



EUROPEAN COMMISSION

Brussels, 17.11.2015  
C(2015) 8170 final

**Subject:**        **State aid – Romania**  
                         **SA.43393 (2015/N) RO**  
                         **The establishment of a state aid scheme to compensate damage**  
                         **caused by severe drought during April-September 2015**

Sir,

The European Commission (hereafter "the Commission") wishes to inform Romania that, having examined the information supplied by your authorities on the State aid scheme referred to above, it has decided not to raise any objections to the relevant scheme as it is compatible with the internal market pursuant to Article 107(3)(c) of the Treaty on the Functioning of the European Union (hereafter "TFEU").

The Commission has based its decision on the following considerations:

**1. PROCEDURE**

- (1) By letter of 21 October 2015, registered by the Commission on the same day, Romania pre-notified the above mentioned state aid scheme. Following an informal exchange of information on 22 October 2015, Romania notified the scheme on 23 October 2015 according to Article 108(3) TFEU.

**2. DESCRIPTION**

**2.1. Title**

- (2) The establishment of a State aid scheme to compensate damage caused by severe drought during April-September 2015.

**2.2. Objective**

- (3) The current scheme will compensate for the damage incurred to farmers by the severe drought that affected Romania in the period April-September 2015.

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### **2.3. Legal basis**

- (4) The legal basis is the Emergency Ordinance entitled “Decision concerning the establishment of a State aid scheme to compensate damage caused by severe drought during April-September 2015.

### **2.4. Duration**

- (5) From the date of the Commission decision until 31 December 2015.

### **2.5. Budget**

- (6) 640 million RON<sup>1</sup>

### **2.6. Beneficiaries**

- (7) The beneficiaries of this scheme are undertakings active in primary agricultural production, namely:
- a) Certified farmers in possession of a producer’s certificate issued under Romanian Law no. 145/2014 establishing measures to regulate the market of agricultural products;
  - b) Freelance farmers, including both individual and family farms, established according to the Government Emergency Ordinance no. 44/2008 on economic activities by authorized individuals, sole proprietorships and family businesses, as amended and supplemented;
  - c) Agricultural producers with legal personality, as well as all associative organisations with or without legal form, which are established by law.
- (8) Undertakings declared ineligible by the Romanian Agency for Payments and Intervention in Agriculture (hereafter “APIA”) following the relevant administrative control fall outside the scope of beneficiaries.

### **2.7. Description of the aid scheme**

- (9) The scheme aims to compensate beneficiaries for damage incurred during April-September 2015 by severe drought which destroyed per beneficiary more than 30% of the eligible crop.
- (10) Romania formally recognized the character of the event as an adverse climatic event which can be assimilated to a natural disaster. The drought started in April 2015 through a lack of rainfalls and reached climax during the months of July and August 2015 which were the third most canicular months since 1961 (following the heat-waves from 1989, 2012 and 2013). The losses incurred by farmers went largely beyond 30% of the crop, in certain areas reaching a total destruction of 100%.
- (11) The prolonged drought affected according to Romanian authorities an estimated number of around 173 500 farmers and an estimated surface of around 1,65

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<sup>1</sup> Approx. 144,6 million EUR (calculated based on a currency exchange rate of 1 EUR=4,43 RON, as of 23 October 2015).

million ha. This indicates an extension of the drought to around 18% of the Romanian agricultural surface.

- (12) The Romanian competent authority established a direct causal link between the drought and the damage suffered by the farmers. The direct causal link is certified at the level of the beneficiary by a protocol evaluating the damage and confirming the cause (see recital (14)a).
- (13) The damage occurred to following crops is eligible for compensation under this notified scheme: maize, sunflower, soybean, potato, sugar beet, field vegetables, fodder plants, pastures and meadows.
- (14) In order to be eligible for compensation the beneficiaries have to comply with the following cumulative eligibility criteria:
  - a) The beneficiaries have to present a protocol assessing the damage at the level of the beneficiary, dating from the period between 1<sup>st</sup> of April 2015 and 20 October 2015, outlined according to the law concerning emergency situations and containing the following minimal information: the type of crop, the surface suffering from the disaster and the loss percentage. To be eligible for aid the loss percentage of the eligible crop has to be more than 30%;
  - b) Beneficiaries have to be registered with APIA with a single payment request for the year 2015.
- (15) The areas for which aid is granted may not exceed the areas determined after the administrative control of the application for single payment for the year 2015.

#### *Type of aid*

- (16) Direct grants

#### *Aid amount and intensity*

- (17) The eligible costs are the damage incurred as a direct consequence of the adverse climatic event which can be assimilated to a natural disaster.
- (18) The aid amount is a compensatory grant which covers a maximum of 20% of the income loss caused by the drought to the relevant crops (see recital (16)).
- (19) The income loss is calculated with the help of statistical indexes based on the average production and average price for the years 2012 to 2014, as taken from the data published by the National Institute of Statistics and Statistical research and from the operational data of the Ministry of Agriculture and Rural Development (hereinafter “MARD”).
- (20) The income loss is calculated by multiplying the percentage of loss recorded in the protocol evaluating the damage with the average income obtained by the different categories of beneficiary for the eligible crop in the previous three years without drought, using statistical indexes as a reference. In order to avoid overcompensation, the average income will be capped to maximum 20% (see recital (21)).

- (21) The following table presents the average income per type of beneficiary and per crop, capped at 20%: (in Romanian currency RON; unit measure: RON/ha):

Crop	Aid to beneficiaries foreseen under recital 7a) and 7b) above	Aid to beneficiaries foreseen under recital 7c) above
Maize beans	280	560
Sunflower	285	570
Soybean	335	670
Potato	1130	2260
Sugar beet	600	1200
Field vegetables	1490	2980
Fodder plants	222,5	445
Pastures	50	100
Meadows	75	150

The compensatory grant will be calculated at the level of each beneficiary, by multiplying the capped average income presented in the table above with the percentage of crop loss marked in the beneficiary's protocol (recital (14)a).

- (22) The following table is a conversion into EUR of the amounts presented in the recital (21) above<sup>2</sup>:

Crop	Aid to beneficiaries foreseen under recital 7a) and 7b) above	Aid to beneficiaries foreseen under recital 7c) above
Maize beans	63,18	126,36
Sunflower	64,31	128,61
Soybean	75,59	151,18
Potato	254,97	509,94
Sugar beet	135,38	270,76
Field vegetables	336,20	672,40
Fodder plants	50,20	100,41
Pastures	11,28	22,56
Meadows	16,92	33,85

- (23) The Romanian authorities commit to respect the condition according to which the aid must be reduced by 50% unless it is given to beneficiaries who have taken out insurance covering at least 50% of their average annual production or production-related income and the statistically most frequent climatic risks in the region concerned for which insurance coverage is provided.

#### *Cumulation of aid*

- (24) The aid contains identifiable eligible costs and may therefore be cumulated with other State aid, as long as those aids concern different identifiable eligible costs.

<sup>2</sup> Calculated based on a currency exchange rate of 1 EUR=4,43 RON, as of 23 October 2015.

The aid will not be cumulated with de minimis aid in respect of the same eligible costs.

#### *Other provisions*

- (25) The grants will be paid directly to the undertaking concerned or to a producer group. In the case of a payment to a producer group, the amount of aid will not exceed the amount of aid to which that undertaking is eligible.
- (26) Undertakings in difficulty are not eligible for aid except where the difficulties are due to the damage caused by severe drought during April-September 2015.
- (27) Undertakings which are subject to an outstanding recovery order following a previous Commission Decision declaring an aid illegal and incompatible with the internal market are not eligible for the aid.

### **3. ASSESSMENT**

#### **3.1. Existence of aid - Application of Article 107(1) TFEU**

- (28) Pursuant to Article 107(1) TFEU, aid granted by a Member State or through State resources in any form whatsoever, which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods, shall, in so far as it affects trade between Member States, be incompatible with the internal market.
- (29) The aid scheme confers an advantage on selected recipients by strengthening their position as it favours certain undertakings economically active in Romania by providing a grant in order to compensate for severe drought.
- (30) The aid scheme in question is financed through the State budget. Therefore, the advantage is granted from State resources.
- (31) According to the case law of the Court of Justice, the mere fact that the competitive position of an undertaking is strengthened compared to other competing undertakings, by giving it an economic benefit which it would not otherwise have received in the normal course of its business, points to a possible distortion of competition.<sup>3</sup> Pursuant to the case law of the Court of Justice, aid to an undertaking is liable to affect trade between Member States where that undertaking operates in a market open to intra-EU trade.<sup>4</sup> The beneficiaries of aid operate on the market of agricultural products where intra-EU trade takes place. The volume of trade in agricultural products is significant. As an example, the EU-28 has produced 284 826 100 tons of cereals in 2012 while intra-EU cereals trade amounted to 51 683 264 tons. The sectors concerned are open to competition at EU level and therefore sensitive to any measure in favour of agricultural production in one or more Member States. Therefore, the present amended scheme is liable to distort competition and to affect trade between Member States.

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<sup>3</sup> Judgment of the Court of 17 September 1980 in Case 730/79 *Philip Morris Holland BV v Commission of the European Communities* ECLI:EU:C:1980:209.

<sup>4</sup> See in particular the judgment of the Court of 13 July 1988 in Case 102/87 *French Republic v Commission of the European Communities* ECLI:EU:C:1988:391.

- (32) In light of the above, the conditions of Article 107(1) of the TFEU are fulfilled. It can therefore be concluded that the notified aid scheme constitutes State aid within the meaning of that Article. The aid may only be considered compatible with the common market if it can benefit from one of the derogations provided for in the TFEU.

### **3.2. Lawfulness of the aid – Application of Article 108(3) TFEU**

- (33) The scheme was notified to the Commission on 23 October 2015. It has not been implemented yet. Therefore, Romania has complied with its obligation under Article 108(3) TFEU.

### **3.3. Compatibility of the aid**

#### *3.3.1. Application of Article 107(3)(c) TFEU*

- (34) The aid may be regarded as compatible with the internal market only if one of the derogations provided for under the TFEU applies. Under Article 107(3)(c), an aid may be considered compatible with the internal market, if it is found 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. For this derogation to be applicable, the aid must fulfil the requirements of the relevant Union State aid legislation.
- (35) The Commission has examined the proposed aid scheme in the light of Article 107(3)(c) TFEU and of the European Union Guidelines for State aid in the agricultural and forestry sectors and in rural areas 2014 to 2020<sup>5</sup> (hereafter “Guidelines”), therein under Part I, Chapter 3. *Common assessment principles* and under Part II, Chapter 1, Section 1.2.1.2. Aid to compensate for damage caused by adverse climatic event which can be assimilated to a natural disaster.

#### *3.3.2. Application of the Union Guidelines for State aid in the agricultural and forestry sectors and in rural areas 2014 to 2020*

##### *3.3.2.1. Common Assessment Principles*

- (36) *Contribution to a common objective:* The scheme is governed by the specific provisions of Part II Section 1.2.1.2 of the Guidelines. According to point 48 of the Guidelines, the Commission considers that the principle of contribution to the objectives of rural development is met regarding the aid measures in Section 1.2 of Part II of the Guidelines, which are outside the scope of rural development, since the Commission has gained sufficient experience as to the contribution of those measures to the rural development objectives. The current scheme falls within Section 1.2 and is outside the scope of rural development. Therefore, the conditions under point 48 of the Guidelines are complied with.

As the scheme provides compensation for losses caused by drought, it does not interfere with the provisions of the common organisation of the markets in agricultural products and therefore it is not incompatible with it. For the same reason, it does not have any environmental impact either. Therefore the conditions under points 44 and 52 of the Guidelines are complied with.

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<sup>5</sup> OJ C 204, 1.7.2014, p. 1.

- (37) *Need for State intervention:* According to point 55 of the Guidelines, the Commission considers that the market is not delivering the expected objectives without State intervention concerning the aid measures fulfilling the specific conditions laid down in Part II of these Guidelines. As those conditions are fulfilled in the present case (see recitals (44) to (53)), the scheme is considered necessary to achieve the objectives of common interest specified under Section 3.1. of Part I of the Guidelines.
- (38) *Appropriateness of aid:* According to point 57 of the Guidelines, the Commission considers that aid granted in the agricultural and forestry sectors and in rural areas, which fulfils the specific conditions laid down in the relevant Sections of Part II of the Guidelines, is an appropriate policy instrument. As those conditions are fulfilled in the present case (see recitals (44) to (53)), the scheme is considered necessary to achieve the objectives of common interest specified under Section 3.1. of Part I of the Guidelines.
- (39) *Incentive effect and need for aid:* According to point 75(e) of the Guidelines, aid to compensate for the damage caused by adverse climatic events which can be assimilated to natural disaster in accordance with Section 1.2.1.2 of Part II of the Guidelines are not required or are deemed to have an incentive effect.
- (40) *Proportionality of the aid:* According to points 82 and 83 of the Guidelines, aid in the agricultural sector and in rural areas is considered to be proportionate if the aid amount does not exceed the eligible costs and maximum aid intensities are applied. The aid amount per beneficiary must be limited to the minimum needed to achieve the common objective aimed for. These requirements are met in the present case (see recitals (44) to (53)). The aid scheme at hand is also in line with point 94 of the Guidelines as regards the agricultural sector, as measures are taken to avoid over compensation of the damage and the intensity rate is very low (see recitals (17) to (20)).
- (41) *Cumulation of aid:* The aid may be cumulated with other State aid, as long as those aids concern different identifiable eligible costs (see recital (24)). Therefore the condition under point 100 of the Guidelines is complied with.
- (42) *Avoidance of undue negative effects on competition and trade:* For the aid to be compatible, the negative effects of the aid scheme in terms of distortions of competition and impact on trade between Member States must be limited and outweighed by the positive effects in terms of contribution to the objective of common interest. Point 113 of the Guidelines establishes the principle that, due to its positive effects on the development of the sector, the Commission considers that where an aid fulfils the conditions and does not exceed the relevant maximum aid intensities, laid down in the applicable Sections of Part II of these Guidelines, the negative effect on competition and trade is limited to the minimum. As those conditions are fulfilled in the present case (see recitals (44) to (53)), the notified scheme is avoiding undue negative effects on competition and trade.
- (43) *Transparency:* The Commission takes note of the commitment undertaken by the Romanian authorities to comply with the transparency provisions of points 128-131 of the Guidelines.

3.3.2.2. Specific assessment according to the category of aid:  
1.2.1.2. Aid to compensate for damage caused by adverse climatic event which can be assimilated to a natural disaster

- (44) According to point 347 of the Guidelines, the provisions on aid granted to compensate for damage caused by an adverse climatic event which can be assimilated to a natural disaster apply only to undertakings active in primary agricultural production. The scheme complies with these provisions (see recital (7) and (11)).
- (45) According to point 348 of the Guidelines, aid granted to make good the damage caused by an adverse climatic event which can be assimilated to a natural disaster is subject to the following conditions: (a) the competent authority of the Member State must have formally recognized the character of the event as an adverse climatic event which can be assimilated to a natural disaster; (b) the competent authority must establish that there is a direct causal link between the adverse climatic event and the damage suffered by the undertaking. The scheme complies with these provisions (see recitals (10) to (12)).
- (46) According to point 351 of the Guidelines, aid must be paid directly to the undertaking concerned or to a producer group or organization of which that undertaking is a member. Where the aid is paid to a producer group and organization, the amount of aid must not exceed the amount of aid to which that undertaking is eligible. The scheme complies with this provision (see recital (16)).
- (47) According to point 352 of the Guidelines, the aid scheme must be established within three years from the date of the occurrence of the adverse climatic event which can be assimilated to a natural disaster and it must be paid out within four years from that date. The scheme complies with this provision, as the drought occurred in April – September 2015, the scheme was notified to the Commission on 23 October 2015, the aid will not be granted previous to the adoption of the Commission decision, the aid will be paid out until 31 December 2015 and the scheme will expire upon that date (see recital (5)).
- (48) The eligible costs are calculated in accordance with points 353 to 355 and points 357 to 361 of the Guidelines (see recitals (17) to (22)) as summarised below. The income loss is calculated by multiplying the percentage of loss recorded in the protocol evaluating the damage with the average income obtained by the different categories of beneficiary, calculated with the help of statistical indexes and capped at 20%, in order to avoid overcompensation. The method of calculation is representative, as it takes into account the percentage of loss at the level of the beneficiary and the type of crop, it is not based on abnormally high yields and does not result in overcompensation, as it is calculated based on average crop data discounted by the percentage of loss and capped at 20% of the sum thus obtained (see recital (20)). The conditions of point 361 of the Guidelines are therefore respected.
- (49) The aid intensity is in line with point 362 of the Guidelines (see recitals (17), (20) and (21)), as it does not exceed 80% of the eligible costs, the income loss being capped at 20%.



- (50) According to point 363 of the Guidelines, aid granted to compensate for damage caused by adverse climatic event which can be assimilated to a natural disaster must be reduced by 50% unless it is given to beneficiaries who have taken out insurance covering at least 50% of their average annual production or production-related income and the statistically most frequent climatic risks in the Member State or region concerned for which insurance coverage is provided. The scheme complies with this provision (see recital (23)).
- (51) According to recital (26), undertakings in difficulty are not eligible for the aid except where the difficulties are due to the damage caused by severe drought during April-September 2015. Therefore point 26 of the Guidelines is fulfilled.
- (52) According to recital (27), undertakings which are subject to an outstanding recovery order following a previous Commission Decision declaring an aid illegal and incompatible with the internal market are not eligible for the aid. Therefore point 27 of the Guidelines is fulfilled.
- (53) On the basis of all these considerations, the Commission concludes that the relevant provisions of the Guidelines are complied with.

#### **4. CONCLUSION**

The Commission has accordingly decided not to raise objections to the notified aid on the grounds that it is compatible with the internal market pursuant to Article 107(3)(c) TFEU.

If any parts of this letter are covered by the obligation of professional secrecy according to the Commission communication on professional secrecy and should not be published, please inform the Commission within fifteen working days of notification of this letter. If the Commission does not receive a reasoned request by that deadline, Romania will be deemed to agree to the publication of the full text of this letter. If Romania wishes certain information to be covered by the obligation of professional secrecy please indicate the parts and provide a justification in respect of each part for which non-disclosure is requested.

Your request should be sent electronically via the secured e-mail system Public Key Infrastructure (PKI) in accordance with Article 3(4) of Commission Regulation (EC) No 794/2004, to the following address: [agri-state-aids-notifications@ec.europa.eu](mailto:agri-state-aids-notifications@ec.europa.eu).

For the Commission

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