COMMISSION DECISION (EU) 2020/1012

of 24 February 2020

on State aid SA.48394 2018/C (ex 2017/N) which Romania has partly implemented in favour of National Uranium Company (CNU)

(notified under document C(2020) 1069)

(Only the Romanian text 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 Treaty establishing the European Atomic Energy Community,

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) On 30 September 2016, the Commission decided not to raise objections on State aid in the form of a six-month rescue loan amounting to RON 62 million (ca. EUR 13,1 million ([2])) that Romania planned to grant to National Uranium Company (CNU) ([3]). In this decision ('the rescue aid decision'), the Commission considered that the State aid was compatible with the internal market pursuant to the Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty (the 'R&R Guidelines') ([4]). As recorded in the rescue aid decision, the Romanian authorities had committed to provide the Commission, within six months of the loan approval, with a restructuring plan as set out in section 3.1.2 of the R&R Guidelines (see recital 42 of the rescue aid decision).

(2) On 12 June 2017, Romania transmitted a restructuring plan for CNU (the 'initial restructuring plan'), notifying also its intention to grant restructuring aid amounting to RON 441 million (EUR 93 million) to CNU. Several exchanges and requests for information from the Commission and answers by the Romanian authorities took place between 9 August 2017 and 13 December 2017.

(3) By letter dated 8 May 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) in respect of that aid.

(4) The Commission decision to initiate the procedure (the 'Opening Decision') was published in the *Official Journal of the European Union* ([5]) on 19 June 2018. The Commission invited interested parties to submit their comments on the aid but none was received.

([1]) OJ C 236, 6.7.2018, p. 6.

([2]) The exchange rate of 17.9.2019 is used in this decision: 1 RON = 0,211 EUR and, when applicable, 1 RON = 0,233 USD and 1 USD = 0,906 EUR. Figures on currency other than RON are provided for information only.

([3]) Commission Decision of 30 September 2016, SA. 46312 (2016/N) – *Romania Rescue aid to Compania Națională a Uraniului SA* (OJ C 236, 6.7.2018, p. 6).

([4]) Communication from the Commission – Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty (OJ C 249, 31.7.2014, p. 1).

([5]) See Commission Decision of 8 May 2018, SA.48394 (2017/N) – *Restructuring of National Uranium Company (Companiei Nationale a Uraniului CNU)* (OJ C 236, 6.7.2018, p. 6.)

(5) The Romanian authorities sent their observations on the Opening Decision and a new restructuring plan (hereafter, the 'second restructuring plan') by letter dated 7 August 2018.

(6) In a videoconference held on 3 December 2018, the Commission requested further clarifications from the Romanian authorities on the plan submitted on 7 August 2018.

(7) The Romanian authorities provided the Commission with further comments and information on 20 December 2018, 14 February 2019, 20 March 2019 as well as a new restructuring plan on 19 April 2019 (hereafter, the 'third restructuring plan').

(8) The Commission also met the Romanian authorities at their request on 24 and 25 June 2019.

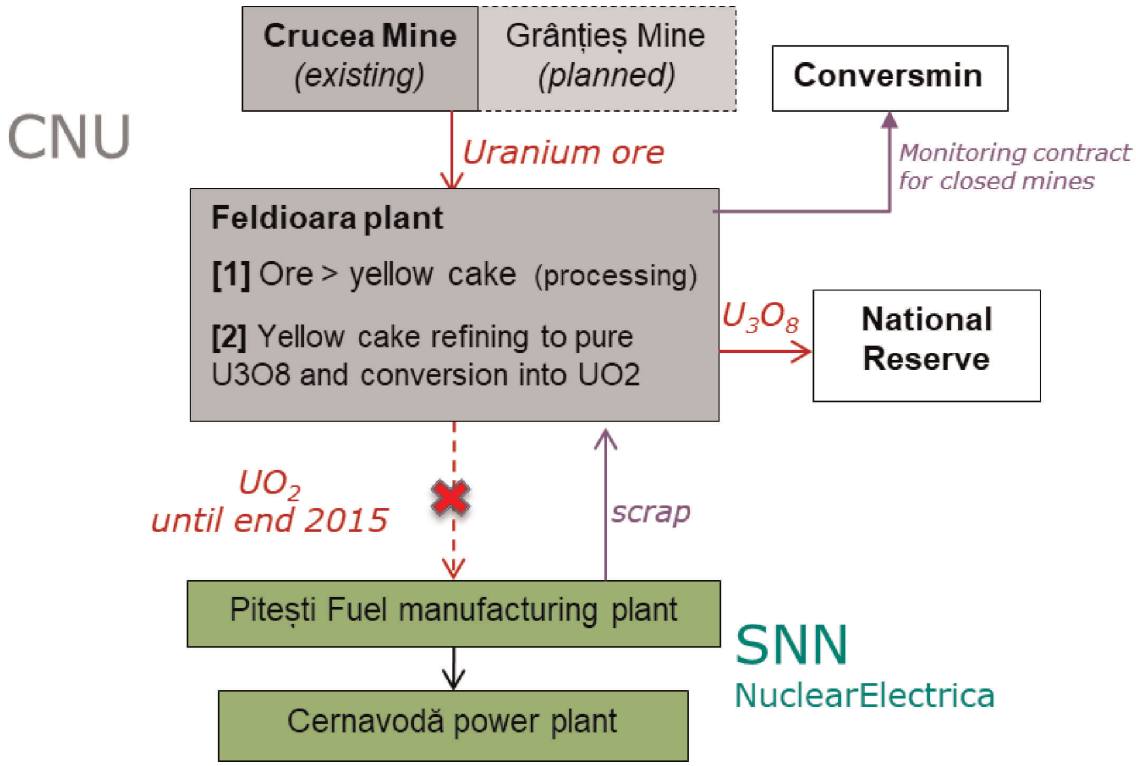
2. DETAILED DESCRIPTION OF THE AID

2.1. **The beneficiary**

2.1.1. *CNU's activities*

(9) CNU is a Romanian company, headquartered in Bucharest, which exploits uranium mines and produces raw material for nuclear power generation in Romania. CNU extracts uranium ore, processes it into yellow cake, refines it into pure uranium octoxide (U_3O_8) and then finally transforms it into uranium dioxide (UO_2). CNU was established in 1997 as a limited liability company, fully owned by the State. In 2017, CNU had 772 employees.

(10) CNU has two operating sites. The uranium mining site, located in Crucea-Botușana (Suceava County, North-East region), employed 346 persons in 2017 while the processing and refining plant, located in Feldioara (Brașov County, Centre region), employed 350 persons. The following chart displays the main sources of revenue in recent years:



(11) CNU traditionally had two customers, the State-owned National Society Nuclearelectrica S.A. (further referred to as 'SNN') purchasing UO_2 to produce fuel for its Cernavodă Nuclear Power Plant and the National Administration of State Reserve and Special Problems (further referred to as 'ANRSPS') purchasing U_3O_8. Together these two buyers used to account for 95 % of CNU's revenues.

(12) SNN was set up in 1998 following the restructuring of the Romanian energy system and is listed on the Bucharest Stock Exchange since 2013. SNN generates electric and thermal power using nuclear power through the Cernavodă Nuclear Power Plant, and it manufactures nuclear fuel through FCN – Nuclear Fuel Plant in Pitești. SNN's capital structure is, according to the latest reports the following: 82,49 % the Romanian State, through the Ministry of Energy, 7,05 % Fondul Proprietatea SA, 5,6 % other legal entities and 4,8 % natural persons.

(13) The main corporate governance body of SNN is the General Shareholders Meeting, which decides on strategic matters, including the appointment and dismissal of the Board of Directors by simple majority, the adoption of the annual budget, the approval of the development strategy and policy, as well as investments and other transactions above EUR 50 million ([6]). The executive body tasked with the management of SNN is the Board of Directors, which has seven members out of which at least four must be independent administrators. Decisions on contracts with uranium suppliers below the EUR 50 million threshold fall under the responsibility of the Board.

2.1.2. *Causes of CNU's difficulties*

(14) CNU customer base is not diversified and is heavily dependent on two buyers, out of which prominently SNN which accounts for more than 80 % of sales. CNU lost its two key customers as of 2016, when SNN contracted with CNU's competitor and ANRSPS did not conclude any supply contract. In December 2015, SNN decided to award its UO_2 supply contract through a tender procedure between its two registered and approved suppliers, CNU and the Canadian supplier Cameco, which ultimately won the contract. CNU found no alternative buyer and was consequently no longer able to sell its production.

(15) Table 1 below, provided by the Romanian authorities, contains the various price offers made (between 2016 and 2018) by CNU and Cameco, through the various rounds of the tender procedure organised by SNN. When SNN decided to sign the first contract with Cameco, the offer made by CNU was 72 % higher. All subsequent offers from CNU were also at substantially higher prices than the ones of Cameco, varying between + 39 % and + 99 %, which lead SNN repeatedly signing supply contracts with Cameco.

Table 1

Summary table of SNN's procurement procedures for 120 tons UO_2 (required for 6 months) for the period 2016 – 2018

	Date of signature of the contract by SNN	Date of first delivery for each contract	Offer from Cameco	Offer from CNU	Price difference offer CNU versus offer Cameco
1	29.1.2016	4.3.2016	USD […] * (≈ RON […])	RON […]	+ 72 %
2	8.7.2016	15.9.2016	USD […] (≈ RON […])	RON […]	+ 39 %
3	23.12.2016	15.2.2017	USD […] (≈ RON […])	RON […]	+ 52 %
4	6.6.2017	21.8.2017	USD […] (≈ RON […])	RON […]	+ 85 %
5	5.1.2018	26.2.2018	USD […] (≈ RON […])	RON […]	+ 77 %

([6]) See SNN's Articles of Incorporation available at http://www.nuclearelectrica.ro/wp-content/uploads/2014/08/engl-act-const1.pdf

6	19.7.2018	17.9.2018	USD […] (≈ RON […])	RON […]	+ 99 %

Source: Answer submitted by Romania on 20 December 2018.
* Confidential information.

(16) Accordingly, CNU's revenue stemmed only from minor side activities, such as a service contract with SNN for its waste treatment and fell significantly. As shown in Table 2, the total revenue of the company decreased from RON 110,8 million (EUR 23,4 million) in 2015 to RON 15,2 million (EUR 3,2 million), which was insufficient to cover CNU's expenditure in 2016.

(17) Before the abrupt fall of sales revenues in 2016, CNU had already posted relatively important operating losses in 2014 and 2015. The gradual exhaustion of uranium resources in the Crucea-Botușana mine partly explains CNU's poor operating results. CNU's mining operations incur high exploitation costs as it lacks funds for the maintenance of transport routes, transport distances increase due the deposit being depleted and lack of underground retrofitting.

(18) CNU also lacks financial resources to exploit a new uranium ore deposit identified in Tulgheș-Grinties as well as to upgrade its Feldioara plant.

(19) Lastly, CNU also faces increasing utility costs, mining fees and additional taxes (environmental tax).

Table 2

Selected financial data according to the first restructuring plan from 2014 to 2023

(in million RON)

	2014 to 2016			Restructuring period					Post-restructuring	
Indicator	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023
Total revenue	142,9	110,8	15,2	210,0	193,9	193,9	193,9	193,9	196,8	196,8
Total expenditure	246,3	254,2	109,1	188,0	191,0	184,6	186,9	189,4	189,4	189,4
Profit/ Loss	-104,7	-143,4	-93,9	18,5	2,6	7,9	5,9	3,8	6,2	6,2
EBITDA	-60,5	-95,1	-54,3	64,5	44,7	43,2	41,8	39,7	42,1	42,1

2.2. **Uranium mining and concentrates for nuclear fuel**

(20) CNU mainly produces two types of output products: the yellow cake (that contains a high concentration of U_3O_8) and (non-enriched) UO_2.

(21) The yellow cake is a standard, tradable commodity product, which is traded worldwide with relatively transparent prices and conditions. The yellow cake, which is the base product for the production of non-enriched, as well as enriched UO_2, is produced and traded by non-European companies (like Cameco) but also by European (incorporated) companies like Orano (formerly Areva), RioTinto or BHP Billiton. Furthermore, new players on this market are currently at various development stages with new mining projects in Spain, Finland and Hungary ([7]).

(22) Romania in particular indicated that Orano spontaneously proposed in May 2017 to supply CNU with yellow cake from its mine in Niger. Orano would have stated to be able to supply the entire quantity of yellow cake required by CNU to produce UO_2 for the benefit of SNN for both reactors in Cernavodă ([8]).

([7]) Information retrieved from https://www.wise-uranium.org/upeur.html on 23 September 2019.
([8]) Point 12.2 of the submission of the Romanian authorities references as Annex to Letter No 121321/DV/8.12.2018

(23) As regards the conversion of U_3O_8 into UO_2, there is actual competition between Cameco and CNU for CANDU-based technology nuclear power plants. Furthermore, any company that currently produces uranium compounds for enriched uranium, to be manufactured as nuclear fuel, such as Orano (formerly Areva), has the technological capacity to and may find it attractive and decide to enter this market in the future and to offer a substitute product. According to publicly available information, Orano is currently modifying its industrial process in its Malvési plant to be able to sell non-enriched UO_2, which is one of its intermediary product, on the international market ([9]). Moreover, there are also alternative currently active suppliers of (non-enriched) UO_2 for CANDUs such as Dioxitek (Argentina), CNNC (China), PAEC (Pakistan), NFC (India).

2.3. **Initial restructuring plan of CNU**

(24) Following the Commission's rescue aid decision approving a loan of RON 62 million (EUR 13,1 million) ([10]), Romania notified on 12 June 2017 the initial restructuring plan ending in 2021.

(25) In the initial restructuring plan, the total restructuring costs amounted to RON 941 (EUR 198,5) million (a detailed breakdown is available in recital 22 of the Opening Decision). These restructuring costs were to be financed, according to Romania, by RON 441 (EUR 93,0) million of State aid and by an own contribution of CNU of RON 500 (EUR 105,5) million ([11]) (i.e. around 53 % of restructuring costs).

(26) The notified restructuring aid consisted of the following five aid instruments:

(a) transformation of RON 62 million (EUR 13,1 million) rescue aid into restructuring aid;

(b) RON 75,5 million (EUR 15,9 million) grant;

(c) RON 77 million (EUR 16,2 million) debt write-off;

(d) RON 213 million (EUR 44,9 million) operating subsidy;

(e) conversion of CNU's debt of RON 13,3 million (EUR 2,8 million), as of 30 March 2017, into shares held by the Romanian State.

(27) The own contribution to the costs in the initial restructuring plan included four main sources of revenue from exploitation for CNU (full detail is available in recital 20 of the Opening Decision):

(a) various supply contracts of U_3O_8 with ANRSPS;

(b) a multiannual contract for providing UO_2 to SNN for the period between 1 September 2017 and 31 December 2021;

(c) a multiannual contract with SNN for processing non-compliant natural uranium-bearing materials;

(d) various contracts with Conversmin SA for the preservation, closing, environmental restoration and monitoring of closed uranium mines.

2.4. **Description of the reasons that led to the opening of the procedure**

(28) In the Opening Decision, the Commission took the view that Romania's plans to grant public funding to support CNU's restructuring plan involved State aid under Article 107(1) TFEU.

([9]) https://www.orano.group/docs/default-source/orano-doc/groupe/publications-reference/rapport_tsn_malvesi_2018.pdf, page 13.

([10]) The rescue aid loan was granted on 5 October 2016 by the Romanian State through its representative, the Ministry of Energy, in accordance with Government Emergency Order No 65/2016 establishing the legal framework for granting an individual legal aid in order to rescue National Uranium Company (Official Gazette No 801 of 11 October 2016). The rescue loan contractually attracted interest at a rate of 6,92 % and was disbursed in two tranches: RON 47,2 million on 5 November 2016 and subsequently RON 13 167 550,53 on 30 March 2017. The interest rate was adjusted from 6,92 % to 11,08 % on 19 July 2017. Source: www.cdep.ro/interpel/2018/r1405B.pdf

([11]) Notification Form Part III.B, point 5.1.B

(29) As CNU fulfilled the criteria for being qualified as a firm in difficulty according to point 20 of the R&R Guidelines, the compatibility of the restructuring aid was analysed in accordance with the R&R Guidelines. After a preliminary assessment, the Commission raised doubts about the compatibility of the above-described measures with the R&R Guidelines. These doubts are summarised below in recitals 30 to 46 (full detail is presented in the Opening Decision in recitals 44 to 70).

2.4.1. *Doubts about the level of own contribution of CNU to the restructuring plan*

(30) The Commission was questioning that the sources of financing as proposed by Romania did constitute a significant, real and actual, free of aid own contribution of at least 50 % and therefore preliminarily considered that the initial restructuring plan did not meet the basic requirements of the R&R Guidelines as regards the own contribution.

(31) First, on the real and actual character of the own contribution, the Commission preliminary concluded that none of the four sources of own contribution listed under recital 27 satisfied this criterion. According to point 63 of the R&R Guidelines, the own contribution shall exclude future expected profits such as cash flow. Among the contracts put forward by Romania, the Commission noted that only contracts for minor amounts did materialise and only partially.

(32) Secondly, on the requirement that the own contribution should be free of aid, the Commission preliminary concluded that the crucial take-or-pay UO_2 supply contract with SNN that was expected to represent approximately 80 % of CNU's sales was unlikely to be concluded at market terms. Based on the available market indications, contract envisaged at RON 623 (EUR 131) per kg_U (i.e. RON 423 per kg_U without subsidy) and corresponding to USD 110 (EUR 100) per kg_U (without subsidy) would exceed the estimated market price (USD 67 -EUR 61- per kg_U) by 64 %.

(33) Furthermore, the Commission also doubted that all the other proposed sources of own contribution were free of aid: those contributions indeed stemmed from planned contracts with public administrations and State-owned enterprises. In particular, Romania failed to demonstrate that ANRSPS, a public entity, would sign the planned contracts with CNU at market prices and that the other planned contract with SNN for the processing of non-compliant materials would be concluded at market terms, e.g. as compared to other typical supply contracts in the industry.

(34) Thirdly, based on the information submitted by Romania, no market investor or lender was backing the plan, nor had any intention to. Romania had been unable to provide the Commission with any supporting indication like a letter of intent that would have shown and proven an interest from a prospective market investor in trusting, supporting and financing the notified restructuring plan.

(35) Finally, the Commission also had doubts about the argument that Romania put forward to the effect that sales of fixed assets would also provide a source of own contribution. It was not clear what could have been the market value of such assets, the timeline for the sale and most importantly, to what extent such a sale could be successfully completed within the restructuring period.

2.4.2. *Doubts about the restoration of the long-term viability of CNU*

(36) The Commission also had doubts that the initial restructuring plan would lead to the restoration of viability of CNU at the end of the restructuring period. In effect, it was not established that CNU would provide a sufficient return and would be capable of remaining on the market without further aid.

(37) First, the Commission noted that Romania failed to provide, as requested, the set of key economic indicators for the restructuring period and data on the profitability and production costs split for each of its main current or planned businesses (Crucea-Botușana mine, Feldioara plant, Tulgheș-Grințieș mine). The information provided at aggregate level was in any case inconclusive as regards the return to long-term viability of CNU at the end of the restructuring period.

(38) Second, CNU's profitability remained low even if one accounted for the price subsidy that was intended to cover the difference between its production cost and UO_2's market price, and which Romania qualified as State aid. As no gradual decrease of this aid was assumed over the restructuring period, the Commission preliminarily concluded that it remained doubtful, without additional supporting evidence, whether CNU would be viable after the end of the restructuring period with no further State subsidy to operations.

(39) Third, the Commission raised doubts on the production costs put forward by the Romanian authorities, after the completion of the investment at the new Tulgheș-Grințieș mine. In particular, the Commission underlined that Romania failed to provide any investment study supporting the alleged amount of U_3O_8 production cost of RON 460 (EUR 97) per kgU ([12]) and observed that this estimate significantly exceeded the actual market price of USD 22 (EUR 20) per pound of U_3O_8 at the end of February 2018 ([13]).

(40) Furthermore, the Commission also observed that the uranium price forecasts submitted by Romania to support the prospects for investments in the new mine were outdated and unreliable and therefore raised doubts about the viability of the new mine. As point 51 of the R&R Guidelines mentions that the return to viability must not be dependent on optimistic assumptions about external factors such as variation in prices, the Commission also doubted that this point of the R&R Guidelines was fulfilled.

2.4.3. *Doubts on the compensatory measures*

(41) In this regard, the Commission noted that Romania envisaged only two behavioural measures. According to the initial restructuring plan, CNU would refrain from purchasing shareholdings in other enterprises during the restructuring period and from using the aid as publicity when selling its products. However, in the absence of any meaningful and clear structural measures, the Commission doubted that the proposed compensatory measures mitigated the negative effects on competition created by the potential aid to a satisfactory extent.

(42) In particular, contrary to Romania's claim that there is no European market for the product that CNU supplies and that there would therefore be no need for any additional compensatory measures, the Commission put forward several considerations.

(43) First the Commission noted that regarding the extraction, although no other European company except CNU currently extracts uranium ore in the EU, there are active companies in the EU that import uranium compounds, in view of supplying processing/refining plants and eventually manufacturing nuclear fuel. This is for instance the case of Orano (formerly Areva) that imports uranium compounds in the EU from its mining activities in non-EU countries like Niger: the market is thus open for competition. Furthermore, uranium-mining deposits were identified and new entries were actually announced or planned in Spain and Finland for 2018-2019.

(44) Secondly, the Commission noted that regarding processing/refining activities, although no other company than Cameco is currently active in the provision of non-enriched UO_2 for CANDU-based technology nuclear power plants in the EU, these markets are open for competition and any company may find it attractive and decide to enter in the future or to offer substitute products sourced from elsewhere. Beyond Cameco, non-enriched UO_2 for CANDU may also be offered by foreign suppliers for instance from China or India.

(45) Third, the Commission was also noting that Romania presented some contradicting statements in its initial restructuring plan, hinting that CNU would be looking for an extension of its portfolio of clients outside Romania, while claiming there was no European market for the product that CNU supplies and that there would therefore be no need for any compensatory measures.

(46) Therefore, the Commission preliminary concluded that: (i) there is actual competition regarding the uranium *extraction* activity and (ii) further competition could potentially arise regarding the uranium *processing-refining* activity. Consequently, the behavioural measures proposed by Romania appeared insufficient and structural compensatory measures were necessary to mitigate the distortions of competition.

3. **COMMENTS OF ROMANIA**

(47) In its comments to the Opening Decision, Romania submitted new information and some observations as well as a second restructuring plan, as follows.

([12]) Around USD 120 per kgU or USD 46 per lb of U_3O_8, based on 1 kg_U = 2,59979 lbs of U_3O_8 according to the specialised website: http://www.uranium.info/unit_conversion_table.php

([13]) Information retrieved from https://www.uxc.com/p/prices/UxCPrices.aspx on 22 March 2018.

3.1. **Comments of Romania on the application of the Euratom Treaty**

(48) The Romanian authorities mentioned that the restructuring was supporting the commitments that they made under the Euratom Treaty regarding nuclear safety, in particular the following ones:

(a) the prevention of mine flooding,

(b) the controlled discharge of underground and pond waters,

(c) the decontamination and depollution of mine and pond waters with uranium, radium and various salt contents above the environmental rules, which is likely to have extremely serious consequences for the environment and the population, including for the company facilities and equipment,

(d) the security of supply with raw materials for the production of the nuclear fuel required for the operation of the units of the Cernavodă Nuclear Power Plant, including maintenance of the local nuclear fuel cycle, which contributes to the assurance of the energy security of Romania,

(e) the management of uranium stocks, closure of the sites where mining/uranium extraction works were performed, conservation, decommissioning of nuclear units, the execution of greening works, post-closure monitoring of environmental and population factors, complex and long-lasting activities and processes to avoid radioactive contamination, closure of mines, greening, post-closure monitoring.

(f) Romania also considers that CNU is crucial for the security of energy supply in Romania and for maintaining its valuable expertise and the substantial investments into CNU's equipment, technologies and licences, which could otherwise be lost ([14]). Romania sees local mining as the most secure way to ensure the supply chain for nuclear energy production and contends that CNU is the unique supplier of UO_2 in the EU that can ensure in an efficient and steady manner the input for the nuclear fuel production in the nuclear reactors in Cernavodă ([15]).

3.2. **Second restructuring plan**

(49) Romania first underlined that in the second restructuring plan they withdrew three out of the five aid measures notified in the initial restructuring plan, namely measures (c), (d) and (e) as described in recital 26, leading to a significant decrease from RON 440,8 million (EUR 93,0 million) to RON 125,1 million (EUR 26,4 million) of the amount of aid to be granted. The aid measures that would remain were the conversion of the rescue aid for RON 60,4 million (EUR 12,7 million) and a grant amounting to RON 64,8 million (EUR 13,7 million).

(50) The restructuring cost would also have decreased from RON 941 million (EUR 198,5 million) to RON 250,3 million (EUR 52,8 million), out of which Romania alleged that CNU would have contributed 50 %, namely RON 125,1 million (EUR 26,4 million).

(51) As part of this second restructuring plan, CNU would establish a new cooperation with SNN. In this context, Romania considered that the Commission's concerns expressed in recitals 47 to 50 of the Opening Decision regarding the potential State aid included in the price of the envisaged contract with SNN became immaterial, as the contract at stake was no longer planned. Romania explained that after ceasing its contract with CNU, which partly caused the financial difficulties of CNU, SNN started to procure raw material from the Canadian company, Cameco. However, relying on a sole source of supply was considered risky in the long term and, as a consequence, SNN put forward a strategy of diversification of procurement.

(52) SNN's General Assembly approved this strategy in May 2018 and explicitly mentioned CNU as a supplier of processing services. Romania explained that based on this strategy, dependence on one supplier and the corresponding risks will be avoided by purchasing U_3O_8 on international markets instead of UO_2, by CNU processing it and using the resulting UO_2 in the production of nuclear fuel. The SNN-CNU relationship would encompass processing and storage of U_3O_8 at CNU premises and the qualification by CNU of U_3O_8 suppliers: a qualification by CNU would indeed have been required before the organisation of competitive procedures among U_3O_8 qualified suppliers, because SNN does not have the expertise required to qualify U_3O_8 suppliers.

([14]) Romania's submission of 19 April 2019, Chapter IV.3. Restructuring Plan, point (iv).
([15]) Romania's submission of 19 April 2019, Chapter IV.3. Restructuring Plan, point (iv).

(53) Thereafter, Romania adopted a law regulating the principles providing for the national strategy of Romania regarding the maintenance of the integrated nuclear cycle, the supply of raw material for production of nuclear fuel required for the operation of the units of the Nuclear Power Plant in Cernavodă ([16]) (hereinafter 'Law 193/2018'). Law 193/2018 determines that CNU is exclusively entitled to produce UO_2 powder within the Romanian territory, and SNN will purchase this product exclusively from CNU, except if CNU cannot deliver the required quantities. The criteria and the methods for determining and adjusting the regulated prices for the services of qualification, storage and processing of U_3O_8, and the price of UO_2, as supplied by CNU, are to be established on the basis of the actual costs of CNU, pursuant to a Government Decision which was still in discussion when Romania submitted the second restructuring plan (see detail on this law in recital 63 below) ([17]). Romania expected as part of the second restructuring plan that a contract between CNU and SNN would enter into force from 2018.

(54) On 22 June 2018, CNU proposed the delivery of […] ton_U of UO_2 at a price of RON […] per kg_U (excluding VAT), that is EUR […] per kg_U. On 17 July 2018, SNN indicated to CNU that the first order for a quantity of […] $tons_U$ of UO_2 would not be launched to CNU because of the unit price tendered. CNU and SNN signed on 19 July 2018 a framework agreement by which CNU would provide UO_2 to SNN.

(55) In November 2018, SNN and CNU concluded a firm contract for the acquisition of […] $tons_U$ of UO_2 at […] RON/kg (EUR […]/kg)price (total amount of RON […] million (EUR […] million) (VAT excluded)) within the above-mentioned framework agreement ([18]).

3.3. **Third restructuring plan**

(56) Following a videoconference with the Commission held on 3 December 2018 to discuss the second restructuring plan, Romania submitted the third restructuring plan, superseding all previous notified restructuring plans.

(57) The third restructuring plan maintains only two out of the five original aid measures with a lower amount compared to the initial restructuring plan. The remaining measures total RON 178,3 million (EUR 37,6 million) and include (i) the transformation of the rescue aid into restructuring aid for RON 60,4 million (EUR 12,7 million) and (ii) a grant to support CNU investments for RON 64,8 million (EUR 13,7 million), including the opening of the exploitation at the Tulgheș-Grințieș mine. A new subsidy, amounting to RON 53,1 million (EUR 11,2 million) was introduced in order to cover the costs of closure of the Crucea-Botușana mine.

(58) Romania notified that the total restructuring costs of RON 356,4 million (EUR 75,2 million) detailed in table 3 below would be financed partly with the restructuring aid and with a RON 178,1 million (EUR 37,6 million) contribution from CNU stemming from its future revenues.

Table 3

Restructuring costs and financing

Planned restructuring costs	Cost amounts	State aid	Contribution from CNU's own resources
Conversion of rescue aid in restructuring aid	60,4	60,4	
Gradual closure Crucea-Botușana mine	**106,0**	53,1	52,9
Opening of the exploitation Tulgheș-Grințieș mine	[…]	[…]	[…]
Improved technology for processing mining waste at the Feldioara plant	[…]	[…]	[…]

([16]) Law No 193/2018 adopted on 19 July 2018 and published in the Official Gazette No 640 of 23 July 2018.

([17]) Government Decision no. 126/2019 for approving the criteria and modalities for establishing and adjusting the regulated prices related to the qualification, storage and processing services of uranium oxide, as well as the price of uranium dioxide provided by the National Uranium Company – S.A. on Romania's territory, adopted on 5 March 2019 and published in the Official Gazette on 6 March 2019.

([18]) See link to press article at: https://www.focus-energetic.ro/nuclearelectrica-incheie-iar-contract-cu-cnu-pentru-uraniu-54071.html. See also Note on page 36 mentioning the quantities for the two contracts for supply concluded with each of Cameco and CNU in SNN's annual report of 2018: http://www.nuclearelectrica.ro/wp-content/uploads/2019/02/SNN_RO_Raport-Anual-CA-2018.pdf. This firm contract followed the offer made by CNU for a higher quantity and an initial bid price 99 % higher than Cameco referred to in row 6 of Table 1.

Improved uranium recovery from tailing pond	[…]	[…]	[…]
Improved uranium recovery from inactive dumps	[…]	[…]	[…]
Total restructuring costs (as per RO submission)	356,4	178,3	178,1
Total in % (as per RO submission)		50,0 %	50,0 %

Source: Annex 14 to the third restructuring plan (*Copenhagen Economics* based on CNU).

(59) Romania then structured its submission to address the three main doubts raised by the Commission. According to Romania, CNU's own contribution is real, actual and does not involve State aid, the third restructuring plan will restore CNU's long-term viability and the restructuring aid to CNU will not distort competition.

3.3.1. *CNU's contribution is real, actual and does not involve State aid*

(60) Romania provided a detailed breakdown of the sources of revenues of CNU in table 4 below:

Table 4

CNU's sources of revenue

Amounts in RON millions	2017	2018	2019	2020	2021	2022	2023
SNN – HG		[…]	[…]	[…]	[…]	[…]	[…]
% of total CNU's revenue		*[…]%*	*[…]%*	*[…]%*	*[…]%*	*[…]%*	*[…]%*
SNN – scrap	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Total ANRSPS	[…]						
Total Conversmin	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Other revenues from rentals	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Total	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Operational costs	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Operational cash-flows	[…]	[…]	[…]	[…]	[…]	[…]	[…]

Source: Annex 14 to the third restructuring plan (Copenhagen Economics).

(61) As illustrated by the table above, Romania submits that CNU has three main clients: SNN, ANRSPS and Conversmin. Romania also detailed the relationship between CNU and these three parties in order to prove that CNU's own contribution resulting from these revenues is to be considered real, actual and not involving State aid.

(62) First, as described in recital 53, CNU has established a new cooperation with SNN, anchored in the law 193/2018. According to Article 2 of this law, CNU will produce in Romania the UO_2 necessary for the Romanian CANDU reactors operated by SNN. Furthermore, according to Article 2(4) of the same law, CNU has the exclusive right to deliver processing and storage services for U_3O_8 in Romania.

(63) The prices of both activities performed by CNU (namely the sale of UO_2 as well as the processing of U_3O_8) are regulated and established by Government Decision. The Government Decision 126/2019 states that the price for those services is to be established based on effective costs of CNU.

(64) Article 2(4) of Government Decision 126/2019 sets certain limits on the regulated price in order to ensure, according to Romania, that it is in line with market principles. In particular, the price of UO_2 cannot be higher than the sum of the following three elements: the six-month average of the long-term international price for U_3O_8, the processing costs and a profit margin of 4 %. Furthermore, Article 2(5) establishes that the cost reductions resulting from an increase in the efficiency of CNU activity certified by an independent auditor will be shared with the buyer, as 50 % will be passed-on into a price reduction to SNN ([19]). Cost reductions that are not linked with an increase in efficiency are passed-on fully into prices. In Romania's view, this cost sharing mechanism provides sufficient incentives to CNU to become more efficient over time.

(65) Romania also provides with an analysis of the three components of the UO_2 price. As regards the 6-month average of the long-term international price for U_3O_8, it has been estimated for the next period at RON 351/kg (EUR 74/kg). The processing costs leading to the production of UO_2 amount approximately to RON […]/kg (EUR […]/kg according to Romania. This price component already includes a 5 % profit margin and is based on a volume of […] ton_U for of UO_2 for a work period of 10 months. The last element of the formula is the 4 % profit margin which Romania considers as a conservative choice in comparison to the average cost of capital of the industry. Romania mentions that this profit margin can be benchmarked with the cost of capital used for the construction of the Paks II nuclear power plant which amounted to [7,5 – 8,5 %] and was assessed by the Commission ([20]). According to Romania, it is also confirmed by the cost of capital for the mining activity which can be estimated above 9 %.

(66) The combination of the three components mentioned in recital 65 gives a value of approximately RON […]/kg (EUR […]/kg) for the price of UO_2 delivery by CNU to SNN.

(67) Romania also mentions that for the year 2018, CNU had signed a contract with SNN valued at RON 24,3 million (EUR 5,1 million) and for 2019 CNU had secured already an advance payment to ensure production continuity. CNU has also yearly contracts with SNN for processing materials containing natural uranium, the value of the contract for 2018 was RON 4,7 million (EUR 1,0 million), with possibility for an annual renewal.

(68) Second, as regards the contracts between CNU and ANRSPS, Romania notes that the details are considered classified information.

(69) Third, for Conversmin, CNU is providing maintenance services according to yearly contracts which are automatically renewed.

(70) In view of the above, Romania considers that CNU's contribution is real, actual and aid free.

3.3.2. *The third restructuring plan will restore CNU's long-term viability*

(71) The third restructuring plan is partly financed by three main aid measures: the transformation of rescue aid into restructuring aid, the aid for mine closure of Crucea-Botușana and some investment measures like the opening of the new Tulgheș-Grințieș mine or the refurbishment of the Feldioara plant.

(72) The Romanian authorities submitted the following elements with regards to the request of the Commission in its Opening Decision for the investment study of the Tulgheș-Grințieș mine underlying Romania's assumption in the initial restructuring plan: Romania submits that the decision to open the new mine is based on previous studies from 1986, 2004 and in particular 2011; even if the Romanian authorities considered the 2011 study as classified information and as such did not share it with the Commission, Romania considers that the assumptions taken in the plan are even conservative as the plan is to begin, at least during the first 10 years to exploit surface reserves and not underground, making the extraction cheaper. A feasibility study which has been commissioned by the Romanian authorities to Cepromin SA should only be available in November 2019.

([19]) Article 2(5) of the Government Decision provides that 'the cost reductions resulted from an increased efficiencies of CNU's activity and certified as such by the independent auditor […] will be split as follows: 50 % of the amount will be recognised in the price as increased profit, whereas 50 % will consist in a price reduction.'

([20]) See Commission Decision of 6 March 2017, SA.38454 (2015/C) – *Possible aid to the Paks nuclear power station* (OJ L 317, 1.12.2017, p. 45).

(73) As regards the technological adaptations of the Feldioara plant in view of processing, refining and exploitation of mining waste, the Romanian authorities mention that the purpose is to reduce the cost of processing uranium ore by upgrading the technological flow, which will lead to higher processing yields.

(74) Romania also explains that from table 4 that it is apparent that the proposed plan will ensure sufficient cash-flows to cover CNU's own contribution as the own contribution required would be around RON 178 million while the sum of the expected operational cash flows over the period 2017-2023 is over RON 250 million (EUR 52,7 million).

(75) Romania also provided with a detailed table of planned cost reductions by site of activity as presented below in table 5. This table shows that the main cost reductions will stem, according to Romania, from 'Suceava', where the current Crucea-Botușana mine is located.

Table 5

Costs per site

Costs (million RON)	2017	2018	2019	2020	2021	2022	2023
Cost per site							
Central	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Feldioara	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Suceava	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Stei	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Oravita	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Total costs	[…]	[…]	[…]	[…]	[…]	[…]	[…]
total amortisation	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Total operational costs	[…]	[…]	[…]	[…]	[…]	[…]	[…]

Source: Annex 14 to the third restructuring plan (Copenhagen Economics).

(76) Romania also explains that the estimates in the third restructuring plan are based on the current uranium prices but that their own research shows positive prospects on the uranium market in the near future. According to Romania, different sources (like S&P Global Market Intelligence) report similar forecasts. The average among forecasts shows that uranium price is expected to grow between 2018 and 2020 by 40 %. Romania also refers to a previous Commission decision that notes market consensus on views that prices of nuclear materials will recover in the medium-term ([21]).

(77) Romania then submits that the overall profitability results are robust to significant changes in assumptions or market conditions. According to Romania, CNU should be able to achieve an own contribution sufficient to cover the investments needs for restructuring even if the foreseen investments had to be increased by 25 % or if the cash-flows would decrease by a similar percentage.

3.3.3. *The restructuring aid in the third restructuring plan will not distort competition*

(78) Romania first underlines that the amount of restructuring aid has been reduced by 60 % compared to the initial restructuring plan and that this decrease will considerably limit the impact on competition and trade.

(79) Romania then puts forward that the uranium markets seem global (both the upstream – extraction than the downstream – refining/processing businesses) and as such the impact of an aid of less than EUR 40 million can only be minimal. To support this, the Romanian authorities explain that Romania accounts for less than 0,1 % of the world's uranium production.

([21]) See Commission Decision of 10 January 2017, SA 44727 (2016/C) *Restructuring aid to Areva* (OJ L 155, 17.6.2017, p. 23), recital 231.

(80) Furthermore, CNU is the only producer of UO_2 using the CANDU technology in Europe and one of the only two companies in the world producing non-enriched natural UO_2. Romania also explains that the small demand for non-enriched UO_2 is not sufficient to trigger sufficient sales that would make a shift in technology profitable and as such which could be an incentive for a current producer of enriched UO_2 to enter this new market.

(81) According to Romania, CNU's exit from the uranium market may increase SNN's dependence on external suppliers of UO_2/U_3O_8. Romania expects that, if the control over the full nuclear fuel cycle were lost, external suppliers of UO_2/U_3O_8 and in particular Cameco, which would become the only available supplier of processed uranium in the form of UO_2 with CANDU certification in Romania, will take advantage of this situation. They would significantly increase the price of products to delivered SNN and maximise their profit. This situation will affect the long-term viability of the national nuclear operator, with negative implications for Romania's energy security.

(82) Finally, Romania underlines that there would be no feasible structural compensatory measure that could be taken without endangering not only the viability of the company but also its core activity. Romania puts forward that the Commission already accepted in previous decisions that any further reductions in activity may risk jeopardising the possibilities of a company to recover, without providing meaningful market opportunities for competitors, as in decision C10/2006 Restructuring to Cyprus Airways.

4. **ASSESSMENT OF THE AID**

4.1. **Existence of aid within the meaning of Article 107(1) TFEU**

(83) By virtue of Article 107(1) TFEU, '*save 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 the trade between Member States, be incompatible with the internal market*'.

(84) It follows that, for a measure to be qualified as State aid within the meaning of Article 107(1) TFEU, the following cumulative criteria must be met: (i) it must be granted by the State and through State resources; (ii) it must confer an advantage upon an undertaking; (iii) it must be selective, i.e. favour certain undertakings or the production of certain goods; and (iv) it must distort or threaten to distort competition and it must affect trade between Member States.

(85) Under section 4, the Commission will assess the aid measures as presented in the third restructuring plan by the Romanian authorities (see table 3 for full details) which are:

(a) the conversion (through debt write-off) of the prolonged rescue loan into restructuring aid for RON 60,4 million (EUR 12,7 million) and;

(b) three State grants totalling RON 117,9 million (EUR 24,9 million) to support CNU investments in the modernisation of the Feldioara plant, the opening of the exploitation at the Tulgheș-Grințieș mine and the closure of the Crucea-Botușana mine.

(86) Prior to examining whether these measures involve State aid pursuant to Article 107(1) TFEU, the Commission notes that Romania considers that the conversion of the prolonged rescue loan into restructuring aid (hereinafter 'the write-off of rescue loan'), as well as the three above-mentioned State grants (hereinafter 'the State grants') do involve State aid.

4.1.1. *State resources and imputability to the State*

(87) For measures to be qualified as State aid within the meaning of Article 107(1) TFEU, (a) they have to derive from the State's resources, either directly or indirectly by any intermediary body acting by virtue of powers conferred on it and (b) they have to be imputable to the State.

(88) The write-off of the rescue loan deprives the State from being reimbursed the rescue loan that it granted from its budget and which should be repaid to the State by CNU. Therefore this measure involves State resources. As this decision has to be taken by the Romanian State, the measure is imputable to the State. The State grants are also to be financed from the State budget and directly result from a decision from the Romanian State. These measures are therefore also clearly imputable to the State and granted through State resources.

4.1.2. *Selectivity*

(89) To be considered State aid, a measure must be selective in that it favours only certain undertakings or the production of certain goods.

(90) The write-off of the rescue loan and the State grants shall be made available only to CNU and are thus not part of a general measure available to all undertakings active in the mining and processing of minerals or in other sectors in Romania. Furthermore, the Government Emergency Order No 65/2016 establishing the legal framework for granting the rescue aid only concerned CNU and is not available to other companies competing, or envisaging to compete with CNU on the uranium processing supply. As the Court has stated, where individual aid is at issue, the identification of the economic advantage is, in principle, sufficient to support the presumption that a measure is selective ([22]). Therefore, the write-off of the rescue loan and the State grants are of a selective nature.

4.1.3. *Economic advantage*

(91) An advantage, within the meaning of Article 107(1) of the TFEU, is any economic benefit that an undertaking could not have obtained under normal market conditions, that is to say in the absence of State intervention ([23]).

(92) The write-off of the rescue loan amounting to RON 62 million (EUR 13,1 million) would favour CNU freeing for other purposes the resources that would be needed to reimburse the loan. No market creditor would have agreed on a debt write-off concerning its whole claim against a given company without any compensation or recovery perspective compared to the possibility of a – at least partial – recovery as part of the liquidation mass of the company in case of bankruptcy. As a conclusion, CNU could not have obtained funding at this condition from the market and therefore the write-off of the rescue loan provides an advantage to CNU.

(93) The State grants planned in favour of CNU are non-repayable financial instruments, which are not available on financial markets, as they offer no remuneration, expectation or entitlement to future financial profits to an investor. CNU could not have obtained funding from the market at these conditions. The State grants therefore provide an advantage to CNU.

4.1.4. *Distortion of competition and impact on trade between Member States*

(94) If aid granted by a Member State strengthens the position of an undertaking compared to other undertakings competing in intra-Union trade, the latter must be regarded as affected by that aid ([24]). It is sufficient that the recipient of the aid competes with other undertakings on markets open to competition ([25]).

(95) As explained in recitals 9 and 10, CNU is mainly active in two stages of the production cycle of uranium: from mining until the production of yellow cake and then from the yellow cake until the production of UO_2.

(96) As explained in recitals 20 to 22, yellow cake is a tradable product offered by a number of companies and the market in which CNU operates is global and open for competition. CNU is in particular actually facing real and direct competition from the European company Orano that proposed to serve SNN's needs in yellow cake and faces the potential competition from EU players via their planned mines in Finland, Hungary and Spain within the EU.

([22]) See judgment of 4 June 2015 *Commission* v *MOL*, C-15/14 P EU:C:2015:362, paragraph 60.

([23]) Judgment of the Court of Justice of 11 July 1996, SFEI and Others, C-39/94, ECLI:EU:C:1996:285, paragraph 60; Judgment of the Court of Justice of 29 April 1999, Spain v Commission, C-342/96, ECLI:EU:C:1999:210, paragraph 41.

([24]) See, in particular, Judgment of the Court of 17 September 1980, *Philip Morris Holland BV v Commission of the European Communities*, Case 730/79, EU:C:1980:209, para. 11; Judgment of the Court (Sixth Chamber) of 22 November 2001, *Ferring SA v Agence centrale des organismes de sécurité sociale (ACOSS)*, Case C-53/00, EU:C:2001:627, para. 21; Judgment of the Court (Sixth Chamber) of 29 April 2004, *Italian Republic v Commission of the European Communities*, Case C-372/97, EU:C:2004:234, para. 44.

([25]) Case T-214/95 *Het Vlaamse Gewest v Commission*, ECLI:EU:T:1998:77.

(97) As regards UO_2, it is explained in recital 23 that UO_2 is not a specific product only produced by CNU, but that UO_2 is as well an intermediary product in the production chain of the enriched UO_2. Beyond the competition of Cameco and potential competition of other UO_2 producers in countries with CANDU reactors (see recital 23), it is as well noticeable that the information report of Orano's Malvési plant mentions that Orano got the necessary authorisations to install an equipment that will enable the production of 300 tons/year of UO_2 to be sold to French clients or on the international market ([26]). Therefore, this new capacity could fully serve SNN yearly demand in UO_2.

(98) CNU is in no way precluded by law from supplying goods or providing services in other Member States.

(99) Likewise, CNU monitors and manages closed uranium mines in Romania. The activity can also be carried out by other mining companies active in the closure and management of mines elsewhere in the Union.

(100) The Commission therefore concludes that there is intra-Union trade for the products traded or produced and services provided by CNU. The planned aid, which allows CNU to remain on the market, is liable to improve its competitive position in the internal market, preventing its competitors to take over CNU's activity in part or in full. Therefore, it distorts or threatens to distort competition and affects trade between Member States.

4.1.5. *Conclusion on the presence of aid*

(101) In light of the above, the Commission concludes that the write-off of the rescue loan and the State grants by which Romania plans to fund RON 178,3 million (EUR 37,6 million) costs of CNU's third restructuring plan constitute State aid under Article 107(1) TFEU and will therefore assess its lawfulness and compatibility with the internal market.

4.2. **Lawfulness of the aid**

(102) The Commission notes that Romania withdrew its plans as regards the State aid notified in the initial restructuring plan in the form of a RON 75,5 million grant, a RON 213 million operating subsidy and a conversion of CNU's debt as of 30 March 2017 of RON 13,3 million into shares held by the Romanian State. Romania confirmed that these measures have not been put into effect. Therefore the assessment by the Commission of these three measures have become devoid of purpose.

(103) As regards the remaining notified aid measures as described in recital 57 and in view of the fact that Romania committed not to put the write-off of the rescue loan and the State grants into effect until the Commission has adopted its final decision, the standstill obligation laid down in Article 108(3) TFEU is met and these measures are considered lawful, without prejudice to their compatibility assessment.

(104) The rescue aid loan was not put into effect before the Commission rescue aid decision and was therefore not unlawful State aid when approved. However, its excessive prolongation and non-repayment well beyond the six-month period for which it was granted render the aid unlawful.

4.3. **Compatibility of the aid and the legal basis for the assessment**

(105) The TFEU sets out the conditions under which aid can be declared compatible with the internal market. Under Article 107(3)(c) TFEU, the Commission can authorise State aid if it is granted to promote the development of certain economic sectors and does not adversely affect trading conditions to an extent contrary to the common interest. Given the nature of the State aid in question, the Commission will examine whether the State aid is compatible with the internal market in light of the provisions set out in the R&R Guidelines, with due regard to the Euratom Treaty.

([26]) Information retrieved from https://www.orano.group/docs/default-source/orano-doc/groupe/publications-reference/rapport_tsn_malvesi_2018.pdf, p. 13, consulted on 23 September 2019.

(106) The assessment of the compatibility of the restructuring aid to support the third restructuring plan has to establish whether the information gathered in the proceedings dispels the doubts expressed in the Opening Decision. To that effect, the assessment follows the three main doubts expressed therein regarding the compatibility of the restructuring measures described in the third restructuring plan with the internal market, namely (i) the presence of real and actual own contribution free of aid from the beneficiary, (ii) the restoration of long-term viability and (iii) the absence of meaningful compensatory measures.

4.3.1. *Eligibility of CNU for restructuring aid under the R&R Guidelines*

(107) Only undertakings in difficulty as defined in point 20 of the R&R Guidelines and not active in the steel or coal sectors as defined in points 15 and 16 thereof, can benefit from compatible rescue or restructuring aid.

(108) As noted in the rescue aid and in the Opening decisions, CNU fulfilled the criteria for being qualified as a firm in difficulty according to point 20 of the R&R Guidelines (see recital 33 of the rescue aid decision) ([27]) and is not active in the coal, steel or banking sectors, so that it can benefit from restructuring aid.

4.3.2. *Presence of real and actual own contribution free of aid from CNU*

(109) According to point 62 of the R&R Guidelines, a significant contribution to the restructuring costs is required from the own resources of the aid beneficiary, its shareholders or creditors or the business group to which it belongs, or from new investors. Point 64 requires that the own contribution which would be considered as adequate for a large company -like CNU- would amount to at least 50 % of the restructuring costs.

(110) Furthermore, according to point 63 of the R&R Guidelines, it is also important that this contribution must be real, as high as possible, aid-free and exclude future expected profit.

(111) This key compatibility criterion of the R&R Guidelines is underpinned by the fact that rescue and restructuring aid are among the most distortive types of State aid. Supporting ailing companies interferes with the normal market dynamic that would push less efficient undertakings out of business. As such, a significant own contribution is assessed as a sign that the markets believe in the feasibility of the return to viability and are actively supporting the restructuring plan.

(112) In the third restructuring plan, Romania presented an own contribution amounting to RON 178,1 (EUR 37,6 million) and purportedly representing 50 % of the total restructuring costs (see section 3.3.1). The sources of revenue are contracts with: (i) SNN for the provision of UO_2, (ii) SNN for the treatment of scrap, (iii) the ANRSPS, (iv) CONVERSMIN, and (v) other minor revenues (see table 4).

(113) While analysing the free of aid character of the own contribution, the Commission prominently notes the absence of participation of any contribution from market investors or commercial banks that would take the risk of pre-financing sales to SNN or provide a market-based loan or fresh capital to finance part of the restructuring costs. On the contrary, the Commission notes that all of the proposed sources of own contribution consist of revenues from contracts with public administrations and State-owned enterprises.

(114) Romania did not present any supporting document or evidence of market-conformity of the planned contracts and prices of ANRSPS, a public administration, with CNU, that could lift the doubt raised in the Opening Decision (recital 51). The same is true regarding contracts with CONVERSMIN: Romania presented data about past and present contracts but does not show these contracts and revenues therefrom are aid free, by demonstrating that the price is a market price.

(115) More prominently, the main source of revenues of CNU (about 80 %) to the restructuring costs, will come, according to Romania, from UO_2 contracts to be concluded between CNU and SNN in implementation of the new adopted law 193/2018 and its accompanying Government's decision (as described in recital 53). Therefore, the Commission will first assess if these revenues – notably from the sales to SNN – can be considered aid free. To this purpose, the Commission will follow the same reasoning and criteria as the one analysed in section 4.1.

([27]) CNU, according to its financial statements as of 31 December 2015, had negative equity and fulfilled the criteria under Romanian law for being placed in collective insolvency proceedings at the request of its creditors.

4.3.2.1. Assessment of the revenues from SNN for UO_2 provision by CNU

(116) The analysis of CNU's revenues generated from the UO_2 sales to SNN provided under this section is only meant at verifying the compliance with point 63 of the R&R Guidelines, which requires that the contribution of the beneficiary to the restructuring costs be free of aid.

(117) As explained in recital 12, the Romanian State owns through the Ministry of Energy 82,5 % of the share capital in SNN. It follows that the resources transferred from SNN to CNU as payment for the contracts to be executed within the framework of the new monopoly law are in fact stemming from State resources to an overwhelming proportion and that the resources of SNN are under control of the Romanian State.

(118) According to settled case law, the ability of the State to control a public undertaking involved in granting a measure does not justify automatically the presumption that its actions and commercial decisions are imputable to the State. The Court of Justice of the European Union ('the Court') has explained that the resources of a public undertaking are to be considered State resources and actions concerning them are considered to be imputable to the State if the State is capable, by exercising its dominant influence over such an undertaking, to direct the use of its resources ([28]). The Court provided indicators for establishing imputability which include, among others, the intensity of the supervision exercised by the public authorities over the management of the undertaking or any other indicator showing an involvement by the public authorities in the adoption of a measure.

(119) First and foremost, the Commission notes that law 193/2018 forcing SNN to buy from CNU has been adopted in Parliament, (see recital 53). As a consequence of this law, SNN will have the obligation to purchase UO_2 from CNU based on CNU's actual refining costs, irrespective of the profitability for SNN of the transaction, notably compared to alternative supplies of UO_2 for instance from Canada-based Cameco. This clearly indicates that supply contracts between SNN and CNU pursuant to this law are not market-based independent commercial decisions of SNN but will be the result from the exercise of the legislative power of the Romanian State. This means that it is the Romanian State which is ultimately exercising the decisive influence over the decision by SNN to contract the purchase of UO_2 from CNU and over the related conditions of that contract (in particular, its price).

(120) In similar circumstances, the Commission concluded that long-term contracts relating to the purchase of electricity by Hidroelectrica, a public undertaking controlled by the Romanian State (80 % of shares) from other public undertakings S.C. Termoelectrica S.A and S.C Electrocentrale Deva S.A, that were prompted by the State authorities, involved State resources and were imputable to the State ([29]). In the case at hand, imputability to the State is even more obvious and directly established, considering that any alternative supply of UO_2 –except for the case where CNU would be unable to supply- would breach law 193/2018 of the State-imposed nature of the contractual relationship between SNN and CNU that directly stems from the Romanian law.

(121) The Commission also notes that this conclusion is strengthened by the importance of the role of the State within the governance of SNN (see recital 12) that ensures that the obligation imposed by law to SNN is put in practice by SNN's decision bodies: indeed, the seven members of the executive board of SNN ([30]) are appointed by the General meeting of shareholders, where the State, owing to its stake in SNN, holds a majority. The Board of directors is in particular responsible for appointing and revoking the managers of SNN and oversees their activity.

(122) Therefore, the Commission concludes that there is direct evidence showing that the conclusion of the contracts and their implementation are imputable to the Romanian State. Furthermore, considering that the conclusion and the implementation of the contracts involve a transfer of resources of SNN (as payment to CNU), which is a State-controlled buyer, the Commission concludes that this planned new measure entails State resources (see recitals 116 and 118).

([28]) Case C-482/99 French Republic/Commission (Stardust Marine) [2002] ECR I-4397

([29]) See Commission Decision of 20 April 2015 on Incompatible aid through preferential tariffs in contracts between Hidroelectrica S.A. and thermoelectricity sellers (SA.33 475 (2012/C)), recitals 12 and 92 to 100 (OJ L 275, 20.10.2015, p. 46). In that case, the selling prices were based on costs determined by the Energy Regulator and the contracts allowed the sellers, which could not find buyers at market prices to sell part of their production to Hidroelectrica well above market prices.

([30]) See: SNN's latest report in the 'annual reports' section of its official website: 2016 Annual report retrieved on 30.7.2019, pages 88 to 96 – http://www.nuclearelectrica.ro/wp-content/uploads/2018/01/Raport-Anual-CA-2016-Final-ENGLEZA1.pdf

(123) Law 193/2018 only concerns CNU and is not available to other companies competing, or envisaging to compete with CNU on the uranium processing supply. As the Court has stated, where individual aid is at issue, the identification of the economic advantage is, in principle, sufficient to support the presumption that a measure is selective ([31]). Law 193/2018 and the revenues accruing to CNU in implementation thereof are thus clearly selective.

(124) On the advantage, the Commission notes that the regulatory framework formed by law 193/2018 and the accompanying Government's decision, ensures CNU with the certainty to sell to SNN its UO_2 production at a price covering part of its costs and ensuring it a profit. This certainty is not available on the market for any other company. In the absence of State intervention, CNU would not have the certainty to sell its production, as in the previous setting of SNN tendering out its UO_2 supply contracts. This is confirmed by table 1, showing that since the introduction of the tender procedure, the prices offered by CNU have always been significantly higher than the one offered by Cameco. The Commission therefore concludes that Law 193/2018 and the revenues accruing to CNU in implementation thereof, provides an advantage to CNU.

(125) In light of the above, the Commission concludes that the revenues from SNN for the purchase of UO_2 are not free of aid, and therefore do not constitute a valid own contribution to the restructuring costs under point 63 of the R&R Guidelines.

(126) The Commission then assessed, other things being equal, what would be the level of CNU's own contribution if those revenues from SNN for processing were not accounted anymore. The resulting operational cash flows are presented in table 6 ([32]).

Table 6

Actual and projected financial results of CNU

In RON million	2017	2018	2019 (f)	2020 (f)	2021 (f)	2022 (f)	2023 (f)
Turnover	84,1	37,8	12,9	15,4	16,5	16,9	17,4
(total expenditures)	66,0	44,0	2,7	3,2	3,1	2,8	3,0
Total operational cash-flows	18,1	-6,2	10,1	12,2	13,4	14,1	14,4
(amortisations)		14,6	11,3	11,3	11,3	11,3	11,3
(taxes – 16 % tax rate assumed based on submissions by Romania)		0,0	0,0	0,2	0,3	0,5	0,5
Net profit		n.a.	-1,2	0,8	1,7	2,4	2,6
Adjusted equity		115,2 ([33])	114,1	114,8	116,6	119,0	121,6
ROE ([34])		n.a.	-1,0 %	0,7 %	1,5 %	2,0 %	2,2 %

([31]) See judgment of 4 June 2015 *Commission* v *MOL*, C-15/14 P EU:C:2015:362, paragraph 60.

([32]) In order to recalculate the operational cash flows, several assumptions on the revenues and the costs as presented by Romania (Table 4) have been made. First, regarding the revenues, the assumption is taken that CNU would not receive the revenues linked to the UO_2 contract with SNN as from 2019; revenues from 2017 and 2018 pre-dated law 193/2018. Second, the calculations conservatively assume that CNU would bear only a percentage of the costs related to the Feldioara plant corresponding to the percentage of revenues generated by the scrap contract compared to the total revenues generated by the scrap and the UO_2 contract to SNN as of 2019. The operating costs of the existing Crucea-Botușana mine as of 2019 are also set aside, considering that CNU would not bear most of them if it needs not to produce U_3O_8 for supplying UO_2 to SNN. As a result, these operating cash flows constitute a maximum in the absence of UO_2 contract with SNN given conservative assumptions on the extent of the decrease in revenues and of the decrease in costs: the decrease in costs could be lower, for instance if CNU were still to produce U_3O_8 for instance for constituting an internal stock, in spite of the absence of UO_2 contract with SNN.

([33]) Based on submission by the Romania authorities (RON 41,3 million of 'share capital' and RON 73,9 million of 'other reserves').

([34]) ROE, ROCE and ROA were computed, in accordance with the methodology followed for the financial year 2018 by the Romanian authorities in their submission dated 19 April 2019 (annex 14), by dividing the net profit by the 'share capital' increased by 'other reserves'. Cumulative profits were taken into account to compute an adjusted equity for each year of the restructuring period.

ROCE		n.a.	-0,8 %	0,4 %	1,3 %	0,7 %	0,9 %
ROA		n.a.	-0,3 %	0,2 %	0,4 %	0,4 %	0,6 %

Source: Commission calculations based on data in Third restructuring plan.

(127) Based on those calculations and using the sum of operating cash flows over 2017-2023 as Romania did, the maximum aid-free amount that CNU could contribute to the plan is RON 76,2 million (EUR 16,1 million). This amount only represents 21,4 % of the RON 365 million (EUR 77,0 million) planned restructuring costs. This is well below the required level of minimum 50 % own contribution. In that respect, even if one assumed, for the sake of the argument, that CNU would still be capable of selling to SNN if it aligned with market prices, the operating revenues accruing to CNU would necessarily be hypothetical and not sufficiently stable and predictable to amount to a real and actual source of own contribution to the restructuring costs. The doubts the Commission raised in that respect in the Opening Decision therefore remain.

(128) Under the Commission's decision making practice in application of the R&R Guidelines, the different beneficiaries concerned contributed with aid free funding to as much as 73 % ([35]) of such costs and no less than 44 % ([36]) of the restructuring costs (less than 50 % can be accepted in an assisted area pursuant to Article 107(3) a) as provided for in point 98 of the R&R Guidelines). The Commission also wants to underline that the strategic nature of the nuclear industry was not a reason for alleviating own contribution requirements for Areva, a potential competitor of CNU where the own contribution was higher than 50 % ([37]). In the present case, the Commission does therefore not identify any valid reason to depart from the rules and its decision-making practice as regards the minimum amount of own contribution to the restructuring costs.

(129) Furthermore, Romania also did not provide any justification to the point raised by the Commission in its Opening Decision (see recital 50) that Romania failed to explain why future profits are actual sources of own contribution in light of the point 63 of the R&R Guidelines, which excludes future expected profits such as cash flow.

(130) As regards other revenues than the ones from SNN relating to CNU's UO_2 supply contract, would these revenue be real, actual and aid-free, which has not been demonstrated by Romania, these revenues would in any case only represent 21,4 % maximum of own contribution (see recital 127) and be largely insufficient for it to meet the requirement relating to own contribution of the R&R Guidelines. The Commission therefore does not need to conclude on whether the other sources of own contribution as presented by Romania are actual, real and aid-free.

4.3.3. *Restructuring plan and return to long-term viability*

(131) According to point 45 of the R&R Guidelines, in the case of restructuring aid, the Commission will require that the Member State concerned submit a feasible, coherent and far-reaching restructuring plan to restore the beneficiary's long-term viability. The restructuring plan must restore the long-term viability of the beneficiary within a reasonable timescale and on the basis of realistic assumptions as to future operating conditions that should exclude any further State aid not covered by the restructuring plan. According to point 48 of the R&R guidelines, the restructuring plan must identify the causes of the beneficiary's difficulties and the beneficiary's own weaknesses, and outline how the proposed restructuring measures will remedy the beneficiary's underlying problems. According to point 50, the expected results of the planned restructuring should be demonstrated in a baseline scenario as well as in a pessimistic (or worst-case) scenario. According to point 52 of the R&R guidelines, long-term viability is achieved when an undertaking is able to provide an appropriate projected return on capital after having covered all its costs including depreciation and financial charges.

([35]) Commission Decision of 25 June 2018, SA.49214 (2017/N) – *Restructuring aid to Semenarna Ljubljana d.o.o.* (OJ C 339, 21.9.2018, p. 1).

([36]) Commission Decision of 12 May 2016, SA.40419 (2015/NN) – *Restructuring aid for Polzela d.d.* (OJ C 258, 15.7.2016, p. 1).

([37]) See Commission Decision of 10 January 2017, SA 44727 (2016/C) *Restructuring aid to Areva* (OJ L 155, 17.6.2017, p. 23).

(132) This key condition of the R&R Guidelines notably aims at avoiding distortion of competition over a long period by unprofitable, repeated injection of public money into ailing companies that would not be able to return to a self-sustained and viable financial situation in a reasonable timeframe in the future. In that respect, the Commission notes that the strategic nature of the nuclear industry was not in other case involving that industry ([38]) a reason for alleviating requirements in terms of thoroughness and robustness of the restructuring plan and in terms of likelihood of return to long-term viability after implementation of the plan.

4.3.3.1. Shortcomings of the restructuring plan

(133) Recitals 54 to 61 of the Opening Decision raised doubts that CNU could become viable without continuous aid (the operating subsidy) and that the planned new mine would be profitable under realistic assumptions. In response, Romania alleges that CNU would become viable on long-term basis given financial projections showing on average between 2018 and 2023, a return on equity (ROE) of 14 % (11,4 % in 2023) and a return on capital employed (ROCE) of 12,9 % (13,6 % in 2023). However, for the reasons provided in the following recitals, the Commission's view is that CNU's long-term viability is not proven.

(134) The Commission notes that in its submission, Romania did not explain why its cash-flow forecasts did not seem to encompass either operating costs or investment costs relating to the new mine planned at Tulgheș-Grințieș.

(135) The Commission also notes that based on information provided by Romania (see table 1), the prices submitted by CNU for supplying SNN with batches of 120 ton_U of UO_2 over 6-month period between December 2015 and August 2018 were higher by 39 % to 99 % compared to Cameco's bid. In its third restructuring plan, Romania did not submit a detailed, quantified explanation of how CNU's production processes (both on the mining and processing/refining segments) could become competitive with Cameco and thus return to long-term viability on the market without further State aid at the end of the restructuring period.

(136) The Commission also notes that the amount of operating costs assumed by CNU in the third restructuring plan is in the range of RON [50-70] million (EUR [10,5 – 14,8 million) per year from 2020. This amount is roughly equal to one third of the annual expenditures foreseen in 2023 (RON 196,8 million) (EUR 41,5 million) in the first restructuring plan submitted by Romania (see table 1). The Romanian authorities did not provide any clear nor convincing justification for this significant reduction in operating costs between those two plans: in particular, in both plans, Crucea would have been fully depleted by 2023; as a consequence, the closure of this mine does not appear to be the explanation for that difference in operating costs between the two above-mentioned restructuring plans. The credibility of assumptions relating to operating cost is thus not established.

(137) Moreover, Romania did not explain at all the underlying assumptions for the revenues assumed in its restructuring plan as of 2021, such as the assumptions in terms of mix for the input of the Feldioara plant between U_3O_8 produced internally and imported. Additionally, the Romanian authorities did not submit a worst-case scenario as foreseen by point 50 of the R&R guidelines with a detailed assessment of the return to viability of the company even under pessimistic assumptions. The Romanian authorities indeed merely computed the amount of cumulative operating cash-flows deemed to constitute own contribution in case operating costs (or alternatively investment costs) were higher by 25 % without substantiating the rationale for such an assumption nor assessing in detail the impact it would have on the financial statements of CNU.

(138) In addition, Romania did not provide evidence that the new mine would be profitable, as expressly requested in the Opening Decision. A feasibility study commissioned from a Romanian consultancy (Cepromin Deva) is expected by November 2019. Therefore, the Commission notes that the 2011 study on the uranium mine, (see recital 72), which the Commission regrets that Romania was unable to produce, even expurgated of possible concerns on national security is, in any event, obsolete and insufficient to establish the profitability of the new mine. In particular, Romania did not dismiss the observation made by the Commission in the Opening Decision that the planned production cost of the mine would be exceeding by far U_3O_8 international market price (see recital 39). Based on

([38]) See footnote 42.

the same specialised source, the Commission observes that uranium prices remain at a low level of circa UDS 25 (EUR 22,6) per lb of U_3O_8 ([39]), which is by far lower than the production cost of USD […] (EUR […]) per lb of U_3O_8 foreseen by Romania in its initial restructuring plan. Romania explained that the production costs of its new mine may be lower than the ones initially envisaged in its 2011 plan as only open pit reserves would be exploited in a first stage but failed to explain how that would compare with current and forecasted market prices. Furthermore, the new subsidy introduced in the third restructuring plan (see recital 57) in order to cover the costs of closure of the Crucea-Botușana mine shows that CNU did not set aside reserves for the environmental restoration of that mine. In the absence of any study for the new mine, there is no possibility to verify that these costs have been correctly factored in for the new mine. The same is true for all the other future costs of exploitation of the new mine. Therefore, the Commission concludes that the doubts about the new mine raised in the Opening decision have not been lifted.

4.3.3.2. Doubts on the return to long-term viability

(139) Foremost, the Commission considers that the calculations provided by the Romanian authorities do not demonstrate the return to viability of CNU as they are based on the wrong premise that CNU satisfactorily contributes to the restructuring of its operations. As explained above, the Commission indeed considers that the revenues from the supply monopoly for the provision of UO_2 to SNN are not free of aid (see recital 125). It follows that there is no return to long-term viability without further State aid since the supplies to SNN under the monopoly are not limited in time and are expected to constitute the bulk of the revenue of CNU during the restructuring period. In practice, as shown in Table 5, notwithstanding the shortcomings in Romania's third restructuring plan, absent this source of revenue, CNU would generate at most a ROE of 2,2 % and ROCE of 0,9 % in 2023. This 2,2 % return is far below the current 5,0 % market rate for a Romanian sovereign bond with a 10-year maturity; this 2,2 % return is also far below the 7,5-8,5 % ROCE which Romania deems to be an adequate remuneration for capital in this industry, by reference to the Paks II decision (see recital 65). The ROCE benchmark that Romania puts forward relates to the construction and operation of a nuclear power plant, which entails risks, costs and remunerations that are different from those of nuclear fuel supply. CNU's business involves a mining component exposed to the evolution of yellow cake prices and a conversion activity into uranium dioxide. A minimum target ROCE for CNU around 7 % to 8,4 %, which coincidentally happens to be in the same order of magnitude as the range in Romania's submission, might therefore be appropriate for reference ([40]). In any event, CNU's projected ROE and ROCE at the end of the restructuring period in 2023 remain largely below the 5 % borrowing costs of Romania if the non-aid free revenues are not taken into consideration. CNU cannot thus be held to return to long-term viability without further aid.

(140) On a subsidiary basis, the Commission assessed whether its conclusion with regard to long-term viability would be changed in case expected revenues in the absence of monopoly would be based on sales at market price. However, if CNU were to effectively sell and record revenues for UO_2 production at market prices, the resulting income would not allow it to reach long-term viability.

(141) According to Romania's submissions, the current sale price of UO_2 is indeed equal to 380 RON/kg (EUR 80/kg) (Cameco's offer dated July 2018), and the market price for U_3O_8 is equal to 31,7 USD/lb (RON 350,4 per kgU of U_3O_8) based on a 6-month historical average. As a consequence, a market buyer would accept to pay CNU for the provision of UO_2 based on imported U_3O_8 a market price for UO_2 (380,4 RON per kg U) less the market price for U_3O_8 (350,4 RON per kgU) that is roughly 30 RON per kgU. The revenues at market price would prove largely insufficient to cover for CNU's processing cost of U_3O_8 into UO_2 ([…] RON/kg, including a 5 % profit margin). Indeed, a higher price for UO_2 based on imported U_3O_8 would prove uncompetitive.

([39]) Data as of 20 July 2019 retrieved from https://www.uxc.com

([40]) In 2018, Orano's post-tax weighted cost of capital on uranium mining was 7,65 % to 11,6 % and 6,7 % in subsequent refining and processing activities. The relative weights of mining and refining and processing cost for CNU in 2019 are 34 % and 66 %, respectively (see table 5), which results in an 'all in' post-tax weighted cost of capital of 7 % to 8,4 %, if the capital cost of Orano was set as target ROCE for CNU. This would be conservative. The minimum target ROCE should be higher than a post-tax weighted cost of capital since an acceptable remuneration must always cover the borrowing costs and appropriate shareholder remuneration. Consolidated accounts of Orano 31.12.2018, p. 46 available at: https://www.orano.group/docs/default-source/orano-doc/finance/publications-financieres-et-reglementees/2018/resultats-annuels-2018/orano_comptes

(142) Similarly, based on the information submitted by Romania, CNU would not come back to long-term viability if it were to be paid the market price for UO_2 (380,4 RON per kgU) by SNN for an integrated offer of UO_2 based on internally mined yellow cake: indeed, Romania submitted that CNU's integrated production cost is roughly of […] RON/kgU based on the Crucea-Botușana mine ([41]) which is far higher than the price for UO_2 submitted by Cameco. Therefore, most of expected sales (ca. 80 %) for the provision of UO_2 based on internally mined U_3O_8 from its planned new mine would be loss making. On that basis, the plan submitted by Romania does not allow concluding that CNU would be viable on the market when selling at market prices.

(143) The Commission further assessed what would happen if CNU were to sell UO_2 from yellow cake stemming from its new planned mine to SNN at market price (380,4 RON per kgU). In such a case, based on the information provided by the Romanian authorities (table 4), the cost of Feldioara would represent at least around RON […] million per year, which would amount to RON […] per kgU, assuming very conservatively, that production at full plant capacity of […] ton_U of UO_2 per year would not increase costs. After covering Feldioara's costs and the cost of central functions (conservatively assumed unchanged at RON […] million per year), this would leave a maximum margin of RON […] per kg_U of UO_2 for CNU to cover the cost of the (new) mine and processing uranium into yellow cake. This margin is far lower than the current market price of RON 350 per kg_U of U_3O_8. This is also lower than the production cost of RON […] per kgU which Romania submitted for the new mine in Tulgheș-Grințieș ([42]).

(144) Table 7 shows that CNU would fail to reach long-term viability if selling UO_2 at market price under the notified restructuring plan, even under the (optimistic) assumption that the production cost of the new mine (including proper coverage of future environmental liabilities) would be equal to current market price for yellow cake (i.e. RON 350 per kg_U of U_3O_8). In effect, the revenues from sales of UO_2 at market price would be lower than CNU's production costs. Accordingly, its ROE, ROA and ROCE would all be negative at the end of the restructuring period. On that basis, even with supplies from the new mine, the third restructuring plan submitted by Romania does not allow concluding that CNU would be viable on the market when selling at market prices.

Table 7

Actual and projected financial results of CNU (sale of UO_2 at market price)

In RON million	2017	2018	2019 (f)	2020 (f)	2021 (f)	2022 (f)	2023 (f)
historical revenues	84,1	37,8					
non-UO_2 related revenues			12,9	15,4	16,5	16,9	17,4
UO_2 related revenues			93,12	93,12	93,12	93,12	93,12
Total Turnover	84,1	37,8	106,0	108,5	109,6	110,1	110,5
Feldioara costs	42,98	28,38	42,53	41,73	40,61	39,27	37,84
Central costs	7,77	4,29	7,77	7,77	7,77	7,77	7,77
Suceava							
mining costs (assuming a production cost equal to market price)	na	na	84	84	84	84	84
Net profit	**na**	**na**	**-28,4**	**-25,1**	**-22,8**	**-21,1**	**-19,2**
adjusted equity			115,23				
ROE ([43])				-25 %	-22 %	-20 %	-18 %

([41]) Second restructuring plan Annex 11.
([42]) See Opening Decision recital 25. Romania has not submitted any new reasoned cost estimates.
([43]) Computed on the basis of an adjusted equity of RON 115 million (assumption provided for 2018 by the Romanian authorities in the notified third restructuring plan); ROCE and ROA computed by dividing net profit by the same relevant aggregate than in Table 6.

ROCE				-20 %	-12 %	-17 %	-7 %
ROA				-7 %	-6 %	-5 %	-4 %

Source: Commission calculations based on data in Third restructuring plan.

4.3.4. *Avoidance of undue negative effects on competition and trade*

(145) According to point 76 and following of the R&R Guidelines, when restructuring aid is granted, measures must be taken to limit distortions of competition, so that adverse effects on trading conditions are minimised as much as possible and positive effects outweigh any adverse ones. In particular, measures limiting the distortion of competition should usually take the form of structural measures, i.e. clear-cut divestitures of viable activities, and not the form of divestitures of loss-making activities which would need to be abandoned anyway to preserve viability.

(146) The logic behind this condition is that under normal market circumstances, if the company would not get the aid, it would go bankrupt or be taken over. This would give rise to market and/or external growth opportunities for its competitors. Therefore, the beneficiary, while getting the aid, should somehow compensate partly for the negative impact on competition that it creates. In addition to the requirement of a contribution by the aid to an objective of common interest, the requirement for compensatory measures also acts as a deterrent for undertakings and helps preventing moral hazard with shareholders of companies turning to the State when experiencing difficulties while recording the upsides when they are profitable.

(147) In this regard, as summarised in recitals 78 to 82, Romania first submits that as compared to the initial restructuring plan, the third restructuring plan decreases the State aid to be granted to CNU by more than 60 %. The Commission notes that as concluded in recital 125, in the third restructuring plan, the revenues coming from the UO_2 contract between CNU and SNN (concluded based on law 193/2018), and amounting to more than RON 250 million (EUR 52,7 million) (over the restructuring period according to Romania's estimations), cannot be considered as free of aid. Therefore, this amount must be added to the RON 178,3 million (EUR 37,6 million) aid, which gives a total aid amount of RON 428,3 million (EUR 90,3 million). This amount represents 97,2 % of the total aid amount presented by Romania in its initial restructuring plan (RON 440,8 million or EUR 93,0 million). Therefore, the Commission concludes that the aid intensity is almost unchanged and has not decreased by 60 % as presented by Romania.

(148) Romania also merely repeats the arguments already presented and on which the Commission expressed doubts in the Opening Decision (see recitals 62 to 68). Romania submits that structural compensatory measures are neither needed, nor possible because CNU's size is negligible and the lack of EU-based alternative CANDU-based supplier makes the impact of aid on competition inexistent. Allegedly, any divesture would jeopardise the viability of the restructuring plan.

(149) However, based on the information presented in recitals 21 to 23 and assessed in section 4.1.4, the Commission concluded that there is actual and potential competition from European companies in providing the yellow cake and that there is also potential competition on the conversion activity as well.

(150) As regards the argument put forward by Romania that any divestment would jeopardise the viability of the restructuring plan, the Commission notes that in the Areva case ([44]), Areva divested its reactor business (New Areva NP) to the French energy incumbent EDF. This activity represented a third of Areva's assets and generated more than 50 % of its turnover pre-restructuring ([45]). The Commission notes that Romania did not present any alternative plan including a divestment of any of CNU's activities such as focussing CNU on the mining segment, while divesting its processing/refining activity on a going concern basis as a stand-alone business.

([44]) See footnote 42.
([45]) See recital 333 of the final decision as referenced in footnote 42.

(151) In view of the information portrayed in recitals 147 to 150 above, it appears that: (i) there is actual competition regarding the uranium extraction activity, (ii) further competition could potentially arise regarding the uranium processing-refining activity and (iii) Romania does not propose any structural compensatory measure for CNU. Consequently, the Commission concludes that the absence of structural compensatory measures does not satisfy the criteria of measures to limit the distortion of competition set out in points 76 and following of the R&R Guidelines.

4.4. **Final conclusion on compatibility of the restructuring aid with the internal market**

(152) As regards the rescue aid loan, in line with point 55(d) of the R&R Guidelines, Romania committed to submitting, within maximum six months from the date of the rescue aid decision or the disbursement of the first instalment (recital 42 of the rescue aid decision), either proof that the loan was reimbursed, or a valid restructuring plan, or a substantiated liquidation plan setting out the steps leading to the liquidation of CNU within a reasonable time frame, without further aid. Romania did not meet this commitment, since (i) the rescue loan has not been reimbursed and (ii) Romania was informed that the restructuring plan (submitted by Romania in June 2017 and amended with a latest version in April 2019) does not ensure a proper own contribution of CNU to the restructuring plan, nor a return for CNU to long term viability without further aid at the end of the restructuring period, nor appropriate compensatory measure.

(153) From the above the Commission concludes that (i) the conversion (through debt write-off) of the prolonged rescue loan into restructuring aid for RON 60,4 million (EUR 12,7 million) and (ii) the three State grants totalling RON 117,9 million (EUR 24,9 million) to CNU are incompatible with the internal market.

5. **AREAS OF APPLICATION OF THE EURATOM TREATY**

(154) The Commission also takes in due account that CNU is active in the areas covered by the Euratom Treaty. The Euratom Treaty established the European Atomic Energy Community, specifying the necessary instruments and allocating responsibilities with a view to achieving objectives that include nuclear safety, energy independence and the diversity and security of energy supplies ([46]).

(155) Article 52 of the Euratom Treaty established the Euratom Supply Agency (ESA) to ensure a regular and equitable supply of nuclear fuels to European users in line with the objectives of Art. 2(d). To perform this task, ESA applies a supply policy based on the principle of equal access of all users to ores and nuclear fuel and ESA has a right of option on materials produced in the Community and an exclusive right to conclude supply contracts for the supply of ores and nuclear fuels

(156) Pursuant to Article 67 of the Euratom Treaty, 'save where exceptions are provided for in this Treaty, prices shall be determined as a result of balancing supply against demand as provided for in Article 60; the national regulations of the Member States shall not contravene such provisions'. Under the simplified procedure, established by Article 5bis of the Regulation of the Supply Agency of the European Atomic Energy Community ([47]), ESA is exercising its right of option and its right to conclude contracts through a single trilateral contract between the producer, ESA and the user.

(157) In the case at hand, ESA is party to every contract between CNU and SNN and as specified in recital 156, is not bound by any Romanian legal acts while assessing purchase orders.

(158) The system for regulating supplies only lays down the principle of preference for Community users, in accordance with Article 2(d) of the Euratom Treaty, and does not guarantee the disposal of Community production of nuclear materials. Moreover, the Euratom Treaty provides for a system that requires prices to be determined by balancing supply and demand unless there are exceptional circumstances ([48]).

([46]) See in particular Articles 1, 2 and 52 of the Euratom Treaty.

([47]) See Regulation of the Supply Agency of the European Atomic Energy Community amending the rules of the Supply Agency of 5 May 1960 determining the manner in which demand is to be balanced against the supply of ores, source materials and special fissile materials (OJ L 193, 25.7.1975, p. 37).

([48]) See, *ENU v Commission*, judgment of 11 March 1997, C-357/95 P EU:C:1997:144, where the Court indicated that there could be exceptional circumstances that could justify departing from the pricing mechanism laid down in the Treaty. The example provided is the 'existence of a threat or a possible threat to the fundamental objective of a regular and equitable supply of ores and nuclear fuels' (para. 47).

(159) The Commission has acknowledged in previous decisions on State aid that the promotion of a successful nuclear energy sector is a fundamental objective of the Euratom Treaty, and therefore also of the European Union ([49]). Without prejudice to the compliance of supplies by CNU to SNN governed by law 193/2018 and Government Decision 126/2019 with the provisions of the Euratom Treaty, the Commission acknowledges that the present decision may impact some of Romania's obligations under the Euratom Treaty as regards safety of uranium mining and processing and security of supply, especially if CNU had to cease operations.

(160) In the context of or as a follow-up to the present proceedings under the TFEU, Romania may plan to adopt measures ensuring the fulfilment of the Euratom Treaty objectives as regards safety of uranium mining and processing and security of supply for instance preserving the ability to guarantee that the Feldioara plant, whether under CNU ownership and operation or not, remains able to produce UO_2 for SNN's CANDU reactors. However, such measures in that context cannot put into question, unduly reduce the scope or delay the implementation of any recovery obligation ensuing from the present proceedings and shall have to be necessary, proportionate, reasonable and limited in time and scope to what is indispensable to preserve safety and security of supply. In enforcement of the present Decision, the Commission must be informed in advance and be in a position to verify that these conditions are met. Consequently, this decision is generally without prejudice to such measures.

6. **RECOVERY**

(161) According to the TFEU and the Union Court's established case-law, the Commission is competent to decide that the Member State concerned must abolish or alter aid when it has found that it is incompatible with the internal market ([50]). The Court has also consistently held that the obligation on a Member State to abolish aid regarded by the Commission as being incompatible with the internal market is designed to re-establish the previously existing situation ([51]).

(162) In this context, the Court has established that this objective is attained once the recipient has repaid the amounts granted by way of unlawful aid, thus forfeiting the advantage which it had enjoyed over its competitors on the market, and the situation prior to the payment of the aid is restored ([52]).

(163) In this regard, Article 16(1) of Council Regulation (EU) 2015/1589 ([53]) states that *'where negative decisions are taken in cases of unlawful aid, the Commission shall decide that the Member State concerned shall take all necessary measures to recover the aid from the beneficiary […]'.*

(164) Thus, the prolonged rescue aid loan – which became unlawful as from the moment when the rescue aid was not repaid within six months after its granting and/or disbursement – was implemented in violation of Article 108(3) TFEU, and is to be considered as unlawful and incompatible aid. The loan must be recovered in order to re-establish the situation that existed on the market prior to its granting. According to Article 16(2) of Regulation (EU) 2015/1589, recovery should cover the time from when the advantage was granted to the beneficiary, that is to say when the aid in the form of principal amount of loan was unlawfully put at the disposal of the beneficiary, until its effective recovery. Furthermore, the sum to be recovered should bear interest until effective recovery. The recovery interest is distinct from the contractual interest or other related sums related to the rescue loan owed by CNU to the State based on contractual agreements, which must be accordingly added to the principal aid amount. By paying the recovery interest, the beneficiary forfeits the financial advantage arising from the availability of the aid in question, free of charge, from the date it was put at the disposal of the beneficiary until it is paid back ([54]). The recovery interest shall be calculated pursuant to Regulation (EC) No 794/2004 ([55]).

([49]) See the Commission Decision 2005/407/EC of 22 September 2004 on the State aid which the United Kingdom is planning to implement for British Energy plc (OJ L 142, 6.6.2005, p. 26), and the Commission Decision (EU) 2015/658 of 8 October 2014 on the aid measure SA.34947 (2013/C) (ex 2013/N) which the United Kingdom is planning to implement for support to the Hinkley Point C nuclear power station (OJ L 109, 28.4.2015, p. 44).

([50]) See Case C-70/72 *Commission v Germany,* ECLI:EU:C:1973:87, paragraph 13.

([51]) See Joined Cases C-278/92, C-279/92 and C-280/92 *Spain v Commission* ECLI:EU:C:1994:325, paragraph 75.

([52]) See Case C-75/97 *Belgium v Commission* ECLI:EU:C:1999:311, paragraphs 64 and 65.

([53]) Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ L 248, 24.9.2015, p. 9).

([54]) See Case T-459/93 *Siemens v Commission* ECLI:EU:T:1995:100, paragraphs 97-101

([55]) Commission Regulation (EC) No 794/2004, OJ L 140, 30.4.2004, p. 1, as amended.

(165) The Commission takes note of the recent discussions with Romania in which it was not excluded that a winding up of CNU may follow a recovery order relating to the rescue loan and its assets being sold in order to meet its liabilities, including those arising from the implementation of recovery imposed on Romania as a result of this Decision.

(166) The fact that CNU may be put under insolvency procedure and unable to repay the aid does not constitute a valid reason for exempting it from its obligation to reimburse the aid ([56]). In this case, restoring the situation prior to the payment of the aid and removing the distortion of competition can be achieved by registering the liability relating to the rescue aid loan in the schedule of liabilities as part of a court-supervised insolvency procedure. If Romania was unable to recover the full amount, the proceedings should result in the definitive cessation of CNU's activities ([57]).

7. **CONCLUSION**

(167) The Commission concludes that Romania has granted to CNU unlawful State aid through the prolonged rescue aid loan, which is incompatible with the internal market and which should be recovered and not written-off, as Romania plans. The Commission also concludes that the additional planned restructuring aid in the form of three grants related to the closing of the Crucea-Botușana mine, the opening of the new Tulgheș-Grințieș mine and to the modernisation of the Feldioara plant, amounting to RON 117,9 million is also incompatible with the internal market and should not be put at the disposal of CNU. Furthermore, the Commission takes note that Romania no longer plans to implement some restructuring aid measures initially notified on which it raised doubts.

(168) The Commission may examine in future separate proceedings whether revenues accruing to CNU in implementation of Law 193/2018 as further specified by Government Decision 126/2019 involve unlawful State aid,

HAS ADOPTED THIS DECISION:

Article 1

The State aid which Romania is planning to implement for Compania Națională a Uraniului SA, in the form of a write-off of the loan granted in accordance with Government Emergency Order No 65/2016 and three State grants related to the closing of the Crucea-Botușana mine, the opening of the new Tulgheș-Grințieș mine and to the modernisation of the Feldioara plant, amounting to RON 178,3 million, is incompatible with the internal market.

The aid measures shall therefore not be implemented.

Article 2

After Romania withdrew its plans, the proceedings with respect of the State aid notified by Romania in the form of a RON 75,5 million grant, a RON 213 million operating subsidy and a conversion of Compania Națională a Uraniului SA 's debt as of 30 March 2017 of RON 13,3 million, into shares held by the Romanian State have become devoid of purpose.

Article 3

The loan amounting to RON 62 million, granted in favour of Compania Națională a Uraniului, in accordance with Government Emergency Order No 65/2016 and interest (the rescue loan) not reimbursed after six months, constitutes unlawful State aid granted by Romania, in breach of Article 108(3) of the Treaty on the Functioning of the European Union and is incompatible with the internal market.

([56]) Judgment of the Court of Justice of 29 April 2004, *Germany* v *Commission*, C-277/00, ECLI:EU:C:2004:238, paragraph 85; Judgment of the Court of Justice of 15 January 1986, *Commission* v *Belgium*, C-52/84, ECLI:EU:C:1986:3, paragraph 14; Judgment of the Court of Justice of 21 March 1990, *Belgium* v *Commission*, C-142/87, ECLI:EU:C:1990:125, paragraphs 60 to 62.

([57]) Judgment of the Court of Justice of 11 December 2012, *Commission* v *Spain*, C-610/10, ECLI:EU:C:2012:781, paragraph 104.

Article 4

1. Romania shall recover the incompatible aid, referred to in Article 3 from the beneficiary.

2. The actual sum to be recovered shall equal the amount of the rescue loan effectively disbursed, namely RON 60 367 550,53, to the beneficiary and not reimbursed by the latter to the Romanian State, as well as the corresponding contractual interest that should have been charged from the disbursement of the rescue loan. The sum to be recovered shall also bear recovery interest from the date the aid became unlawful until its actual recovery.

3. The interest shall be calculated on a compound basis in accordance with Chapter V of Commission Regulation (EC) No 794/2004 ([58]).

4. Romania shall cancel all payment of all outstanding amount of the aid referred to in Article 3 with effect from the date of adoption of this decision.

Article 5

1. Recovery of the aid referred to in Article 3 shall be immediate and effective, without prejudice of appropriate measures which Romania may adopt with a view to achieve Romania's obligations under the Euratom Treaty, provided such measures are proportionate, reasonable, and limited in time.

2. Romania shall ensure that this Decision is implemented within four months following the date of notification of this Decision.

Article 6

1. Within two months following notification of this Decision, Romania shall submit the following information to the Commission:

(a) the total amount (principal and recovery interests) to be recovered from the beneficiary;

(b) a detailed description of the measures already taken and planned to comply with this Decision;

(c) documents demonstrating that the beneficiary has been ordered to repay the aid.

2. Romania shall keep the Commission informed of the progress of the national measures taken to implement this Decision until recovery of the aid referred to in Article 3 has been completed. It shall immediately submit, on simple request by the Commission, information on the measures already taken and planned to comply with this Decision. It shall also provide detailed information concerning the amounts of aid and recovery interest already recovered from the beneficiary.

Article 7

This Decision is addressed to Romania.

Done at Brussels, 24 February 2020.

For the Commission
Margrethe VESTAGER
Executive Vice-President

([58]) Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EU) 2015/1589 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ L 140, 30.4.2004, p. 1).