

ORDER

No. 1120/26 July 2024

regarding the approval of the State aid scheme in the form of Contracts for Difference for the production of electricity from renewable sources of onshore wind and solar photovoltaic energy

Given:

- Decision COM C (2024) 1596 final of 06.03.2024 - SA 108510 (2023N) approving the Contracts for Difference support scheme for the production of renewable electricity from onshore wind and solar photovoltaic;
- Letter no. 4912/SIB/11.07.2024 under which the Competition Council and the European Commission have been informed in relation to the adjustment of the auction capacity, without affecting the total capacity of the scheme, and in relation to the adjustment of the maximum exercise price for the first auction;
- point 2.5.2 from Section 2.5 of the Communication from the Commission Temporary Crisis and Transition Framework for State Aid measures to support the economy following the aggression against Ukraine by Russia (2023/C 101/03);
- Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC;
- 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;
- provisions of the Government Emergency Ordinance no. 60/2022 on establishing the institutional and financial framework for the implementation and management of the funds allocated to Romania through the Modernization Fund, as well as for amending and supplementing certain normative acts, as amended and supplemented;
- Council Implementing Decision on the approval of the assessment of the recovery and resilience plan for Romania COM/2021/608 final;
- European Commission Communication - Technical guidance on the application of the "do no significant harm" principle under the Recovery and Resilience Mechanism Regulation (2021/C58/01);
- Report of the General Directorate for Energy Policies no. 251.497/22.07.2024 and of the General Directorate for Investments no. 237.006/22.07.2024 on the need to approve the State aid scheme

in the form of Contracts for Difference for the production of electricity from renewable sources of onshore wind and solar photovoltaic energy,

on the basis of art. 4 lett. a) of Government Decision no. 318/2024 on the approval of the general framework for the implementation and functioning of the Contracts for Difference support mechanism for low carbon technologies and art. 10 para. (6) of Government Decision no. 316/2021 regarding the organisation and functioning of the Ministry of Energy, with subsequent amendments and supplements,

the minister of energy issues this order.

Art.1 *The State aid scheme in the form of Contracts for Difference for the production of electricity from renewable sources of onshore wind and solar photovoltaic energy, as provided for in the Annex which forms an integral part of this order, is hereby approved.*

Art.2 (1) The Ministry of Energy shall carry out the provisions of this order, through the General Directorate for Investments and the General Directorate for Energy Policies, in compliance with their specific attributions.

(2) The General Directorate for Energy Policies shall take the following measures:

- a) prepares the documentation in relation to the order opening the tender;
- b) prepares the documentation related to the approval of successful applicants in the CfD auctions related to this scheme;
- c) prepares the documentation related to the mandate agreement between the Ministry of Energy, as principal, and the Electricity and Natural Gas Market Operator "OPCOM" - S.A, hereinafter referred to as the CfD Counterparty, as trustee.

(3) The General Directorate of Investments shall take the following measures:

- a) analyzes and submits for approval the mandate agreement between the Ministry of Energy, as principal, and the CfD Counterparty, as trustee;
- b) manages and monitors the implementation of the CfD scheme;
- c) calculates, notifies and requests from the European Investment Bank the drawings from the Modernization Fund;
- d) ensures that transfers from the Modernization Fund to the Liquidity Fund related to this scheme provided under art. 1 are carried out;
- e) provides the necessary funds to meet any payment requests made by the CfD Counterparty in accordance with the provisions of art. 4 lett. f) of HG no. 318/2024 on the approval of the general framework for the implementation and operation of the mechanism of support through contracts for difference for low carbon technologies;
- f) takes the necessary steps to recover unlawful or misused state aid under this scheme provided under art. 1.

Art.3 If the European Commission issues a new Authorization Decision or if it disapproves of the Ministry of Energy's proposals under letter no. 4912/SIB/11.07.2024, the provisions of this scheme provided under art. 1 shall be amended accordingly.

Art.4 This order is published in the Romanian Official Gazette, Part I and on the website of the Ministry of Energy <https://energie.gov.ro/>, in the Modernisation Fund section.

Art.5 The provisions of this Order enter into force from the date of publication in the Official Gazette of Romania, Part I.

Minister of Energy

Sebastian-Ioan BURDUJA

Published in the Official Gazette no. 762 of 5 August 2024

State aid scheme in the form of Contracts for Difference for the production of electricity from renewable sources of onshore wind and solar photovoltaic energy

Art.1 The objective and the necessity for implementing the CfD scheme

- (1)** The state aid scheme in the form of Contracts for Difference establishes the way in which state aid will be granted through Contracts for Difference (CfD Contracts) on the basis of the Decision for approval of the state aid by the European Commission C (2024) 1596 final of 06.03.2024, hereby named Decision for approval, under the Communication from the Commission (2023/C 101/03) - Temporary Crisis and Transition Framework for State Aid measures to support the economy following the aggression against Ukraine by Russia, section 2.5, point 2.5.2 - Operating aid for accelerating the rollout of renewable energy and for energy storage.
- (2)** The state aid scheme aims to conclude CfD contracts by 31 December 2025 for projects with a total capacity of 5,000 MW using solar photovoltaic and onshore wind eligible generation technologies.
- (3)** Regarding Romania's application through which the necessary documentation was submitted for authorization of the state aid scheme, which resulted in the Decision for approval, the total capacity for each auction and the maximum exercise price for the first auction were adjusted, elements which were communicated to the Competition Council and the European Commission under letter no. 4912/SIB/11.07.2024. Therefore, the capacity allocated to the first auction for the production of electricity from photovoltaic solar sources was reduced from 1000 MW to 500 MW, with the remaining 500 MW to be allocated to the second auction, without affecting the total scheme capacity of 5000 MW, as per paragraph (7).
- (4)** The operating aid provided through CfD contracts awarded under this CfD scheme is granted on the basis, and subject to the outcome, of clear and transparent competitive tender processes, named CfD auctions, aimed at investments in projects using solar photovoltaic and onshore wind eligible generation technologies and which have an installed capacity greater than or equal to 5 MW.
- (5)** In accordance with art. 3 para. (10) of Government Decision no. 318/2024 on the approval of the general framework for the implementation and functioning of the Contracts for Difference support mechanism for low carbon technologies, the operating aid provided through CfD contracts awarded under this CfD scheme is carried out in accordance with COM Decision C(2024)1596 final, with the capacity adjustments mentioned under paragraph (3) and the maximum exercise price for the first auction.
- (6)** The implementation of this CfD scheme contributes to:
 - a)** achieving the reduction of carbon emissions in the atmosphere generated by the energy sector by replacing part of the amount of fossil fuels consumed each year, respectively coal and natural gas;
 - b)** achieving a more efficient economy from the point of view of the use of sources, more ecological and more competitive within a sustainable development, which is based, among other things, on a high level of protection and on improving the quality of the environment;

- c) achieving the objectives of the European Union regarding the production of energy from renewable sources provided for in Directive (EU) 2018/2001 of the European Parliament and of the Council on the promotion of the use of energy from renewable sources;
 - d) achieving the objectives of the National Integrated Plan in the Field of Energy and Climate Change 2021-2030, approved by Government Decision no. 1076/2021 regarding the global share of energy from renewable sources in the final gross energy consumption;
 - e) increasing the production of electricity from renewable sources, which will contribute to achieving the objectives of the European Ecological Pact established by Commission Communication COM (2019) 640 final;
 - f) achieving the objective regarding climate neutrality, provided for in Regulation (EU) 2021/1119 of the European Parliament and of the Council of June 30, 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) no. 401/2009 and (EU) 2018/1999 ("European Climate Law"), regarding ensuring, by 2050 at the latest, a balance at Union level between emissions and absorptions of greenhouse gases that are regulated under Union law, so as to reach zero net emissions by this date;
 - g) increasing the share of renewable energy in total primary energy consumption.
- (7) In accordance with the provisions of the National Recovery and Resilience Plan (NRRP) approved by the Council's Implementation COM Decision(2021) 608 final of November 3, 2021 approving the evaluation of Romania's Recovery and Resilience plan, CfD contracts under this CfD scheme are concluded for projects using onshore wind and solar photovoltaic eligible generation technologies, as follows:
- a) 1,500 MW installed capacity of which 1,000 MW installed capacity for the production of electricity from onshore wind and 500 MW installed capacity for the production of electricity from solar photovoltaic sources as a result of a first round of CfD auction, with a separate tender for each technology, to be held by the end of 2024;
 - b) 3,500 MW installed capacity of which 1,500 MW installed capacity for the production of electricity from onshore wind and 2,000 MW installed capacity for the production of electricity from solar photovoltaic sources as a result of a second round of CfD auction, with a separate tender for each technology, to be held by the end of the third quarter of 2025.

Art.2 The domain of application

- (1) The CfD scheme aims to grant operating aid for projects comprising entirely new electricity generation capacity that use solar photovoltaic or onshore wind eligible generation technology, which are undertaken by applicants who submit a funding request to the CfD scheme operator in a CfD auction prior to the start of works for such projects.
- (2) The funding request of a project can be submitted if the start of works observes the deadlines provided under art. 3 lett. 1).

Art. 3 Definitions and interpretation

Within this CfD scheme, the terms and expressions set out below have the following meanings:

- a) **project's proposed installed capacity** - the proposed installed capacity expressed in megawatts (MW) of the project offered within the CfD auction, which is intended to be commissioned by the CfD beneficiary and become subject to the CfD scheme, as described in the applicant's funding request, equal to or greater than 5 MW;
- b) **project's commissioned installed capacity** - the final installed capacity (as determined in accordance with the CfD contract) expressed in megawatts (MW) of the project, which is subject to the CfD scheme and that was actually commissioned by the CfD beneficiary in accordance with the CfD contract, and which cannot be lower than 90% of the project's proposed installed capacity;
- c) **funding request** – defined under art. 2 point 5 of Government Decision no. 318/2024 - means a request submitted by an applicant to the CfD scheme operator within the tender of a CfD auction under this CfD scheme and which includes the technical offer and the financial offer;
- d) **consortium** - a joint venture, partnership, or other combination of international and/or national legal entities;
- e) **CfD contract** - a private law contract concluded between the CfD counterparty and the CfD beneficiary, on the basis of which CfD difference payments are made in accordance with the relevant CfD scheme and with the Annex of Government Decision no. 318/2024;
- f) **auction start date** - the date provided under the announcement of the competent ministry, following the entry into force of the CfD auction initiation order in accordance with art. 4 lett. b) of Government Decision no. 318/2024;
- g) **payment start date** - the date on which the CfD beneficiary has satisfied all requirements under the CfD contract in order to become eligible for CfD difference payments;
- h) **auction closing date** - in relation to a CfD auction under this CfD scheme, the date on which funding requests can no longer be received and when the CfD scheme operator may begin the process of evaluating the funding requests submitted by qualified applicants for the relevant tender of the CfD auction;
- i) **longstop date** - the latest permitted date by which the CfD beneficiary must achieve the payment start date in accordance with, and as specified in, the relevant CfD contract, provided that the longstop date in any CfD contract awarded under this CfD scheme cannot exceed 24 months from the target commissioning date;
- j) **target commissioning date** - the date submitted by the applicant in the technical offer by which the payment start date will be achieved and by which the project will commence commercial operations and be commissioned such that it can lawfully generate and deliver electricity into the national energy system pursuant to a commercial operation licence granted by ANRE, but which must be no later than 36 months from the anticipated date of signing the CfD contract, and which shall be no later than any earlier date specified in any CfD auction initiation order for the relevant tender of the CfD auction;

- k) **CPI or Consumer Price Index** - the harmonised index of consumer prices (HICP) – monthly data (index) for the Euro area published by Eurostat;
- l) **start of works** - either the start of construction works relating to the project, or the first legally binding commitment to order equipment or any other commitment that makes the project irreversible, whichever is earlier. Buying land and preparatory works such as obtaining permits and conducting preliminary feasibility studies are not considered as start of works. Projects whose works started as of 9 March 2023, or before, as of 20 July 2022 are eligible under this CfD scheme insofar as such investments were eligible under the previous Temporary Crisis Framework (Temporary Crisis and Transition Framework (OJ C 101, 17.3.2023, p. 3), amended by the Communication from the Commission C(2023)8045 (OJ C1188, 21.11.2023,) replaces the Temporary Crisis Framework adopted on 28 October 2022 (JO C 426, 9.11.2022, p. 1), which had already replaced the previous Temporary Crisis Framework adopted on 23 March 2022 (JO C 131I, 24.3.2022, p. 1), as amended on 20 July 2022 (JO C 280, 21.7.2022, p. 1). The Temporary Crisis Framework ceased to produce legal effects as of 9 March 2023). In this regard, the deadline of 20 July 2022 is applicable to the projects covered by this CfD scheme as they were also eligible under the previous Temporary Crisis Framework;
- m) **undertaking** - in accordance with the definition provided under art. 2 point 24 of Government Decision no. 318/2024;
- n) **large enterprises** - enterprises that do not meet the criteria for inclusion in the definition of small and medium-sized enterprises;
- o) **CfD auction** – in accordance with the definition provided under art. 2 point 25 of Government Decision no. 318/2024. Each of the two CfD auctions under this CfD scheme shall comprise a separate tender for each eligible generation technology;
- p) **micro, small and medium-sized enterprises** - enterprises that fall within the definition of SMEs set out in Annex I of the Commission Regulation (EU) no. 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of articles 107 and 108 of the Treaty, with subsequent amendments and additions;
- q) **competent ministry** - in accordance with the definition provided under art. 2 point 27 of Government Decision no. 318/2024;
- r) **total capacity target** - the aggregate capacity or capacities, measured in megawatts in terms of the offered capacity of projects participating in a tender of a CfD auction, to which CfD contracts can be awarded, as stipulated in the CfD auction initiation order for a particular tender of the CfD auction;
- s) **financial offer** - the documentation submitted by an applicant as part of their funding request for the relevant tender of a CfD auction in the form and manner specified in this state aid scheme, the CfD auction initiation order and the tender rules, specifying the strike price offered by the applicant and, if required, any other financial or pricing information which is required to be provided by the applicant for participating in the relevant tender of a CfD auction;

- t) **marginal offer** - the financial offer submitted by a qualified applicant, for which the associated offered capacity, when added to the offered capacities of all higher-ranked financial offers, exceeds the total capacity target specified for the relevant tender of the CfD auction;
- u) **technical offer** - means the documentation submitted by an applicant as part of their funding request for the relevant tender of a CfD auction in the form and manner specified in this state aid scheme, the CfD auction initiation order and the tender rules, demonstrating the fulfilment of the eligibility criteria for both the applicant and the project;
- v) **energy market operator** - in accordance with the definition provided under art. 3 point 69 of Law no. 123/2012, with any subsequent amendments or modifications thereof;
- w) **nominated energy market operator** - in accordance with the definition provided under art. 3 point 68 of Law no. 123/2012, with any subsequent amendments or modifications thereof;
- x) **day-ahead market** - in accordance with the definition provided under art. 3 point 86 of Law no. 123/2012, with any subsequent amendments or modifications thereof;
- y) **organised marketplaces** - in accordance with the definition provided under art. 3 point 82 of Law no. 123/2012, with any subsequent amendments or modifications thereof and in the European Commission's Decision C (2024) 1596/06.03.2024 – footnote (19);
- z) **CfD difference payments** - in accordance with the definition provided under art. 2 point 34 of Government Decision no. 318/2024;
- aa) **strike price** - in accordance with the definition provided under art. 2 point 35 of Government Decision no. 318/2024, submitted by the applicant in the financial offer and used to calculate CfD difference payments under CfD contracts by comparing it to the reference price, as provided in the CfD contract - Annex of Government Decision no. 318/2024;
- bb) **reference price** – in accordance with the definition provided under art. 2 point 37 of Government Decision no. 318/2024 and in accordance with the provisions of the Decision for approval;
- cc) **tender rules** - in accordance with the definition provided under art. 2 point 41 of Government Decision no. 318/2024 and in accordance with the provisions of the Decision for approval;
- dd) **qualified applicant** - an applicant who has met the eligibility criteria and has been deemed eligible by the CfD scheme operator to participate in the relevant tender of the CfD auction;
- ee) **applicant** - in accordance with the definition provided under art. 2 point 43 of Government Decision no. 318/2024;
- ff) **rejected applicant** - an applicant who has not met the eligibility criteria or has not been deemed eligible by the CfD scheme operator to participate in the relevant tender of the CfD auction;
- gg) **eligible generation technology** - in accordance with the provisions of the Decision for approval, any of the following categories of technologies:
 - (i) onshore wind;
 - (ii) solar photovoltaic,

Art.4 Beneficiaries

The CfD scheme is addressed to micro, small and medium-sized enterprises and large enterprises, including newly established enterprises constituted in accordance with the relevant legislation of the member state where they are established, which have as their main or secondary activity, as registered in the company's statute, the activity related to the production of electricity, corresponding to division 35: "Production and supply of electricity and thermal energy, gas, hot water and air conditioning", NACE class 3511 – Electricity production. Credit and financial institutions cannot be the direct recipients of state aid under this CfD scheme, specifically meaning that such institutions cannot be the entity entering into the CfD contract.

Art.5 General eligibility criteria for the applicant

To participate in this CfD scheme and for the applicant's funding request to be accepted in a CfD auction, the applicant must cumulatively meet the following eligibility criteria:

- a) the applicant must be a legally constituted undertaking in accordance with the legislation of the member state where it is established;
- b) the applicant has, as a primary or secondary activity, as registered in the company's statute, the production of electricity. If the applicant is a Romanian company the primary or secondary activity shall also correspond to division 35: "Production and supply of electric and thermal energy, gas, hot water and air conditioning" NACE 3511 – electricity production;
- c) the applicant is 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, as amended from time to time;
- d) the applicant is not bankrupt or in liquidation, its activities are not under judicial administration, it is not the subject of a preventive arrangement, ad hoc mandate or any other agreement concluded with creditors, its 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 or regulations;
- e) the applicant has fulfilled its obligations to pay taxes, fees and social security contributions to the component budgets of the consolidated budget, in accordance with the legal provisions applicable in Romania or in the country where it has its head office or is established;
- f) the applicant is not declared 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) the applicant or its legal representative have not 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) the applicant or its legal representative have not 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) the applicant is not the subject of a decision to recover a state aid, issued by the Competition Council, the European Commission, a supplier or administrator of state aid or established by a court order, in which the state aid or *de minimis* aid was not fully recovered;
- j) the applicant is not an undertaking in difficulty within the meaning of the definition in point 20 of the Communication from the Commission (2014/C249/2001) in relation to Guidelines on state aid for rescuing and restructuring non-financial undertakings in difficulty;
- k) the applicant, its direct or indirect shareholders, controllers, parent undertakings, subsidiaries or its legal representative, including any of their respective directors, officers, employees or agents, is not or has not been subject to any international sanctions applied by the United Nations, the European Union, or any other authority with jurisdiction over them.

Art.6 General eligibility criteria for the project

To participate in this CfD scheme and for the applicant's funding request to be accepted in a CfD auction, the applicant's project must cumulatively meet the following eligibility criteria:

- a) must be implemented on the territory of Romania;
- b) the proposed installed capacity must entirely comprise new electricity generation capacity and utilise only solar photovoltaic or onshore wind eligible generation technologies in order to produce and deliver the generated electricity into the national energy system. For the avoidance of doubt, the CfD scheme does not extend to projects replacing, extending or repowering existing installed capacities;
- c) the proposed installed capacity is equal to or greater than 5 MW;
- d) for the first auction, the project must obtain a valid technical grid connection permit (*Aviz Tehnic de Racordare*) for the CfD generation capacity within six months as of execution of the CfD contract; for the second auction, the technical grid connection permit shall be requested in accordance with the provisions of the auction initiation order;
- e) the target commissioning date specified in the funding request does not exceed 36 months from the anticipated date of signing the CfD contract by the CfD counterparty.

Art.7 Supporting documentation

- (1) The applicant must submit, together with the funding request, the following supporting documents demonstrating the fulfilment of the eligibility criteria under the funding request, including without limitation to:
 - a) an organisation chart showing the names and details of the direct and indirect shareholders, owners and controllers that have an interest in the applicant and/or the project;
 - b) confirmation that such direct and indirect shareholders, owners and controllers are not subject to international sanctions, as required by the eligibility criterion specified at article 5 letter k), together with confirmation that such shareholders, owners and controllers are respectively not:

- (i) persons, entities or bodies specifically named in the legal acts imposing those sanctions applied by the United Nations, by the European Union or by any other authority with jurisdiction over them;
 - (ii) undertakings owned or controlled by persons, entities or bodies targeted by sanctions adopted by the United Nations, the European Union or any other authority with jurisdiction over them; or
 - (iii) undertakings active in industries targeted by sanctions adopted by the European Union;
- c) either:
- (i) confirmation that such direct or indirect shareholders, owners or controllers will not have any direct or indirect shareholding, ownership or controlling interest in any other applicant; or
 - (ii) details of such direct or indirect shareholding, ownership or controlling interest in any other applicant;
- d) a report presenting the technical characteristics of the project's proposed installed capacity, and including the estimate for the quantity of electricity that the project will generate and deliver to the national energy system annually over the term of the CfD contract;
 - e) any other documents that are required to be submitted in order to demonstrate that the project eligibility criteria have been met;
 - f) the bid bond issued in accordance with the applicable provisions of the CfD auction initiation order and tender rules for the relevant tender of the CfD auction;
 - g) an affidavit confirming that the project and the project's proposed installed capacity does not benefit from financing from public funds. The project cannot benefit from more than one support mechanism or other state aid funding;
 - h) an affidavit confirming compliance with each of the eligibility criteria for the applicant specified at art. 5 letters c) - k).
- (2) Additional documents or requirements may be specified in the associated tender rules for a CfD auction under this CfD scheme.
- (3) The documents and requirements referred to under para. (1), as well as any additional documents and requirements specified pursuant to para (2), shall be submitted in the form and manner mentioned in the tender rules for the relevant tender of the CfD auction.
- (4) An applicant may submit a funding request in respect of the whole or part of a project's proposed installed capacity, provided that any such capacity must be, and must remain for the term of the CfD contract, separately metered from any other installed capacity that will not be subject to the CfD contract if awarded. Where a funding request relates to a part of a project's proposed installed capacity, the eligibility criteria and other requirements shall apply only to that part of the project.
- (5) The CfD scheme applies only to projects comprising entirely new electricity generation capacity and do not represent projects replacing, extending or repowering existing installed capacities.

- (6) The maximum capacity that may be offered and secured by an applicant within each tender of a CfD auction carried out under this CfD scheme is 25% of the total capacity auctioned for the relevant tender.

Art.8 The budget of the scheme and the estimated number of beneficiaries

- (1) The estimated total budget for this CfD scheme is the equivalent in lei of 3 billion Euros, representing, with priority, non-refundable European Union funds secured by the competent ministry from the Modernization Fund and transferred to the CfD liquidity fund, when it is necessary.
- (2) The budget allocation and financial operations carried out in order to use the non-reimbursable European Union funds shall be made in accordance with the provisions of the applicable legal framework for the management of these funds.
- (3) In the event of the forecast or actual depletion of the financial resources allocated from the Modernization Fund, the competent Ministry takes appropriate measures to cover the CfD shortfall and notifies the European Commission of any changes to existing aid in accordance with Article 4 (1) of Regulation 794/2004 implementing Regulation (EU) 2015/1589 of the European Council laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union.
- (4) From the perspective of the allocated budget, the estimated number of applicants who could benefit from aid under this scheme is between 50 and 250 beneficiaries.

Art.9 The duration of the scheme

- (1) The granting of operating state aid by CfD contracts is carried out until 31 December 2025 and the state aid is considered granted upon the signing of the CfD contracts.
- (2) The duration of support through CfD difference payments made by the CfD counterparty to the CfD beneficiary under a CfD contract is determined by the date on which the CfD beneficiary achieves the payment start date in accordance with the provisions of the CfD contract.
- (3) Under the CfD contract, CfD difference payments are made for a maximum of 15 years, as follows:
 - a) where the payment start date falls on or before the target commissioning date, the CfD beneficiary will be entitled to receive CfD difference payments for a period of 15 years from that date;
 - b) where the payment start date falls after the target commissioning date but before the longstop date, the CfD beneficiary will be entitled to receive CfD difference payments for a period shorter than 15 years, which is reduced by the number of days between the target commissioning date and the payment start date.
- (4) Where the project's commissioned installed capacity is less than 100% but greater or equal to 90% of the project's proposed installed capacity awarded in the CfD auction, the time period for which the CfD beneficiary will be able to receive CfD difference payments will be reduced

proportionately by the percentage of the capacity which was not commissioned, with this reduction being measured in calendar days and rounded to the nearest integer.

Art.10 The method of granting the operating state aid

- (1)** The CfD scheme represents operating state aid granted to CfD beneficiaries through the CfD difference payments made pursuant to a CfD contract.
- (2)** The CfD difference payments are made following the date on which the CfD beneficiary has met all the requirements set forth in the CfD contract to become eligible for CfD difference payments, are calculated in Euros, and are paid in Lei, in accordance with the provisions of the CfD contract, including in relation to the exchange rate to be used for the Euro to Lei conversion.
- (3)** The strike price may be adjusted through indexation in line with inflation and as a result of provisions aimed at addressing any additional costs or additional savings for the CfD beneficiary or the CfD counterparty that are generated by changes in legislation, according to the provisions of the CfD contract.
- (4)** The indexation of the strike price is made in accordance with the provisions of the Decision for approval and shall occur every 3 years but only if the CPI index at that point in time is higher by 10% or more compared to the CPI index applicable at the date of signing the CfD contract or the date of the last applied indexation, as follows:
 - a) the first indexation shall be applied following the payment start date but not before the year 2027 if the CPI index at that time is higher by 10% or more compared to the CPI index applicable at the moment of signing the CfD contract; and
 - b) subsequent indexations shall be applied every 3 years from the date of the last indexation if at such time the CPI index is higher by 10% or more compared to the CPI applicable at the last indexation,
- (5)** In each case provided under para. (4) the indexation will be made in accordance with the indexation provisions set out in the CfD contract.
- (6)** A CfD beneficiary must deliver into the National Energy System and sell only on organized marketplaces all quantities of electricity delivered by the electricity generating capacity that is subject to a CfD contract, except for electricity used for its own technological consumption powered from the CfD beneficiary's generator terminals.
- (7)** If ANRE finds violations of the provisions under paragraph (6), the competent ministry issues a decision for the voluntary exclusion of the CfD beneficiary from the scheme, which will result in the termination of the CfD contract for non-compliance thereof.
- (8)** CfD beneficiaries do not receive CfD difference payments for any quantity of electricity delivered into national energy system in any period in which the weighted average of prices achieved in the day-ahead markets operated by the nominated energy market operators in Romania, as this weighted average is calculated in accordance with the CfD contract, used for the reference price, corresponding to that delivered quantity, is negative.
- (9)** The profit-sharing mechanism for bilateral contracts excess profit, as set out in article 12 paras. (7) and (8) of Government Decision no. 318/2024, applies to CfD beneficiaries under this CfD scheme.

- (10) The terms and conditions for CfD contracts granted under this CfD scheme are set out in the Annex to Government Decision no. 318/2024.

Art.11 Sanctions

- (1) In cases where the payment start date falls after the target commissioning date specified in the CfD contract, the period during which a CfD beneficiary is entitled to received CfD difference payments is reduced on a day-by-day basis until such date that the CfD beneficiary fulfils all the conditions provided in the CfD contract in order to become eligible for the CfD difference payments(if at all and provided that this occurs on or prior to the longstop date).
- (2) In cases where the fulfils all the conditions provided in the CfD contract in order to become eligible for the CfD difference payments but the project`s commissioned installed capacity is less than 100% but greater or equal to 90% of the project`s proposed installed capacity awarded in the CfD auction, the time period for which the CfD beneficiary will be entitled to receive CfD difference payments will also be reduced proportionately by the percentage of the capacity which was not commissioned with this reduction being measured in calendar days and rounded to the nearest integer.
- (3) In cases where the CfD beneficiary did not fulfil all the conditions provided in the CfD contract in order to become eligible for the CfD difference payments by the longstop date specified in the CfD contract, the CfD contract automatically terminates, resulting in the withdrawal of the operating aid under this CfD scheme for that CfD beneficiary and the performance bond is enforced by the CfD counterparty.

Art.12 Rules regarding the cumulation of state aid

- (1) The operating aid granted under this CfD scheme cannot be cumulated with any other state aid received by the same beneficiary.
- (2) The competent ministry monitors the operating aid granted under this CfD scheme.

Art.13 Method of running the scheme

- (1) A CfD auction under this CfD scheme is carried out in two stages, specifically the evaluation of the technical offer and the financial offer in accordance with the rules and requirements specified in this CfD scheme, the CfD auction initiation order and associated tender rules for the relevant tender of the CfD auction.

Art.14 General rules for the CfD auction initiation order

- (1) The competent ministry issues the CfD auction initiation order, and the date set out for the initiation of the auction through the competent ministry announcement, following the entry into force of this order, represents the commencement date of the CfD auction process.

- (2) Without limitation and to the extent that each following item is deemed relevant by the competent ministry for a particular CfD auction, a CfD auction initiation order establishes for each tender of a CfD auction:
- a) the start date for the submission of funding requests;
 - b) the deadline for submission of funding requests;
 - c) the date on which technical offers will be unsealed, which must be a date after the auction closing date;
 - d) the date on which financial offers will be unsealed, which must be a date after all technical offers have been evaluated;
 - e) the rules used to determine whether an applicant meets the requirements to qualify for submission of a funding request in the relevant tender of the CfD auction;
 - f) the maximum strike price, expressed in EUR/MWh, as approved by a ministry order adopted for this purpose;
 - g) rules and any required dates for the target commissioning date;
 - h) the capacity targets;
 - i) the tender rules;
 - j) the acceptable amount and form of setting up the bid bond and the conditions related to the validity, enforceability and return of the bid bond to be submitted by an applicant with reference to the eligible generation technology within an auction and the installed capacity to be admitted following the auction;
 - k) the acceptable amount and form of setting up the performance bond and the conditions related to the validity, enforceability and return of the performance bond with reference to the eligible generation technology within an auction and the installed capacity to be admitted following the auction.

Art.15 General rules for the tender rules

- (1) The competent ministry, by order, issues and approves the tender rules in respect of a CfD auction under this CfD scheme. The tender rules may make separate provision for each tender of a CfD auction.
- (2) Without limitation, the tender rules establish at a minimum:
- a) the form and substance requirements for funding requests;
 - b) the eligibility criteria for applicants and projects, pursuant to articles 5 and 6;
 - c) the methodology, procedure and criteria for awarding CfD contracts to the qualified applicants;
 - d) the necessary steps for the conclusion of CfD contracts with qualified applicants;
 - e) the maximum capacity which may be awarded to a qualified applicant or group of related qualified applicants which are directly or indirectly owned or controlled by the same

natural or legal person, and any rules that will be used to determine whether such interests in multiple qualified applicants exist;

f) any other additional elements deemed relevant, and any additional guidelines regarding matters set out in a CfD auction initiation order.

(3) The tender rules may be amended/supplemented by the competent ministry when deemed necessary, provided that no funding requests have been submitted at the time of amendment, and as provided for in such tender rules, depending on the technology and CfD auction round. The CfD auction initiation order and the tender rules will have a mechanism for applicants to submit clarification requests.

Art.16 Process for the evaluation of funding requests from applicants

(1) The CfD scheme operator will first unseal and evaluate the technical offers only and keep all financial offers sealed until the date specified in the announcement as the date on which the financial offers will be unsealed.

(2) The CfD scheme operator will, in turn, unseal and begin to evaluate the financial offers on the relevant date specified in the announcement and will not unseal the financial offers of unqualified applicants.

(3) The financial offers of the successful qualified applicants, as well as the capacities awarded will be made public for all qualified applicants.

(4) In order to determine the qualified applicants who are successful in a relevant tender of the CfD auction, the CfD scheme operator shall comply with and apply the tender rules and any capacity targets subject to any rules applying to marginal offers.

Art.17 Capacity targets

(1) The purpose of a CfD auction is to achieve the capacity targets specified in the CfD auction initiation order and the associated tender rules.

(2) The CfD auction initiation order and the associated tender rules include for each tender in the auction the total capacity target (in megawatts).

Art.18 Qualification and eligibility of applicants

(1) An applicant who submits a funding request must:

a) submit it in the form and manner mentioned in the CfD auction initiation order and the tender rules;

b) ensure that the technical offer will contain the following references to the project employing an eligible generation technology in the form and manner specified in the CfD auction initiation order and the tender rules:

(i) the proposed installed capacity offered (MW) in respect of the project for which the funding request is made; and

- (ii) the target commissioning date in respect of the project for which the funding request is made. The target commissioning date submitted in the technical offer will be stipulated in the CfD contract, if such a contract will be awarded to the respective applicant;
 - c) submit the financial offer with the strike price (MWh) in the form and manner specified in the CfD auction initiation order and the tender rules. The strike price submitted in the financial offer will be the same as that stipulated in the CfD contract, if such a contract will be awarded to the respective applicant;
 - d) submit the funding request no later than the deadline specified in announcement;
 - e) provide or procure the bid bond in the form and manner specified in the CfD auction initiation order and the tender rules.
- (2) Where funding requests are required to be submitted in physical form, the applicant shall simultaneously submit two sealed envelopes, one containing the technical offer and one containing the financial offer, both envelopes being included in a common outer envelope.
 - (3) The CfD scheme operator determines by carrying out an evaluation of the applicant's technical offer, according to the eligibility criteria for the applicant and the project, whether it qualifies for its financial offer to be considered in the relevant tender of the CfD auction.
 - (4) The CfD scheme operator will establish an online platform for CfD auctions within no more than 18 months from the approval of this CfD scheme. Once the online platform is operational, funding requests and related documents will be submitted through this platform. For CfD auctions conducted before an online platform is available, applicants will be required to submit physical documents together with a USB stick (one with the technical offer and one with the financial offer) with the documents in digital form, appropriately encrypted, identified and sealed.

Art.19 Bid bond

- (1) The bid bond will:
 - a) be provided or procured by the applicant in the form and manner mentioned in the CfD auction initiation order and the tender rules;
 - b) be in favour of the CfD scheme operator; and
 - c) be included in the technical offer envelope.
- (2) The CfD scheme operator will return the bid bond to a qualified applicant if:
 - a) the applicant and/or the project do not meet the eligibility criteria;
 - b) the financial offer of the qualified applicant was not accepted;
- (3) The CfD scheme operator enforces the bid bond if a qualified applicant who has been successful in a CfD auction or the entity nominated pursuant to art. 21 para (4):
 - a) does not sign a CfD contract in accordance with art. 21 para (5); or

- b) does not submit the performance bond to the CfD counterparty within 15 working days from the date of signing the CfD contract, in accordance with the terms of the CfD contract;

Art.20 Evaluation and notification of auction results for qualified applicants

- (1) From the date on which financial offers are unsealed for the qualified applicants, the CfD scheme operator evaluates all financial offers received from the qualified applicants in accordance with the tender rules.
- (2) A financial offer is deemed compliant and eligible to be considered by the CfD scheme operator if:
 - a) the applicant has submitted the offer in the form and manner described in the CfD auction initiation order and the tender rules; and
 - b) the strike price offered does not exceed the maximum strike price for the eligible generation technology specified in the CfD auction initiation order.
- (3) If a financial offer does not meet one or more of the conditions provided under paragraph (2), the applicant will be considered non-compliant and rejected by the CfD scheme operator.
- (4) For the purposes of the evaluation mentioned at para. (1), the CfD scheme operator ranks, by reference to the strike price offered, in ascending order, all the compliant financial offers received from qualified applicants in accordance with the provisions of the CfD auction initiation order and the tender rules. The ranked financial offers are accepted up to the total capacity target for each tender of the CfD auction, as specified in this scheme and in the CfD auction initiation order and the tender rules, subject to the following cumulative: :
 - a) rules for the treatment of marginal offers;
 - b) rules for the breaking of ties between financial offers in terms of the strike price offered;
 - c) rules for the maximum capacity which may be awarded to a qualified applicant or group of related qualified applicants which are directly or indirectly owned or controlled by the same natural or legal person,
- (5) After the evaluation of the financial offers, the CfD scheme operator notifies the competent ministry and all qualified applicants, specifying the results of the evaluation or any re-evaluation of the financial offers.
- (6) After the notice specified in para. (4), the competent ministry issues an order regarding the successful qualified applicants to be awarded CfD contracts following the CfD auction.
- (7) The competent ministry communicates the decision regarding the successful qualified applicants to the CfD counterparty and the CfD scheme operator and will publish the decision on its website.

Art.21 Signing of CfD contracts

- (1) The CfD counterparty signs the CfD contracts awarded to the successful qualified applicants identified in the order issued by the competent ministry in accordance with art. 20 para. (5). The signing of CfD contracts is carried out under the conditions of the Decision for approval, but if

the European Commission issues objections regarding the implementation of this scheme in relation to the Decision for approval, the Ministry of Energy reserves the right to amend this scheme and the terms of the competitive selection process or to suspend the implementation of this scheme in accordance with the requests/decision of the European Commission..

- (2) The CfD counterparty must deliver to the successful qualified applicant an invitation in physical and/or electronic format to sign the CfD contract in two original copies in handwriting or in one original copy with an authorised electronic signature.
- (3) The CfD beneficiary entering into the CfD contract must be a company incorporated in Romania, for fiscal purposes. In cases where a successful qualified applicant does not fulfil this requirement, it may nominate a special purpose vehicle in accordance with the provisions of paragraph 4.
- (4) A successful qualified applicant in a relevant CfD auction may nominate a special purpose vehicle to be the entity that signs the CfD contract as the CfD beneficiary, in accordance with the tender rules, only if, prior to the signing of the CfD Contract:
 - a) it provides evidence of full ownership of the special purpose vehicle when the successful qualified applicant is a single undertaking;
 - b) it provides evidence of ownership of the special purpose vehicle in the proportions specified in the applicant's funding request for the composition of the consortium, when the successful qualified applicant it is a consortium.
- (5) The CfD counterparty must return to the successful qualified applicant or to the nominated entity, as the case may be, a copy of the CfD contract signed by both parties in handwriting or with an authorised electronic signature in accordance with the tender rules, the procedure and timeline specified in the announcement.
- (6) If a CfD contract is concluded, the CfD counterparty must inform the competent ministry and the CfD scheme operator.

Art.22 Failure to sign CfD contracts

- (1) If the CfD counterparty does not receive a signed copy of a CfD contract from a successful qualified applicant or from the nominated special purposed vehicle (SPV) in accordance with the provisions of article 21 and the tender rules, as the case may be, the invitation and the related offer to conclude a CfD contract automatically expires and the bid bond is enforced by the CfD scheme operator.
- (2) In the case provided for in para. (1), the CfD counterparty must send a notice to each qualified applicant, the competent ministry and the CfD scheme operator regarding the expiry of the offer to conclude the CfD contract.
- (3) Following the notice provided for in para. (2), the competent ministry requests the CfD scheme operator to proceed with the re-evaluation of the offers of qualified applicants that it has not found to be successful, in order to qualify the best ranking qualified applicant among the previously unsuccessful qualified applicants in accordance with this scheme, the CfD auction initiation rules and associated tender rules. In order for an unsuccessful qualified applicant's

funding request to be considered as part of the re-evaluation, such qualified applicant must have maintained or renewed the bid bond.

- (4) Under the terms of para. (3), the awarding of CfD contracts will be effected by amending the order issued by the competent ministry under the terms of art. 20 para. (5) and the process provided for in art. 20 will be repeated but only if there are additional qualified applicants who were unsuccessful during the first evaluation under art. 20.

Art.23 Notice regarding the auction results

- (1) Following the conclusion of all CfD contracts awarded following a CfD auction, the CfD scheme operator and the competent ministry shall publish on their website a list of all the qualified and unqualified applicants and those who concluded CfD contracts.
- (2) The notice of auction results shall include at least the following details:
 - a) the CfD beneficiaries who have signed CfD contracts;
 - b) the details of the project to which each CfD contract relates, namely the project name, project location, eligible generation technology used and the project's proposed installed capacity or the partial project's proposed installed capacity that will be subject to the CfD contract, where applicable;
 - c) the target commissioning date for each project to which each CfD contract relates;
 - d) the strike price applicable to each CfD contract;
 - e) the list with qualified and unqualified applicants who have not concluded CfD contracts.

Art.24 Register of CfD contracts

- (1) For each concluded CfD contract, the CfD counterparty will assign a unique identification code.
- (2) The CfD counterparty shall establish a CfD register containing at least the following information:
 - a) the unique identification code of each CfD contract;
 - b) the project's proposed installed capacity and, once commissioned, the project's commissioned installed capacity. Where the project participates with partial capacity in the CfD scheme, and the remaining capacity will be outside the CfD scheme, the CfD register will also specify the partial capacity of the project's proposed/commissioned capacity which is subject to the CfD scheme and the partial capacity that does not benefit from the CfD scheme;
 - c) any indexation of or other adjustment to the strike price of a CfD contract;
 - d) any other information that the CfD counterparty reasonably considers would facilitate the administration of the CfD contracts.
- (3) The information regarding the concluded CfD contracts are published on the CfD counterparty's website.

Art.25 Rules regarding the publication, information, reporting and monitoring of state aid

- (1)** The competent ministry, as the provider of state aid and administrator of this CfD scheme, transmits to the Competition Council:
 - a)** any information requested regarding this CfD scheme;
 - b)** annual reports on the implementation of the CfD scheme in accordance with the Regulation on state aid monitoring procedures, implemented by Order of the President of the Competition Council no. 441/2022, and with Regulation (EC) no. 794/2004 of the Commission of April 21, 2004 implementing Council Regulation (EU) 2015/1589 establishing the rules for the application of article 108 of the Treaty on the Functioning of the European Union.
- (2)** The competent ministry, as the provider of state aid and administrator of this CfD scheme, monitors compliance with the conditions and eligibility criteria set out in this scheme throughout its duration and has the obligation to permanently supervise ongoing aid granted and order the measures that are required. Where the competent ministry identifies any non-compliance with respect to state aid, the competent ministry undertakes all the necessary steps to recover the aid granted, including the related interests, calculated according to the provisions of the Government's emergency ordinance no. 77/2014, approved by Law no. 20/2015, with subsequent amendments and additions, as well as the other European Union provisions in force.
- (3)** The competent ministry publishes on its website the following relevant information regarding this CfD scheme:
 - a)** the full text of the approved CfD scheme and its implementation provisions;
 - b)** information on each aid granted under the CfD scheme.
- (4)** The competent ministry, as the provider of state aid and administrator of this CfD scheme, has the obligation to upload the present scheme, the payments made and any recoveries in the General Register of State Aid granted in Romania (RegAS), pursuant to art. 29 of emergency ordinance of Government no. 77/2014, approved by Law no. 20/2015, with subsequent amendments and additions, as well as to comply with all obligations set out in section 3 Monitoring and reporting of the Communication from the Commission - Temporary Crisis and Transition Framework for State Aid measures to support the economy following the aggression against Ukraine by Russia (2023/C 101/03).

Art.26 Preservation of documents

- (1)** The competent ministry together with the CfD scheme operator and the CfD counterparty are obliged to keep all the information related to the aid granted under this CfD scheme as well as any supporting documents related to the aid granted for a period of 10 years starting on the date of granting the last aid as part of this CfD scheme.
- (2)** CfD beneficiaries receiving state aid under this CfD scheme are obliged to keep for a period of 10 years starting on the date of the last aid paid under the scheme all the necessary documents and to keep a specific record of the aid they have benefited from according to this CfD scheme, from which the total amount of state aid received can be calculated, broken down by year, as well as the legal basis on which it was granted.

