demonstrated by submitting information on completed projects to which aid applicants have contributed.
- (24) Romania confirms that the aid under the measure is not granted to undertakings under sanctions adopted by the Union, including but not limited to: (i) persons, entities or bodies specifically named in the legal acts imposing those sanctions; (ii) undertakings owned or controlled by persons, entities or bodies targeted by sanctions adopted by the Union; or (iii) undertakings active in industries targeted by sanctions adopted by the Union, insofar as the aid would undermine the objectives of the relevant sanctions.
- (25) Romania confirms that the measure may not in any way be used to undermine the intended effects of sanctions imposed by the Union or its international partners and will be in full compliance with the anti-circumvention rules of the applicable regulations⁽¹⁴⁾. In particular, natural persons or entities subject to the sanctions will not benefit directly or indirectly from the measure.

2.6. Sectoral and regional scope of the measure

- (26) The measure is open to micro, small, medium-sized or large enterprises that are active in the production of electricity (NACE group D35.1.1). Credit and financial institutions are excluded from the scope of the measure.
- (27) The measure applies to the whole territory of Romania.

2.7. Basic elements of the measure

2.7.1. Eligible projects

- (28) The technologies eligible under the measure are onshore wind and solar photovoltaic⁽¹⁵⁾. The measure only applies to newly built installations.
- (29) In order to be eligible under the measure, projects must:
- (a) be implemented on the territory of Romania;
 - (b) have a minimum installed capacity of 5 MW;
 - (c) be commissioned such that they can lawfully generate and inject electricity to the national energy system pursuant to a commercial operation licence granted by ANRE within 36 months from the date of granting of the aid.

⁽¹⁴⁾ For example, Article 12 of Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ L 229, 31.7.2014, p. 1).

⁽¹⁵⁾ The draft Government Decision which forms the legal basis of the measure (see recital (14)(b)) refers to other technologies (i.e. offshore wind, hydro, nuclear power, energy storage and hydrogen), but they will be eventually subject of separate support schemes and are not part of the measure assessed in this decision.

- (30) In addition to the requirements in recitals (28) and (29) the projects participating in the first round of auctions will be required to obtain a technical grid connection permit (ATR) within six months from the signature of a CfD under the measure. As explained in recital (38), the Romanian authorities consider that this requirement does not unduly limit competition. However, Romania committed to re-assess the inclusion of this requirement in the second round of auctions, with a view of ensuring effective competition.
- (31) Romania submits that the measure does not include any artificial limitations or discrimination. In this regard, Romania explains that the eligible technologies were selected when preparing Romania's RRP as they were technologies sufficiently mature to be implemented in the limited timeframe needed in order to respond to the immediate need to accelerate the development of green energy sources following the Russian aggression against Ukraine.
- (32) Furthermore, Romania explains that the minimum installed capacity required to participate in the measure (see recital (29)(b)) reflects the possibility for smaller projects to benefit from aid under other existing schemes.
- (33) Romania confirms that eligible under the scheme will only be projects whose works started as of 9 March 2023, or as of 20 July 2022 in so far as such investments are eligible under the previous Temporary Crisis Framework. In that regard, Romania submitted that the deadline of 20 July 2022 is applicable to the projects covered by the measure as they were also eligible under the previous Temporary Crisis Framework. In addition, Romania explains that projects that have started works before submitting an aid application under the measure will not be eligible.
- (34) Romania explains that the counterfactual scenario without the aid would be that the projects supported under the measure would not go ahead. Romania further explains that, as the total publicly announced volume of corporate Power Purchase Agreements (PPAs) in Romania in 2022 was 30 MW (PexaQuote 2022 statistics), it is reasonable to assume that the volume sought by the measure (5000 MW, see recital (17)) would not be achieved without the measure. This would entail that, without the aid Romania could not reach the NECP targets described in recital (7).

2.7.2. Aid allocation procedure

- (35) The aid will be granted through a competitive bidding process supervised by Transelectrica, operating as the CfDs scheme operator. Romania intends to organise two rounds of auctions for CfDs for solar photovoltaic and onshore wind, respectively in 2024 and in 2025. For each round of auction, there will be a separate competitive bidding procedure for solar photovoltaic and onshore wind and each project will only compete within those of the same technology. The table below shows the volume to be procured in each of the competitive bidding procedures that will be held under the measure:

Auction	Volume
First round (2024)	2 000 MW
Onshore wind tender	1 000 MW
Solar PV tender	1 000 MW
Second round (2025)	3 000 MW

Auction	Volume
Onshore wind tender	1 500 MW
Solar PV tender	1 500 MW
Total	5 000 MW

Source: Romanian authorities.

- (36) The volume of the auctions takes into account the expected supply of projects and is set at a level that should ensure that the budget constitutes a binding constraint in the competitive bidding procedure, meaning that Romania expects that not all tenderers will receive aid.
- (37) In particular, in 2022 the Romanian authorities held a preliminary call for expression of interest on the measure to understand the interest of market participant applying for support⁽¹⁶⁾. The results showed an interest to develop onshore wind projects for a cumulative capacity of 5 500 MW (of which a cumulative capacity of 1 600 MW already obtained the grid connection permit) and solar photovoltaic projects for a cumulative capacity of 8 200 MW (of which a cumulative capacity of 2 800 MW already obtained the grid connection permit).
- (38) With respect to the requirement for projects participating in the first round of auctions to obtain a technical grid connection permit (ATR) within six months from the signature of a CfD under the measure (see recital (30), Romania submits that as of January 2024, grid connection permits have been issued for a cumulative capacity of 8 352 MW of onshore wind and 9 497 MW of solar photovoltaic projects.
- (39) In case of undersubscription of one of the auction rounds, the Romanian authorities commit to reduce the volume in future auction rounds in order to reestablish competition. In addition, in case of repeated undersubscription, the Romanian authorities commit to introducing remedies for any future schemes that it notifies to the Commission for the same technology, in line with requirements set forth under point 78(i) TCTF.
- (40) Applicants intending to participate in the auction must submit a funding request whereby they prove (with supporting information and documents) that they meet the eligibility requirements detailed below in sections 2.5 and 2.7.1. The funding request should include:
- (a) Information on the total capacity of the project expressed in MW and on the share of this capacity that will participate in the measure. In case funding is requested only for a share of the total capacity of the project, the aid applicants need to ensure separate metering of the capacity for which funding is requested.
 - (b) A commissioning date for the project in line with the requirement set out in recital (29)(c) (i.e., which must be within 36 months from the date of granting of the aid).

⁽¹⁶⁾ The call for expression of interest concerned a measure with a longer granting period than the notified measure, specifically the period from 2023 to 2030. This is due to the fact that Romania expressed an interest in prolonging the notified measure after its expiration.

- (c) A longstop date which represents the latest possible actual commissioning date of the project and cannot exceed 24 months from the commissioning date (see recital (40)(b)).
- (41) In addition, at the moment of the aid application, applicants are required to provide a bid bond issued by a bank or a financial institution with a minimum credit rating of BBB by S&P (or equivalent) registered in the European Union or the EEA, authorised to operate on the Romanian territory, for an amount of EUR 20 000/MW of the capacity with which the applicant intends to participate in the measure ⁽¹⁷⁾.
- (42) Aid applications will be ranked solely on the basis of the strike price bid. Applications will be selected starting with from the lowest strike price bid until the volume of the auctions is reached. Where two or more applicants bid the same strike price, the CfD scheme operator shall use the following criteria to break the tie:
- (a) Technical grid permit – The project that at the moment of the aid application has received the technical grid permit will be given priority.
 - (b) Project capacity – If the technical grid permit does not allow to break the tie, the project with a higher capacity participating in the measure will be given priority.
 - (c) Commissioning date – If neither the technical grid permit, nor the project capacity allows to break the tie, the project with the commissioning date closer to the auction launch date will be given priority.
 - (d) Submission of the offer – If neither the technical grid permit, nor the project capacity, nor the commissioning date allows to break the tie, the project whose application was submitted earlier will be given priority.
- (43) The treatment of the marginal bid will be as follows:
- (a) If the cumulated capacity offered by all successful bidders, including the marginal bidder, is equal to or lower than 110 % of the total capacity required by the auction, the bid of the marginal bidder will be automatically accepted.
 - (b) If the cumulated capacity offered by all successful bidders, including the marginal bidder, is higher than 110 % of the total capacity required by the auction, the bid of the marginal bidder will be automatically rejected.
- (44) The auctions will result in the determination of the number of generators that will benefit from the CfD scheme, as well as in the determination of the strike price for each beneficiary (i.e. pay-as-bid).
- (45) Romania explains that to further ensure proportionality of the aid, a maximum strike price will be set for each competitive bidding process organised under the

⁽¹⁷⁾ The bid bond will be enforced only in case an applicant successful in the auction fails to sign the CfD or to submit a performance bond within 15 working days from the date of signing of the CfD(48).

measure. The maximum strike price will be set according to the methodology developed by an independent economic consultant, as follows:

- (a) Information about the pipeline of projects that stand ready to participate in the auction for each eligible technology will be collected, including any information on the expected costs and revenues of these projects.
 - (b) A supply curve will be derived on the basis of the strike price that would allow the projects in the pipeline to recover all their costs, including cost of capital.
 - (c) A demand curve will be derived based on the volume of the competitive bidding procedure, including a limited buffer.
 - (d) The maximum strike price will be the price at which the demand and the supply curve intersect.
- (46) On the basis of the methodology described in recital (45), the maximum strike price for the first round of auctions is set at 93 EUR/MWh for onshore wind and 91 EUR/MWh for solar PV. Using the same methodology, the Ministry of Energy may update the strike price for the auctions in the second round in light of the:
- (a) Information on the pipeline of projects and the estimated project costs and revenues for each eligible technology.
 - (b) Information on bidding behaviour in comparable auctions internationally.
 - (c) Data on the maximum strike prices used in other EU member states for auctions covering the same eligible technologies and the intensity of competition observed in these auctions.
- (47) A cap to the capacity awarded per beneficiary will also apply. For each auction, an application may only be awarded a maximum capacity representing 25 % of the total capacity auctioned for each technology. Romania explained that this requirement was introduced to limit concentration in the renewable energy market.

2.7.3. *Functioning of the CfDs*

- (48) Following each auction, CfD with a duration of 15 years from the start of operations of the installation are signed by each of the successful applicants with the CfD counterparty. Where a successful applicant fails to sign the CfD, the best ranking applicants among the previously unsuccessful qualified applicants are selected according to the rules described in section 2.7.2 until the auctioned volume is reached.
- (49) Within 15 working days from the signature of the CfD, beneficiaries are required to provide a performance bond issued by a credit institution registered in the European Union or the EEA, authorised to operate on the Romanian territory, in favour of the CfD counterparty for an amount of EUR 75 000/MW of the project capacity.

- (50) The strike price of the CfD will be the price bid by each successful applicant in the auction. Starting in 2027, the strike price will be indexed every three years to Consumer Price Index (CPI) in the Euro Area only if the CPI at the moment of the indexation will exceed by 10 % the CPI applicable at the moment of signing the CfD or CPI applicable at the moment of the last applied indexation.
- (51) The strike price may be adjusted to reflect the economic impact of changes in law ⁽¹⁸⁾ applying only to the beneficiaries of the measure or to the electricity generation capacity subject to the measure that directly give rise to additional costs or savings for the CfD beneficiaries or, alternatively, prevent them from fulfilling some of the obligations under the CfD.
- (52) The beneficiaries will be required to sell the electricity subject to the CfD on organised marketplaces ⁽¹⁹⁾ and will receive from the CfD counterparty or pay back to the CfD counterparty the difference between the strike price set in the competitive bidding procedure and a reference price calculated by ANRE as a monthly output-weighted average of prices achieved in the day-ahead markets, where the output weighting is based on all CfD beneficiaries falling within the same technology category as follows:

$$Reference\ Price = \frac{\sum_{SU \in BP} DAM_{SU} \times q_{SU}}{\sum_{SU \in BP} q_{SU}}$$

where for each settlement unit (SU) ⁽²⁰⁾ in which the hourly day-ahead markets clearing price is not negative:

– DAM_{SU} (expressed in EUR/MWh) refers to the hourly day-ahead markets clearing price associated with the settlement unit (as published by the market operator).

– q_{SU} refers to the total metered output (expressed in MWh) that has accrued in the same settlement unit for all CfD beneficiaries producing electricity with the same generation technology.

- (53) Romania explains that the day-ahead markets clearing price referred to in recital (52) consists of a weighted average of the clearing prices in the different day-ahead markets where the weighting is based on traded volumes in each marketplace.
- (54) ANRE shall trigger a review of the reference price described in recital (52) where it considers that it is no longer reflective of market prices or in case it has been notified by more than 50 % of the beneficiaries of the measure that they consider

⁽¹⁸⁾ Changes in law include amendments, terminations, repeals, replacements, withdrawals of any primary or secondary legislation of a Romanian Competent Authority (but excluding any such primary or secondary legislation to the extent it is implementing mandatory requirements of the European Union).

⁽¹⁹⁾ An organised marketplace is a multilateral system which brings together or facilitates the bringing together of third parties' interests in buying and selling wholesale energy products in a way that results in a contract or any other system or facility in which third parties' interests in buying and selling wholesale energy products can interact in a way that results in a contract.

⁽²⁰⁾ A settlement unit is defined as a fifteen-minute period within a day.

that the reference price is no longer reflective of market prices. When reviewing the reference price, ANRE shall consult all the beneficiaries of the measure.

- (55) Whenever the strike price exceeds the reference price, the CfD beneficiaries will receive from the CfD counterparty an amount equivalent to the difference between the strike price and the reference price applied to the amount of electricity delivered by the aid beneficiaries to the national power system ('NPS'). Whenever the reference price exceeds the strike price, the CfD beneficiaries will be required to pay back to the CfD counterparty the difference between the reference price and the strike price applied to the amount of electricity delivered by the aid beneficiaries to the NPS.
- (56) Aid beneficiaries may sell the electricity produced and subject to the CfD through bilateral contracts (e.g., PPAs) concluded on organised marketplaces. Romania explained that the price at which these bilateral contracts are concluded does not impact the amount of aid they receive under the measure, which remains the difference between the strike price and the reference price. However, since the conclusion of bilateral contracts may result in additional revenues compared to the sale of electricity on the day ahead market (which is the source of the reference price), the scheme features a profit-sharing mechanism to limit excessive profits. The profit-sharing mechanism will apply as follows:
- (a) If, in respect of a settlement unit, the price per MWh in a bilateral contract is above the reference price but below the strike price, the CfD beneficiary shall return 50 % of the revenues obtained under the bilateral contract calculated as a product between the quantities of electricity sold under bilateral contract multiplied by the difference between the bilateral contract price and the reference price to the CfD Liquidity Fund.
 - (b) If, in respect of a settlement unit, the price per MWh in a bilateral contract is above both the strike price and the reference price, with the strike price being higher than the reference price, the CfD beneficiary shall return to the CfD Liquidity Fund:
 - i. 100 % of the revenues obtained under the bilateral contract calculated as a product between the quantities of electricity sold under bilateral contract multiplied by the difference between the strike price and the reference price; and
 - ii. 50 % of the revenues obtained under the bilateral contract calculated as a product between the quantities of electricity sold under bilateral contract multiplied by the difference between the bilateral contract price and the strike price.
 - (c) If, in respect of a settlement unit, the price per MWh in a bilateral contract exceeds both the strike price and the reference price, with the reference price being higher than the strike price, the CfD beneficiary shall return 50 % of the revenues obtained under the bilateral contract calculated as a product between the quantities of electricity sold under bilateral contract multiplied by the difference between the bilateral contract price and the reference price to the CfD Liquidity Fund.

- (57) Romania explains that the design of the measure prevents undue distortions to the efficient functioning of the electricity market because beneficiaries are required to market their output. In addition, the reference price calculated as monthly output-weighted average of prices achieved in the day-ahead market preserves the exposure of the beneficiaries to market prices, incentivising them to capture the highest market price possible and therefore, promoting efficiency.
- (58) With respect to the profit-sharing mechanism, Romania submits that by limiting extra profits, this mechanism limits the budget necessary to incentivise the production of renewable electricity under the measure, while still providing an incentive for aid beneficiaries to conclude bilateral contracts. In fact, beneficiaries have incentive to conclude bilateral contracts at sufficiently high prices which would result in additional revenues.
- (59) Finally, Romania explains that beneficiaries will not receive aid for production in any periods in which the market value of that production is negative, i.e. the hourly day-ahead market clearing price associated with a fifteen-minute period within a day is negative.
- (60) Beneficiaries must provide quarterly reports to the CfD counterparty on their progress towards the implementation of the supported project (including on planning, permitting, licensing, construction and commissioning).
- (61) Penalties will apply to projects that do not comply with the deadline for commissioning described in recitals (40)(b) and (c) as follows:
- (a) If the beneficiary does not commission the capacity by the commissioning date declared in the aid application (see recital (40)(b)), the duration of the CfD is reduced by the period of delay in commissioning the facility.
 - (b) If commissioning does not take place by the longstop date declared in the aid application (see recital (40)(c)), the CfD is automatically terminated and the CfD counterparty enforces the performance bond.
- (62) In addition, penalties apply to projects for which the final installed capacity is lower than the capacity declared in the aid application (see recital (40)(a)) as follows:
- (a) If the installed capacity is lower than the capacity declared in the aid application, but greater than or equal to 90 % of the capacity declared in the aid application, the duration of the CfD is reduced proportionately by the percentage of the capacity not commissioned.
 - (b) If the installed capacity is lower than 90 % of the capacity declared in the aid application, the CfD is automatically terminated and the CfD counterparty enforces the performance bond.
- (63) The penalties described in points (61) and (62) do not apply in case of force majeure attested in a certificate issued by the Chamber of Commerce and Industry of Romania.
- (64) Romania submits that the ‘do no significant harm’ principle will be observed throughout the implementation of the scheme. Specifically, Romania explains that

the present scheme is included in Romania's RRP (see recital (9)). In the context of the assessment of the RRP, the Commission has found that none of the measures foreseen, including the measures at issue, is expected to do a significant harm to environmental objectives within the meaning of Article 17 of Regulation (EU) No 2020/852 ⁽²¹⁾.

2.8. Compliance with relevant provisions of Union law

- (65) Romania confirms that the proposed measure does not by itself, or by the conditions attached to it or by its financing method constitute a non-severable violation of Union law.

2.9. Cumulation

- (66) The Romanian authorities confirm that aid under the measure may not be cumulated with aid under measures approved by the Commission under the COVID-19 Temporary Framework ⁽²²⁾.
- (67) The Romanian authorities confirm that aid granted under the measure may not be cumulated with aid granted under other measures approved by the Commission under the Temporary Crisis and Transition Framework or under the previous Temporary Crisis Framework.
- (68) Furthermore, the Romanian authorities confirm that aid under the measure will not be cumulated with other aid or with centrally managed funds in relation to the same eligible costs.

2.10. Monitoring and reporting

- (69) Romania confirms that it will respect the monitoring and reporting obligations laid down in section 3 of the Temporary Crisis and Transition Framework (including the obligation to publish relevant information on each individual aid above EUR 100 000 granted under the measure on the comprehensive national State aid website or Commission's IT tool within 12 months from the moment of granting ⁽²³⁾).

⁽²¹⁾ Commission Staff Working Document - Analysis of the recovery and resilience plan of Romania - Accompanying the document Proposal for a Council Implementing Decision on the approval of the assessment of the recovery and resilience plan for Romania (COM(2021)6089 final).

⁽²²⁾ Communication from the Commission - Temporary framework for State aid measures to support the economy in the current COVID-19 outbreak (OJ C 91I, 20.3.2020, p. 1), as amended by Commission Communications C(2020) 2215 (OJ C 112I, 4.4.2020, p. 1), C(2020) 3156 (OJ C 164, 13.5.2020, p. 3), C(2020) 4509 (OJ C 218, 2.7.2020, p. 3), C(2020) 7127 (OJ C 340I, 13.10.2020, p. 1), C(2021) 564 (OJ C 34, 1.2.2021, p. 6), and C(2021) 8442 (OJ C 473, 24.11.2021, p. 1).

⁽²³⁾ Referring to information required in Annex III to Commission Regulation (EU) No 651/2014 and Annex III to Commission Regulation (EU) 2022/2472 and Annex III to Commission Regulation (EU) 2022/2473.

3. ASSESSMENT

3.1. Lawfulness of the measure

- (70) By notifying the measure before putting it into effect (see recital (15)), the Romanian's authorities have respected their obligations under Article 108(3) TFEU.

3.2. Existence of State aid

- (71) For a measure to be categorised as aid within the meaning of Article 107(1) TFEU, all the conditions set out in that provision must be fulfilled. First, the measure must be imputable to the State and financed through State resources. Second, it must confer an advantage on its recipients. Third, that advantage must be selective in nature. Fourth, the measure must distort or threaten to distort competition and affect trade between Member States.
- (72) The measure is imputable to the State, since it is administered by the Romanian Ministry of Energy with the assistance of Transelectrica (the Transmission System Operator in Romania) and the OPCOM S.A. (the Romanian gas and electricity market operator) (see recital (16)), and it is based national laws (recital (14)). It is financed through the Modernisation Fund (recital (18)), which constitutes State resources since Member States have discretion to decide on its use.
- (73) The measure confers an advantage on its beneficiaries in the form of two-way contracts for difference where the amount of aid granted to each beneficiary is the difference between a strike price determined in a competitive bidding procedure (see recital (44)) and a reference price described in recital (52). The measure thus confers an advantage on those beneficiaries which they would not have had under normal market conditions.
- (74) The measure is selective since aid will be awarded only to certain undertakings, specifically to undertakings active in the production of electricity from onshore wind and solar photovoltaic (see section 2.5), while other undertakings in a comparable legal and factual situation within that sector or other sectors (considering that all economic operators should in principle cover their own costs), are not eligible for aid and thus will not receive the same advantage. Undertakings in the financial sector are excluded (see recital (26)).
- (75) The measure is liable to distort competition, since it strengthens the competitive position of its beneficiaries. It also affects trade between Member States, since those beneficiaries are active in sectors in which intra-Union trade exists.
- (76) Therefore, the Commission concludes that the measure constitutes aid within the meaning of Article 107(1) TFEU. The Romanian authorities do not contest that conclusion.

3.3. Compatibility

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

- (78) Pursuant to Article 107(3), point (c), TFEU, the Commission may declare compatible with the internal market ‘aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest’.
- (79) The current crisis has demonstrated the urgent need to reduce dependency on imports of fossil fuels and to accelerate the energy transition. In that context, the Commission considers that Member States may need to take additional measures in line with the REPowerEU Plan⁽²⁴⁾, to accelerate the decarbonisation of European industry in order to achieve the Union’s climate targets.
- (80) The adoption of the Temporary Crisis and Transition Framework demonstrates the Commission’s view that State aid is justified and can be declared compatible with the internal market on the basis of Article 107(3), point (c), TFEU for a limited period of time if it contributes to speeding up the rollout of renewable energy, storage and renewable heat in line with the REPowerEU.
- (81) The Commission considers that the measure is necessary, appropriate and proportionate in the current context and can be declared compatible with the internal market on the basis of Article 107(3), point (c) TFEU. In particular:
- (a) The measure provides operating aid for the promotion of energy from renewable sources and supports the accelerated rollout of renewable energy relevant for the REPowerEU Plan. In particular, the measure provides support for new installations producing electricity from onshore wind and solar photovoltaic (see recital (28)), which fall within the scope of point 78(a)(i) of the Temporary Crisis and Transition Framework. Therefore, the measure facilitates the development of economic activities that can contribute to reducing the Union’s dependency on imports of fossil fuels and to achieving its climate and energy targets. The measure also complies with point 78(a) of the Temporary Crisis and Transition Framework.
 - (b) Aid is granted under the measure on the basis of a scheme with an estimated capacity volume and budget (see recital (17)). The measure therefore complies with point 78(b) of the Temporary Crisis and Transition Framework.
 - (c) Romania has demonstrated that the limitation of the measure to certain technologies does not include an artificial limitation and that discrimination on this basis is excluded (see recital (31)). The measure therefore complies with point 78(c) of the Temporary Crisis and Transition Framework.
 - (d) Aid will be granted by 31 December 2025 at the latest (see recital (20)) and the installations must be completed and be in operation within 36 months after the date of granting (see recital (29)(c)). In addition, the

⁽²⁴⁾ Communication from the Commission to the European Parliament, the European Council, the European Economic and Social Committee and the Committee of the Regions, REPowerEU Plan (COM/2022/230 final).

measure includes, as described in recital (61)(61), an effective system of penalties in case this deadline is not met. The measure therefore complies with point 78(d) of the Temporary Crisis and Transition Framework.

- (e) Aid under the measure will be granted in the form of two-way contracts for difference, in relation to the energy output of the installation and with a contract duration of 15 years from the start of operations of the aided installation (see recital (48)). In particular, aid beneficiaries receive the difference between a strike price defined in a competitive bidding procedure, as described in section 2.7.2, and a reference price calculated as a monthly output-weighted average of prices achieved in the day-ahead market (see recital (52)), when this difference is positive. When the difference between the strike price and the reference price is negative, aid beneficiaries will have to pay back into the budget of the scheme the difference. In this way, the measure ensures the aid beneficiaries a minimum and a maximum remuneration. In addition, Romania submits that aid beneficiaries under the measure will have an incentive to operate and participate efficiently in the energy market as they could increase the revenues they receive by selling electricity on the market with respect to the set reference price. While limiting the surplus revenues that aid beneficiaries may obtain by concluding bilateral contracts, the surplus sharing mechanism described in recital (56) does not negatively impact the efficient participation of aid beneficiaries in the energy market through the conclusion of these contracts. The measure therefore complies with point 78(e) of the Temporary Crisis and Transition Framework.
- (f) Romania has submitted elements that confirm that the competitive bidding process envisaged to allocate the aid will be open, clear, transparent, non-discriminatory and effectively competitive, based on objective criteria that are defined *ex ante* and that minimise the risks of strategic bidding and undersubscription (see section 2.7.2). In addition, at least 70 % in the total selection criteria used for ranking bids has been defined in terms of aid per unit of energy capacity (see recital (42)). Romania has submitted elements that confirm that the volumes of capacity or production tendered were set to ensure that the bidding process is effectively competitive (see recitals (37) and (38)). Romania has proven the plausibility that the volume tendered will match the potential offer of projects (see recitals (37) and (38)). In case of repeated undersubscription of competitive bidding processes, Romania commits to introduce remedies for any future scheme that it notifies to the Commission for the same technology (see recital (39)). The measure therefore complies with points 78(f)(i) and 78(g) of the Temporary Crisis and Transition Framework. On that basis, the Commission considers that the aid is limited to the minimum necessary. It can therefore be concluded that the aid is proportionate.
- (g) Point 78(h) of the Temporary Crisis and Transition Framework does not apply to this measure as aid is granted only through competitive bidding procedures.
- (h) As described in recital (52), the reference price of the CfD used to grant aid under the measure will be based on the monthly output-weighted average of prices achieved in the day-ahead market. The Commission

considers that the definition of the reference price under the measure will prevent any undue distortion to the efficient functioning of markets and, in particular, preserve efficient operating incentives and price signals as aid beneficiaries will be incentivised to sell electricity on the market at the higher possible price in order to increase their revenues compared to the reference price, including through the conclusion of bilateral contracts. Beneficiaries will not be incentivised to offer their output below their marginal costs and as they would not receive aid for production in any periods in which the market value of that production is negative (recital (59)). The measure therefore complies with point 78(i) of the Temporary Crisis and Transition Framework.

- (i) Points 78(j) and 78(k) of the Temporary Crisis and Transition Framework do not apply to this measure as aid is granted only to onshore wind and solar photovoltaic installations.
- (j) Romania confirmed that aid under the measure is only granted with respect to newly installed capacities (see recital (28)). The measure therefore complies with point 78(l) of the Temporary Crisis and Transition Framework.
- (k) Romania confirmed that aid under the measure will not be cumulated with other aid or with centrally managed funds for the same eligible costs (see recitals (66) to (68)). The measure therefore complies with point 78(m) of the Temporary Crisis and Transition Framework.
- (l) Aid will only be granted under the scheme for installations for which works started as of 9 March 2023 or 20 July 2022 in so far as such investments were eligible under the previous Temporary Crisis Framework (recital (33)). The measure therefore complies with point 78(n) of the Temporary Crisis and Transition Framework.
- (m) The Commission considers that, given the exceptional economic challenges that undertakings face due to the current crisis, it is generally the case that in the absence of the aid, beneficiaries would continue their activities without changes, provided that continuing their activities without changes does not entail a breach of Union law. As described in recital (34), Romania submitted that, in the absence of aid, market players would have to bear significantly higher costs associated with financing projects on a merchant basis, resulting in the projects supported under the measure not going ahead, which would impair the achievement of Romania's a NECP targets. This counterfactual scenario is considered realistic and does not entail a breach of Union law. Since in the absence of aid, the economic activity supported by the measure would not be undertaken, the Commission concludes that necessity of the aid and incentive effect are present. The measure therefore complies with point 78(o) of the Temporary Crisis and Transition Framework.
- (n) Romania confirmed that it will ensure compliance with the 'do not significant harm principle' (see recital (64)). The measure therefore complies with point 78(p) of the Temporary Crisis and Transition Framework.

- (82) State aid measures that entail, by themselves, by the conditions attached to them or by their financing method a non-severable violation of Union law cannot be declared compatible with the internal market ⁽²⁵⁾.
- (83) Romania confirms that the proposed measures do not by themselves, or by the conditions attached to them or by their financing method constitute a non-severable violation of Union law (see recital (65)). In addition, the Commission has no indications of any possible breach of Union law that would prevent the notified measure from being declared compatible with the internal market. Therefore, the Commission considers that the measure does not infringe any relevant provisions of Union law.
- (84) Romania confirms that the aid granted under section 2.5 of the previous Temporary Crisis Framework cannot be cumulated with aid granted under the same respective sections of the Temporary Crisis and Transition Framework if it covers the same eligible costs (see recital (67)).
- (85) The Romanian authorities confirm that, as required by point 51 of the Temporary Crisis and Transition Framework, the aid under the measure is not conditioned on the relocation of a production activity or of another activity of the beneficiary from another country within the EEA to the territory of the Member State granting the aid. This is irrespective of the number of job losses actually occurred in the initial establishment of the beneficiary in the EEA (see recital (10)).
- (86) The Romanian authorities confirm that, as required by point 52 of the Temporary Crisis and Transition Framework, the aid under the measure will not be granted to undertakings under sanctions adopted by the Union, including but not limited to:
- (a) persons, entities or bodies specifically named in the legal acts imposing those sanctions;
 - (b) undertakings owned or controlled by persons, entities or bodies targeted by sanctions adopted by the Union; or
 - (c) undertakings active in industries targeted by sanctions adopted by the Union, insofar as the aid would undermine the objectives of the relevant sanctions (see recitals (24) and (25)).
- (87) The Romanian authorities confirm that the monitoring and reporting requirements set out in section 3 of the Temporary Crisis and Transition Framework will be respected (see recital (69)).
- (88) The Romanian authorities further confirm that aid under the measure may not be cumulated with aid granted under other measures approved by the Commission under the Temporary Crisis and Transition Framework, the previous Temporary Crisis Framework and the COVID-19 Temporary Framework (see recitals (66) and (67)).

⁽²⁵⁾ Judgment of 31 January 2023, *Commission v Braesch and Others*, C-284/21 P, EU:C:2023:58, paras. 96 et seq.

- (89) The Commission has taken due consideration of the fact that the measure facilitates the development of certain economic activities and of the positive effects of that measure, which contributes to speeding up the rollout of renewable energy in line with the REPowerEU Plan and when balancing those effects against the potential negative effects of the measure on the internal market. The Commission considers that the positive effects of the measure outweigh its potential negative effects on competition and trade and it is compatible with the internal market pursuant to Article 107(3), point (c) TFEU since it meets all the relevant conditions of the Temporary Crisis and Transition Framework.

4. CONCLUSION

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

Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President