COMMISSION DECISION

of 6 July 2010

on the measure C 40/07 (ex NN 48/07) implemented by Romania for ArcelorMittal Tubular Products Roman S.A. (formerly Petrotub Roman S.A.)

(notified under document C(2010) 4492)

(Only the Romanian version is authentic)

(Text with EEA relevance)

(2013/516/EU)

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 regard to the provisions of Annex VII, and Appendix A to Annex VII, to the Protocol on Transitional Measures to the Accession Treaty of Romania,

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

Whereas:

I. PROCEDURE

(1) By letter dating from 2 February 2007, the Commission requested Romania to provide information regarding public debt waivers and the rescheduling of public debt for Petrotub Roman S.A. (hereinafter 'Petrotub') in the context of its privatisation in 2003 (following privatisation, the company was re-named Mittal Steel Roman, and subsequently ArcelorMittal Tubular Products S.A. [2] - hereinafter 'AM Roman').

(2) By letter dated 25 September 2007, the Commission informed Romania that it decided to initiate the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union [3] in respect of possible aid involved in the privatisation of Petrotub. The Decision was published in the *Official Journal of the European Union* [4]. The Commission invited interested parties to submit their comments on the measure.

(3) Romania submitted its comments by letter of 26 November 2007, registered on the same date. By letters dated 28 January 2008, registered on 29 January 2008, ArcelorMittal (the parent company) and AM Roman (the subsidiary concerned) submitted their comments, which were communicated to Romania on 12 February 2008. Romania reacted by letter of 11 March 2008, registered on the same date.

(4) The Commission requested additional information by letters of 26 February 2009, 8 October 2009 and 29 January 2010. Romania replied by letters of 27 April 2009, 19 October 2009 and 3 February 2010, all registered on the same dates.

II. DESCRIPTION OF THE FACTS

1. The company

(5) AM Roman is a seamless steel tubes producer located in Roman, a Romanian region receiving assistance under Article 107(3)(a) TFEU [5]. Before privatisation in 2003, the company, then named Petrotub, was a producer of seamless steel tubes, whose production consisted of hot-rolled and cold-rolled steel tubes with diameters between 6 and 620 mm and wall width between 0,5 and 70 mm. These products have various applications in energy industries (oil, gas, chemicals, nuclear and conventional energy) and in the machinery and construction industries. After privatisation, the company continued to operate on the same product market. At present ArcelorMittal Tubular Products Holding B.V. Rotterdam NLD (of the ArcerlorMittal group) holds a 69,76 % stake in the company [6].

[1] OJ C 287, 29.11.2007, p. 29.

[2] Petrotub was acquired in 2003 by LNM Holdings, and the latter merged in 2004 with ISPAT International, to form the Mittal Steel group. In 2006, Mittal Steel merged with Arcelor to form the ArcelorMittal group. As of December 31, 2009, ArcelorMittal Tubular Products Holding B.V. Rotterdam NLD holds a 69,7684 % stake in ArcelorMittal Tubular Products Roman S.A.

[3] With effect from 1 December 2009, Articles 87 and 88 of the EC Treaty have become Articles 107 and 108, respectively, of the Treaty on the Functioning of the European Union ('TFEU'). The two sets of provisions are, in substance, identical. For the purposes of this Decision, references to Articles 107 and 108 of the TFEU should be understood as references to Articles 87 and 88, respectively, of the EC Treaty where appropriate.

[4] See footnote 1 above.

[5] Roman is the second largest city of a North-Eastern Romanian county qualifying as assisted region under Article 107(3)(a) TFEU pursuant to the Commission Decision of 24 January 2007 on the national regional State Aid map for Romania (N 2/07) (OJ C 73, 30.3.2007, p. 17).

[6] Further details on the company's current profile are available on the website of ArcelorMittal (see http://www.arcelormittal.com/tubular/roman-54.html).

2. **The measure at stake**

(6) On 23 July 2003 the Romanian privatisation agency APAPS (now AVAS) ([7]) made public its intention to sell its 70 % stake in Petrotub. The privatisation took place through public tender. A sale agreement was signed with LNM Holdings NV (now ArcelorMittal) on 28 October 2003, for the purchase price of USD 6 million (EUR 5,1 million ([8])).

(7) In the context of privatisation, APAPS agreed on behalf of the Romanian state to write off public debt totalling EUR 22,5 million, and to reschedule the remaining public debt.

(8) In 1998 Petrotub had contracted a commercial loan of DEM [30-50] (*) million [EUR 15-25 million] with duration until 2011 from the German development bank Kreditanstalt für Wiederaufbau (hereinafter 'KfW'), in order to purchase a new mill from Mannesmann AG. The KfW financing package was secured on its different segments with State guarantees granted by Germany and Austria and a bank guarantee from the Romanian bank Banca Comercială Română (BCR). The German State guarantee was counter-guaranteed by the Romanian State. The Romanian counter-guarantee covered 85 % of the total KfW loan of DEM 30-50 million. Romania charged Petrotub a one-off fee of [3-7 %].

III. **THE OPENING DECISION**

(9) In the opening decision, the Commission informed Romania that the basis for opening the formal investigation procedure was Annex VII Section B on Steel Restructuring to the Protocol to the Accession Treaty of Romania (hereinafter 'Annex VII'); and that, in the absence of specific provisions in Annex VII with respect to the legal situation of Romanian tube producers at the time of the privatisation, the Commission would investigate the existence and compatibility of State aid to AM Roman on that basis.

(10) The Commission noted that the acquisition price (EUR 5,1 million) did not cover the loss incurred by the State in the form of the waiver of EUR 22,5 million of public debt to which the Romanian privatisation agency APAPS agreed in the context of privatisation.

(11) Before the opening of the formal investigation procedure, Romania had provided a report by an external consultant ([9]) to show that privatisation on the given terms had been the most advantageous solution for the State.

(12) The report identified privatisation as leading to the most advantageous situation for the Romanian State. The table below compares the sums estimated to be obtained by each of the creditor public institutions in the privatisation and the liquidation scenarios ([10]).

	Privatisation	Liquidation
Social Security Fund	EUR […] million	EUR […] million
Unemployment Fund	EUR […] million	EUR […] million
Health Fund	EUR […] million	EUR […] million
APAPS	EUR […] million (including the sale price of EUR 5,1 million)	0
Total State	EUR [4-9] million	EUR [19-26] million

(13) The report was based on the assumption that, in the event of liquidation, the 1998 guarantee would have been triggered, and the State (through the Ministry of Finance) would have become liable for the outstanding amount of the 1998 KfW loan taken by Petrotub, i.e. for EUR [15-25] million. In other words, in the liquidation scenario, the State would have eventually received only EUR [2-9] million, which is lower by comparison to the total of EUR [4-9] million received through privatisation.

(14) In the opening Decision, the Commission questioned whether the outcomes of the privatisation and liquidation scenarios should have been estimated for the State as a whole, as the expert report suggested, or separately for each of the public creditors, in line with the *HAMSA* jurisprudence ([11]).

(15) Inter alia, the Commission also doubted that the loss of EUR [15-25] million as a result of the triggering of the 1998 guarantee could be taken into account in estimating the outcome of liquidation. In line with the HYTASA ([12]) and Gröditzer ([13]) cases, a distinction

([7]) In May 2004, the Romanian privatisation agency APAPS (Romanian acronym for the Authority for the Privatisation and Administration of State Holdings) was merged with AVAB (Romanian acronym for the Authority for the Administration of Bank Assets) and renamed AVAS (Romanian acronym for the Authority for the Administration of State Assets).

([8]) The EUR sums are calculated at the ROL/EUR exchange rate of 30 September 2003 – 1 EUR = 38 185 ROL.

(*) Business secret.

([9]) BDO Conti Audit SA, report of October 2007.

([10]) The sums expressed in ROL are converted into EUR at the ROL/EUR exchange rate applicable on 30 September 2003 – see footnote 8 above.

([11]) Case T-152/99 *HAMSA and Spain* v Commission [2002] ECR II-3049.

([12]) Joined Cases C-278/92 to 280/92 *Spain* v *Commission* (HYTASA) [1994] ECR I-4103.

([13]) Case C-344/99 *Germany* v *Commission* (Gröditzer Stahlwerke) [2003] ECR I-1139.

should be made between the obligations which the State must assume as shareholder of the company and the obligations it must assume as public authority. It follows that the costs assumed in relation to a public authority act cannot be taken into account for the purpose of estimating the costs that a private shareholder would have been in the position to, and willing to incur. The Commission regards the fact that in 1998 the Romanian Ministry of Finance issued a sovereign guarantee for Petrotub as an indication that a private shareholder would not have been in the position to issue such a guarantee. Another indication in this sense is the fact that the 1998 guarantee was granted on terms and conditions that a private operator might not have accepted.

IV. **COMMENTS FROM ROMANIA AND INTERESTED PARTIES**

(16) In its submission of 27 November 2007, Romania argued mainly that the privatisation of Petrotub in October 2003 had not involved an advantage to Petrotub or the buyer, and therefore the operation had not involved State aid within the meaning of Article 107(1) TFEU.

(17) Romania first underlined that Petrotub had been sold through an open, transparent and unconditional tender procedure – a fact which, in the opinion of the Romanian authorities, showed that Petrotub had been sold at the market price and that the buyer did not derive any advantage from the purchase. Second, Romania considered that it had acted in the same way as any private vendor would have acted: in choosing between the privatisation and liquidation scenarios, the State opted for the scenario that was most advantageous exclusively on financial terms, without taking into account non-commercial or policy considerations of the kind that by their nature are characteristic of the exercise of public authority.

(18) In relation to this second argument, Romania showed that, under national law, the privatisation agency AVAS was required and empowered to estimate and compare the overall outcomes of privatisation and liquidation by reference to the State budget as a whole. In other words, the privatisation agency chooses the scenario that is most advantageous for the State budget as a whole, in the same way in which a large holding company comprising several creditors would do. From this perspective, contrary to the Commission's views, the State could not and did not have to estimate the outcomes of privatisation and liquidation separately for each of the public bodies concerned.

(19) In addition, in estimating the outcomes of liquidation, the State was entitled to take into account the loss associated with the triggering of the 1998 guarantee, because, under the given conditions, such guarantee would have been granted to Petrotub also by a private investor. The company was not in difficulty at the time when the guarantee was granted, and the risk premium charged to Petrotub for the guarantee was an appropriate remuneration for a shareholder guarantee issued in favour of a company which was in good condition at the time.

(20) Moreover, the 1998 guarantee must be assessed from the perspective of the relevant State aid rules in force at that time. The Commission Communication on short-term export credit guarantees applicable at the time excluded long-term export credit guarantees from the scope of scrutiny under Article 107(1) TFEU (then Article 87(1) TEC) ([14]). Romania also stressed that in 1998, when the guarantee was granted, Petrotub was a tube producer, and as such was not covered by the ECSC definition of steel or by the provisions of Protocol 2 on ECSC steel in the Europe Agreement.

(21) AM Roman and its parent company ArcelorMittal fully endorsed Romania's argumentation. The companies also underlined that, under the Romanian legislation applicable at the time, and under the Europe Agreement rules on State aid, the State guarantee issued in favour of Petrotub in 1998 did not involve State aid. Furthermore, the 1998 guarantee constituted a clear enforceable commercial obligation undertaken by the State as majority shareholder of the company concerned, and can therefore be included in the estimate of the liquidation costs. ArcelorMittal also stressed that it had paid a market price for the acquisition of Petrotub, and therefore any possible advantage resulting from privatisation, *quod non*, would at any rate have remained with the State as a seller.

V. **ASSESSMENT**

1. **Applicable law and Commission competence**

(22) This procedure addresses events which took place before Romania's accession to the European Union (1 January 2007). Petrotub was privatised in October 2003. Also, in 1998 the Romanian State had issued a guarantee in favour of Petrotub in relation to a loan of DEM [30-50] million from KfW to purchase a new mill. The 1998 guarantee is linked to the 2003 privatisation insofar as Romania argued that its costs in case of liquidation must be taken into account when assessing the 2003 privatisation operation under the market economy operator test.

(23) As a general rule, Articles 107-108 TFEU do not apply to measures granted before accession which are no longer

([14]) Communication of the Commission to the Member States pursuant to Article 93(1) of the EC Treaty applying Articles 92 and 93 of the Treaty to short-term export-credit insurance (OJ C 281, 17.9.1997, p. 4). The text is available at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31997Y0917(01):EN:NOT

applicable thereafter ([15]). By derogation from this general rule, and therefore on an exceptional basis, the Commission has the competence to review State aid granted by Romania in the context of the restructuring of its steel industry before accession on the basis of Annex VII to the Accession Treaty of Romania ([16]).

The lex specialis nature of Annex VII

(24) Annex VII contains provisions allowing Romania to conclude the restructuring of its steel industry as initiated before accession. The pre-accession restructuring of the Romanian steel sector was carried out on the basis of Protocol 2 on ECSC Steel annexed to the Europe Agreement (hereinafter 'Protocol 2'), as extended by the Additional Protocol signed on 23 October 2002 (hereinafter 'the Additional Protocol').

(25) Protocol 2 granted to Romania a 'grace period' of 5 years, from 1993 until the end of 1998, to restructure its ECSC steel industry in view of accession. The 'grace period' was extended until the end of 2004 by an Additional Protocol approved by Council Decision of 29 July 2002 and signed on 23 October 2002. During the resulting total 'grace period', i.e. from 1993 until the end of 2004, Romania was allowed to give restructuring aid to the steel sector on terms and conditions resulting from Protocol 2 (as extended by the Additional Protocol) and on the basis of a National Restructuring Program (hereinafter 'NRP') agreed by the Community. The Romanian NRP was approved by the Council on 18 July 2005 ([17]).

(26) Annex VII is a 'safeguard mechanism' allowing the Commission to monitor after 1 January 2007 (the accession date) aid granted by Romania to the steel sector before accession on the basis of Protocol 2 (as extended by the Additional Protocol) and the NRP. Furthermore, Annex VII empowers the Commission to recover aid given in breach of Protocol 2 and the NRP. Thus Annex VII is a *lex specialis* allowing *on an exceptional basis and by derogation from the general regime* the retroactive monitoring and review of State aid granted by Romania to its steel industry before accession. In recent judgments concerning pre-accession State aid granted to Polish steel companies ([18]) the General Court confirmed the *lex specialis* character of Protocol 8 to the Accession Treaty of Poland, which contains equivalent provisions to those set out in Annex VII.

Scope of the Commission's retroactive control competence under Annex VII

(27) In the context of this procedure, the Commission must assess whether the exceptional retroactive control competence described in recitals (23)-(26) above also covers measures granted by Romania to tube producers before accession. To this end, the legal bases applicable to this case, consisting of Annex VII in conjunction with Protocol 2 and the Additional Protocol, have to be interpreted with a view to determining whether their provisions cover measures granted to Romanian tube producers before accession.

(28) It is a generally-recognised principle of law that the provisions of a *lex specialis*, which derogates from the general regime, must be interpreted *in a strict sense*. A strict interpretation of the above-mentioned legal bases (see recitals (29)-(43) below) leads to the conclusion that the Commission's exceptional retroactive control competence is limited to (potential) pre-accession aid to ECSC producers, thereby excluding (potential) aid to tube producers.

Interpretation of the legal bases

(29) Paragraphs (12) and (17) of Annex VII lay down the Commission's monitoring and retroactive control competences with respect to pre-accession aid to the Romanian steel industry. Paragraph (12) empowers the Commission and the Council to monitor the implementation of the Romanian NRP before and after accession, until 2009. Paragraph (17) empowers the Commission to order recovery of State aid granted in breach of paragraphs (1) to (3) of Annex VII (as indicated in recitals (30)-(32) below).

(30) Paragraph (1) of Annex VII stipulates that State aid granted by Romania for the restructuring of '*specified parts of its steel industry*' from 1993 to 2004 shall be deemed compatible with the internal market provided that: '*[…] the period provided for in Article 9(4) of Protocol 2 on ECSC products to the Europe Agreement […] has been extended until 31 December 2005*'; the terms and conditions set out in the NRP have been complied with; no further State aid is granted or paid to beneficiaries of the NRP after 1 January 2005; and '*[…] no State aid for restructuring is paid to the Romanian steel sector after 31 December 2004*'. It also stipulates that: '*For the*

([15]) In Joined Cases T-273/06 and T-297/06 *ISD Polska and Others* v *Commission*, judgment of 1 July 2009, the General Court confirmed at paragraph 90 that '[…] it is common ground that, in principle, Articles 87 EC and 88 EC do not apply to aid granted before accession which was no longer applicable thereafter'. See also Commission Decision 2006/937/EC of 5 July 2005 on State aid C 20/04 (ex NN 25/04) in favour of Huta Czestochowa S.A. (OJ L 366, 21.12.2006, p. 1, paragraph 108).

([16]) OJ L 157, 21.6.2005.

([17]) Council Decision of 18 July 2005 on the fulfilment of the conditions laid down in Article 3 of the Additional Protocol to the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and Romania, of the other part, with regard to an extension of the period laid down in Article 9(4) of Protocol 2 to the Europe Agreement (OJ L 195, 27.7.2005, p. 22).

([18]) Case T288/06 *Regionalny Fundusz Gospodarczy* v *Commission*, judgment of 1 July 2009, paragraphs 40-44, and Joined Cases T-273/06 and T-297/06 *ISD Polska and Others* v *Commission*, judgment of 1 July 2009, paragraphs 91-97.

purpose of these provisions and Appendix A, State aid for restructuring is to be understood as any measure concerning steel companies that constitutes State aid within the meaning of Article 87(1) of the EC Treaty and that cannot be held to be compatible with the internal market in accordance with the normal rules applied in the Community'.

(31) Paragraph (2) of Annex VII provides that only the companies listed as beneficiaries of the NRP (also listed in Appendix A to Annex VII) are eligible for receiving State aid over the period 1993 to 2004.

(32) Paragraph (6) of Annex VII provides that companies not listed as beneficiaries of the NRP '*shall not benefit from aid for restructuring or any other aid*', and shall not be required to reduce their capacity either.

(33) The first subparagraph of paragraph (1) of Annex VII refers explicitly to Article 9(4) of Protocol 2, as extended by the Additional Protocol signed on 23 October 2002. Protocol 2 covered only ECSC steel, and even listed the ECSC steel products in an Annex. The latter contained the same list of ECSC products as that in Annex I to the ECSC Treaty, where the definition of 'ECSC steel' specifically excluded steel tubes ('tubes (seamless or welded) […] bright bars and iron castings (tubes, pipes and fittings, and other iron castings').

(34) The ECSC Treaty expired on 23 July 2002. As of that date, State aid to the steel industry was brought under the general EC regime. On that occasion it was decided to broaden the definition of the European steel sector to include tube producers. This was codified in Article 27 and Annex B of the Multisectoral Framework on regional aid for large investment projects ([19]), which defined the EU steel sector so as to include seamless tubes and large welded tubes (with a diameter greater than 406,4 mm). The extended definition of the steel sector was thereafter taken over in Annex I to the Guidelines on national regional aid for 2007-2013 ([20]), and in Point 29 under Article 2 of the General Block Exemption Regulation ([21]).

(35) Nevertheless, neither Protocol 2 nor the Additional Protocol were explicitly amended to include this broadened definition of the EU steel sector as including tube producers. Protocol 2 expired on 31 December 1997. The Additional Protocol extended the validity of Protocol 2 from 1 January 1998 for another 8 years or until the date of Romania's accession (whichever came first). The Additional Protocol refers to '*steel products*' in general, but its scope is also specifically linked to Article 9(4) of Protocol 2, which covered ECSC products only. In particular, under Article 2 of the Additional Protocol, the extension of Protocol 2 was made conditional on the submission by Romania to the Commission of an NRP and company restructuring plans, for beneficiaries of the NRP, both meeting '*the requirements of Article 9(4) of Protocol 2 to the Europe Agreement and assessed and agreed by its national State aid authority (the Competition Council)*'.

(36) It should therefore be concluded that Paragraph 17 of Annex VII, as interpreted in the light of paragraphs (1)-(2) and (6) of Annex VII, together with Protocol 2 and the Additional Protocol, do not give the Commission competence to control aid granted to Romanian tube producers prior to accession, in particular over the period 1993 to 2004.

Implementing Rules for the Europe Agreement as interpretation instrument

(37) In addition to the legal interpretation of the scope of the relevant legal bases (i.e. Annex VII, Protocol 2 and the Additional Protocol - see recitals (29)-(36) above), the Commission also examined the question of whether the implementing rules for the application of the State aid provisions in the Europe Agreement and Protocol 2, as adopted by the Community and Romania in 2001 (hereinafter 'the Implementing Rules' ([22])), are relevant when determining the scope of the Commission's retroactive control competence with respect to (potential) pre-accession aid to Romanian tube producers.

(38) As a general rule, the Implementing Rules contain rules of procedure, to be distinguished from the substantive State aid provisions in the Europe Agreement and Protocol 2. It must be noted however that the Implementing Rules also contain specific provisions on the criteria for assessing the compatibility of aid with the Europe Agreement, and with Protocol 2, respectively.

(39) The first sentence of Article 2(1) of the Implementing Rules provides as follows: '*The assessment of compatibility of individual aid awards and programmes with the Europe Agreement, as provided for in Article 1 of these Rules, shall be made on the basis of the criteria arising from the application of the rules of Article 87 of the Treaty establishing the European Community, including the present and future secondary legislation, frameworks, guidelines and other relevant administrative acts in force in the Community, as well as the case law of the Court of First Instance and the Court of Justice of the European Communities and any decision taken by the Association Council pursuant to Article 4(3).*' This sentence lays down *the general principle that the substantive criteria for assessing compatibility of State aid in*

([19]) OJ C 70, 19.3.2002, p. 8.
([20]) OJ C 54, 4.3.2006, p. 13.
([21]) OJ L 214, 9.8.2008, p. 3.
([22]) OJ L 138, 22.5.2001, p. 16.

general with the Europe Agreement are 'evolutive', in the sense that they incorporate any new changes/developments in EU law and case law.

(40) The second sentence of Article 2(1) refers in particular to the compatibility criteria laid down in Protocol 2: '*Insofar as the aid awards or aid programmes are destined for products covered by Protocol 2 to the Europe Agreement, the first sentence of this paragraph applies fully with the exception that the assessment shall not be made on the basis of the criteria arising from the application of the rules of Article 87 of the Treaty establishing the European Community but on the basis of the criteria arising from the application of the rules on State aid of the Treaty establishing the European Coal and Steel Community*.' It must be noted that the wording of this sentence clearly indicates that, by contrast to the situation of general aid covered by the first sentence of Article 2(1) (see recital (41) above), in the case of aid covered by Protocol 2 *the compatibility criteria evolve by reference to the ECSC Treaty*. No specific indications are given as to the evolution of the compatibility criteria *after the expiry of the ECSC Treaty in 2002*.

(41) Articles 2(2) and 2(3) of the Implementing Rules set out the mechanism whereby Romania must incorporate changes in the EU compatibility criteria. In particular, Romania shall be informed of any changes in the Community compatibility criteria which are not published, and '*where such changes do not encounter objections from Romania within three months from the date of receiving the official information about them, they shall become criteria of compatibility as provided for in paragraph 1 of this Article. Where such changes encounter objections from Romania and having regard to the approximation of legislation as provided for in the Europe Agreement, consultations shall take place, in accordance with Articles 7 and 8 of these Rules*'.

(42) Although Romania did not object within three months to the change in 2002 of the Community definition of the steel industry to also cover tube producers, those changes in Community law could not have become applicable to measures that fall outside the scope of the Europe Agreement, namely those that were not covered by the ECSC Treaty. Moreover, since Annex VII is a *lex specialis*, when determining its scope the Commission cannot rely on broadening the definition of EU steel following the expiry of the ECSC Treaty. It must therefore be concluded that a clear distinction must be made between, on the one hand, the 'evolutive' nature of the law applicable to State aid for the steel sector in Romania before accession, under the Europe Agreement, and on the other hand the necessarily strict interpretation of the scope of the Commission's retroactive control competence as stemming from Annex VII, Protocol 2 and the Additional Protocol.

VI. **CONCLUSION**

(43) On the basis of the aforementioned considerations (see in particular recitals (36) and (42) above), the Commission concludes that it does not have competence to review measures granted to Romanian tube producers before accession, in particular over the period 1993-2004, on the basis of Annex VII. This procedure is closed, taking note of the Commission's lack of competence to assess the acts concerned,

HAS DECIDED AS FOLLOWS:

Article 1

The formal investigation procedure laid down in Article 108(2) TFEU initiated by letter addressed to Romania of 25 September 2007, is closed for lack of Commission competence under the provisions of Annex VII Section B to the Accession Treaty of Romania to review the measures granted by Romania in the context of the privatisation of Petrotub Roman S.A in 2003.

Article 2

This Decision is addressed to Romania.

Done at Brussels, 6 July 2010.

For the Commission
Joaquín ALMUNIA
Vice-President