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Subject: State aid / Romania
SA. 58003 (2020/N)
Scheme for compensating agricultural producers who set up crops in autumn 2019 affected by pedological drought

Sir,

The European Commission ("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 ("TFEU").

The Commission has based its decision on the following considerations:

1. PROCEDURE

- (1) By letter of 13 July 2020, registered by the Commission on the same day, Romania notified, according to Article 108(3) TFEU, the above mentioned aid scheme.
- (2) The Commission sent a request for additional information to the Romanian authorities on 29 July 2020, which the Romanian authorities answered by letter of 7 August 2020. They submitted further information on 13 August 2020.

* Handling instructions for SENSITIVE information are given at <https://europa.eu/ldb43PX>

Excelenta sa dl Bogdan AURESCU
Minister for Foreign Affairs of Romania
Aleea Modrogan nr. 14, sector 1 011826,
București ROMANIA

- (3) Romania exceptionally agrees to waive its rights deriving from Article 342 TFEU, in conjunction with Article 3 of Regulation 1/1958¹ and to have this Decision adopted and notified in English.

2. DESCRIPTION

2.1. Title

- (4) Scheme for compensating agricultural producers who set up crops in autumn 2019 affected by pedological drought.

2.2. Objective

- (5) With the present notification the authorities of Romania wish to establish a scheme for compensating agricultural producers who set up crops in autumn 2019 affected by pedological drought.

2.3. Legal basis

- (6) The legal basis is the draft *Ordonanță de Urgență privind instituirea unei scheme de ajutor de stat pentru producătorii agricoli care au înființat culturi în toamna anului 2019, afectate de seceta pedologică* (Emergency Ordinance on the establishment of a State aid scheme for agricultural producers who set up crops in autumn 2019, affected by pedological drought).

2.4. Duration

- (7) From the date of notification of the Commission's decision till 31 December 2020.

2.5. Budget

- (8) The overall budget of the scheme is RON 1 088 409 000 (around EUR 225 million). The granting authority is the Ministry of Agriculture and Rural Development.

2.6. Beneficiaries

- (9) The beneficiaries of the scheme are agricultural producers operating in the primary agricultural production and having submitted a single application for area payment in the 2020 campaign, respectively:
- (a) agricultural producers, authorized natural persons, individual enterprises and family enterprises, established according to the Ordinance Government Emergency Department no. 44/2008 on the development of economic activities by authorized natural persons, individual enterprises and family enterprises, approved with amendments and completions by Law no. 182/2016, with subsequent amendments and completions;
 - (b) agricultural producers who are legal entities, except producer groups.

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

- (10) Aid will not be granted to undertakings in difficulty, within the meaning of the definition stipulated in point 35 (15) of the European Union Guidelines for State aid in the agricultural and forestry sectors and in rural areas 2014 to 2020² (hereinafter "the Guidelines") unless the financial difficulty of an undertaking has been caused by the event in cause³.
- (11) The Romanian authorities committed to suspend the payment of the aid if the beneficiary is subject to an outstanding recovery order following a previous Commission decision declaring an aid illegal and incompatible with the internal market.

2.7. Form of aid

- (12) Direct grant.

2.8. Description of the aid scheme

- (13) The agricultural year 2019-2020 started with a significant lack of rainfall compared to the multiannual average which induced an accentuated pedological drought in almost all regions of the country, causing delays in the sowing of autumn crops in some areas, or reducing the rise in other areas. The pedological drought is defined as unfavorable meteorological phenomenon that can be assimilated to a natural disaster, manifested by high temperatures above the comfort limit and low rainfall, a phenomenon that affects the area of an agricultural crop established in autumn 2019 in a percentage of over 30% of the crop area, declared by an agricultural producer.
- (14) The agrometeorological information on the manifestation of the drought phenomenon between September 2019 - April 2020, provided by the National Meteorological Administration, for the agricultural regions Banat, Crişana, Maramureş, Dobrogea, Moldova, Muntenia, Oltenia and Transylvania, resulted in the following conclusions on monthly precipitation amounts:
- (a) the precipitation amounts from September 2019 represented 50% of the precipitation quantities of September 2017 and exceeded the precipitations of September 2018;
 - (b) the precipitation amounts from October 2019 represented 40% of the precipitation quantities of October 2017 and exceeded the precipitations of October 2018;
 - (c) the precipitation amounts in November 2019 represented 80% of the precipitation quantities of November 2017 and 90% of the precipitation quantities of November 2018;

² OJ C 204 of 1.7.2014, p. 1. Amended by the Notices published in OJ C 390, 24.11.2015, p. 4; OJ C 139, 20.4.2018, p. 3 and OJ C 403, 9.11.2018, p. 10.

³ The Romanian authorities will control at the moment of granting the aid, if the situation of difficulty of the beneficiary is linked to the pedological drought in cause and not to another different reason.

- (d) the precipitation amounts in December 2019 represented 50% of the precipitation quantities of December 2017 and 50% of the precipitation quantities of December 2018;
 - (e) the precipitation amounts in January 2020 represented 20% of the precipitation amounts of January 2018 and 20% of the precipitation quantities of January 2019;
 - (f) the precipitation amounts in February 2020 represented 70% of the precipitation amounts of February 2018 and exceeded the precipitation amounts of February 2019;
 - (g) the precipitation amounts from March 2020 represented 20% of the precipitation quantities of March 2018 and were within the limits of the precipitation quantities of March 2019;
 - (h) the precipitation amounts in April 2020 represented 70% of the precipitation quantities of April 2018 and 20% of the precipitation quantities of April 2019.
- (15) Following the analysis of the monthly rainfall and the soil moisture reserve, the phenomenon of extreme/severe/moderate pedological drought is manifested in all the analysed agricultural regions.
 - (16) The manifestation of these adverse meteorological phenomena that can be assimilated to a natural disaster seriously affects both the production obtained and the incomes of agricultural producers in the vegetable sector, with implications for ensuring food security and the resumption of the production cycle by agricultural producers.
 - (17) The Operational Center for Emergency Situations within the Ministry of Agriculture and Rural Development, following the information contained in the Synthesis Reports with damages to agricultural crops, associated to the pedological drought, prepared by the County Committees for emergencies, estimates at approximately 34,647 the number of farmers affected and at approximately 1,168,064.79 ha crops established in autumn 2019 affected by varying degrees of damage on important agricultural areas at national level, broken down as follows: wheat 833,213.53 ha, rye 314.5 ha, triticale 5,112.51 ha, barley (*hordeum vulgare*) 175,680.44 ha, barley (*hordeum disticum*) 16,613.71 ha, oats 628, 69 ha and rapeseed 136,501.41 ha.
 - (18) The Government of Romania will formally recognise in the legal basis of the scheme the character of the event as an adverse climatic event, which can be assimilated to a natural disaster.
 - (19) The Romanian authorities have demonstrated that there is a direct link between the drought and the damage suffered by the undertakings. The Romanian authorities confirmed that any potential beneficiary has to prove that the drought has destroyed more than 30% of his average production calculated on the basis of the preceding three-years period.
 - (20) The eligible costs are the damage incurred as a direct consequence of the drought. Eligible for aid is the loss of income due to the full or partial destruction of the

agricultural production resulting from the occurrence of an adverse climatic event, which can be assimilated to a natural disaster as referred to in point (354)(b) of the Guidelines.

- (21) The damage and the eligible costs are assessed by the granting authority based on the documentary evidence, which is clear and specific.
- (22) The method provided for in point (358) of the Guidelines is not used, for reasons relating to the period of time for which State aid would be granted for losses incurred (given that the official determination of the quantities of products obtained would take place after the end of the harvest period, during the last trimester of this year), the official determination of the average selling price obtained during the year (which will be only possible in 2021), the actual period for granting the amounts (which would be estimated only in the second semester of 2021) and the urgent need for State aid to ensure the ability of farmers to finance, to a certain extent, their work in the new agricultural campaign. Consequently, according to the Romanian authorities, the application of the provisions of point (358) of the Guidelines would have a negative impact on the plant sector as a whole.
- (23) The calculation of the damage is made using an alternative method as provided for by point (361) of the Guidelines.
- (24) The losses caused are the expenditures made in the period from the establishment of crops in the fall of 2019 to April 2020 inclusive, resulting from the estimates of expenditures for each calamity crop, prepared by the Research Institute for Agricultural Economics and Rural Development.
- (25) The State aid is a flat-rate compensatory payment covering 40% of the losses resulting from the estimates of expenditure for each calamity crop (wheat, rye, triticale, barley, oats and rapeseed). The amounts of State aid are expressed in lei / ha and represent:

Culture	Amount of compensatory aid (lei/ha)
Wheat	925,0
Rye	925,0
Triticale	805,0
Barley (<i>hordeum vulgare</i>)	912,0
Barley (<i>hordeum disticum</i>)	951,0
Oats	772,0
Rapeseed	1002,0

- (26) The amount of the compensatory aid for each beneficiary of the scheme is determined by multiplying the affected areas entered in the minutes of finding and assessing damage to agricultural crops, with the amounts provided in the table corresponding to each culture.
- (27) The aid intensity is until 40% of the eligible costs.
- (28) The Romanian authorities inform that drought is a phenomenon that is not insured by insurance companies.
- (29) According to the Romanian authorities, the cumulation of the present grant with aid received from other public resources, including regional aid schemes (national or EU) to cover the same eligible costs is excluded. The aid authorised under the scheme will not be cumulated with any *de minimis* aid in respect of the same eligible costs.
- (30) The aid is paid out directly to the farmer concerned.
- (31) The Romanian authorities confirm that the aid relates closely to the Common Agricultural Policy (CAP), and is consistent with the rural development objectives referred to in point (10) of the Guidelines.

2.9. Transparency

- (32) Romania has informed the Commission that in order to comply with the transparency requirement the publication of the aid scheme and the individual aid grants above 60 000 EUR will be done through the following web page: www.apia.org.ro. The Romanian authorities are committed to ensuring that the information is kept for at least ten years and made available to the general public without restriction.

3. ASSESSMENT

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

- (33) According to Article 107(1) TFEU, "[s]ave as otherwise provided in the Treaties, any 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".
- (34) The qualification of a measure as aid within the meaning of this provision therefore requires the following cumulative conditions to be met: (i) the measure must be imputable to the State and financed through State resources; (ii) it must confer an advantage on its recipient; (iii) that advantage must be selective; and (iv) the measure must distort or threaten to distort competition and affect trade between Member States.
- (35) The scheme in question is imputable to the State and financed through State resources, as shown in recital (8). The notified scheme is selective because other undertakings in a comparable legal and factual situation, in the light of the objective pursued by the scheme, in the agricultural sector or in other sectors, are

not eligible for aid and thus will not receive the same advantage. The notified scheme therefore gives only certain undertakings, as shown in recital (9), a selective economic advantage, by strengthening their competitive position on the market. 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 competition⁴.

- (36) Pursuant to the case law of the Court of Justice, aid to an undertaking appears to affect trade between Member States where that undertaking operates in a market open to intra-EU trade⁵. The beneficiaries of aid operate on a market of agricultural sector where intra-EU trade takes place⁶. The sector concerned is open to competition at EU level and therefore sensitive to any measure in favour of the production in one or more Member States. Therefore, the present scheme is liable to distort competition and to affect trade between Member States.
- (37) In light of the above, the conditions of Article 107(1) TFEU are fulfilled. It can therefore be concluded that the proposed scheme constitutes State aid within the meaning of that Article. The aid may only be considered compatible with the internal 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

- (38) The aid scheme was notified to the Commission on 13 July 2020. 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

- (39) Under Article 107(3)(c) TFEU, 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.
- (40) For this derogation to be applicable, the aid must comply with the relevant Union State aid rules.

3.3.2. Application of the Guidelines

- (41) As regards the notified aid scheme, 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" of the Guidelines is applicable.

⁴ 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.

⁵ 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.

⁶ In 2019, Romanian trade with other Member States amounted to EUR 4.571 billion for exports and to EUR 7.165 billion for imports.

- (42) According to point (346) of the Guidelines, the Commission will consider the aid to compensate for the damage caused by an adverse climatic event which can be assimilated to a natural disaster compatible with the internal market under Article 107(3)(c) TFEU if it complies with the common assessment principles of the Guidelines and with the specific provisions set out in Section 1.2.1.2 of Part II of the Guidelines.

3.3.2.1. Common Assessment Principles

Contribution to a common objective

- (43) According to point (44) the aid should be related closely to the Common Agricultural Policy (CAP), and be consistent with the rural development objectives referred to in point (10) of the Guidelines. The current aid scheme fulfils these requirements as stated in recitals (16) and (31), therefore point (44) of Guidelines is complied with.
- (44) 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 Sections 1.1.10.3, 1.2, 1.3, 2.8 and 2.9 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 of Part II of the Guidelines and is outside the scope of rural development. Therefore, the requirements under (48) of the Guidelines are complied with.

Need for State intervention

- (45) 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 provisions of Part II of the Guidelines. Therefore, such aid should be considered necessary to achieve the objectives of common interest specified under Section 3.1. of Part I. The current aid scheme complies with the specific provisions of Section 1.2.1.2 of Part II of the Guidelines, as shown in recitals (54) to (70), and therefore the requirements under point (55) of the Guidelines are complied with.

Appropriateness of aid

- (46) According to point (57) of the Guidelines, the Commission considers that aid granted in the agricultural and forestry sectors and in rural areas, which complies with the specific provisions of the relevant Sections of Part II of the Guidelines, is an appropriate policy instrument. The current aid scheme complies with the specific provisions of Section 1.2.1.2 of Part II of the Guidelines, as shown in recitals (54) to (70), and therefore the requirements under point (57) of the Guidelines are complied with.
- (47) The aid is granted in the form of a direct grant to compensate for the damage caused by adverse climatic event, which can be assimilated to a natural disaster. The direct grant is the appropriate aid instrument as other forms of aid e.g. guarantee or aid in form of reduced taxes would not achieve the desired effect to the same extent as the direct grant. As the aid amount is limited to the minimum

necessary, as shown in recitals (49) to (51), and the specific requirements as described in recitals (54) to (70) are fulfilled, the possible negative effect on competition and trade is low. Therefore, the requirements under points (59) and (60) of the Guidelines are complied with.

Incentive effect and need for aid

- (48) According point (75)(e) of the Guidelines the incentive effect is not required or is deemed to be present in case of an aid to compensate for damage caused by adverse climatic event which can be assimilated to a natural disaster.

Proportionality of the aid

- (49) Points (82) to (84) of the Guidelines stipulate that if the aid amount does not exceed the eligible costs and the aid intensity stays within the ceilings set out in Part II of the Guidelines, the aid is deemed to be proportionate. The current aid scheme complies with the specific provisions regarding eligible costs and aid intensity laid down in Part II, Section 1.2.1.2 of the Guidelines, as shown in recital (64), and therefore points (82) and (84) of the Guidelines are complied with.
- (50) According to point (85) of the Guidelines the aid amount has to be calculated by the granting authority when granting the aid and the eligible costs will be supported by clear, contemporary documentary evidence. Pursuant to recital (21) of the present decision, point (85) of the Guidelines is complied with.
- (51) As described in recital (29) above, the Romanian authorities assured that the aid under the notified scheme will not be cumulated with aid received from other local, regional, national or European Union sources, nor with any *de minimis* aid in respect of the same eligible costs. Consequently, the requirements under point (104) of the Guidelines are complied with.

Avoidance of undue negative effects on competition and trade

- (52) According to point (113) of the Guidelines, the Commission considers that where an aid complies with the provisions 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. The current aid scheme complies with the provisions of Section 1.2.1.2 of Part II of the Guidelines, as shown in recitals (54) to (70), and therefore point (113) of the Guidelines is complied with.

Transparency

- (53) Regarding the transparency requirements stipulated in points (128) to (132) of the Guidelines, the Romanian authorities have committed to comply with these requirements as stated in recital (32).

3.3.2.2. Specific assessment according to the category of aid

- (54) According to point (347), first sentence of the Guidelines the rules apply only for adverse climatic event which can be assimilated to a natural disaster as defined in point (35).34 of the Guidelines. As explained in recitals (13) to (17) and in recital

(19) above, the severe pedological drought from autumn 2019 to spring 2020 has destroyed more than 30 % of the average of the production calculated on the basis of the preceding three-year period. Therefore, the definition of point (35).34 of the Guidelines is met.

- (55) According to point (347), second sentence of the Guidelines the rules apply only to undertaking active in the primary agricultural production. As described in recital (9) above, the requirement of point (347), second sentence of the Guidelines is fulfilled.
- (56) According to point (348)(a) of the Guidelines the competent authority of the Member State concerned has formally to recognize the character of the event as an adverse climatic event, which can be assimilated to a natural disaster. As explained in recital (18) above the adverse climatic events, which can be assimilated to natural disasters are formally recognised by the Romanian Government. Therefore, the requirement of point (348)(a) of the Guidelines is fulfilled.
- (57) According to point (348)(b) of the Guidelines there has to be a direct causal link between the adverse climatic event, which can be assimilated to a natural disaster and the damage suffered by the undertaking. As explained in recital (19), the requirement of point (348)(b) of the Guidelines is fulfilled
- (58) According to point (351) of the Guidelines the aid must be paid directly to the undertaking concerned. As explained in recital (30) above the aid is paid out directly to the farmer concerned. Therefore, the requirement of point (351) of the Guidelines is fulfilled.
- (59) 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 paid out within four years from the date of the event. As the Romanian authorities notified the scheme on 13 July 2020 and the duration of the scheme is until the end of 2020, as shown in recital (7), the requirements set in point (352) of the Guidelines are fulfilled.
- (60) According to point (353) of the Guidelines there are two requirements: first, that the eligible costs are the damage incurred as a direct consequence of the adverse climatic event, which can be assimilated to a natural disaster, and second, that they are assessed either by a public authority, by an independent expert recognised by the granting authority or by an insurance undertaking. As regards the first requirement it is explained in recital (20) above that the eligible costs are the damage incurred as a direct consequence of the drought. As regards the second requirement it is explained in recital (21) that the damage is assessed by the granting authority. Therefore, the two requirements of point (353) of the Guidelines are fulfilled.
- (61) According to recital (20) the damage includes the loss of income due to the full or partial destruction of the agricultural production. This is in line with point (354) b of the Guidelines.
- (62) According to point (355) of the Guidelines the calculation of the damage must be made at the level of the individual beneficiary. As explained in recital (26) above this requirement is fulfilled.

- (63) According to point (361) of the Guidelines the Commission will accept other methods for the calculation of damage (different from the ones stipulated in points (356) to (360) of the Guidelines) provided that it is satisfied that these are representative, not based on abnormally high yields and do not result in overcompensation of any beneficiary. The method for the calculation of damage proposed by the Romanian authorities is described in recitals (22) to (26) above. This method satisfies the requirements of point (361)(b) of the Guidelines as it is based on the influence and manifestations of climate indexes communicated by the National Meteorological Administration and avoid overcompensation of any beneficiary because it is limited to 40% of the total losses of the beneficiary. The method is representative, as it applies uniformly to all farmers and takes into account the expenditure incurred by farmers in the period from the establishment of crops from autumn 2019 to April 2020, including results from estimates of expenditure for each crop affected by to the Research Institute for Agricultural Economics and Rural Development. The method used by the Romanian authorities in the estimates of expenditure is based on average cost incurred, which does not lead to a level of State aid higher than the one that would result from the application of the method provided in point (358) of the Guidelines, based on production losses.
- (64) As there are not any insurance company covering this natural phenomenon, as mentioned in recital (28), the 50% reduction of the scheme is not applicable. Requirements of points (362) and (363) of the Guidelines are complied with.
- (65) It can therefore be concluded that the relevant requirements of Section 1.2.1.2 of Part II of the Guidelines are met.

Duration of the aid scheme

- (66) As to the duration of the scheme, pursuant to point (719) of the Guidelines the Commission shall only authorize schemes of limited duration. As shown in recital (6), this condition is met.

Undertakings in difficulty and outstanding recovery orders

- (67) The Commission notes that no aid will be granted to undertakings in difficulty, unless the financial difficulty is caused by the adverse climatic event which can be assimilated to a natural disaster, as shown in recital (10), and that the Romanian authorities will suspend the payment of the aid if the beneficiary is subject to an outstanding recovery order following a previous Commission decision declaring an aid illegal and incompatible with the internal market, as shown in recital (11). Therefore the provisions of points (26) and (27) of the Guidelines are complied with.
- (68) In view of the above considerations, the Commission considers that the notified aid scheme is compatible with the internal market on the basis of Article 107(3)(c) TFEU given that it complies with the Guidelines.

4. CONCLUSION

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

If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site: <http://ec.europa.eu/competition/elojade/isef/index.cfm>.

Your request should be sent electronically to the following address:

European Commission,
Directorate-General Competition
State Aid Greffe
B-1049 Brussels
Stateaidgreffe@ec.europa.eu

Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President

