Commission Decision (EU) 2019/1144 of 17 December 2018 on the State aid SA.36086 (2016/C) (ex 2016/NN) implemented by Romania for Oltchim SA (notified under document C(2018) 8592) (Only the Romanian version is authentic) (Text with EEA relevance)

COMMISSION DECISION (EU) 2019/1144

of 17 December 2018

on the State aid SA.36086 (2016/C) (ex 2016/NN) implemented by Romania for Oltchim SA

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(Only the Romanian version is authentic)

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first subparagraph of Article 108(2) thereof,

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a),

Having called on interested parties to submit their comments pursuant to the provision(s) cited above[1] and having regard to their comments,

Whereas:

1. PROCEDURE

(1) On 17 July 2009, the Romanian authorities notified to the Commission the planned conversion of a public debt of Oltchim S.A. (‘Oltchim’) into equity. On 7 March 2012, by Commission Decision 2013/246/EU[2] in case SA.29041 — *Support measures in favour of Oltchim SA Râmnicu Vâlcea* (‘the 2012 Commission decision’), the Commission concluded that the debt conversion of RON 1 049 million (EUR 231 million) did not entail State aid. That conclusion was based on the firm commitment of the Romanian Government to privatise Oltchim in full, including the whole stake resulting for the public authorities after the debt conversion.

(2) After the failed attempt to privatise Oltchim, the Romanian authorities initiated contacts with the Commission in October 2012 to prepare the formal notification of rescue aid to Oltchim (registered as SA.35558).

(3) In November 2012 the press reported that the Romanian authorities had concluded an agreement with the creditor banks of Oltchim for the financing of the resumption of Oltchim's production. Against this background, the Commission decided to open an *ex officio* case registered as SA.36086 and by letter of 18 January

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2013 requested Romania to provide information. Romania replied to this request on 7 February 2013. The Commission requested additional information on 18 February 2013 to which Romania replied on 11 March 2013. Romania submitted additional information at a meeting in June 2013 and by letter of 25 September 2013.

(4) By letters of 5 August 2014, 16 October 2014 and 3 March 2015 the Commission requested additional information to which Romania replied respectively on 15 September 2014, 26 November 2014, 26 March 2015 and 16 April 2015. On 11 May 2015 the Commission requested additional information, which Romania provided at a meeting on 26 May 2015 and by letters of 10 June 2015 and 25 June 2015. On 3 September 2015 the Commission requested additional information which Romania supplied on 10 September 2015. Romania also submitted spontaneous information on 22 October 2015 and requested meetings, which took place on 23 October 2015 and 22 January 2016.

(5) By letter dated 8 April 2016, the Commission informed Romania that it had decided to initiate the procedure laid down in Article 108(2) TFEU in case SA.36086. The Commission decision to initiate the procedure was published in the *Official Journal of the European Union*[(3)]. The Commission invited interested parties to submit their comments on the aid.

(6) The Commission received initial comments from Romania (15 June 2016) and from four interested parties. Third party comments were forwarded to Romania, which was given the opportunity to react; its comments were received by letter dated 28 November 2016.

(7) By letter of 29 July 2016, Romania proposed a modification to the sale process of Oltchim for the purpose of achieving economic discontinuity. The Romanian authorities supplied additional information (on 14 September 2016, 4 November 2016 and 5 December 2016), and modified the terms of the initial sale process.

(8) Following the above-mentioned exchanges, the consulting firm AT Kearney, in its quality of representative of Oltchim ('the Seller') provided successive reports on the progress of the asset sale of Oltchim on 27 January 2017, 4 April 2017, 25 July 2017, 15 September 2017, 21 November 2017, 18 January 2018, and 16 July 2018.[(4)]

(9) During the sale process, a number of third parties intervened and the Romanian authorities provided comments on each of these interventions.

(10) An additional request for information was sent to Romania on 26 January 2018 to which Romania replied on 16 May 2018.

2. BACKGROUND

2.1. Beneficiary

(11) Oltchim is one of the largest petrochemical companies in Romania and South-East Europe. The Romanian State (currently *via* the Ministry of Economy) maintains a controlling stake of 54,8 % in the company.

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(12) Oltchim mainly produces liquid caustic soda, propylene oxide-polyols, plasticisers and oxo-alcohols. Oltchim is the biggest producer of liquid caustic soda on the European market (EU market share of 41 % in 2015), the only producer of caustic soda beads in Central Europe, as well as the only producer of polyvinyl chloride and polyethers in Romania and third in Europe. Oltchim exports over 74 % of its production inside and outside of Europe[(5)].

(13) Oltchim is the main industrial employer in Vâlcea (a Romanian region assisted under Article 107(3)(a) TFEU). In 2015 Oltchim employed 2 208 employees, of which, 1 982 employees at the Râmnicu Vâlcea site and 226 employees at the site of the Pitești — Petrochemical Division Bradu.

2.2. **Facts**

2.2.1. *The public debt of Oltchim and failed privatisation attempts (1995-2011)*

(14) Oltchim has a long history of economic difficulties. Over the period 1995-2000 it contracted a series of commercial loans, backed with State guarantees. Oltchim was not able to repay the loans and the banks called upon the State guarantees. In 2002 the Ministry of Finance transferred Oltchim's debt stemming from the State guarantees to the Romanian privatisation agency ('AAAS'[(6)]). The Ministry of Finance continued to make payments on account of the State guarantees until December 2006 and again transferred to AAAS all claims resulting from the subsequent payments made on the basis of the triggered guarantees.

(15) Over the years 2007-2012 Oltchim's financial situation deteriorated, its financial accounts systematically showed a growing operating loss, accumulated losses and negative own funds. On 31 December 2012 (before entering into insolvency) Oltchim's financial accounts showed an operating loss of EUR 62,9 million, a net loss of EUR 127,8 million and accumulated losses of EUR 383 million.

(16) Romania made several attempts to privatise Oltchim (in 2001, 2003, 2006, 2007 and 2008) but all failed.

(17) Specifically, in 2001, the State negotiated and signed with the Canadian mining company Exall Resources the sale of a 53,2 % stake. As the purchaser failed to pay the value of the shares (USD 10 million, that is approximately EUR 8,9 million[(7)]) and failed to guarantee the technological and environmental investments promised, the deal was no longer pursued[(8)]. In 2002 the State decided to attempt a new call for privatisation, opting for the conversion of the AVAS (precursor of AAAS) debt into equity. However, the deadline for submitting bids was postponed twice and given the opposition of a potential investor and of minority shareholders including by action in Court, in 2003 the offer was revoked[(9)]. Subsequently, after the revocation in 2006 of a conversion of the debt originally approved in 2003, the Romanian authorities again tried to privatise Oltchim together with the debt in 2006 and 2008. However, according to the Romanian authorities, no investor was interested in buying Oltchim under such conditions[(10)].

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2.2.2. *The 2012 Commission decision*

(18) By the 2012 Commission decision, the Commission decided that the planned conversion into equity of debt towards AAAS of RON 1 049 million[(11)] (circa EUR 231 million) did not entail State aid. This decision was based on Romania's firm commitment to privatise the entire public share resulting from the debt conversion by the end of May 2012 at the latest, as expressed in two letters from the respective Prime Ministers at that time[(12)].

(19) The Commission took this view after having analysed critically the reports prepared by independent consultants[(13)] and submitted by the Romanian authorities in the course of proceedings. Those reports compared the proceeds from a liquidation of Oltchim with those of a privatisation. In the liquidation scenario, the value of Oltchim's assets was estimated as RON 692 055 000 (EUR 152,2 million), comprising RON 264 119 000 for pledged assets and RON 427 936 000 for unpledged assets[(14)].

(20) According to the 2011 Raiffeisen report, in the liquidation scenario AAAS would have collected around RON 105,4 million (around EUR 23 million), representing 12 % of its total claim.

(21) This amount was compared to the value of AAAS' claim in a debt conversion plus privatisation scenario. In this scenario, depending on the method used for the estimation of the enterprise value, the market value of Oltchim was estimated between EUR 28 million and EUR 97 million. Following the conversion of its debt into equity and the subsequent privatisation, AAAS would obtain between EUR 22,9 million and EUR 79,5 million[(15)].

(22) In view of this comparison, the Commission concluded that: 'if the company is fully privatised in the short-term after the debt conversion, the notified Measure (conversion of the debt followed by full privatisation) does not involve an advantage to Oltchim as that measure allows the public creditor AVAS [AAAS] to recover more than if it decided to place the company in liquidation. In that respect, the Commission takes note of the firm commitment taken by the Romanian authorities at the time, to privatise the company in full by 31 May 2012'[(16)].

(23) However, Oltchim did not implement the debt-to-equity conversion of AAAS debt as approved by the 2012 Commission decision. Production had just been suspended in August 2012 following a refusal of Oltchim's main electricity supplier Electrica S.A. ('Electrica') to provide services without being paid.

(24) Immediately after Oltchim ceased operation the Romanian authorities started to send clear signals to the public about their readiness to do all possible efforts to save Oltchim. Only a few days before the privatisation date, the Romanian Minister of Economy at the time indicated between 2 to 4 weeks as a timespan for the re-starting of Oltchim's production. He was quoted as saying that he had 'discussed with the management of the complex who has a plan of re-launching of installations'[(17)].

(25) On 22 September 2012 the privatisation process failed, with a few cases pending before the national courts in relation to the privatisation's process.[18]

2.2.3. *Oltchim's situation after the failed privatisation of 22 September 2012*

(26) After the failed privatisation, Oltchim's financial situation further deteriorated. During the immediate period following the failed privatisation, the Romanian authorities reiterated their readiness to do the necessary to save Oltchim[19].

(27) On 1 October 2012, a new strategy for the preparation of Oltchim's activity including financial support in the form of rescue aid was envisaged. In a contemporaneous press article, the Romanian Prime-minister at that time explained that the privatisation procedure has failed and added that, '[w]e have to explain today the reserve plan for resuming activities, saving jobs and preparing a new privatisation procedure, under very different, considerably improved conditions'[20]. In the same vein, the Prime-minister announced an upcoming agreement with various creditors for rescuing the company: 'Oltchim's restarting plan will be presented on Thursday and will provide for the next steps on the Vâlcea plant […] Minister of Economy, Commerce and Business Environment […] and the Finance Minister will start to officially discuss with all the main creditors, AVAS, Electrica and the three banks that are the main creditors of Oltchim: BCR, Banca Transilvania and CEC. Together with them, we will present on Thursday the plan to relaunch Oltchim, which clearly sets out the necessary steps for a new management at Oltchim, to finance the restarting of the production, the period of the activity, the payment of outstanding salaries and the preparation for the privatisation that will most likely occur during 2013, under conditions other than those in which it is currently taking place'.[21]

(28) On 17 October 2012, the State Secretary of the Ministry of Economy declared to the press that parts of Oltchim were to be re-opened in a matter of days and that the Government intended to grant a EUR 20 million rescue aid to Oltchim[22].

(29) On 24 October 2012 Oltchim managed to restart its production thanks to a change in trading conditions granted to Oltchim by two public suppliers (CET Govora and National Salt Company Salrom)[23]:

— CET Govora signed a new electricity contract with Oltchim on 15 September 2012 and then agreed to increase electricity supply (initially from 25 October 2012, then from 12 November 2012) and then to further continue supplies from 1 January 2013. These changes in the contractual relationship with Oltchim seem to have been taken in the implementation of several decisions[24] issued by the Vâlcea County Council to ensure electricity supply to Oltchim.

— National Salt Company Salrom ('Salrom') accepted postponement of payments for its supplies.

(30) On 15 November 2012, the Minister of Economy made declarations to the press about the Government's commitment to keep Oltchim alive: 'The idea of insolvency goes out of hand as long as we would have concluded the deal with the main creditors. This is the reason why we have concluded a reorganisation agreement,