Commission Decision (EU) 2019/293 of 8 November 2018 on the State aid SA.43785 (2018/C) (ex 2015/PN, ex 2018/NN) implemented by Romania for restructuring Complexul Energetic Hunedoara (notified under document C(2018) 7308) (Only the Romanian text is authentic) (Text with EEA relevance)

COMMISSION DECISION (EU) 2019/293

of 8 November 2018

on the State aid SA.43785 (2018/C) (ex 2015/PN, ex 2018/NN) implemented by Romania for restructuring Complexul Energetic Hunedoara

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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) thereof,

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

Whereas:

1. PROCEDURE

(1) By letter dated 12 March 2018, the Commission informed Romania that it had decided to initiate the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union ('TFEU') ('the opening decision') in respect of the restructuring aid for Complexul Energetic Hunedoara S.A. ('CE Hunedoara'). The opening decision followed earlier notifications and contacts between the Commission and Romania concerning State aid to CE Hunedoara or its predecessors, as further described in the opening decision and section 2.1 below.

(2) The Commission decision to initiate the procedure was published in the *Official Journal of the European Union*[2]. The Commission invited interested parties to submit their comments thereon.

(3) On 15 May 2018, Romania provided comments on the opening decision. The Commission did not receive comments from interested parties. In addition to the comments received on 15 May 2018, the Commission also held a video conference with the Romanian authorities on 31 July 2018.

Changes to legislation: *There are currently no known outstanding effects for the Commission Decision (EU) 2019/293. (See end of Document for details)*

2. DETAILED DESCRIPTION OF THE AID

2.1. Earlier decisions concerning CE Hunedoara

(4) On 22 February 2012, the Commission had decided not to raise objections on the planned aid totalling RON 1 169 million (ca. EUR 251,3 million) for the closure of three out of the seven coal mines exploited by the National Hard Coal Company JSC Petrosani[3] ('Decision regarding the first aid to coal mines'). In that decision, the Commission found that the planned aid was compatible with the internal market pursuant to Council Decision 2010/787/EU[4] ('the Council Decision on aid to coal mines').

(5) On 20 April 2015, the Commission had considered that Electrocentrale Paroşeni and Electrocentrale Deva, two electricity generation companies that had been merged into CE Hunedoara in 2012, had received between 2009 and 2011 operating State aid which was incompatible with the internal market. In its decision[5] ('the Decision regarding the incompatible aid'), the Commission requested Romania to recover the aid and interest from CE Hunedoara as the successor company of the two electricity generation companies, in case the beneficiaries failed to repay. On 10 June 2015, the Romanian authorities provided information showing that the amount of RON 34 785 015,45 (approx. EUR 7,48 million) covering the aid amount to be recovered and the recovery interest was transferred from CE Hunedoara to the Romanian Ministry of Energy, thereby implementing the recovery decision.

(6) On 21 April 2015, the Commission decided not to raise objections on State aid planned to be granted to CE Hunedoara in the form of dedicated loans up to RON 167 million (approx. EUR 37,7 million)[6] ('the rescue aid decision')[7]. In that decision the Commission found that the loans constituted rescue aid to CE Hunedoara and declared that the aid was compatible with the internal market pursuant to the Guidelines on State aid for rescuing and restructuring of non-financial undertakings in difficulty ('the R&R aid Guidelines')[8], taking into account a number of commitments provided by Romania (see recitals 120 and 123 below).

(7) On 21 October 2015, six months after the rescue aid decision, Romania transmitted a restructuring plan for CE Hunedoara ('the first restructuring plan')[9]. The aim of Romania was to extend the period of reimbursement of the rescue loan, which was the subject of the rescue aid decision and to grant restructuring aid to CE Hunedoara to finance costs included in the first restructuring plan. By letter transmitted on 3 December 2015, Romania communicated its intention to provide information on the restructuring aid four weeks later. The following day, the Commission administratively opened case SA.43785 (2015/PN) concerning the restructuring aid to CE Hunedoara.

(8) On 8 January 2016, Romania pre-notified its intention to grant restructuring aid to CE Hunedoara on the basis of a new restructuring plan, modified as compared to the first restructuring plan ('the amended restructuring plan') and submitted additional supporting information, further complemented on 11 January 2016. On 12 January

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2016, a meeting was held with the Romanian authorities regarding the information submitted.

(9) On 15 January 2016, Romania was informed that significant modifications of the envisaged restructuring aid and the first restructuring plan would be advisable before Romania proceeded with a formal notification. Romania did not provide any new restructuring plan thereafter.

(10) In January 2016, CE Hunedoara entered into formal insolvency proceedings under Romanian law, which however was later on dismissed by a national court.

(11) Thereafter, Romania considered that, whilst CE Hunedoara would eventually be liquidated, it would be necessary to temporarily keep in operation some of the power generation units along with some coal mines and related coal preparation services supported with a compensation for generation costs. Based on those considerations and new plans as to possible future successor(s) of CE Hunedoara operating with part of the latter's assets, on Commission's request, the Romanian authorities submitted information on 12 May 2016, during a videoconference on 18 May 2016, on 9, 25 and 29 August 2016, during a meeting on 12 October 2016, as well as on 9 November 2016, 17 May 2017 and 1 September 2017. The information supplied on 17 May 2017 included, in particular, a timeline for the eventual liquidation of CE Hunedoara.

(12) On 24 November 2016, based on a separate notification, the Commission decided not to raise objections on RON 447,8 million (ca. EUR 96,2 million) planned to be granted to CE Hunedoara for the closure of two out of the four coal mines still operated by CE Hunedoara which were not the subject of the Decision regarding the first aid to coal mines[(10)] ('Decision regarding the second aid to coal mines'). In that decision the Commission found that the planned aid was compatible with the internal market pursuant to the Council Decision on aid to coal mines.

2.2. The beneficiary: CE Hunedoara

(13) CE Hunedoara is a vertically integrated power generation company headquartered in Petrosani, Hunedoara County. Its shares are fully owned by the Romanian State. CE Hunedoara uses mainly indigenous coal, which it extracts from its coal mines, to produce electricity heat for the surrounding cities. Its two power plants, Deva[(11)] and Paroseni[(12)], have a total installed nominal capacity of 1 225 MW. CE Hunedoara produces approximately 4,2 % of the electricity consumed in Romania, where it is the only major producer of electricity in the centre and northwest areas. The company employs approx. 6 600 people, of which 1 750 jobs relate to power generation and 4 700 to mining activities.

(14) CE Hunedoara was established in November 2012 by merging two previously failing and now liquidated State owned companies, Electrocentrale Paroseni and Electrocentrale Deva ('the predecessor companies'). Following the liquidation of the National Hard Coal Company JSC Petrosani, there were four coal mines planned to remain in operation and not planned to receive closure aid under the Decision regarding the first aid to coal mines. These were merged into CE Hunedoara together with the

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power generation units and related administrative staff and real estate of Electrocentrale Paroseni and Electrocentrale Deva, since virtually all of the coal supplied by the four coal mines was used by Electrocentrale Paroseni and Electrocentrale Deva as fuel for power generation and heat supply. In particular:

— CE Hunedoara initially took over production assets and liabilities from the predecessor companies. Both companies were consistently unable to sell electricity at competitive market prices in Romania and received incompatible operating aid in the amounts of RON 22,62 million and RON 3,65 million between 2009 and 2011 (ca. EUR 5,6 million in total), which the Commission ordered Romania to recover with interest from CE Hunedoara in the Decision regarding the incompatible aid, because of the economic and legal continuity with the beneficiaries[13].

— Subsequently, in August 2013, CE Hunedoara took over four of the seven coal mines from the National Hard Coal Company JSC Petrosani. Earlier, by 2011, National Hard Coal Company JSC Petrosani was operating seven mines; three of them received aid to closure under the Decision regarding the first aid to coal mines. The other four mines later incorporated into CE Hunedoara were allegedly viable. These four coal mines and other productive assets were transferred to CE Hunedoara net of any liability, in particular regarding ca. EUR 1,2 billion debts previously accumulated towards the State or other public bodies, mainly stemming from unpaid taxes and contributions. The debts accumulated had not been taken into account when evaluating the viability of the four mines. The Commission noted the commitment of Romania to notify under State aid rules, if necessary, any State measure concerning the debts towards the State. Romania did not notify the process[14] whereby the four coal mines were transferred free of debt to CE Hunedoara.

2.3. The operational and financial performance of CE Hunedoara

2.3.1. *The operational performance*

(15) According to the Romanian Energy Regulator[15], the share of net electricity generation of CE Hunedoara between 2013-2015 was as follows:

Table 1

Total electricity feed-in 2013-2015 by CE Hunedoara compared to total production

Generator	Capacity used (MW)			Total electricity generated (TWh)		
	2013	2014	2015	2013	2014	2015
CE Hunedoara	1 110 (6 %)	998 (5 %)	1 063 (5 %)	3 (5 %)	2,7 (4 %)	1,84 (2,9 %)
Market volume	18 142 (100 %)	18 448 (100 %)	19 086 (100 %)	55,8 (100 %)	62 (100 %)	62,6 (100 %)

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(16) In Romania, electricity is generated by various types of power plants with varying generation costs. As of July 2012, electricity is traded at wholesale level through the exchange, i.e. spot and forward markets of the Romanian Power Exchange ('OPCOM').

(17) An important criterion for a power plant operation is a comparison of the day-ahead market price and the marginal costs for electricity generation in that power plant. In case of thermal power plants, the main marginal costs are fuel costs, the costs of CO_2 emission certificates and operational marginal costs.

(18) CE Hunedoara registered an average production cost of 274,27 RON/MWh (approx. 59 EUR/MWh) in 2013 310,19 RON/MWh (approx. 67 EUR/MWh) in 2014 and 358,90 RON/MWh (approx. 77 EUR/MWh) in 2015. Moreover, the average cost of the hard coal (the fuel) extraction within CE Hunedoara was around 126 RON/MWh (approx. 27 EUR/MWh), compared to the price of the hard coal on the market of about 40 RON/MWh (approx. 9 EUR/MWh)**(16)**.

(19) However, the weighted average annual price of electricity on the day-ahead market on OPCOM was 165,06 RON/MWh (approx. 35 EUR/MWh) in 2013, 158,93 RON/MWh (approx. 34 EUR/MWh) in 2014 and 166,35 RON/MWh (approx. 36 EUR/MWh) in 2015. Also, on the bilateral centralised market of OPCOM the average annual price of electricity price varied between 182,94 RON/MWh (approx. 39 EUR/MWh) and 162,41 RON/MWh (approx. 35 EUR/MWh) during 2013 to 2015**(17)**. In other words, between 2013 and 2015 when the loans at issue were granted, the average production costs of CE Hunedoara were between 66 % to 116 % higher than the prices at which electricity was traded on the day ahead market and between 50 % and 121 % higher than the prices on the bilateral centralised market of the Romanian power exchange.

(20) It can be noted that under such market prices CE Hunedoara could not operate profitably on a lasting basis because the day-ahead prices and forward prices were below the production costs of CE Hunedoara. In a competitive electricity market, one would expect any production to be sold at a price above its marginal costs to attain a margin of profit. However, CE Hunedoara was manifestly unable to do so as from its establishment other than occasionally, as evidenced by the failure of CE Hunedoara to set aside sufficient operating revenues to purchase the CO_2 emission certificates needed in 2014 and 2015. Coal fired power plants usually operate as baseload operating power plants with load factor of 70 % or higher**(18)**. However, it can be seen from the electricity generation data in Table 1 that the load factor of CE Hunedoara was 30,8 % in 2013 and 2014 dropping below 20 % in 2015. This can be explained by the fact that the productive assets in the form of coal mines and the two power generation plants which merged into CE Hunedoara in November 2012 were the same as those operated by the failed predecessor companies previously, without any significant productive or technological improvement aiming to lower production costs. As a result, CE Hunedoara sold its production at an average price of 199,22 RON/MWh (approx. 43 EUR/MWh) in 2013, 167,68 RON/MWh (approx. 36 EUR/MWh) in 2014 and 181,52 (approx. 39 EUR/