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Mitteilungen und Bekanntmachungen

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⁽¹⁾ Text von Bedeutung für den EWR.

II

(Mitteilungen)

MITTEILUNGEN DER ORGANE, EINRICHTUNGEN UND SONSTIGEN STELLEN
DER EUROPÄISCHEN UNION

EUROPÄISCHE KOMMISSION

**Genehmigung staatlicher Beihilfen nach den Artikeln 107 und 108 des Vertrags über die
Arbeitsweise der Europäischen Union****Vorhaben, gegen die von der Kommission keine Einwände erhoben werden**

(Text von Bedeutung für den EWR)

(2021/C 355/01)

Datum der Annahme der Entscheidung	6.8.2021	
Nummer der Beihilfe	SA.60177 (2021/N)	
Mitgliedstaat	Belgien	
Region	VLAAMS GEWEST	—
Titel (und/oder Name des Begünstigten)	Structurele steunmaatregel die de kwaliteit van het aanbod van intermodale verbindingen vanuit en naar de Vlaamse zeehavens verbetert ter bevordering van de modal shift.	
Rechtsgrundlage	Art. 35bis van het decreet van 2 maart 1999 houdende het beleid en het beheer van de zeehavens.	
Art der Beihilfe	Regelung	—
Ziel	Verkehrskordinierung	
Form der Beihilfe	Zuschuss	
Haushaltsmittel	Haushaltsmittel insgesamt: EUR 14,3 (in Mio.) Jährliche Mittel: EUR 3,575 (in Mio.)	
Beihilfehöchstintensität	50 %	
Laufzeit	1.1.2022 — 31.12.2025	
Wirtschaftssektoren	Güterbeförderung in der Binnenschifffahrt	

Name und Anschrift der Bewilligungsbehörde	Vlaamse Overheid — Departement Mobiliteit en Openbare Werken Koning Albert II-laan 20 bus 2, 1000 Brussel
Sonstige Angaben	—

Die rechtsverbindliche(n) Sprachfassung(en) der Entscheidung, aus der/denen alle vertraulichen Angaben gestrichen sind, finden Sie unter:

<http://ec.europa.eu/competition/elojade/isef/index.cfm>.

Datum der Annahme der Entscheidung	9.7.2021	
Nummer der Beihilfe	SA.60787 (2020/N)	
Mitgliedstaat	Italien	
Region	ITALIA	—
Titel (und/oder Name des Begünstigten)	Compensation for indirect ETS costs in Italy	
Rechtsgrundlage	— Article 29 of the Legislative Decree No 47 of 9 June 2020 implementing Directive (EU) 2018/410 of the European Parliament and of the Council of 14 March 2018 amending Directive 2003/87/EC; and — the draft Decree implementing the Energy Transition Fund in the industrial sector — Compensation for indirect CO2 costs of the Minister for the Ecological Transition in conjunction with the Minister for Economic Affairs and Finance	
Art der Beihilfe	Regelung	—
Ziel	Umweltschutz	
Form der Beihilfe	Zuschuss	
Haushaltsmittel	Haushaltsmittel insgesamt: EUR 1 490 (in Mio.) Jährliche Mittel: EUR 140 (in Mio.)	
Beihilfehöchstintensität	75 %	
Laufzeit	1.1.2020 — 31.12.2030	
Wirtschaftssektoren	Alle für Beihilfen in Frage kommende Wirtschaftszweige	
Name und Anschrift der Bewilligungsbehörde	Acquirente Unico S.p.A. (on behalf of the Ministry for the Ecological Transition) Via Guidubaldo Del Monte, 45, 00197 — Roma	
Sonstige Angaben	—	

Die rechtsverbindliche(n) Sprachfassung(en) der Entscheidung, aus der/denen alle vertraulichen Angaben gestrichen sind, finden Sie unter:

<http://ec.europa.eu/competition/elojade/isef/index.cfm>.

Datum der Annahme der Entscheidung	29.4.2021
Nummer der Beihilfe	SA.61461 (2021/N)
Mitgliedstaat	Deutschland

Region	NORDRHEIN-WESTFALEN	—
Titel (und/oder Name des Begünstigten)	Nordrhein-Westfalen — Förderung von Öko-Modellregionen	
Rechtsgrundlage	Verwaltungsvorschrift des Ministeriums für Umwelt, Landwirtschaft, Natur- und Verbraucherschutz des Landes Nordrhein-Westfalen zur Förderung von Öko-Modellregionen in Nordrhein-Westfalen (VwV Öko-Modellregionen NRW) Landeshaushaltsordnung des Landes NRW in der Fassung der Bekanntmachung vom 16. April 1999 zuletzt geändert durch Artikel 1 des Gesetzes vom 18. Dezember 2018 (insbes. § 23 und § 44)	
Art der Beihilfe	Regelung	—
Ziel	Landwirtschaft, Forstwirtschaft, ländliche Gebiete	
Form der Beihilfe	Subventionierte Dienste	
Haushaltsmittel	Haushaltsmittel insgesamt: EUR 3,6 (in Mio.) Jährliche Mittel: EUR 0,6 (in Mio.)	
Beihilfehöchstintensität	80 %	
Laufzeit	bis zum 31.12.2027	
Wirtschaftssektoren	Landwirtschaft; Jagd und damit verbundene Tätigkeiten	
Name und Anschrift der Bewilligungsbehörde	Bezirksregierung Detmold Leopoldstraße 15, 32756 Detmold	
Sonstige Angaben	—	

Die rechtsverbindliche(n) Sprachfassung(en) der Entscheidung, aus der/denen alle vertraulichen Angaben gestrichen sind, finden Sie unter:

<http://ec.europa.eu/competition/elojade/isef/index.cfm>.

Datum der Annahme der Entscheidung	22.7.2021	
Nummer der Beihilfe	SA.62800 (2021/N)	
Mitgliedstaat	Schweden	
Region	—	—
Titel (und/oder Name des Begünstigten)	Ändring av stödordningen för miljökompensation för godstrafik på järnväg	
Rechtsgrundlage	Förordning (2018:675) om miljökompensation för godstransporter på järnväg	
Art der Beihilfe	Regelung	—
Ziel	Umweltschutz	

Form der Beihilfe	Zuschuss
Haushaltsmittel	Haushaltsmittel insgesamt: SEK 2 750 000 000 (in Mio.) Jährliche Mittel: SEK 550 000 000 (in Mio.)
Beihilfehöchstintensität	18 %
Laufzeit	—
Wirtschaftssektoren	Güterbeförderung im Eisenbahnverkehr
Name und Anschrift der Bewilligungsbehörde	Trafikverket 781 89 Borlänge
Sonstige Angaben	—

Die rechtsverbindliche(n) Sprachfassung(en) der Entscheidung, aus der/denen alle vertraulichen Angaben gestrichen sind, finden Sie unter:

<http://ec.europa.eu/competition/elojade/isef/index.cfm>.

Datum der Annahme der Entscheidung	16.7.2021	
Nummer der Beihilfe	SA.63654 (2021/N)	
Mitgliedstaat	Dänemark	
Region	—	—
Titel (und/oder Name des Begünstigten)	COVID-19: Amendment to aid scheme to support airlines holding a Danish air operator certificate (SA.59370 as amended by SA.62599)	
Rechtsgrundlage	Bekendtgørelse om støtteordning nr. 3 til lønudgifter til kritisk personale i luftfartsselskaber i anledning af COVID-19-udbruddet (Lovtidende A 2021 Udgiven den 20. august 2021 Nr. 1703) Aktstykke Nr. 304 Folketinget 2020-21 (Afgjort den 24. juni 2021), Folketingstidende Tillæg E	
Art der Beihilfe	Regelung	—
Ziel	Behebung einer beträchtlichen Störung im Wirtschaftsleben	
Form der Beihilfe	Zuschuss	
Haushaltsmittel	Haushaltsmittel insgesamt: DKK 27 000 000 (in Mio.)	
Beihilfehöchstintensität	100 %	
Laufzeit	1.6.2021 — 30.9.2021	
Wirtschaftssektoren	Alle für Beihilfen in Frage kommende Wirtschaftszweige	

Name und Anschrift der Bewilligungsbehörde	Trafikstyrelsen (The Danish Civil Aviation and Railway Authority) Carsten Niebuhrs Gade 43 1577 Copenhagen V Phone Number (+45) 7221 8800
Sonstige Angaben	—

Die rechtsverbindliche(n) Sprachfassung(en) der Entscheidung, aus der/denen alle vertraulichen Angaben gestrichen sind, finden Sie unter:

<http://ec.europa.eu/competition/elojade/isef/index.cfm>.

Datum der Annahme der Entscheidung	30.7.2021	
Nummer der Beihilfe	SA.63699 (2021/N)	
Mitgliedstaat	Spanien	
Region	ESPANA	Mischgebiete
Titel (und/oder Name des Begünstigten)	AGRI — Ayudas a operadores profesionales que realicen inversiones en instalaciones de protección frente a insectos vectores	
Rechtsgrundlage	Proyecto de Real Decreto por el que se establecen las bases reguladoras para la concesión de subvenciones destinadas a inversiones en materia de bioseguridad para la mejora o construcción de centros de limpieza y desinfección de vehículos de transporte por carretera de ganado, así como para inversiones en bioseguridad en viveros, acometidas por determinados productores de materiales vegetales de reproducción.	
Art der Beihilfe	Regelung	—
Ziel	Beihilfen für Investitionen in materielle oder immaterielle Vermögenswerte in landwirtschaftlichen Betrieben im Zusammenhang mit der landwirtschaftlichen Primärproduktion	
Form der Beihilfe	Zuschuss	
Haushaltsmittel	Haushaltsmittel insgesamt: EUR 19 (in Mio.)	
Beihilfehöchstintensität	80 %	
Laufzeit	bis zum 31.12.2023	
Wirtschaftssektoren	Anbau einjähriger Pflanzen, Anbau mehrjähriger Pflanzen, Betrieb von Baumschulen; sowie Anbau von Pflanzen zu Vermehrungszwecken	
Name und Anschrift der Bewilligungsbehörde	Ministerio de Agricultura, Pesca y Alimentación. Dirección General de Sanidad de la Producción Agraria Calle Almagro, 33, 28071, Madrid, España	

Sonstige Angaben	—
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Die rechtsverbindliche(n) Sprachfassung(en) der Entscheidung, aus der/denen alle vertraulichen Angaben gestrichen sind, finden Sie unter:

<http://ec.europa.eu/competition/elojade/isef/index.cfm>.

Datum der Annahme der Entscheidung	14.7.2021	
Nummer der Beihilfe	SA.63719 (2021/N)	
Mitgliedstaat	Italien	
Region	ITALIA	—
Titel (und/oder Name des Begünstigten)	Esonero contributivo per i lavoratori autonomi colpiti dagli effetti economici della pandemia	
Rechtsgrundlage	Esonero contributivo per i lavoratori autonomi colpiti dagli effetti economici della pandemia	
Art der Beihilfe	Regelung	—
Ziel	Behebung einer beträchtlichen Störung im Wirtschaftsleben	
Form der Beihilfe	Ermäßigung der Sozialabgaben	
Haushaltsmittel	Haushaltsmittel insgesamt: EUR 2 500 (in Mio.) Jährliche Mittel: EUR 2 500 (in Mio.)	
Beihilfehöchstintensität	—	
Laufzeit	bis zum 31.12.2021	
Wirtschaftssektoren	Alle für Beihilfen in Frage kommende Wirtschaftszweige	
Name und Anschrift der Bewilligungsbehörde	Ministero del lavoro e delle politiche sociali Via Veneto 56 00187 Roma I	
Sonstige Angaben	—	

Die rechtsverbindliche(n) Sprachfassung(en) der Entscheidung, aus der/denen alle vertraulichen Angaben gestrichen sind, finden Sie unter:

<http://ec.europa.eu/competition/elojade/isef/index.cfm>.

Datum der Annahme der Entscheidung	2.8.2021	
Nummer der Beihilfe	SA.63720 (2021/N)	
Mitgliedstaat	Italien	

Region	—	—
Titel (und/oder Name des Begünstigten)	Decontribuzione settori del turismo e degli stabilimenti termali e del commercio	
Rechtsgrundlage	Decontribuzione settori del turismo e degli stabilimenti termali e del commercio	
Art der Beihilfe	Regelung	—
Ziel	Behebung einer beträchtlichen Störung im Wirtschaftsleben	
Form der Beihilfe	Ermäßigung der Sozialabgaben	
Haushaltsmittel	Haushaltsmittel insgesamt: EUR 868 (in Mio.) Jährliche Mittel: EUR 868 (in Mio.)	
Beihilfehöchstintensität	—	
Laufzeit	bis zum 31.12.2021	
Wirtschaftssektoren	GASTGEWERBE/BEHERBERGUNG UND GASTRONOMIE, ERBRINGUNG VON SONSTIGEN DIENSTLEISTUNGEN	
Name und Anschrift der Bewilligungsbehörde	Ministero del lavoro e delle Politiche Sociali Via Veneto 56 Roma- 00187	
Sonstige Angaben	—	

Die rechtsverbindliche(n) Sprachfassung(en) der Entscheidung, aus der/denen alle vertraulichen Angaben gestrichen sind, finden Sie unter:

<http://ec.europa.eu/competition/elojade/isef/index.cfm>.

Datum der Annahme der Entscheidung	17.8.2021	
Nummer der Beihilfe	SA.64218 (2021/N)	
Mitgliedstaat	Italien	
Region	ITALIA	—
Titel (und/oder Name des Begünstigten)	COVID-19: Aid in the form of guarantees on loans, subsidised interest rates and grants managed by the „Istituto per il Credito Sportivo“	
Rechtsgrundlage	Art. 14 Decreto-legge 8 aprile 2020, n. 23 convertito in Legge 5 giugno 2020, n. 40 Art. 10 commi da 8 a 13 Decreto-legge 25 maggio 2021, n. 73 Regolamento sulle modalità di gestione del Comparto del Fondo di Garanzia per finanziamenti di liquidità di cui all'art. 14, comma 1 del D.L. 8 aprile 2020, n. 23 Regolamento del Comparto per finanziamenti di liquidità del Fondo per contributi in conto in interessi di cui all'art. 14, comma 2 del D.L. 8 aprile 2020, n. 23	

Art der Beihilfe	Regelung	—
Ziel	Behebung einer beträchtlichen Störung im Wirtschaftsleben	
Form der Beihilfe	Zuschuss, Bürgschaft, Zinszuschuss	
Haushaltsmittel	Haushaltsmittel insgesamt: EUR 43 (in Mio.) Jährliche Mittel: EUR 43 (in Mio.)	
Beihilfehöchstintensität	—	
Laufzeit	bis zum 31.12.2021	
Wirtschaftssektoren	Erbringung von Dienstleistungen des Sports	
Name und Anschrift der Bewilligungsbehörde	Istituto per il Credito Sportivo Via Giambattista Vico, 5 00196 Roma	
Sonstige Angaben	—	

Die rechtsverbindliche(n) Sprachfassung(en) der Entscheidung, aus der/denen alle vertraulichen Angaben gestrichen sind, finden Sie unter:

<http://ec.europa.eu/competition/elojade/isef/index.cfm>.

Datum der Annahme der Entscheidung	20.8.2021	
Nummer der Beihilfe	SA.64357 (2021/N)	
Mitgliedstaat	Italien	
Region	—	—
Titel (und/oder Name des Begünstigten)	contributo a fondo perduto a favore di attività economiche e commerciali nei centri storici dei comuni ove sono presenti santuari religiosi.	
Rechtsgrundlage	Article 59 of the Decree Law no. 104 of 14 August 2020 containing „Urgent measures to support and relaunch the economy“, as amended by Law no 126 of 13 October 2020 and subsequently amended by Law no. 178 of 30 December 2020 and by the Decree Law no. 41 of 22 March 2021, converted with amendments by Law no 69 of 21 May 2021	
Art der Beihilfe	Regelung	—
Ziel	Behebung einer beträchtlichen Störung im Wirtschaftsleben	
Form der Beihilfe	Zuschuss	
Haushaltsmittel	Haushaltsmittel insgesamt: EUR 10 (in Mio.) Jährliche Mittel: EUR 10 (in Mio.)	
Beihilfehöchstintensität	—	
Laufzeit	bis zum 31.12.2021	

Wirtschaftssektoren	Alle für Beihilfen in Frage kommende Wirtschaftszweige
Name und Anschrift der Bewilligungsbehörde	Agenzia delle Entrate Via del Giorgione 106-00147 Roma
Sonstige Angaben	—

Die rechtsverbindliche(n) Sprachfassung(en) der Entscheidung, aus der/denen alle vertraulichen Angaben gestrichen sind, finden Sie unter:

<http://ec.europa.eu/competition/elojade/isef/index.cfm>.

Datum der Annahme der Entscheidung	20.8.2021	
Nummer der Beihilfe	SA.64443 (2021/N)	
Mitgliedstaat	Irland	
Region	—	—
Titel (und/oder Name des Begünstigten)	COVID-19: Coach Tourism Business Continuity Scheme	
Rechtsgrundlage	National Tourism Development Authority Act, 2003, as amended — Sections 8 (1)(e), 8(2)(c) and 25(1).	
Art der Beihilfe	Regelung	—
Ziel	Behebung einer beträchtlichen Störung im Wirtschaftsleben	
Form der Beihilfe	—	
Haushaltsmittel	Haushaltsmittel insgesamt: EUR 25 (in Mio.) Jährliche Mittel: EUR 25 (in Mio.)	
Beihilfehöchstintensität	—	
Laufzeit	19.11.2020 — 31.12.2021	
Wirtschaftssektoren	Sonstige Personenbeförderung im Landverkehr	
Name und Anschrift der Bewilligungsbehörde	Fáilte Ireland 88-95 Amiens Street, Dublin 1, D01 WR86, Ireland	
Sonstige Angaben	—	

Die rechtsverbindliche(n) Sprachfassung(en) der Entscheidung, aus der/denen alle vertraulichen Angaben gestrichen sind, finden Sie unter:

<http://ec.europa.eu/competition/elojade/isef/index.cfm>.

V

(Bekanntmachungen)

VERFAHREN BEZÜGLICH DER DURCHFÜHRUNG DER WETTBEWERBSPOLITIK

EUROPÄISCHE KOMMISSION

STAATLICHE BEIHILFEN — RUMÄNIEN

Staatliche Beihilfe SA.59344 (2021/C, ex 2021/N) — Rumänien — Umstrukturierungsbeihilfe für TAROM**Aufforderung zur Stellungnahme nach Artikel 108 Absatz 2 des Vertrags über die Arbeitsweise der Europäischen Union**

(Text von Bedeutung für den EWR)

(2021/C 355/02)

Mit Schreiben vom 5. Juli 2021, das nachstehend in der verbindlichen Sprachfassung abgedruckt ist, hat die Kommission Rumänien von ihrem Beschluss in Kenntnis gesetzt, wegen der genannten Beihilfe das Verfahren nach Artikel 108 Absatz 2 des Vertrags über die Arbeitsweise der Europäischen Union zu eröffnen.

Alle Beteiligten können innerhalb eines Monats nach Veröffentlichung dieser Zusammenfassung und des Schreibens zu der Beihilfe, die Gegenstand des von der Kommission eingeleiteten Verfahrens ist, Stellung nehmen. Die Stellungnahmen sind an folgende Anschrift zu richten:

Europäische Kommission
Generaldirektion Wettbewerb
Registratur Staatliche Beihilfen
1049 Bruxelles/Brussel
BELGIQUE/BELGIË
Fax + 32 22961242
Stateaidgreffe@ec.europa.eu

Alle Stellungnahmen werden Rumänien übermittelt. Beteiligte, die eine Stellungnahme abgeben, können unter Angabe von Gründen schriftlich beantragen, dass ihre Identität nicht bekannt gegeben wird.

Die rumänische Luftverkehrsgesellschaft TAROM steht mehrheitlich im Eigentum des Staates, der direkt eine Kontrollmehrheit in Höhe von ca. 97,22 % der Anteile hält. Die verbleibenden Minderheitsbeteiligungen werden von mehreren öffentlichen Unternehmen (National Airport Company Bucharest, Romanian Air Traffic Service Administration) und vom privaten Investitionsfonds Muntenia gehalten.

TAROM ist eine Luftverkehrsgesellschaft, die von einem einzigen Drehkreuz aus operiert und hauptsächlich in der Passagierluftfahrt und in geringerem Maße im Fracht- und Postverkehr aktiv ist. Sie beschäftigt fast 1 500 Mitarbeiter. Neben dem Luftverkehr erbringt sie auch Wartungsdienstleistungen für andere Fluggesellschaften, die am Flughafen Bukarest-Otopeni tätig sind.

TAROM hat mindestens ab dem Jahr 2008 wiederholt Verluste verzeichnet. Diese finanziellen Schwierigkeiten wurden durch die Auswirkungen der Corona-Pandemie verschärft.

Am 24. Februar 2020 beschloss die Kommission, keine Einwände gegen die staatliche Beihilfe zu erheben, die TAROM in Form eines Rettungsdarlehens in Höhe von 36,7 Mio. EUR mit einer Laufzeit von maximal sechs Monaten gewährt werden sollte. Darüber hinaus erhielt TAROM am 2. Oktober 2020 eine Entschädigung von 18,8 Mio. EUR für außergewöhnliche Schäden infolge des COVID-19-Ausbruchs.

Am 28. Mai 2021 meldete Rumänien eine Umstrukturierungsbeihilfe in Höhe von 190,7 Mio. EUR zur Unterstützung eines bis 2025 laufenden langfristigen Umstrukturierungsplans bei der Kommission zur Genehmigung an. Die Beihilfe würde in Form einer Kapitalzuführung von 92,9 Mio. EUR durch den Staat, eines Schuldenerlasses in Höhe von 40,6 Mio. EUR auf das als Rettungsbeihilfe gewährte Darlehen einschließlich Zinsen sowie eines Zuschusses von 57,2 Mio. EUR gewährt. Der Anmeldung zufolge wird TAROM Eigenmittel aus dem Verkauf von Vermögenswerten (vor allem Flugzeuge), Finanzierungsleasingverträgen und der Veräußerung von Minderheitsbeteiligungen an vertikal verbundenen Unternehmen zur Begleichung von Verbindlichkeiten (asset-to-debt-Geschäfte) zur Deckung der im Laufe des Umstrukturierungszeitraums anfallenden Umstrukturierungskosten beisteuern. Der vorläufigen Beurteilung der Kommission zufolge handelt es sich bei diesen Finanzierungsquellen jedoch noch nicht um reale und tatsächlich gegebene Quellen, sodass die von der Kommission als angemessen angesehenen 50 % der Umstrukturierungskosten nicht erreicht würden. Die Kommission hat zum gegenwärtigen Zeitpunkt Zweifel, ob der vorgebliche Eigenbeitrag real ist und tatsächlich geleistet wird. Die Kommission hat ferner Zweifel, ob der Zeitraum und die Annahmen im Rahmen des für die Bewertung der langfristigen Tragfähigkeit des Umstrukturierungsplans vorgelegten Ausweichszenarios angemessen sind und ob die negativen Auswirkungen auf den Wettbewerb ausreichend abgemildert werden, damit die Beihilfe die in den Leitlinien für Rettungs- und Umstrukturierungsbeihilfen⁽¹⁾ festgelegten Voraussetzungen für die Vereinbarkeit mit dem Binnenmarkt nach Artikel 107 Absatz 3 Buchstabe c AEUV erfüllen würde.

⁽¹⁾ ABl. C 249 vom 31.7.2014, S. 1.

WORTLAUT DES SCHREIBENS

The Commission wishes to inform Romania that, having examined the information supplied by your authorities regarding public financing in favour of TAROM S.A. ('TAROM'), it has decided to initiate the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union ('TFEU').

1. PROCEDURE

- (1) On 24 February 2020, the Commission decided not to raise objections on State aid planned to be granted by Romania to TAROM in the form of a rescue loan for a maximum of six months amounting to RON 175 952 000 (ca. EUR 36,66 million). In that decision⁽¹⁾ ('the rescue aid decision'), the Commission found that the loan constituted State aid to TAROM and considered that the aid was compatible with the internal market pursuant to the 2014 Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty⁽²⁾ (the 'R&R Guidelines') as rescue aid. In connection with the rescue aid, the Romanian authorities had committed to provide the Commission, within six months of the loan approval by the Commission, with a restructuring plan as set out in section 3.1.2 of the R&R Guidelines (see recital (69) of the rescue aid decision).
- (2) On 24 August 2020, Romania submitted a first restructuring plan for TAROM (the 'preliminary restructuring plan'). At the same time, Romania pre-notified its intention to grant restructuring aid to TAROM. Further to a number of exchanges with the Commission services, Romania submitted a new draft restructuring plan on 23 March 2021.
- (3) On 28 May 2021, the Romanian authorities notified to the Commission the restructuring aid accompanying the new restructuring plan. The Commission sent a request for information prior to a call with the Romanian authorities on 10 June 2021. On the 10 June 2021, Romania submitted an amended version of Annex 2 — Report regarding the Restructuring Plan of the notification.

2. THE BENEFICIARY**2.1. TAROM's activities**

- (4) TAROM is a Romanian airline headquartered in Otopeni, Ilfov. TAROM was set up as a State company in 1954. It was reorganised under the 1997 Government Ordinance and set up as a joint-stock company under the 1998 Law as Romania's national air transport company⁽³⁾. The Romanian State, represented by the Ministry of Transport, Infrastructure and Communications ('Ministry of Transport'), owns directly 97,22 % of the shares. The remaining minority shareholdings are held by several public companies: National Airport Company Bucharest ('CNAB', 1,46 %), ROMATSA (Romanian Air Traffic Service Administration) (1,24 %) and Investment Fund Muntenia (0,08 %). TAROM is not part of a wider group of companies as it is an independent centre of decision-making within the State, not managed together with other State holdings. TAROM holds 50 % of shares in Romanian Fuelling Services S.R.L. and is a minority shareholder in several other companies⁽⁴⁾.
- (5) TAROM is mainly active in the air transport of passengers, cargo and mail. It currently has nearly 1 500 employees, out of which ca. 350 operate in the technical division (maintenance and repair operations). It has been a member of the SkyTeam alliance since 2010.
- (6) TAROM is a single hub carrier, with its hub located at the OTP Bucharest Henry Coandă International Airport ('Bucharest Otopeni Airport' or 'OTP Airport'). In 2019, TAROM carried over 3,1 million passengers to 41 own destinations (10 domestic and 41 international to elsewhere within the Union, the Middle East and North Africa) with a fleet of 25 aircraft. As an effect of the global COVID-19 pandemic, in 2020 TAROM lost 73 % of its pre-pandemic traffic, with only 0,9 million passengers on 38 routes. In addition to scheduled flights, it also offers transport services to tour operators (around 5 % of total traffic). Moreover, it provides maintenance services to KLM, TAP, Air Serbia and other airlines.

⁽¹⁾ Commission decision of 24 February 2020 in Case SA.56244 — *Rescue aid to TAROM* (OJ C 310, 18.9.2020, p. 1).

⁽²⁾ 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).

⁽³⁾ Law no. 136/1998 from 29/06/1998 Published in the Official Gazette, Part I no. 241 of 02/07/1998 for the approval of the Government Ordinance no. 45/1997 regarding the establishment of the Commercial Company 'National Romanian air transport company — TAROM' — S.A ('Law 136/1998').

⁽⁴⁾ Globe Ground S.R.L. (37 %), DNATA S.A. (Alpha Rocas) (30,8 %), World Trade Centre Bucuresti S.A. (2,6 %), World Trade Hotel S.A. (2,6 %), Centrul Regional de Excelenta in Aviatia Civila S.A. (CREAC) (25 %), Association for the Promotion and Development of Tourism Bucharest (11,1 %).

2.2. Financial situation of TAROM

- (7) Over the past five years, TAROM's financial situation has significantly deteriorated, in particular with regard to profit. The company has been loss making since at least 2008 and, as reflected in Table 1, it has registered significant losses in recent years. TAROM's subscribed share capital was EUR 760,00 million in 2018, EUR 753,31 million in 2019, and EUR [...] million in 2020 ⁽⁵⁾. Its accumulated losses in 2020 amount to EUR [...] million ⁽⁶⁾. Hence, at least for the past two years prior to the granting of the rescue aid, the accumulated losses exceeded half of TAROM's estimated share capital so the company was an undertaking in difficulty; that situation has not changed, and TAROM is still in difficulty at present.
- (8) According to Romania, TAROM's deteriorating financial situation in recent years is mainly due to an ageing and non-homogenous fleet ⁽⁷⁾ involving high maintenance costs and high fuel charges, but also to the costs derived from inefficiencies in operations. This, in turn, negatively affected the company's operational and overall profit, operational cash flow and cash resources. The failure by the company's management to address those issues, coupled with intense competition from low-cost carriers, has led to an acute liquidity shortage, for which rescue aid was granted following the approval by the Commission on 24 February 2020 (see recital (1)). In addition, on 2 October 2020 TAROM received EUR 19,3 million compensation for exceptional damage caused by the COVID-19 pandemic ⁽⁸⁾.
- (9) At present, the financial situation of TAROM is already very difficult and the long-term survival of the business fully depends on restructuring aid and on the successful implementation of a solid restructuring plan.

3. DESCRIPTION OF THE RESTRUCTURING AID MEASURES

3.1. Restructuring plan

- (10) Following the rescue aid decision, on 28 May 2021 Romania notified EUR 190,7 million restructuring aid consisting of (i) a EUR 40,6 million debt write off by Romania of the loan granted as rescue aid (EUR 36,7 million principal and its corresponding interest), (ii) a EUR 92,9 million capital injection by Romania, and (iii) a EUR 57,2 million grant.
- (11) The restructuring plan encompasses a restructuring period of five years, from 2021 to 2025.
- (12) The restructuring plan foresees TAROM posting profits as of 2024, attaining a return on capital employed ('ROCE') of [...] % in 2024 and [...] % by 2025.
- (13) More specifically, based on the projections provided by Romania, in the baseline scenario TAROM will have a negative return on assets ('ROA') in 2022 and 2023, as TAROM will incur losses. In 2021, the result is positive as a result of the restructuring aid. Starting with 2024, the ROA will turn positive, as TAROM will start generating profits. In 2024 the ratio is slightly lower due to the fact that the profit generated is not commensurate to its asset base (increased because of the right to use assets from the B-MAX fleet). After 2024, the ROA will reach values that are in line with the competitors' results included by Romania in the peer group ⁽⁹⁾.
- (14) In the baseline scenario, TAROM is expected to achieve in 2024 a ROCE value close to the overall peer group average (~10 %) and gradually increases that value in order to get close to its main competitors' results, Wizz Air and Blue Air. In the restructuring period, continuous cost management (i.e. cost reductions through improved efficiency, renegotiation of contracts, productivity improvements) is planned to enhance structural profitability. In addition, investments in the renewal of fleet will replace more costly and less efficient aircraft. The net profit margin will gradually increase towards the end of the restructuring period to [...] % in 2024 and [...] % in 2025, in line with the company's main competitors.

⁽⁵⁾ For 2020 Romania presented preliminary figures, as audited accounts are not yet available for the year ending on 31 December 2020.

⁽⁶⁾ Preliminary figures for 2020 — audited account not yet available. For yearly figures on the financial situation of TAROM, Romania used IFRS audited financial reports as of 2015.

⁽⁷⁾ As of March 2021, TAROM's fleet comprises 16 jet type aircraft and 13 smaller, regional type aircraft (ATRs), with half of the jet aircraft being over 19 years old and the majority of ATRs more than 20 years old.

⁽⁸⁾ SA.56810 — COVID-19 — Aid to Tarom (OJ C 94, 19.3.2021, p. 1).

⁽⁹⁾ Romania submits that, as there is no competitor matching TAROM's characteristics from all relevant perspectives (i.e. fleet size, headcount, business model, number of routes, etc), for the evaluation of the long term viability a benchmark group including in the peer group a mix of competitors that individually present a combination of element make the comparison appropriate. That group includes: direct competitors such as Wizz Air and Blue Air, companies in the region that have gone through similar restructuring processes such as LOT and Czech Airlines, and legacy carriers operating in Central and Eastern European area — Croatia Airlines and Air Serbia.

Table 1

Selected financial data according to the restructuring plan — Evolution of TAROM's return indicators before and during the restructuring period (baseline scenario)

Summary of main financial indicators in baseline scenario	Historical period		Restructuring period				
	2019a	2020e	2021f	2022f	2023f	2024f	2025f
Operating revenues (<i>million EUR</i>)	285,28	[...]	[...]	[...]	[...]	[...]	[...]
EBITDA (<i>million EUR</i>)	12,20	[...]	[...]	[...]	[...]	[...]	[...]
Adjusted EBITDA (<i>million EUR</i>)	12,20	[...]	[...]	[...]	[...]	[...]	[...]
EBIT (<i>million EUR</i>)	(32,43)	[...]	[...]	[...]	[...]	[...]	[...]
Net result (<i>million EUR</i>)	(35,73)	[...]	[...]	[...]	[...]	[...]	[...]
Total equity (<i>million EUR</i>)	96,96	[...]	[...]	[...]	[...]	[...]	[...]
Total capital employed ^[6] (<i>million EUR</i>)	158,04	[...]	[...]	[...]	[...]	[...]	[...]
ROA ^[1] (%)	- 12,54 %	[...]	[...]	[...]	[...]	[...]	[...]
ROCE ^[2] (%)	- 20,52 %	[...]	[...]	[...]	[...]	[...]	[...]
ROE ^[3] (%)	- 36,85 %	[...]	[...]	[...]	[...]	[...]	[...]
Adj. EBITDA margin ^[4] (%)	4,28 %	[...]	[...]	[...]	[...]	[...]	[...]
EBIT margin ^[5] (%)	- 11,4 %	[...]	[...]	[...]	[...]	[...]	[...]
Net profit margin	- 12,52 %	[...]	[...]	[...]	[...]	[...]	[...]

Source: Notification, Annex 2 — Report regarding the restructuring plan, page 186.

- (15) The restructuring plan includes a wide range of actions scheduled to be implemented until 2025, grouped into four broad categories ⁽¹⁰⁾ as follows:
- (i) *fleet renewal*: consisting in the phasing in of new and phasing out of old aircraft, leading to a change from 29 planes in 2020 to 17 planes as of 2024 onwards ⁽¹¹⁾, with most of the new planes (5 new jets B-MAX entering the fleet in 2023) but overall similar capacity in terms of available seat kilometres (ASK) at the end of the restructuring, as smaller aircraft are being replaced by bigger models;

⁽¹⁰⁾ Notification, Annex 2 — Report regarding the restructuring plan, Section 5, pages 93 to 138.

⁽¹¹⁾ Total capacity available for fleet on regular routes in terms of available seat kilometers (ASK) varying from 4,45 million in 2019 to 4,29 million as of 2024 onward (noting that ASK of 1,35 million in 2020 was exceptionally low due to the flight bans during the COVID-19 pandemic).

- (ii) *commercial optimisation measures*: route optimisation (translated into optimisation of flight schedules and frequencies, optimal aircraft allocation, closing of unprofitable routes, etc.), changes in the commercial policy related to the unbundling of services (paid catering) by introducing an ancillary revenues strategy similar to low cost carriers in order to reduce ticket prices, increased focus on charter flights, closing of owned ticketing agencies, marketing actions and communication;
- (iii) *organisational efficiency measures*: resizing of core structure to adapt to the current and future level of activity, optimisation of the Technical Division (following the separation of part of it for setting up of the joint venture with [...]), restructuring of support functions;
- (iv) *cost optimisation measures*: fuel costs reduction through a combination of efficiency measures and prices adjustment through renegotiation and/or tenders, staff reduction (ca. 400 employees⁽¹²⁾, out of which a significant proportion from the Technical Division (responsible for maintenance and repair operations — MRO) and management positions) and employees relocation and head-office building rent, implementation of new distribution system, new distribution capacity (NDC)⁽¹³⁾ to decrease distribution cost and to increase ancillary revenue.
- (16) The total restructuring costs that are expected to arise in the five-year restructuring period amount to EUR 408,5 million. Approximately EUR 190,7 million of that cost would be financed with State aid⁽¹⁴⁾, in particular:
- a) EUR 40,6 million debt cancellation corresponding to the EUR 36,7 rescue aid in form of a Treasury loan and the corresponding interest (EUR 2,2 million for the period May — December 2020 and EUR 1,7 million for the period January — June 2021),
- b) EUR 92,9 million share capital increase which would cover the pre-delivery payments (PDP) for B-MAX aircraft (estimated to ca. EUR [...] million) and part of the cash deficit of 2021 estimated to ca. EUR 17,9 million, and
- c) EUR 57,2 million subsidy⁽¹⁵⁾.

Table 2

Composition of the restructuring costs — yearly breakdown (in million EUR)

Category of measures	Category of costs	2020	2021	2022	2023	2024	2025	2026-2033	Total
Fleet renewal <i>BMAX Financial Lease</i>	PDP BMAX		[...]	[...]	[...]	[...]	[...]	[...]	[...]
	Lease rates		[...]	[...]	[...]	[...]	[...]	[...]	[...]
	Cash collateral — guarantee for finance lease		[...]	[...]	[...] ⁽³⁾	[...]	[...]	[...]	[...]
Commercial optimisation	Marketing and communication		[...]	[...]	[...]	[...]	[...]	[...]	[...]
	Agencies closing — Increases of sales commissions, CRS, ARC and BSP fees and handling costs		[...]	[...]	[...]	[...]	[...]	[...]	[...]
	Agencies closing — redundancy payments		[...]	[...]	[...]	[...]	[...]	[...]	[...]

⁽¹²⁾ Ca. 180 employees have already left the company in the previous year following a voluntary leave programme.

⁽¹³⁾ NDC stands for a new communication standard developed by IATA for the travel industry and adopted by many IATA members.

⁽¹⁴⁾ Romania is preparing a notification under Article 107(2)(b) TFEU on the compensation of further COVID-19 damages suffered by TAROM and that award of further compensation aid would be taken into account in the decision on the restructuring plan.

⁽¹⁵⁾ Depending on the amount of the additional compensation for COVID-19 damage corresponding to the period after July 2020 currently under assessment in a separate procedure by the Commission, that subsidy would likely be reduced.

Category of measures	Category of costs	2020	2021	2022	2023	2024	2025	2026-2033	Total
Organisational efficiency <i>Personnel restructuring</i>	Redundancy payments		[...]	[...]	[...]	[...]	[...]	[...]	[...]
	Consulting costs		[...]	[...]	[...]	[...]	[...]	[...]	[...]
	Contingencies		[...]	[...]	[...]	[...]	[...]	[...]	[...]
Costs optimisation	Fuel Management system and FEI team costs		[...]	[...]	[...]	[...]	[...]	[...]	[...]
	Redundancy payments impacting handling costs		[...]	[...]	[...]	[...]	[...]	[...]	[...]
	Employees relocation		[...]	[...]	[...]	[...]	[...]	[...]	[...]
Total costs of restructuring measures			[...]	[...]	[...]	[...]	[...]	[...]	[...]
Cash deficit			[...]	[...]	[...]	[...]	[...]	[...]	[...]
Rescue aid		38,9 ⁽¹⁾	1.7 ⁽²⁾						40.6
Total restructuring costs		38,9	[...]	[...]	[...]	[...]	[...]	[...]	408,5

⁽¹⁾ The rescue aid amount for 2020 — EUR 38,9 million — comprises the principal EUR 36,7 million and the interest for the period May — December 2020 ~ EUR 2,2 million;

⁽²⁾ The rescue aid amount for 2021 — EUR 1,7 million — comprises the interest for the period January — June 2021;

⁽³⁾ [...].

Source: Notification, Annex 2 — Report regarding the restructuring plan, page 190.

3.2. Own contribution and burden sharing

- (17) According to Romania, the total restructuring costs of EUR 408,5 million would be covered partly by own funds from TAROM in the amount of EUR 217,8 million, while the remainder of EUR 190,7 million would come from the State budget in the form of State aid. In that scenario, TAROM's own contribution would amount to 53 % of the total restructuring costs (see Table 3).

Table 3

Structure of State aid and sources of own contribution (in million EUR)

State Aid form of financing	Amount (million EUR)	Sources of own contribution	Amount (million EUR)
Share capital increase	92,9	Aircraft sales	[...]
Subsidy	57,2	Debt to asset transaction in relation to existing shareholdings	[...]
Rescue Aid	40,6	Finance lease	[...]
Total State Aid	190,7	Total sources of own contribution	217,8
% of Restructuring cost	47 %	% of Restructuring cost	53 %

Source: Notification, Annex 2 — Report regarding the restructuring plan, page 189.

- (18) The restructuring plan includes three main sources for TAROM's own contribution:
- a) Finance lease contracts with aircraft suppliers (such as Boeing (for BMAX) and potentially also ATR ⁽¹⁶⁾) (for ATRs, various types of regional aircraft) and/or specialised lessors for which negotiations are currently ongoing (see recital (19)); the overall financing contributing to the own contribution from the finance lease contract is estimated by Romania at EUR [...] million.
 - b) Sale of assets, such as old aircraft, which is projected to result in an own contribution of EUR [...] million ⁽¹⁷⁾. Romania acknowledges that the sale procedure of those assets has not yet started.
 - c) Divestitures via debt to asset transactions in relation to existing shareholdings in [...], shareholdings to [...] (which also holds minority shareholdings in all these companies) for settling part of the existing debts to that company ⁽¹⁸⁾, eliminating thus the related cash outflow. Those transactions are valued at EUR [...] million ⁽¹⁹⁾.
- (19) In particular, as regards the finance lease amount of EUR [...] million, it represents part of the total value of EUR [...] million of lease rates for [...] years period for the acquisition of five BMAX aircraft. In order to finance those jets that are planned to be delivered in 2023, TAROM has initiated discussions with [...], which introduced TAROM to several major financial institutions that can structure finance leases ([...]). Romania explained that, although various lessors and financiers had expressed their interest in financing TAROM, considering that financing will be obtained in two years as well as the market envisioned volatility during that period, binding offers will be received after due diligence analyses, performed close to the financing moment — i.e. 2023. Therefore, the financing conditions currently provided by lessors, and modelled within the Business Plan, are estimates, and will be revised close to the financing moment, considering the market conditions at that time. However, Romania contends that the expressed interest in financing TAROM can be considered as proof of market trust in TAROM's potential to become viable ⁽²⁰⁾. Lastly, based on the latest exchanges, Romania hopes that that particular part of the finance lease amounting to EUR [...] million would be guaranteed by [...] ⁽²¹⁾.
- (20) Romania acknowledges that out of the pair of existing shareholders of TAROM, only the State will contribute (either with funds or by absorbing losses) to TAROM's restructuring, and that neither the minority shareholder nor TAROM's creditors will be involved in respective burden sharing. Romania did not yet explain whether the minority shareholders that do not contribute to the burden sharing will be asked to give up their share to the State.

3.3. Compensatory measures

- (21) Romania submits that TAROM would carry out the following structural compensatory measures, in order to limit the competition distortion created by the restructuring aid:
- a) TAROM ceased/will cease the operation of 10 destinations, both international and domestic, and releasing corresponding slots. Those routes are (i) from Bucharest Otopeni to Barcelona (in operation), to Alicante (suspended), to Valencia (suspended), to Hamburg (closed), to Stockholm (closed), to Erevan (closed), to Tbilisi (closed), (ii) from Cluj to Iași (closed), to Larnaca (closed), and (iii) from Iași to Timișoara (closed);
 - b) Divestiture via asset to debt deals of TAROM's minority shareholdings in companies with activities that are ancillary to flight transport ([...]);
 - c) Outsourcing (part of) TAROM's maintenance and repair operations (Technical Division) via a joint venture with [...], an external, private supplier.
- (22) As behavioural measures, Romania proposes that TAROM will abstain from purchasing shareholdings in other enterprises during the restructuring period, except where indispensable to ensure its long-term viability, and from using the aid as publicity when selling its products.

4. ASSESSMENT

- (23) The Commission first examines whether the measures mentioned in recital (10) involve State aid within the meaning of Article 107(1) of the TFEU. The Commission then examines whether the aid was already implemented and whether such aid might be compatible with the internal market.

⁽¹⁶⁾ ATR stands for Aerei da Trasporto Regionale (in Italian) or Avions de transport régional (in French), a Franco-Italian aircraft manufacturer headquartered on the grounds of Toulouse Blagnac International Airport in Blagnac, France. It was set up in 1981 as a joint venture between Aérospatiale of France (now Airbus) and Aeritalia (now Leonardo) of Italy.

⁽¹⁷⁾ Fair value of aircraft to be phased out: [...], [...], [...], [...].

⁽¹⁸⁾ Discussions are ongoing between TAROM and [...].

⁽¹⁹⁾ Based on the evaluation performed in May 2020 by independent consultants, the fair values of the participations are [...].

⁽²⁰⁾ Notification, Annex 2 — Report regarding the restructuring plan, page 19 and Notification, Part III, pages 19 and 20.

⁽²¹⁾ Call with the Romanian authorities on 10 May 2020.

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

- (24) 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 trade between Member States, be incompatible with the internal market.'*
- (25) The qualification of a measure as aid within the meaning of this provision therefore requires the following cumulative conditions to be met: (i) the measure must be imputable to the State and financed through State resources; (ii) it must confer an advantage on its recipient; (iii) that advantage must be selective; and (iv) the measure must distort or threaten to distort competition and affect trade between Member States.
- (26) The Romanian authorities consider that the planned State support for restructuring involves State aid within the meaning of Article 107(1) TFEU.
- (27) As regards the presence of State resources, the measures have either been already (i.e., the rescue aid loan) or will be (with respect to the State capital injection and State grant and debt write off of the rescue aid) granted by the State from the State budget and thus clearly involve State resources. The decisions to grant the restructuring aid are taken directly by the Romanian Government and are thus imputable to the State ⁽²²⁾.
- (28) As regards the presence of an economic advantage, the Commission notes that a significant part of [...] % of the public financing of the restructuring measures is planned to be given in the form of an unconditional subsidy and a debt write off (of the rescue aid) by the State and will not need to be repaid by the company. Such non-repayable measures are not available on financial markets and therefore confer an economic advantage to TAROM. In addition, to the best knowledge of the Commission, no market investor was willing and ready to invest in the capital of TAROM, so the capital injection will also confer an advantage to the company that it would not have otherwise received from the market ⁽²³⁾.
- (29) The measures are extended only to TAROM and are thus not part of a general measure available to all undertakings active in the sector of air transport. As the Union Courts have 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 ⁽²⁴⁾. This is so regardless of whether there are operators on the relevant markets that are in a comparable factual and legal situation. Therefore, the planned measures are of a selective nature.
- (30) 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 ⁽²⁵⁾.
- (31) The air transport sector in which TAROM is active is open to competition and trade between Member States and many other undertakings provide air transport services throughout the Union and currently do so in Romania. Therefore, the measures are liable to affect trade between Member States.
- (32) By granting access to funding which TAROM would not have obtained at market conditions, the measures are consequently liable to allow TAROM to remain in operation and improve its competitive position in the internal market. Therefore, the measures distort or threaten to distort competition and affects trade between Member States.

Conclusion on the presence of aid

- (33) In light of the above, the Commission concludes that the restructuring plan which covers costs of around 408,5 million, out of which EUR 190,7 million will be supplied by Romania to the benefit of TAROM, involves 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

- (34) Following the rescue aid decision, on 24 August 2020, Romania transmitted a first restructuring plan. As Romania did so within six months of granting the rescue aid, hence the prolongation of the rescue aid is not unlawful. For other planned State aid (apart from the prolonged rescue aid), Romania commits not to put it into effect until its approval, thereby respecting the standstill obligation laid down in Article 108(3) TFEU.

⁽²²⁾ As per the draft Government Emergency ordinance for completing the Government Ordinance no. 45/1997 on the establishment of the Company 'Romanian National Air Transport Company -TAROM' — S.A., which is meant to be adopted further to the Government Emergency Ordinance no. 12/2020 and the European Commission Decision no. C (2020) 1160 / 24.02.2020.

⁽²³⁾ See point 76 and subseq of the Commission Notice on the notion of State aid as referred to in Article 107(1) TFEU ('NoA') (OJ C 262, 19.7.2016, p. 1).

⁽²⁴⁾ See judgment of 4 June 2015 *Commission v MOL*, C-15/14 P EU:C:2015:362, paragraph 60.

⁽²⁵⁾ 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, paragraph 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, paragraph 21; and 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, paragraph 44.

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

- (35) The Commission must assess if the restructuring aid notified by Romania in the form of the measures identified in recital (10) can be found compatible with the internal market. According to the case law of the Union Courts, it is up to the Member State to invoke possible grounds of compatibility, and to demonstrate that the conditions for such compatibility are met ⁽²⁶⁾.
- (36) The Commission has assessed the measures on the basis of Article 107(3)(c) TFEU providing that the Commission may declare compatible *'aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest.'*
- (37) The R&R Guidelines provide rules and conditions for the purposes of the compatibility assessment of rescue and restructuring aid to undertakings in difficulty pursuant to Article 107(3)(c) TFEU and Romania claims that such conditions are met in the present case.

4.3.1. Application of the R&R Guidelines

- (38) Only undertakings in difficulty as defined in point 20 of the R&R Guidelines and not active in the steel sector as defined in point 15 thereof, or the coal sector as defined in point 16 thereof, can benefit from compatible rescue or restructuring aid.
- (39) As noted in the rescue aid decision, since 31 December 2018 TAROM fulfilled the criteria for being qualified as a firm in difficulty according to point 20(a) of the R&R Guidelines (see recitals (6) and (53) to (57) of the rescue aid decision) and the company is still in difficulty (see recital (7)). Furthermore, TAROM is not active in the coal or steel sectors –as defined in footnotes 19 and 20 of the R&R Guidelines–, making it eligible for restructuring aid.

4.3.2. Contribution to the development of an economic activity, avoidance of social hardship and existence of market failure

- (40) Under Article 107(3)(c) TFEU the aid measure must facilitate the development of an economic activity. The restructuring aid to TAROM will allow it to maintain its economic activities in the air transport sector (see recitals (7) to (9)).
- (41) Under point 38 a) of the R&R Guidelines, the State has to demonstrate that the aid aims at preventing social hardship or addressing a market failure. In that regard, Romania refers to circumstances mentioned in point 44(b) of the R&R Guidelines, i.e., that *'there is a risk of disruption to an important service which is hard to replicate and where it would be difficult for any competitor simply to step in.'*
- (42) Romania submits that, should TAROM discontinue its operations, passengers' welfare would be adversely affected for all the routes currently operated by that flag carrier, albeit at varying degrees, depending on the reaction of competitors, with the strongest impact on the 10 routes currently solely operated by TAROM. Romania submits that the previous examples from markets where TAROM ceased operations show that it is unlikely that other carriers would take over on some routes as many are still not operated today: out of the 22 routes closed by TAROM during the past 3 years, half are currently not operated by any other airline and most of them were not operated even under normal market conditions prior to COVID-19 pandemic. Romania contends that, overall, competitors would intend to serve TAROM's main destinations but not the less attractive routes (due to various reasons including low demand, lack of appropriate, small aircraft, preference for point to point and no hub and spoke, connectivity based business model, etc.).
- (43) The Commission is aware of a number of recent developments showing that competitors have entered some domestic routes operated by TAROM (for instance on three of the routes where TAROM was the only operator — Bucharest-Oradea, Cluj-Iasi and Iasi-Timisoara, Blue Air entered during the Summer of 2020; as such, the size of the aircraft is not necessarily an impediment for a low cost carrier (LCC) to enter domestic routes. In addition, as regards international routes, the few examples of price differences between TAROM and other carriers that Romania provided ⁽²⁷⁾ are not sufficiently robust to allow the Commission to draw a conclusion as to the likely price increases and lack of alternative entry in case of TAROM's exit from those routes in the medium to long term.

⁽²⁶⁾ See Case C-364/90, *Italy v Commission*, EU:C:1993:157, paragraph 20.

⁽²⁷⁾ See Notification, Annex 2 — Report regarding the restructuring plan, pages 32 to 38. In short, Romania submits that the expected increase in fares would also likely take place on routes operated by TAROM, and where the company exit from the market would lead to a monopolistic position (either from a LCC or legacy carrier). According to Romania, that phenomenon has already been observed on the routes on which TAROM has stopped operating. As support for validating the hypothesis, Romania offers an analysis of airfare evolution before and after TAROM exited the market has been conducted for Stockholm and Hamburg routes. Furthermore, Romania provides a price analysis between TAROM and competitors on key routes showing that most prices offered by TAROM on the respective routes are cheaper than those practiced by other legacy carriers (e.g. Bucharest-Amsterdam, Bucharest-Frankfurt, Bucharest-Paris); Romania also claims that the existence of prices lower than TAROM's on such routes by certain LCCs is in fact associated with a lower level of the overall service, thus not contradicting the fact that TAROM has consistently cheaper prices on comparable services.

(44) However, while in the medium to long run other carriers could enter on some of the routes (as examples in the past have revealed), it is not warranted to consider that competitors would be able and ready to take over all the routes and flight services that TAROM has been operating on both national and international routes without any disruption for customers in the medium to long term. In particular, as the sole operator of certain national (and international) air connections and given the particularly long hours (and sometimes difficult conditions) needed to complete those trips through the road and rail networks on the national territory of Romania, TAROM ensures an important service of regional connectivity that, in event of cessation of activity would lead to a disruption of mobility, which could have a significant impact on the mobility of Romanian citizens and businesses and could be detrimental to the economic situation in the affected regions of Romania. The fact that TAROM is limited in size does not *per se* deprive it of being eligible for restructuring aid. Furthermore, the existence of a certain degree of substitutability does not in itself exclude the disruption of an important service, for instance the disruption for a large number of individuals which can have serious consequences for various businesses, including SMEs.

(45) The Commission concludes on preliminary basis that the restructuring aid meets the condition under points 38(a) and 44(b) of the R&R Guidelines.

4.3.3. *Avoiding undue distortions of competition*

(46) Under Article 107(3)(c) TFEU the aid measure must avoid adversely affecting trading conditions to an extent contrary to the common interest. The R&R Guidelines pose a series of criteria how that condition applies to the restructuring of undertakings in difficulty, in particular:

(47) As regards the rescue aid loan approved by the rescue aid decision, in line with point 55(d) of the R&R Guidelines, Romania committed to submitting, within a maximum of six months from the date of the Commission decision of 24 February 2020, a valid restructuring plan for TAROM, as set out in section 3.1.2 of the R&R Guidelines (see recital (69) of the rescue aid decision).

(48) At that stage, it is doubtful that the restructuring aid planned in support of the submitted restructuring plan meets the compatibility criteria laid down in the R&R Guidelines, mainly for the following reasons:

(a) **Appropriateness**

(49) The R&R Guidelines require that Member States provide restructuring aid through instruments that allow proper remuneration whilst being appropriate to address the beneficiary's solvency and liquidity issues. In that respect, the provision of restructuring aid in the form of a sizeable (non-remunerated) grant of EUR 40,6 million and a debt write off of EUR 57,2 million does not allow the State acting as aid grantor to reap any upsides from a successful restructuring. However, after the end of the restructuring period, TAROM is expected to post positive net results (Table 2).

(50) As indicated in recital (4), the State is the majority and controlling shareholder of TAROM with more than 97 % stake, whereas less than 1 % of the shares are owned by the private Investment Fund Muntenia, and the rest indirectly by the State through various State entities and public companies (without any veto or special rights). The notified restructuring aid of EUR 190,7 million is to be granted in proportion of ca. 50 % the form of a share capital increase, along with a direct subsidy and a debt write off (of the rescue aid, in the form of a repayable loan and its corresponding interest). The grant and debt write-off will address the company's liquidity needs in particular at the very beginning of the restructuring period, whereas the capital increase is targeted at improving its solvability. Based on the estimations provided by Romania under the baseline and pessimistic scenarios, other combinations of aid instruments (such as guarantees or loans) or amounts would either compromise the restructuring objectives or imply an unbearable financial cost, hampering the company's long-term viability. At the present stage and without prejudice to the assessment of the proportionality of the restructuring aid, the planned aid instruments and amounts appear to be adequate to address TAROM's problems of solvency and liquidity and could therefore be deemed appropriate.

(b) **Own contribution and burden sharing**

(51) 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. Such own contribution should normally be comparable to the aid granted in terms of effects on the solvency or liquidity position of the beneficiary. In addition, the own contribution must, according to point 63 of the R&R Guidelines, be real, that is to say actual, excluding future expected profits such as cash flow.

(52) However, according to the restructuring plan submitted by the Romanian authorities, it appears at this stage that the purported own contribution of EUR 217,8 million is not real, nor actual. For most of the own contribution, Romania relies only on advanced negotiations for finance lease contract(s) with potential lessors or banks. However, without a firm commitment for financing from a lessor or a bank, the EUR [...] million of the finance lease are neither real, nor actual. Furthermore, based on the information submitted by Romania, no market investor or lender is firmly backing the plan at this stage. [...]. Ongoing negotiations [...] have to date not resulted in any binding offer of a financial lease.

- (53) Romania also puts forward another source of financing — the sale of TAROM's assets (aircraft and minority shareholdings in vertically related companies). However, Romania acknowledges that the sale procedure of those assets has not even started and itself estimates that the revenues from such aircraft sale would bring EUR [...] million, which is just above [...] % of the total amount needed as own contribution (see recitals (16), (18)b) and Table 3).
- (54) Similarly, there is no upfront buyer for the TAROM's minority participations in the vertically related companies [...]. [...], there is no binding agreement or offer to purchase for any of those participations. Moreover, the updated valuation reports of these companies are not yet ready. Given that [...], the market logic of the planned assets-to-debt deal would still need to be confirmed via a market economy operator (MEO) test on the purchase of those assets. This is relevant for point 63 of the R&R Guidelines, which requires that '*[c]ontribution by the State or a public company may only be taken into account provided that it is free of aid.*'
- (55) In addition, points 65 to 67 of the R&R Guidelines require that aid to cover losses should only be granted on terms which involve adequate burden sharing by existing investors, which would normally mean that incumbent shareholders and subordinated creditors must absorb losses in full, before any State intervention has taken place.
- (56) However, Romania expressly acknowledges that neither the private minority shareholder of TAROM (the Investment Fund Muntenia) nor TAROM's creditors will provide burden sharing in any form (see recital (20)). Romania has not yet clarified whether the minority shareholders that do not contribute to the burden sharing will be asked to give up their share to the State. Romania also does not provide any arguments justifying any exceptions to the rules on adequate burden sharing (point 68 of the R&R Guidelines).
- (57) Finally, point 64 of the R&R Guidelines provides that the own contribution will normally be considered as adequate if it amounts to at least 50 % of the restructuring costs. However, as is evident from recital (16) and Table 2, TAROM's own contribution would at most be only [...] % of the restructuring costs (after discounting the elements that cannot be accepted, see recitals (52) and (54)). In the situation in which backing by a government guarantee would be required by any of the potential lessor(s), the corresponding part of the EUR [...] million finance lease would not be qualified as TAROM's own funds free of aid. Lastly, Romania has not put forward any arguments showing a particular hardship or exceptional circumstances which would justify the proportion of TAROM's own contribution being lower than 50 % of the restructuring costs.
- (58) In the light of the above, the Commission preliminarily concludes that the sources of financing as proposed by Romania do not constitute a significant, real and actual, free of aid own contribution of at least 50 %, and that adequate burden sharing by the existing shareholders and creditors is not yet demonstrated in the restructuring plan. The Commission therefore considers that the restructuring plan as it currently stands does not correspond to the basic requirements of the R&R Guidelines as regards the own contribution and burden sharing.

(c) Restoration of long-term viability

- (59) According to point 45 of the R&R Guidelines, in case of restructuring aid the Commission will require that the Member State concerned submits 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 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.
- (60) First, the estimations provided by Romania in the notified restructuring plan are based on the last Eurocontrol 5-year forecast Europe 2020-2024 ⁽²⁸⁾ and, thus, on credible hypotheses concerning vaccination campaign scenarios. More specifically,
- a) The *baseline scenario* is based on Eurocontrol scenario 2 which anticipates that vaccinations are made widely available to travellers (or end of the pandemic occurs) by summer 2022 with full recovery of air traffic to 2019 levels in 2026. In that scenario, there are enough testing facilities for passengers, a good level of passenger confidence and airlines would reasonably be able to invest and re-hire once demand returns (especially LCC).
 - b) The setback (or the *pessimistic scenario*) is based on Eurocontrol scenario 3, which anticipates a lingering infection and low passenger confidence, with recovery to 2019 level only in 2029. In that scenario, vaccines are also made widely available for travellers by summer 2022, however their use is not uniform across the globe. Furthermore, for airlines it would be difficult to operate at pre-COVID levels, as a result of some regions experiencing renewed outbreak phases, not at the same time nor with the same intensity — herd immunity probably not uniform across the globe, and might not persist. In terms of passengers' confidence, that scenario envisions that demand would bounce back for 60 to 70 % of travellers but as some will be reluctant to fly, there would likely be a permanent drop in the propensity to fly.

⁽²⁸⁾ Eurocontrol five-year forecast 2020-2024/European flight movements and service units/Three scenarios for recovery from COVID-19 — November 2020. While there are some differences between Eurocontrol and ICAO regarding 2021 prospects, both Eurocontrol scenarios 2 and 3 are in line with ICAO path 1.

- (61) According to the restructuring plan baseline scenario, further cost-cutting measures would allow for a return to profitability within 5 years (i.e. by 2025). This is reflected in TAROM's financial ratios, with TAROM's 2025 ROA ([...] %) higher than TAROM's alleged cost of debt and TAROM's 2025 ROCE ([...] %) higher than TAROM's alleged WACC ⁽²⁹⁾ ([...] %). Further, TAROM's 2025 financial ratios (ROA, ROCE and Net Profit Margin) would be in line with the historical financial ratios of TAROM's peer group. However, it should be noted that TAROM's restructuring plan contains no explanation of the reasonableness of the level of profitability that TAROM would allegedly achieve in 2025 and more clarifications on the tests, WACC components and peer group selection would be required. For example, TAROM's restructuring plan contains no information regarding TAROM's WACC and its components. This makes it difficult, at this stage, to assess TAROM's return to viability. While TAROM will undertake efforts to improve its efficiency, its expected level of profitability, which is in the range of that of its best performing peers in 2019, seems optimistic, considering TAROM's historical performance.
- (62) In the pessimistic scenario, the return to profitability would only be achieved as of 2027. According to point 47 of the R&R Guidelines, the restructuring plan must restore the long-term viability of the beneficiary within a reasonable timescale in both the baseline and the pessimistic scenarios, and the restructuring period should be as short as possible. Romania has failed to provide a restructuring plan that would restore its viability in the pessimistic scenario by the end of implementation of the restructuring plan, which runs until 2025 (see recital (11)).
- (63) Furthermore, in both the baseline and the pessimistic scenario, Romania did not provide sufficient information regarding the construction of the peer group, nor the figures underlying the peer group data.
- (64) At this stage, the Commission has doubts that the proposed restructuring plan is of an appropriate duration and would lead to the restoration of viability of TAROM at the end of the restructuring period because it is not apparent that TAROM will provide a sufficient return and will be capable of remaining on the market without further aid.

(d) *Compensatory measures*

- (65) 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 non-loss making activities that can carry on as a stand-alone business and which would not need to be abandoned anyway to preserve viability.
- (66) In this regard, the Commission considers that it is not yet sufficiently established that real structural compensatory measures are envisaged, for the following reasons.
- (67) Firstly, Romania proposed to divest certain slots in a number of international airports (Barcelona, Alicante, Valencia, Hamburg, Stockholm, Erevan, Tbilisi, Larnaca) ⁽³⁰⁾ as well as a few domestic airports (Iasi, Cluj, Timișoara) and minority shareholdings in companies with activities that are ancillary to flight transport (as per recital (21)b), they refer to shareholdings in [...]). Lastly, it also commits to outsource its maintenance and repair (Technical Division) via a joint venture with [...], an external, private supplier.
- (68) However, at this stage, only a limited number of the proposed slot releases concern potentially congested airports (Alicante, Valencia, Hamburg, Stockholm, Larnaca) and Romania did not provide the necessary information to allow the Commission to assess whether the flight times proposed for the released slots would indeed correspond to highly congested airport conditions. Furthermore, the divestment plans for the shareholdings in the vertically related companies are still vague, lacking in particular valuation reports of the assets and profitability of companies concerned.
- (69) While Romania's proposed access compensatory measures (including slot releases in various European airports) and divestitures in form of debt-to-asset deals could potentially be meaningful, the strong doubts on the proportionality of the aid and on TAROM's own contribution make it necessary that proceeds from market-based sales and divestitures of assets contribute to reducing the amount of restructuring aid, whilst reducing the negative effects of the aid on other air carriers.
- (70) Furthermore, as is evident from recital (15)(i), despite the considerable reduction in the number of aircraft, due to the planned phasing in of jets and phasing out of smaller types of aircraft, the overall flight capacity of TAROM expressed in terms of ASK will not materially change by the end of the restructuring plan.
- (71) Finally, apart from barring TAROM from purchasing shareholdings in other enterprises during the restructuring period, except where indispensable to ensure its long-term viability, and from using the aid as publicity when selling its products, Romania did not propose any other behavioural measure.

⁽²⁹⁾ WACC stands for weighted average cost of capital, a calculation of a firm's cost of capital in which each category of capital is proportionately weighted.

⁽³⁰⁾ Notification, Annex 2 — Report regarding the restructuring plan, pages 144 to 149.

- (72) For the reasons mentioned above, the structural compensatory measures proposed so far by Romania appear insufficiently established. In the absence of firm and clear structural and behavioural measures, it is doubtful that the negative effects of the aid on competition are mitigated to a satisfactory extent.

(e) ***Conclusion on the compatibility under the R&R Guidelines***

- (73) In light of the findings of the preliminary assessment above, the Commission has doubts at this stage about the compatibility of the restructuring plan with the principal requirements of the R&R Guidelines.
- (74) In particular, the Commission has doubts regarding: (i) the presence of a real and actual own contribution free of aid from the beneficiary, (ii) the presence and effectiveness of burden sharing, (iii) the restoration of long-term viability and restructuring within a reasonable timescale, and (iv) the presence and effectiveness of meaningful compensatory measures.

4.3.4. *Conclusions on compatibility*

- (75) In the present case, the Commission has doubts at this stage whether the planned restructuring aid to TAROM meets the principal conditions of the R&R Guidelines and whether the positive effects of the measure outweigh the negative effects of it and, accordingly, whether the restructuring aid could be declared compatible with the internal market pursuant to Article 107(3)(c) TFEU.
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