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**Subject: State Aid SA.56895 (2020/N) – Romania
COVID-19: Support scheme for SMEs**

Excellency,

1. PROCEDURE

- (1) By electronic notification of 5 April 2020, Romania notified aid in the form of a scheme comprising direct grants and guarantees on loans (Government Emergency Ordinance no 110/2017 on the Program for Supporting SMEs - IMM INVEST ROMANIA, as approved and amended by Law no. 209/2018, as subsequently amended and supplemented by Government Emergency Ordinance no. 29/2020 and Government Ordinance no. 42/2020, “the measure”) under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak as amended on 3 April 2020. (“the Temporary Framework”).¹
- (2) Romania submitted additional information on 7 and 8 April 2020.
- (3) The Romanian authorities confirm that the notification does not contain confidential information.

¹ Communication from the Commission - Temporary framework for State aid measures to support the economy in the current COVID-19 outbreak, as amended by Commission’s Communication of 3 April, OJ C 112I , 4.4.2020, p.1.

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- (4) Romania exceptionally agrees to waive its rights deriving from Article 342 TFEU, in conjunction with Article 3 of Regulation 1/1958,² and to have this Decision adopted and notified in English.

2. DESCRIPTION OF THE MEASURE

- (5) Romania considers that the COVID-19 outbreak has started to affect the real economy. The isolation measures for health protection purposes have an immediate impact on both demand and supply and affect businesses and employees. Beyond the immediate effects on mobility and trade, the COVID-19 outbreak is increasingly affecting companies in all sectors and all types, especially small and medium-sized enterprises ("SMEs")³.
- (6) Romania submits that businesses of all types are at risk to face a severe lack of liquidity and that this applies in particular to SMEs the situation of which may be seriously affected in the short and medium term.
- (7) The measure, therefore, aims to ensure that sufficient liquidity remains available in the market for SMEs, to counter the damage inflicted upon undertakings impacted by the outbreak and to preserve the continuity of economic activity during and after the outbreak.
- (8) The measure is expressly based on Article 107(3)(b) of the Treaty on the Functioning of the European Union ("TFEU"), as interpreted by Section 3.1 and 3.2 of the Temporary Framework.

2.1. The nature and form of aid

- (9) The measure provides aid in the form of direct grants and State guarantees on loans.

2.2. National legal basis

- (10) The legal basis for the measure is the Government Emergency Ordinance no 110/2017 on the Program for Supporting SMEs - IMM INVEST ROMANIA, as approved and amended by Law no. 209/2018, as subsequently amended and supplemented by Government Emergency Ordinance no. 29/2020 and Government Ordinance no. 42/2020.

2.3. Administration of the measure

- (11) The Romanian Ministry of Public Finance is the granting authority, and the mandated administrator of the state aid scheme is the State owned National Credit Guarantee Fund for SMEs (*Fondul Național de Garantare a Creditelor pentru Întreprinderile Mici și Mijlocii*, "FNGCIMM").

² Regulation No 1 determining the languages to be used by the European Economic Community, OJ 17, 6.10.1958, p. 385.

³ In accordance with the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises, OJ L 124, 20.5.2003, p.36.

2.4. Budget and duration of the measure

- (12) The budget of the state aid in form of grants is RON 781 million (about EUR 161 million). As to the State guarantees, Romania estimates that initially RON 5 million (approximately EUR 1 million) may have to be allocated in the state Budget.
- (13) Aid may be granted under the notified measure as from its approval until 31 December 2020 at the latest.

2.5. Beneficiaries

- (14) The final beneficiaries of the measure are all SMEs in Romania active in the eligible sectors referred to in recital (15). However, banks and other financial institutions are not eligible final beneficiaries.. Aid may be granted under the measure only to undertakings that were not already in difficulty within the meaning of the General Block Exemption Regulation ("GBER")⁴, the Block Exemption Regulation for the Agricultural Sector ("ABER")⁵ and the Block Exemption Regulation for the Fishery and Aquaculture Sector ("FIBER")⁶ on 31 December 2019. The State guarantees are issued by FNGC IMM for the loans issued by banks to SMEs.

2.6. Sectoral and regional scope of the measure

- (15) The measure is open to all sectors, with the exception of certain non-eligible sectors as defined by the relevant legislative act.⁷ The non-eligible sectors include gambling and betting activities, production or sale of weapons or ammunition, explosives, tobacco, alcohol, substances under national control, plants, narcotic and psychotropic substances, investigation and protection activities. It applies to the whole territory of Romania.

2.7. Basic elements of the measure

- (16) For aid in the form of direct grants under Section 3.1 of the Temporary Framework:
 - (a) Aid granted under this measure will not exceed the total gross nominal value of EUR 800 000 per undertaking.

⁴ As defined in Article 2(18) 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, OJ L 187 of 26.6.2014, p. 1.

⁵ Article 1(4)(c) of Commission Regulation (EU) No 702/2014 of 25 June 2014 declaring certain categories of aid in the agricultural and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 TFEU, OJ L 193, 1.7.2014, p. 1.

⁶ Article 1(3)(b) of Commission Regulation (EU) No 1388/2014 of 16 December 2014 declaring certain categories of aid to undertakings active in the production, processing and marketing of fishery and aquaculture products compatible with the internal market in application of Articles 107 and 108 TFEU, OJ L 369, 24.12.2014, p. 37.

⁷ Government Emergency Ordinance no 110/2017 on the Program for Supporting SMEs - IMM INVEST ROMANIA, as amended.

- (b) Aid granted to undertakings active in the processing and marketing of agricultural products is conditional on not being partly or entirely passed on to primary producers and is not fixed on the basis of the price or quantity of products purchased from primary producers or put on the market by the undertakings concerned.
 - (c) The derogations in paragraph 23(a) of the Temporary Framework Communication will apply and the gross amount of aid before any deduction of tax or other charge will not exceed EUR 120 000 per undertaking active in the fishery and aquaculture sector⁸ or EUR 100 000 per undertaking active in the primary production of agricultural products⁹.
 - (d) The Romanian authorities confirmed that if an undertaking receives one or more direct grants under the notified and/or other schemes authorised under section 3.1 of the Temporary Framework, the aid will not exceed in total the overall maximum amount as spelt out above in points (a) and (c).
 - (e) Additionally, for agricultural, fisheries and aquaculture sector:
 - aid to undertakings active in the primary production of agricultural products will not be fixed on the basis of the price or quantity of products put on the market;
 - aid to undertakings active in the fishery and aquaculture sector will not concern any of the categories of aid referred to in Article 1, paragraph (1)(a) to (k) of Commission Regulation (EU) No 717/2014⁷;
 - where an undertaking is active in several sectors to which different maximum amounts apply, the Romanian authorities will ensure by appropriate means such as separation of accounts, for each of these activities the relevant ceiling is respected and that the highest possible amount is not exceeded in total.
- (17) For aid in the form of guarantees on loans under Section 3.2. of the Temporary Framework:
- (a) The Romanian authorities will set the guarantee premiums in accordance with point 25(a) of the Temporary Framework. Specifically, the amount of the guarantee premium will be determined by the duration of the loan for the SME borrower in a step-up approach as stipulated in the table of point 25(a) of the Temporary Framework:

⁸ As defined in Article 2(1) of Commission Regulation (EU) No 717/2014 of 27 June 2014 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the fishery and aquaculture sector, OJ L 190, 28.6.2014, p. 45.

⁹ All products listed in Annex I to the TFEU with the exception of the fishery and aquaculture sector.

Type of recipient	For 1 st -year	For 2nd - 3rd year	For 4 th - 6 th years
SMEs	25bps	50bps	100bps

- (b) All loans to which the guarantees may apply will be agreed by 31 December 2020 at the latest. Borrowers will therefore have the benefit of any such guarantees, and therefore aid will be granted, by 31 December 2020 at the latest.
- (c) Guarantees relate to both investment and working capital loans.
- (d) Romania distinguishes between the following types of companies:
- For micro-enterprises, the guarantee covers 90% of the underlying loan amount for financing working capital, which cannot exceed RON 500 thousand (approximately EUR 100 000);
 - for small enterprises, the guarantee covers 90% of the underlying loan amount for financing working capital, which cannot exceed RON 1 million (approximately EUR 200 000);
 - for medium-sized enterprises, the guarantee covers 80% of the underlying loan amount, which cannot exceed RON 5 million (approximately EUR 1 million) for financing working capital and RON 10 million (approximately EUR 2 million) for investment loans;
 - for micro-enterprises and small enterprises the guarantees of 90% of financing working capital loans could be cumulated with the guarantee of 80% for investment loans within the maximum loan amount of RON 10 million (approximately EUR 2 million).
- (e) Romania confirms that in any case the underlying loan amount cannot exceed the limits set out in paragraph 25(d) of the Temporary Framework. This will be verified during the application. For reasons of administrative simplicity, where the situation of the beneficiary requires a fast guarantee approval process, the amount of the loan may be increased to cover the liquidity needs from the moment of granting for the coming 18 months for SMEs, which is determined through self-certification by the beneficiary of its liquidity needs.
- (f) The amortisation of the guarantee will follow the structure of the underlying loan, *i.e.* when the size of the loan decreases over time, the guaranteed amount decreases proportionally.
- (g) It is not envisaged to grant guarantees with a maturity on or before 31 December 2020. However, if there are any such guarantees granted, the limits under point 25(d) of the Temporary Framework will, nevertheless, be respected.
- (h) The maximum maturity will be six years.

- (i) Losses will be sustained proportionally and under the same conditions by the lender and the State through FNGCIMM.
- (j) Romania submits that, considering the commercial banks' own exposure on the loans, they have an incentive to offer the loans on the most favourable conditions possible in order to avoid the undertaking defaulting, since that would entail substantial losses to the bank. In any case, the banks will have to comply with the interest thresholds set by the legislation and the government decision to approve the methodological norms. According to Romania, this ensures that the aid will be passed on to the final beneficiaries.
- (k) Romania confirmed that the mobilisation (triggering) of the guarantee is contractually linked to specific conditions that have to be agreed between the parties when the guarantee is initially granted.

2.8. Cumulation

- (18) The aid ceilings and cumulation maxima fixed under the measure shall apply regardless of whether the support for the aided project is financed entirely from State resources or partly financed by the Union.
- (19) According to the Romanian authorities, SMEs that receive guarantees under Section 3.2. of the Temporary Framework also benefit from a grant under Section 3.1. of the Temporary Framework..

2.9. Monitoring and reporting

- (20) The Romanian authorities confirm that they will respect the monitoring and reporting obligations laid down in Section 4 of the Temporary Framework (*e.g.*, by 31 December 2020, a list of measures put in place on the basis of schemes approved under the Temporary Framework must be provided to the Commission; detailed records regarding the granting of aid must be maintained for 10 years upon granting of the aid, etc.).

3. ASSESSMENT

3.1. Lawfulness of the measure

- (21) By notifying the measure before putting it into effect, the Romanian authorities have respected their obligations under Article 108(3) TFEU.

3.2. Existence of State aid

- (22) For a measure to be categorised as aid within the meaning of Article 107(1) TFEU, all the conditions set out in that provision must be fulfilled. First, the measure must be imputable to the State and financed through State resources. Second, it must confer an advantage on its recipients. Third, that advantage must be selective in nature. Fourth, the measure must distort or threaten to distort competition and affect trade between Member States.
- (23) The measure is imputable to the State, since it is granted by the Ministry of Finance and administered by the State owned National Credit Guarantee Fund for

SMEs and it is based on the legislative acts referred to in recital (10). It is financed through State resources, since it is financed by public funds.

- (24) The measure confers an advantage on its beneficiaries in the form of direct grants and public guarantees on loans (recital (9)). The measure thus relieves those beneficiaries of costs, which they would have to bear under normal market conditions.
- (25) The advantage granted by the measure is selective, since it is awarded only to certain undertakings, *i.e.* to SMEs registered in Romania that are active in all sectors with the exceptions of those mentioned in recital (15) and that are not banks and other financial institutions.
- (26) The measure is liable to distort competition, since it strengthens the competitive position of its beneficiaries. It also affects trade between Member States, since those beneficiaries are active in sectors in which intra-Union trade exists.
- (27) In view of the above, the Commission concludes that the measure constitutes aid within the meaning of Article 107(1) TFEU. The Romanian authorities do not contest that conclusion.

3.3. Compatibility

- (28) Since the measure involves aid within the meaning of Article 107(1) TFEU, it is necessary to consider whether that measure is compatible with the internal market.
- (29) Pursuant to Article 107(3)(b) TFEU the Commission may declare compatible with the internal market aid “*to remedy a serious disturbance in the economy of a Member State*”.
- (30) By adopting the Temporary Framework on 19 March 2020, as amended on 3 April 2020, the Commission acknowledged (Section 2) that “*the COVID-19 outbreak affects all Member States and that the containment measures taken by Member States impact undertakings*”. The Commission concluded that “*State aid is justified and can be declared compatible with the internal market on the basis of Article 107(3)(b) TFEU, for a limited period, to remedy the liquidity shortage faced by undertakings and ensure that the disruptions caused by the COVID-19 outbreak do not undermine their viability, especially of SMEs*”.
- (31) The measure aims at facilitating the access of SMEs to external finance at a time when the normal functioning of credit markets is severely disturbed by the COVID-19 outbreak and that outbreak is affecting the wider economy and leading to severe disturbances of the real economy of Member States.
- (32) The measure is conceived at national level by the authorities of Romania to remedy a serious disturbance in their economy. The importance of the measure to mitigate liquidity problems and stimulate lending by private banks to enterprises during the COVID-19 outbreak is widely accepted by economic commentators and the measure is of a scale, which can be reasonably anticipated to produce effects across the entire Romanian economy. Furthermore, the measure has been designed to meet the requirements of a specific category of aid, namely aid in the form of grants and guarantees on loans as described in Section 3.1 and in the form

of guarantees on loans as described under Section 3.2 of the Temporary Framework, and the requirements for aid in the form of guarantees and loans channelled through credit institutions or other financial institutions described in Section 3.4 of the Temporary Framework.

- (33) The Commission accordingly considers that the measure is necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State and meets all the conditions of the Temporary Framework.
- (34) The measures under section 3.1 of the Temporary Framework meet the conditions in view of the following facts (recital (16)):
- The maximum aid amount per undertaking in the form of grants, with the exception of undertakings in the fishery and aquaculture sector and active in the primary production of agriculture products, will not exceed EUR 800 000 in nominal value (recital (16)(a)), as laid down in point 22(a) of the Temporary Framework.
 - The measure is granted on the basis of an aid scheme with an estimated budget (recital (12)), hence the condition set out in point 22(b) of the Temporary Framework is met.
 - The measure will only be granted to undertakings which were not already in difficulty on 31 December 2019 (recital (14)); the measure therefore complies with point 22(c) of the Temporary Framework;
 - The measure will be granted no later than 31 December 2020 (recital (13)), hence the measure complies with point 22(d) of the Temporary Framework.
 - Aid granted to SMEs active in the processing and marketing of agricultural products is conditional on not being partly or entirely passed on to primary producers and is not fixed on the basis of the price or quantity of products purchased from primary producers or put on the market by the SMEs concerned (recital (16)(b)), hence the measure complies with point 22(e) of the Temporary Framework.
 - The maximum aid does not exceed EUR 120 000 per undertaking active in the fishery and aquaculture sector or EUR 100 000 per undertaking active in the primary production of agricultural products (recital (16)(c)) as laid down in point 23(a) of the Temporary Framework.
 - Aid to SMEs active in the primary production of agricultural products will not be fixed on the basis of the price or quantity of products put on the market, hence the measure complies with point 23(b) of the Temporary Framework (recital (16)(e)). Aid to undertakings active in the fishery and aquaculture does not concern any of the categories of aid referred to in Article 1, paragraph (1) (a) to (k), of Commission Regulation (EU) No 717/201420 (recital (16)(e)), hence the measure complies with point 23(c) of the Temporary Framework. The provisions of point 23bis of the Temporary Framework as regards the maximum ceilings for undertakings active in several sectors are also complied with (recital (16)(e)).
 - The Romanian authorities committed to comply with all the monitoring and reporting obligations laid down in Section 4 of the Temporary Framework (recital (20)).

- (35) The guarantees on loans meet the conditions under Section 3.2. of the Temporary Framework for the following reasons:
- The measure sets minimum levels for guarantee premiums, applied progressively from 25 to 100 bps for the scheme's only beneficiaries, SMEs, on loans with a maturity of up to six years (recital (17)(a)). It therefore complies with the guidance in point 25(a) of the Temporary Framework.
 - Guarantees can be granted under the measure by 31 December 2020 at the latest (recital (17)(b)). The measure therefore complies with point 25(c) of the Temporary Framework.
 - The overall amount of loans per beneficiary covered by guarantees granted under the measure cannot exceed the limits of point 25(d) of the Temporary Framework (recital (17)(e)). Specifically, the Commission considers such aid to be proportionate in the present case, since it includes a maximum threshold that is linked to the beneficiary's declared liquidity needs, which will be verified during the application. Moreover, such threshold provides administrative simplification in the current urgent circumstances, in order to disburse effectively the aid. The beneficiaries are solely SMEs, which generally face greater challenges in receiving finance than large undertakings, even in normal times.
 - The measure limits the duration of the guarantees to a maximum of six years (recital (17)(h)). The guarantees described in recital (17)(d) cover not more than 90% for the small and micro-enterprises and not more than 80% for the medium sized enterprises of the loan principal.¹⁰ Losses stemming from the loans are sustained proportionally and under the same conditions by the credit institutions and the State. Furthermore, when the size of the loan decreases over time, the guaranteed amount decreases proportionally (recital (17)(f)). The measure therefore complies with point 25(f) of the Temporary Framework.
 - Guarantees granted under the measure relate to investment and working capital loans (recital (17)(c)). The measure therefore complies with point 25(g) of the Temporary Framework.
 - Firms in difficulty already on 31 December 2019 within the meaning of the GBER, ABER and FIBER are excluded from benefitting from the measure (recital (14)). The measure therefore complies with point 25(h) of the Temporary Framework.
 - By leaving a 10% or 20% exposure to the loans with the commercial banks that, in any case, will have to comply with the interest thresholds set by the legislation and the government decision to approve the methodological norms, the measure introduces safeguards in relation to

¹⁰ For micro-enterprises and small enterprises the guarantees of 90% of financing working capital loans could be cumulated with the guarantee of 80% for investment loans within the maximum loan amount of RON 10 million (approximately EUR 2 million).

the possible indirect aid in favour of the credit institutions or other financial institutions to limit undue distortions to competition. Such safeguards ensure that these institutions, to the largest extent possible, pass on the advantages of the measure to the final beneficiaries (recital (17)(j)). The measure therefore complies with points 28 to 31 of the Temporary Framework.

- The Romanian authorities have confirmed that they will respect the monitoring and reporting rules laid down in Section 4 of the Temporary Framework (recital (20)).
- The applicable cumulation rules are respected (recitals (18) and (19)).
- Lastly, the mobilisation of the guarantees is contractually linked to specific conditions which have to be agreed between the parties when the guarantee is initially granted (recital (17)(k)).

4. COMPLIANCE WITH INTRINSICALLY LINKED PROVISIONS OF DIRECTIVE 2014/59/EU

- (36) Without prejudice to the possible application of Directive 2014/59/EU on bank recovery and resolution (“**BRRD**”)¹¹ in the event that an institution benefiting from the measures meets the conditions for the application of that Directive or of that Regulation, the Commission notes that the notified measures do not appear to violate intrinsically linked provisions of BRRD.
- (37) In particular, aid granted by Member States to non-financial undertakings as final beneficiaries under Article 107(3)(b) TFEU in line with the Temporary Framework, which is channeled through credit institutions or other financial institutions as financial intermediaries, may also constitute an indirect advantage to those institutions.¹² Nevertheless, any such indirect aid granted under the measure does not have the objective of preserving or restoring the viability, liquidity or solvency of those institutions. The objective of the measure is to remedy the liquidity shortage faced by undertakings that are not financial institutions and to ensure that the disruptions caused by the COVID-19 outbreak do not undermine the viability of such undertakings, especially of SMEs. As a result, aid granted under the measure does not qualify as extraordinary public financial support under Art. 2(1) No 28 BRRD.
- (38) Moreover, as indicated in recital (17)(j) above, the measure introduces safeguards in relation to any possible indirect aid in favour of the credit institutions or other financial institutions to limit undue distortions to competition. Such safeguards ensure that those institutions, to the largest extent possible, pass on the advantages provided by the measure to the final beneficiaries.
- (39) The Commission therefore concludes that the measure does not violate any intrinsically linked provisions of the BRRD.

¹¹ OJ L 173, 12.6.2014, p. 190-348.

¹² Points 6 and 29 of the Temporary Framework.

5. CONCLUSION

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

Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President

CERTIFIED COPY
For the Secretary-General,

Jordi AYET PUIGARNAU
Director of the Registry
EUROPEAN COMMISSION