EEB
European
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Bureau

EEB contribution to State Aid SA.59974 (2021/C)
Romania Restructuring of "Complexul Energetic Oltenia SA"

1. Comments on the doubts from the Commission

a) Own contribution and burden sharing

Beyond the points already made by the Commission in recitals 47 and 48, **we would like to point out that revenues could be even lower than expected** since, according to the plan, CE Oltenia will still remain locked to fossil fuels for years to come.

Fossil fuels are becoming increasingly expensive due to market and regulatory forces (see point 1b), which will reduce the expected profits. According to a very recent report by think-tank Carbon Tracker[1], the value of share offerings in fossil fuel companies dropped by almost 20% since 2012, while low-carbon companies gained ground in the shift towards clean energy. From 2012 to 2020, investors have bought almost $640 billion of equities issued by oil, gas and coal producers, fossil fuel- dependent utilities, pipelines and service companies. However, their investments have lost roughly $123 billion or nearly 20% in value, despite bullish equity markets during much of that period. That contrasts with activity in clean energy. Investors bought $56 billion in equity from clean-energy companies, which has gained $77 billion in value, the report said.

In this respect, we underline that the restructuring plan foresees CE Oltenia still well locked-in in fossil fuels well after 2026, when its energy mix would be made of 41% lignite and 53% fossil gas (recital 16), leaving a mere 6% for renewable sources. CE Oltenia might always conclude bilateral contracts at fixed prices with private entities, but it looks very unlikely because no private enterprise would agree on such a contract that will make it overpay energy generated by expensive fossil fuels. As the Commission has already noticed in recital 50 (b),"*no bank or market investor(s) have expressed interest to support or finance part of the investments in fuel switching from* lignite to natural gas or to renewable power generation, which would have shown market trust in this new activity". For the same reason of absence of market investors' interest, any bilateral contracts with other public companies would not meet the "market economy investor principle" and would be most likely be State aid, that shall be explicitly forbidden by the Commission.

Additionally, **a meaningful "own contribution" would require, at minimum, CE Oltenia to comply with basic EU law in terms of emission limits for air pollution, which is clearly not happening, since the compliance with LCP BREF BAT Conclusions**[2] **is part of the restructuring plan itself.**
We strongly advocate for not allowing the use of State aid for complying with the EU law in terms of CO_2, ash, NO_x and SO_2 emissions (recital 14c), since this **would breach the principle that aid cannot be granted for complying with Union standards, which include the Industrial Emissions Directive BAT and emissions levels in particular**.[3] Besides breaching State aid law, stating that those costs can be eligible

[1] https://carbontracker.org/reports/a-tale-of-two-share-issues/
[2] As per the Commission Implementing Decision (EU) 2017/1442 establishing best available techniques (BAT) conclusions, under Directive 2010/75/EU of the European Parliament and of the Council, for large combustion plants.
[3] See State aid guidelines for environmental protection and energy, para. 19(3)(b), para. (53).

would launch a wrong signal to the other energy operators that are still due to comply with LCP BREF BAT Conclusions, as well as pay their due CO_2 allowances. Furthermore, it will launch a bad signal to the other Member States and EU businesses that complied with emission limits in due time using their own money, putting at risk the principles of the level playing field and whole functioning and principles of EU pollution limitation framework that defends EU communities from harmful air, water and soil pollution. **The BAT standards are based on economically and technically viable conditions for the operator, and thus shall not be eligible for State aid.** The risk is that the provision of State aid would function as a sort of "lifetime extension" beyond August 2021 for installations that, otherwise, would stop operations due to stricter environmental standards.

In this respect, information mentioned in recitals 7 and 14 notably make it clear that the CE Oltenia's lignite capacity is composed of plants that require high maintenance costs due to age and would require "costly environmental compliance investments", which shall not be done through public funds.
On the other hand, there will be real perspective of revenues if CE Oltenia would decide to leave fossil fuels behind and restructure itself diversifying its portfolio towards other more remunerative activities, such as energy efficiency, which would relieve the company from costs, and renewable sources of energy, which are simply more profitable on the medium and long term and would make more probable that CE Oltenia will be able to contribute in a meaningful way to its restructuring plan.

b) Restoration of long-term viability in a reasonable timescale

We do not see as viable on the long-term a restructuring plan keeping CE Oltenia locked to value chains that are going to be increasingly expensive and, moreover, environmentally unsustainable. **The plan presented by CE Oltenia simply ignores the very clear economic, political and environmental signals coming from all the relevant arenas**, including the rising price of carbon emissions (44 € on April, 6th, 2021, +120% in the last year[4]), the new 2030 EU targets ("Fit for 55" package) that will likely make it increase even more, EU's international commitments as the Paris Agreement, which requires to phase out coal by 2030 at the latest and not to perpetrate its use after that date, as well as the role of the EU in the international arena ("climate diplomacy"), where it is advocating to stop financing fossil fuel based infrastructures[5].

Moreover, even domestic trends strongly advise to abandon fossil fuels to make CE Oltenia profitable on the long term. According to recent data by Ember[6], Romanian electricity production from coal constantly (and predictably) declined from 24,78 TWh in 2011 (40% of total generation) to 9,37 TWh in 2020 (16,7 % of total generation), whereas wind and solar regularly grew from a 2,24% of total energy generation in 2011 to 15,53% in 2020.

The assumption made by CE Oltenia that prices of the CO_2 allowances will remain relatively the same during the restructuring period (recital 59) is blindly ignoring the reality of a constantly increasing price of CO_2. As a matter of fact, governments are increasingly pushing carbon pricing measures as a way to squeeze out fossil fuels from the energy sector. According to an OECD preview of carbon pricing policies due at the end of

[4] https://ember-climate.org/data/carbon-price-viewer/
[5] https://www.consilium.europa.eu/en/press/press-releases/2021/01/25/council-adopts-conclusions-on-climate-and-energy-diplomacy/
[6] https://ember-climate.org/global-electricity-review-2021/data-explorer/

April[7], prices are "still well below estimates of the real cost to the planet of CO_2 emissions." The report reviews the excise taxes, carbon taxes and emissions permit prices that make up carbon pricing measures in 44 OECD and G20 countries, driving 80 percent of energy's global carbon emissions. **It finds that as of 2018, only 10 of the countries were pricing carbon at even half the €60 per ton benchmark, which, the OECD says, is a mid-range estimate of the real cost of CO2 emissions for 2020 and a low-end estimate for 2030**. According to the findings, 55% of carbon emissions from energy use in the 44 countries were "entirely unpriced."

Moreover, in the "*Government Emergency Ordinance no. 21/2021 for the approval of the granting of a state restructuring aid to the Company Oltenia Energy Complex*" the Romanian government itself recognise that the CO_2 price is going to "continue its upward trend[8]". However, we do not agree with the assumption that this trend could not be predicted, being the ETS framework designed exactly with the scope of reducing CO_2 emissions through a market-based system.

Additionally, CE Oltenia situation is already compromised; marginal production costs are higher that its main competitors not using fossil fuels (recital 8) and the company posted losses every year since 2014. **All these signals are making clear that the energy sector is quickly going beyond fossil fuels**, which will become increasingly expensive as policy will tighten emission limits. Nevertheless, CE Oltenia is planning a 94% fossil fuels share after 2026, making highly disputable that such a plan will be viable on the medium term. Such a plan would require a new intervention in a few years, wasting millions of public resources and putting a risk thousands of jobs that could be saved if only CE Oltenia would recognise the basic economic and policy landscape and start an ambitious renovation based of renewable energy sources and the reskilling of its personnel.

c) Presence and effectiveness of compensatory measures

As stated by the Commission, "*it is doubtful that real structural compensatory measures are envisaged*" by CE Oltenia. Not only will CE Oltenia not foresee structural changes in its business plan, **but also will contribute to lock a part of Romanian energy mix to increasingly expensive fossil fuels (gas and coal), at the expenses of new business actors willing to invest on more remunerative renewable energy resources**. According to the restructuring plan, CE Oltenia will replace part of its coal power units (1.460 MW) and adjacent mining pits with gas units (1.325 MW), leaving little room for new businesses to enter the market or for existing ones to grow. A real and ambitious path that would also spark the creation of new and more sustainable businesses, as well as green jobs, should foresee at least:

I. Phasing out the whole CE Oltenia's lignite capacity (about 3.470 MW) by 2025 at the latest.
II. Considering that it is used at on average about 24% of its total capacity[9] (about 1.000 MW), consider the following plan:
III. Replacing it with a mix of energy efficiency measures to reduce energy demand (at least 40%, 400 MW) and new renewable energy sources (or imports), in particular solar and wind (30%, 300 MW).

[7] http://www.oecd.org/tax/tax-policy/effective-carbon-rates-2021-highlights-brochure.pdf
[8] Translated from Romanian.
[9] https://www.iea.org/countries/romania

In both cases, CE Oltenia could partner with other businesses to acquire the necessary know-how and contribute to the growth of news sustainable and remunerative business models, stimulate their growth and make the market more competitive.

IV. Keeping the remaining part for other businesses to cover using the same mix of energy efficiency and new renewable energy generation (30%, 300 MW). Modernisation Funds could be used to encourage the development of private businesses active in the fields of energy efficiency and/or renewable energy able to compete in the market.

V. Using part of the money coming from the State to reskill workers (in line with point 35 of the Rescue and Restructuring Aid Guidelines) and, where not possible, to pay pension schemes in order to avoid that the cost of CE Oltenia's inaction fall on the workforce.

Such a plan would also comply with recital 83 of State aid Guidelines (Behavioural measures) since investments in new and more profitable fields would ensure long-term viability to CE Oltenia and increase competition. Moreover, it would ensure the fixing of market failures coming from environmental degradation, the reduction of CE Oltenia's vulnerability towards CO_2 price and a use of Modernisation Funds in line with the criteria foreseen by "priority projects" as defined by art. 10.d.2 of the ETS Directive[10], which will speed up its use and avoid a long scrutiny by the Commission and the European Investment Bank.

2. Other comments

The EEB submitted a contribution[11] to the public consultation organised by DG Competition about the alignment of competition rules to the European Green Deal (EGD). We consider this alignment a key step towards an ambitious and effective implementation of the EGD, as well as an obligation under Article 11 TFEU. While EU competition policy is a cornerstone of the EU Treaties, it cannot undermine the Union's environmental ambitions, such as efforts to prevent and reduce pollution or halt the loss of nature, strengthen circular economy practices and climate change mitigation measures. In fact, pollution, the destruction of nature, waste of resources and climate change each have significant economic costs for communities and have a negative impact on the EU's internal market. Consequently, when assessing competition and the internal market, the Commission must uphold its role as the "Guardian of the Treaties" and integrate environmental policy and other Union ambitions to ensure there is full policy coherence. In this paragraph we mention the parts relevant with the CE Oltenia case.

a) Emission limits should be stricter than EU standards.

CE Oltenia's lignite plants are notoriously exceeding the emission levels associated with the use of BAT as set by the 2017 LCP BREF BAT Conclusions. The Romanian government obtained derogations concerning the NO_x levels, which has given CE Oltenia enough time to install the proper pollution control devices. Nevertheless, until 2019 the situation remained unchanged, as is shown in the table below[12]:

[10] Directive (EU) 2018/410 of the European Parliament and of the Council amending Directive 2003/87/EC to enhance cost-effective emission reductions and low-carbon investments, and Decision (EU) 2015/1814
[11] https://eeb.org/library/competition-policy-supporting-the-green-deal-goal-eeb-contribution/
[12] Industrial Plant Data Viewer, http://eipie.eu/projects/ipdv

Plant	NO_x (BAT range: <85-175mg/Nm3)	SO_2 (BAT range 10-130 mg/Nm3)	PM (BAT range 2-8 mg/Nm3)	Hg (BAT range <1-7 µg/Nm3)	Derogations
Isalnita	465 mg/Nm3 (2019)	173 mg/Nm3 (2018)	11 mg/Nm3 (2018)	n.a.	Art 32 (TNP for NOx)
Rovinari 1	246 mg/Nm3 (2019)	187 mg/Nm3 (2018)	9,64 mg/Nm3 (2018)	0,4 µg/Nm3 (2019)	Art 32 (TNP for NOx)
Rovinari 2	189 mg/Nm3 (2019)	177 mg/Nm3 (2018)	10,75 mg/Nm3 (2018)	0,5 µg/Nm3 (2019)	No
Turceni 2	315 mg/Nm3 (2019)	184 mg/Nm3 (2018)	13,67 mg/Nm3 (2018)	2,2 µg/Nm3 (2018)	Art 32 (TNP for NOx)
Turceni 3	184 mg/Nm3 (2019)	177 mg/Nm3 (2018)	12,4 mg/Nm3 (2018)	0,2 µg/Nm3 (2018)	No
Craiova II	265,3 mg/Nm3 (2018)	166,1 mg/Nm3	14,21 mg/Nm3		Art 32 (TNP for NOx)

Romanian operators, as all the other operators in the EU, must respect these limits by August 17th, 2021 to comply with the LCP BREF BAT Conclusions adopted under the Industrial Emissions Directive provisions. But, quite worryingly, CE Oltenia's restructuring plan includes "*environmental protection measures, encompassing investments or temporary operating cost support in current and remaining mining and power generation assets, including environmental compliance (CO_2 allowances and compliance costs ash, NO_x, SO_2 etc.)*". This is unacceptable for two reasons: firstly, Oltenia had the opportunity to already comply with the Emission Limit Values (ELV) for NO_x (200 mg/Nm^3) set in 2010 and due to comply by latest 2016, as set in the Industrial Emissions Directive, confirming the ELVs set in the previous LCP Directive (2001/80/EC). The set ELVs in the Annex V part 1 of the IED correspond to the upper level of the BAT associated emission levels set in the precedent LCP BAT-C dating back to 2006.

Secondly, when the revised LCP BREF BAT Conclusions were adopted in 2017, CE Oltenia received an additional 4,5-year period to comply thanks to an optional derogation contained in the IED (art. 32, TNP derogation), which was granted by the Romanian government to CE Oltenia. Thus, the operator has guiltily and repeatedly delayed action to comply with the mentioned emission limits; what is even worse is that the LCP BREF BAT standards define the minimal expected environmental performance based on economically and technically viable conditions for operators. As a matter of fact, there are EU energy utilities that have been complying with those standards since latest 2016, and with no use of public money. Moreover, an incentive effect or a beyond Union Standard compliance case has not been demonstrated.

Consequently, and in line with points 53-54 of the State aid guidelines for environmental protection and energy, the provision of State aids should exclude investments needed to comply with the EU environmental acquis, namely the BAT conclusion drafted within the IED framework. In fact, these would be wasted resources, since they would extend the lifetime of a business with no future and create, eventually, stranded assets. The LCP BAT BREF foresees alternative measures for avoiding the retrofitting of power installations, which is the reduction of operation of the units below 1.500 hours/year. **This alternative solution has not been considered by the applicant, yet it is a temporary solution that would allow to maintain capacity when needed (recital 23) and prevent an expensive retrofit**. Therefore, we consider the aid inappropriate and

counter-productive for CE Oltenia's workforce, long-term business perspectives and the whole EU environmental protection goals, including climate protection.
Moreover, we regard the switch to fossil gas generation as non-compliant with the set 100g CO_2/KWh target set in the TEG Taxonomy climate[13].
Finally, we lack clarity as to how the common assessment criteria under the EEAG State aid guidelines have been considered. The need of State intervention in the form of State aid has also not been assessed in full (see comment on stricter implementation of EU environmental protectional acquis as an alternative to state aid), more generally the application fails to demonstrate the incentive effect.

b) Conditionalities to make State aids EGD-compatible.

Together with CAN Europe and Greenpeace we drafted a series of cumulative conditions[14] that would make State aids compatible with the EU climate and environmental goals, namely:

I. **The aid shall not reward business as usual for market operators or negatively affect producers of renewable energy sources.** The aid shall not provide incentives to either keep business as usual operation or provide State aid funding for market operators using fossil fuels to operate beyond their anticipated date of closure. Operators of plants that are older than 25 years should not be eligible for any compensations because the return on investments has already been met.
II. **The national law implementing the LCP BREF BAT Conclusions shall be strengthened to comply with the lower emission limit values** (85 mg/Nm^3 for NO_x, 10 mg/Nm^3 for SO_2 and 1 µg/Nm^3 for mercury.
III. **Negative externalities should be addressed, calculated and subtracted from any aid.** DG COMP shall require a subtraction of negative externalities and air pollution damage costs by applying the Value of Statistical Life damage costs method of the EEA, adapted to 2020 prices, as a minimum. This shall be applicable to eligible operators until the closure date of the concerned pollution source. A minimal price level of 100€/ton of GHG emitted shall be accounted for GHG emissions. The GHG allowances (EUA) of retired plants, that are no longer needed, shall be automatically withdrawn from GHG budgets in accordance to Article 12(4) of the EU ETS Directive. Water cost services shall also be subtracted, e.g. sulphate pollution from lignite mining, and water abstraction for industrial use. Re-cultivation costs of opencast mines shall be set aside and paid by the operator.

c) State aids as a last resort measure.

The requirement of State aids shall be only the last resort step to be made only after the implementation by the Romanian government of all other possible and necessary measures within its competence, such as regulatory measures or fiscal instruments, that would make the recurrence to State aid schemes not necessary, notably:

[13] https://ec.europa.eu/info/sites/info/files/business_economy_euro/banking_and_finance/documents/200309-sustainable-finance-teg-final-report-taxonomy-annexes_en.pdf
[14] For more details: https://eeb.org/library/annex-to-the-letter-to-the-european-commission-on-german-state-aid-for-coal-phase-out/

I. Market operators benefitting from State aids do not benefit from other financial support schemes or indirect support schemes enabling the status quo (e.g. keeping Romania locked to expensive fossil fuels), such as capacity markets or other operating aids. In this respect, the Modernisation Fund would be an alternative to State aids and not a part of the restructuring plan and, in any case, it shall not be used to convert coal power plants to fossil gas.

II. The use of other already-existing funds that could prevent the use of State aids, such as the Innovation Fund, the Modernisation Fund, the Just Transition Fund, etc.

III. Romanian authorities have taken action to internalise negative externalities generated by CE Oltenia throughout its life cycle (e.g. subsidies, tax exemptions, as well as exemption from liabilities) through taxes, pollution charges or other equivalent measures, as well as relevant EU law such as the polluter pays principle and the cost recovery principle of the Water Framework Directive. For instance, CE Oltenia generates annually an equivalent cost to community of 550 M € in terms on damages caused by air pollution to health[15].

IV. Pollution prevention standards have been rigorously enforced (see point 2a), and beyond the minimal EU legal levels.

In any case, State aids shall be used only as last resort to accelerate the closure of coal-fired power plants that are still profitable or have prospects of profitability beyond 2030 (which is quite unlikely, check point 1b) and shall be limited to those coal-fired power plants closing by 31 December 2029 at the latest. Conversions to other fossil fuels (including oil, shale gas, fossil gas, peat, gasoline, residues from refining activities, biomass) or waste shall not be admissible, as not in line with the European Green Deal objectives.

d) Best value for money principle.

The aid must provide "best value for money" in terms of alternative use of that same amount of financial resources to deliver a similar level of desired objective, for instance:

I. The possibility to substitute the equivalent lost energy capacity through improved energy efficiency measures (check point 1c) or through imports.

II. The effect of allocation of part of the proposed aid to other beneficiaries, with the aim to support renewable energy generation (e.g. through feed in tariffs or direct payments to RES projects) and stimulate market competitiveness.

III. The overall impact on job creation, eco-innovation, compatibility with relevant environmental quality standards as to the various alternative options concerned.

IV. Assessment on how the aid scheme and options considered constitutes an "enabling activity" in the meaning of Article 16 of Regulation 2020 (852).

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[15] Europe Beyond Coal database: https://beyond-coal.eu/database/