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Subject: State aid N 103/2008 – Romania
Regional development by direct investment

Sir,

1. PROCEDURE

- (1) By electronic notification of 25 February 2008, registered at the Commission on the same day (SANI 983) the Romanian authorities notified the scheme regarding regional development by direct stimulation for large investment projects.
- (2) The Commission requested additional information by letter dated 23 April 2008 (D/51635) as the notification was considered to be incomplete. The Romanian authorities provided this information by letter dated 20 May 2008 (A/9317).

2. DESCRIPTION OF THE AID MEASURE

2.1. Objective of the aid scheme

- (3) The measure aims at promoting regional development in the assisted areas of Romania in conformity with the Commission decision of 24 January 2007 on the Romanian regional aid map¹ by providing the possibility of regional aid for large investment projects in the sense of section 4.3 of the Guidelines on National Regional Aid² (hereinafter: RAG).

2.2. Legal basis and granting authority:

- (4) The legal basis of the scheme is:

¹ State aid N 2/2007 – Romania – "Regional aid map 2007-2013", OJ C 73, 30.03.2007.

² Guidelines on national regional aid for 2007-2013, OJ C 54, 4.03.2006.

- The Government Decision on regional development by investments stimulation (in original language: *"Proiectul de Hotărâre de Guvern privind dezvoltarea regională prin stimularea investițiilor"*).

(5) The scheme will be operated by the Ministry of Economy and Finance.

2.3. Geographical and sectoral scope of the scheme

- (6) The notified measure is applicable to the whole territory of Romania which is eligible for regional aid under article 87(3)(a) of the EC Treaty in accordance with the approved Romanian regional aid map for 2007-2013³.
- (7) The scheme provides aid in all sectors of the economy, with the exception of the production of the products referred to in Annex I to the EC Treaty, and sectors of fishery, steel, shipbuilding, transport, synthetic fibres and coal industry. The scheme will apply to the processing and marketing of agricultural products but only to the extent laid down in *the* Community Guidelines for State aid in the agriculture and forestry sector 2007-2013⁴.

2.4. Nature and form of the aid

- (8) The aid will be awarded in form of a direct grant for an initial investment project.

2.5. Large investment projects

- (9) The regional aid is awarded for initial investment that is regarded as setting-up of a new establishment, the extension of an existing establishment, the diversification of the output of an establishment into new and additional products or to a fundamental change in the overall production process of an existing establishment. Replacement investment is excluded.
- (10) The acquisition of the assets directly linked to an establishment may also be regarded as initial investment provided the establishment has closed or would have closed had it not been purchased and provided the assets do not belong to an undertaking in difficulty.
- (11) The initial investment has to have a total cost that exceeds the equivalent in LEI of EUR 100 million and with eligible costs more than the equivalent in LEI of EUR 50 million⁵ and that create herewith at least 500 new jobs.⁶
- (12) A large investment project is considered to be a single investment project when the initial investment is undertaken in a period of three years by one or more companies and consists of fixed assets combined in an economically indivisible way.

³ See footnote 1.

⁴ OJ C 319, 27 December 2006, pg.1 .

⁵ The EUR 50 million must be calculated at prices and exchange rates on the date when the aid is granted, or in case of large investment projects where individual notification is required, at prices and exchange rates at the date of the notification.

⁶ Investment projects with a total costs of more than EUR 30 million and that create at least 300 new jobs are eligible for regional aid under the exempted scheme XR 182/2007 published in OJ C 106 form 26.04.2008.

2.6. Beneficiaries

- (13) The access to the scheme is limited to large undertakings, as defined in the Law No. 346/2004⁷ and in the European Commission Regulation (EC) 364/2004⁸. To be eligible under the scheme a large undertaking has to make in Romania an initial investment as defined at section 2.5 of this decision.
- (14) The foreseen total number of beneficiaries is 20.
- (15) The scheme will not apply to undertakings that are in difficulty in the meaning of the Community Guidelines on State Aid for Rescuing and Restructuring Firms in Difficulty⁹. Likewise, the scheme is not applicable to undertakings that still have at their disposal an earlier unlawful aid that was declared incompatible by a Commission Decision until those beneficiaries have reimbursed or paid into a blocked account the total amount of unlawful and incompatible aid and the corresponding recovery interest.

2.7. Eligible expenditure

- (16) The eligible costs are calculated either on the basis of the material or immaterial costs of the initial investment or on the basis of the wage costs for new directly created jobs, whichever is higher.

2.7.1 Aid calculated on the basis of investment costs

- (17) All assets that are acquired must be new except the case where the beneficiary acquires assets from an existing establishment.
- (18) In case of acquisition of an establishment or of assets directly linked to an establishment, only the costs of buying assets from third parties are taken into consideration provided that the transaction has taken place under market conditions.
- (19) The costs for the investment in material assets include the costs for acquisition of land, buildings and plant/machinery.
- (20) Costs related to the acquisition of fix assets other than land and buildings under lease can only be taken into consideration if the lease takes the form of financial leasing and contains an obligation to purchase the asset at the expiry of the term of the lease. For the lease of land and buildings, the lease must continue for at least five years after the anticipated date of the completion of the investment project.
- (21) As eligible costs are also taken into account the purchase of immaterial assets (acquisition of patent rights, licences, know-how or unpatented technical knowledge) up to a limit of 50% of the total eligible investment expenditure of the investment project. Furthermore, the acquired immaterial assets must be exclusively used in the

⁷ Law 346/2004, on stimulating the establishment and the development of small and medium undertakings (in original language: Legea 346/2004 privind stimularea înființării și dezvoltării întreprinderilor mici și mijlocii).

⁸ European Commission Regulation (EC) 364/2004 of 25 February 2004 amending the (EC) Regulation 70/2001 as regards the extension of its scope to include aid for research and development, OJ L 63, 28.2.2004, p. 22-29.

⁹ OJ C 244, 1.10.2004.

establishment receiving the aid, must be regarded as amortizable assets, must be purchased from third parties under market conditions and must be included in the assets of the firm and remain in the establishment receiving the aid for the period of at least five years.

2.7.2 Aid calculated on the basis of wage costs

- (22) The eligible costs that are taken into account are those related to the gross wage (before tax) and the compulsory social security contributions of a newly employed person, calculated over a period of two years.
- (23) Job creation means a net increase in the number of employees directly employed in the establishment that receives the regional aid compared with the average over the previous 12 months. Any jobs lost during that 12 month period will be deducted from the apparent number of jobs created during the same period.

2.8. Aid amount and intensity

- (24) The aid amount is calculated as a percentage of the eligible costs calculated either on the basis of the planned and eligible investment costs or wage costs.
- (25) According to the Romanian regional aid map for 2007-2013, the maximum aid intensity for initial investment is 50% for all the developing regions except Bucharest-Ilfov region where the aid ceiling is 40%¹⁰.
- (26) However, in accordance with point 67 of the RAG the allowable aid amount for a large investment project is calculated according to the following formula:

$$A = R \times (50 + 0,50 \times B + 0,34 \times C), \text{ where}$$

- A is the maximum state aid amount;
- R is the unadjusted aid ceiling established in accordance with the Regional aid map for 2007-2013;
- B is the eligible expenditure between the LEI equivalent of EUR 50 million and the LEI equivalent of EUR 100 million;
- C is the eligible expenditure above the LEI equivalent of EUR 100 million.

2.9. Individual notification obligation, transparency mechanism and monitoring

- (27) The Romanian authorities will notify individually to the Commission any aid to be awarded to investment projects that exceeds the maximum allowable amount of aid calculated on the basis of the above mentioned formula, namely any aid that exceeds EUR 37,5 million or EUR 30 million for an investment with eligible expenditure of EUR 100 million made in an assisted region with a regional ceiling of 50% or 40%. The aid will be individually notified to the Commission within 60 working days from the date when the Ministry of Economy and Finance issued the "In-principle Agreement for

¹⁰ The aid intensity is calculated in gross grant equivalent that is the discounted value of the aid expressed as a percentage of the discounted value of the eligible costs.

financing". The aid will not be awarded until the decision of the Commission for approving the aid is taken.

- (28) However, in case these thresholds are not exceeded and the aid is granted for non-notifiable large investment projects, the Romanian authorities will submit, within 20 working days starting from the granting of the aid by the competent authority, to the Commission the information requested in the standard laid down in Annex III to the RAG.
- (29) The Ministry of Economy and Finance will keep detailed records regarding the granting of aid for all large investment projects in order to establish whether the maximum allowable aid intensity has been observed as well as the other criteria of the RAG. These records will be kept 10 years from the day when the aid has been awarded.

2.10. Mechanism of granting the aid

- (30) The granting authority will award aid in the limits of the budget of the scheme to undertakings that are selected depending on the date and number of the registration of the application. The authorities will verify the compliance with all criteria's laid down in the scheme.

2.11. Own contribution and necessity of the aid

- (31) The beneficiaries have to provide a contribution of at least 25% of the eligible costs of the investment project, in a form which is free of any public support, including *de minimis* support.
- (32) The beneficiaries have to obtain an "in-principle Agreement for Financing"¹¹ before the start of the works¹² on the project. Therefore, they have to submit an application for aid to the Ministry of Economy and Finance before the start of the works so that the latter can confirm in writing that, subject to detailed verification, the project in principle meets the conditions of eligibility laid down in this scheme.
- (33) In case where the aid is subject to individual notification to and approval by the Commission, confirmation of eligibility is made conditional to on the Commission decision approving the aid.

2.12. Maintenance of the investment and of the newly created jobs

- (34) The investment must be maintained in the concerned region at least for 5 years after its completion. However, replacement of assets may be accepted in case it refers to assets becoming obsolete within this 5 years period due to rapid technological change, provided that the economic activity is retained in the region concerned for the minimum period.
- (35) In case the aid is calculated in the basis of the wage costs, the jobs must be filled within 3 years of the completion of the works. Each of the new jobs created through the

¹¹ In original language: "Acord de principiu de finanțare".

¹² "Start of work" means either the start of construction work or the first firm commitment to order equipment, excluding preliminary feasibility studies.

investment must be maintained in the concerned region for a period of 5 years from the date the job was first filled.

2.13. Cumulation rules

- (36) The scheme foresees the possibility of cumulating the aid granted under this scheme with aid from other sources under the condition that the total amount of aid will not exceed the applicable aid intensity ceiling calculated on the basis of this scheme. This will be ensured by introducing an ex-post verification system of the financed project.
- (37) Regional aid granted under this scheme can not be cumulated with *de-minimis* support in respect of the same eligible expenses in order to circumvent the maximum aid intensities calculated on the basis of this scheme.

2.14. Duration and budget of scheme

- (38) The scheme will operate from Commission approval until 2012. The estimated overall budget is LEI 2 070 million (equivalent of EUR 575 million).

3. ASSESSMENT

3.1. State aid character of the scheme

- (39) Under the scheme, the aid is provided by public authorities through State resources within the meaning of Article 87(1) of the EC Treaty.
- (40) Since the aid will be granted to a limited number of companies, namely large companies that carries out an investment of at least EUR 100 million with eligible costs of at least EUR 50 million and creates at least 500 new jobs, the measure is considered to be selective.
- (41) By granting a direct grant, the scheme reduces the expenses for these companies carrying out an initial large investment in Romania.
- (42) Thus, the measure confers an advantage to these companies, which may distort or threaten to distort competition.
- (43) Since the scheme applies to sectors and undertakings involved in trade between Member States, there is a risk that the aid could affect that trade.
- (44) Consequently, the proposed aid measure constitutes aid within the meaning of Article 87(1) of the EC Treaty.

3.2. Legality of the aid measure

- (45) The Romanian authorities have fulfilled their obligation according to Article 88(3) of the EC Treaty by notifying the draft law before putting it into effect. The Commission takes note of the fact that the scheme will enter into force only after approval by the Commission.

3.3. Compatibility of the aid measure

- (46) Having established that the notified scheme involves State aid within the meaning of Article 87(1) of the EC Treaty and it is necessary to consider whether the scheme can be found to be compatible with the common market.
- (47) The Commission has examined the proposed aid measure in the light of Regional Aid Guidelines and in particular section 4.3 as the scheme applies only to projects with eligible costs more than EUR 50 million. This assessment has led to the following observations:
- The measure defines the large investment projects in line with the conditions laid down at point 60 of the RAG as only projects with eligible costs of above EUR 50 million are covered by the measure. Likewise, a large investment project is considered to be a single investment project when the initial investment is undertaken in a period of three years by one or more companies and consists of fixed assets combined in an economically indivisible way.
 - The measure is limited in its geographical and sectoral scope to the whole territory of Romania which is eligible for regional aid under Article 87 (3) (a) of the EC Treaty in accordance with the Romanian Regional Aid Map for 2007-2013 and to sectors which fall under the scope of the Regional Aid Guidelines in accordance with section 2. As far as processing and marketing of agricultural products are concerned, aid will be granted only to the extent laid down in the Community Guidelines for State aid in the agriculture and forestry sector 2007-2013.
 - In line with the condition laid down in point 9 of the RAG, firms in difficulty are not eligible for a direct grant under this measure.
 - The measure is not applicable to undertakings that still have at their disposal an earlier unlawful aid that was declared incompatible by a Commission Decision until those beneficiaries have reimbursed or paid into a blocked account the total amount of unlawful and incompatible aid and the corresponding recovery interest.
 - Aid will be limited to initial investment as defined at point 34 and 35 of the RAG. Replacement investment is not eligible for regional aid.
 - The eligible costs as they are calculated on the basis of investment costs or wage costs fall within the scope of the Regional Aid Guidelines (section 4.2).
 - The intensity of the aid and the aid amount is calculated in conformity with the scaling down and formula foreseen at point 67 of the RAG.
 - In line with point 64 of the RAG, the Romanian authorities will individually notify to the Commission any aid that exceeds the maximum allowable amount of aid that an investment with eligible expenditure EUR 100 can receive under the scale and rules laid down in point 67 of the RAG. In case of an individual notification obligation, the aid will not be awarded until the decision of the Commission for approving the aid is taken.

- Pursuant to the transparency and monitoring mechanism foreseen at points 65 and 66 of the RAG, the Romanian authorities will provide the Commission, within 20 working days starting from the granting of the aid, all information requested in the standard form laid down in Annex III of the RAG. Likewise, the Romanian authorities will keep detailed records regarding the granting of aid for all large investments projects for 10 years from the date on which the aid was awarded.
- The necessity of aid principle as explained at point 38 of the RAG is respected, as the beneficiaries have to submit the aid application before the starting of the works and the granting authority confirm in writing that, subject to detailed verification, the project in principle meets the conditions of eligibility laid down by the scheme. In case works begins before the two conditioned mentioned above are fulfilled, the whole project will not be eligible for aid.
- The scheme meets the condition as laid down at point 39 of the RAG since the beneficiary has to provide a financial contribution of at least 25% of the eligible costs, in a form which is free of any public support.
- In line with point 40 of the RAG, the aid is made conditional to the obligation of maintaining the investment in the region concerned during a minimum period of five years. In addition, where the aid is calculated on the basis of wage costs, the jobs must be filled within 3 years of the completion of the works and must be maintained within the region concerned for a period of five years from the date the job was first filled.
- The rules on cumulation of aid as defined in section 4.4 of the RAG are respected. By introducing an ex-post verification system of the financed large investment project, the Romanian authorities will ensure that the total amount of aid is not exceeding the applicable aid ceiling calculated on the basis of this scheme in case the regional investment aid is cumulated with aid from other sources.
- In line with point 108 of the RAG, projects for which expenses incurred before the date of publication of the scheme will not be eligible for regional aid under the notified scheme.
- The duration of the scheme is in line with the duration of the regional map. The notified scheme will expire on 31 December 2012.

(48) In view of the above, the Commission considers that the notified aid scheme is compatible with the common market in accordance with Article 87(3)(c) of the EC Treaty.

4. DECISION

(49) The Commission has accordingly decided to consider the aid scheme compatible with the EC Treaty.

(50) The Commission reminds the Romanian authorities that the reporting conditions described in the Commission Regulation (EC) N°794/2004 implementing Council

Regulation (EC) N° 659/1999 laying down detailed rules for the application of Article 93 of EC Treaty have to be respected.

- (51) The Commission further reminds the Romanian authorities that all plans to modify this aid scheme have to be notified to the Commission.

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Yours faithfully,
For the Commission

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Member of the Commission