



EUROPEAN COMMISSION

Brussels, 16.10.2012

C(2012) 7293 final

PUBLIC VERSION

WORKING LANGUAGE

**This document is made available for
information purposes only.**

**Subject: State aid SA.35053 (N/2012) (ex PN/2012) – Romania
Start-up aid to airlines departing from Craiova International Airport**

Sir,

1. PROCEDURE

- (1) By electronic notification of 28 June 2012 the Romanian authorities notified to the Commission, in accordance with Article 108(3) of the Treaty on the Functioning of the European Union (TFEU)¹, an aid measure aiming to provide support for the opening of new air transport services connecting Craiova International Airport (hereafter: "CA") to other EU airports. The notification has been registered under case number SA.35053. On 27 July 2012 the Commission requested additional information. The Romanian authorities replied 16 August 2012.

2. DESCRIPTION OF THE MEASURE

2.1. Craiova Airport

- (2) CA currently has more than 30 000 passengers. The number of passengers has substantially increased since the deregulation of the Romanian air traffic in 2007.

¹ OJ L 138 of 30.4.2004

Titus CORLĂȚEAN
Ministrul Afacerilor Externe
Aleea Alexandru 31
Sector 1
RO-011822-BUCUREȘTI

Commission européenne, B-1049 Bruxelles – Belgique
Europese Commissie, B-1049 Brussel – België
Telefon: 00 32 (0) 2 299.11.11.

Passenger numbers at CA between 2007 and 2011				
2007	2008	2009	2010	2011
5 133	12 988	15 130	23 629	32 006

- (3) CA is currently only served by Carpatair for schedule air passenger transport with direct flights to Timisoara, Rome and Bergamo. Jet2.com provides charter flights to London and Cologne
- (4) As far as business traffic is concerned CA is connected to the hub of Carpatair at Timisoara Airport with connecting flights to Ancona, Bari, Bergamo, Bologna, Florence, Rome, Verona, Venice, Düsseldorf, Munich, Stuttgart and Athenes.
- (5) The closest airports from CA are Bucharest (225 km), Sofia (258 km), Sibiu (220 km) and Timisoara (335 km). There are no current or projected high speed rail services anywhere near Craiova.

2.2. Objective of the measure

- (6) The aim of the measure is to grant start-up aid to one or more air carriers, to be selected through a tendering procedure, opening new routes or frequencies which increase the net volume of traffic between CA and other EU airports.
- (7) Recent statistics from CA show that the number of passengers for 2011 has increased by 35% compared to the year 2010.
- (8) The CA management, with the support of Dolj County Council, intends to connect the airport with other European national or regional airports because it believes that there is substantial room for service expansion operated by both traditional or low-cost carriers.
- (9) CA expects the expansion to benefit both discretionary travellers based in Craiova as well as tourists and other inbound traffic destined for Dolj County or Oltenia Region, as there is substantial scope for expansion of Oltenia's tourism potential.

2.3. National legal basis

- (10) The new aid scheme is based on *Ordinul Ministrului Transporturilor si Infrastructurii nr. 744 / 23 septembrie 2011; proiect de Hotărâre a Consiliului Județean Dolj privind ajutorul financiar la înființare de noi destinații de pe aeroportul Craiova.*

2.4. Budget

- (11) The annual budget of the scheme is expected to be:

year	EUR
2012	280 000
2013	252 000
2014	224 000
2015	196 000
2016	168 000

2017	140 000
2018	112 000
Sum	1 372 000

2.5. Duration of the scheme and the aid

- (12) The aid will be accorded for a period of three to maximum five years. The period in which contracts for start-up aid for the opening of new destinations departing from CA may be concluded extends over a period of five years, from 1 September 2012 to 31 December 2016. Aid contractually agreed can still be disbursed in 2017 and 2018. The Romanian authorities have declared that this is contingent to the prior approval of the European Commission.

2.6. Beneficiaries

- (13) The beneficiaries of the aid are air carriers which satisfy certain technical and financial criteria as described below. The final beneficiaries will be the air carriers chosen following the tendering procedure.
- (14) Undertakings of all sizes are eligible. The maximum number of beneficiaries of the scheme is three.

2.7. Form of aid

- (15) The start-up financial assistance will be provided as a direct grant to air carriers whose tenders have been accepted, for the opening of new routes within the European Union and/or frequencies which increase the net volume of traffic to and from Craiova, but do not compete with any existing air services within the same city or conurbation. None of the routes in question is currently operated by a high-speed rail service.

2.8. The call for tenders

- (16) Dolj County Council and CA propose to issue at least one public tender call per year to airlines that might have an interest in inaugurating new services to and from Craiova. Respondents would then submit service proposals, including business plans, which would specify proposed routes and service frequencies, equipment to be utilized, capacity, expected traffic levels, and pro forma costs and revenues. The tenders would specify that, if the tender were accepted, Dolj County Council and CA would be willing to provide financial assistance.
- (17) Dolj County Council and CA will make its plans public in good time and with an adequate publicity to enable all interested airlines to offer their services. The tender will be advertised in a selection of industry publications to ensure that all interested airlines will be made aware of the request for proposals. It will also be available on Dolj County Council's and CA's websites.
- (18) It is planned to open at least one tender per year and a maximum of 20 new routes in

total in five years.

2.8.1. Eligibility criteria

- (19) Any air operator which fulfils the following requirements can apply for this call for proposals:
- The applicant must have an air operating license issued by a Member State of the EU, in accordance with EC Regulation 1008/2008;
 - The applicant must have compulsory insurance against accidents covering passengers, cargo, mail, and third-party liability under the terms of EC Regulation 785/2004²;
 - The applicant must not be on the European black list of airlines that fail to satisfy safety standards, as published at: <http://ec.europa.eu/transport/air-ban/>;
 - The applicant must have a European air operator certificate (AOC) or other equivalent document issued by a competent authority in their country of origin;
 - The applicant cannot cumulate this type of aid with other ones granted for operating the aforementioned route, such as aid of a social nature granted to certain categories of passengers and compensation for discharging public services. Also, in accordance with the rules of proportionality, such aid cannot be combined with other aid granted to cover the same costs, including aid paid in another State.
 - The applicant must not have any financial debts to CA, and must not be in litigation with CA at the time of the call for proposals.

2.8.2. Routes

- (20) Dolj County Council will issue calls for the development of new routes; these calls can be for routes or groups of routes. The call will specify the routes which are to be developed. The call qualifies a route as a new route citing the definition of paragraph 79 (c) of the 2005 Aviation Guidelines³ and meets the following additional criteria:
- Only routes that have not been served by an air carrier within the previous year will be considered as a new route.
 - Only routes linking CA to another EU airport are eligible.
 - No retrospective application can be made for support if a route has already been announced.
 - The period during which the airline undertakes to operate the route on CA must be greater than the period during which start-up aid is granted for that specific route.

2.8.3. The Business Plan

- (21) Applicants have to produce a business plan covering both the period in which financial aid will be granted to open new destinations and the period in which the company will operate without receiving any financial compensation. The business plan shall include the following information:
- The period for which it requires the start-up aid and the period when it is required to

²

³ Community guidelines on financing of airports and start-up aid to airlines departing from regional airports OJ C 312, 9.12.2005, p. 1–14

operate that route;

- Commercial activities intended for advertising the new route during the start-up assistance period;
- How tickets are to be sold on the new available route;
- Financial details of the activities described above;
- The human resource factor that the company will allocate for operating and development of the new route.
- The viability after it does not anymore receive aid.

2.8.4. The Operational Plan

(22) Applicants have to produce an operational plan of the new route that contains the following information:

- The new route to be developed;
- The date of launching the new route;
- The frequency of flights to be operated on the route. A minimum of 2 flights per week are expected on the route operated from CA airport;
- Aircraft type and seating configuration to be utilized on the new route;
- Passenger traffic estimated for each of the years in which financial assistance is provided by CA;
- The schedule of flights indicating the different hours and days of operating the route.

2.8.5. The Financial Plan

(23) Applicants have to produce a financial plan containing the following elements:

- The amount of financing required per boarded passenger;
- The number of passengers for each year of the operating period;
- A forecasted value of the eligible net costs of start-up, for each year of the period for which financing is being requested.
- The estimated turnover on the route (with and without the financing provided). This information should be broken down per year.

2.9. Eligible costs

(24) The eligible costs will be restricted to the initial marketing and advertising costs incurred to publicize the new air route, and may include the installation costs of the airline incurred in order to launch the route from CA. Standard direct operating costs such as aircraft leasing or depreciation, fuel, salaries of flight personnel, airport

charges, and catering services are not eligible for coverage. All eligible costs must be real ones incurred under normal market conditions.

2.10. Aid intensity and cumulation

- (25) The aid will be accorded in a digressive way for a period of three to maximum five years. Since Dolj County is considered a disadvantaged region in the European Union in the sense of article 107 (3) (a) TFEU, the amount of aid in any year may not exceed 50% of total eligible cost for that year and total aid may not exceed an average of 40% of eligible cost.
- (26) Depending on the eligible costs mentioned in the tender of the operators and finally agreed in the contract to be concluded between Dolj County Council and the airline, the costs will be justified and grounded in the business plans included in the tenders.
- (27) The aid will not exceed 10 Euro / boarded passenger in the first year and will be paid under a digressive scheme (ex. 10 Euro / boarded passenger in the first year, 9 Euro / boarded passenger in the second year, 8 Euro / boarded passenger in the third year, 7 Euro / boarded passenger in the fourth year, 6 Euro / boarded passenger in the fifth year).
- (28) The maximum amount of aid was determined by a calculation of the advertising costs, the expected number of passengers and the maximum intensity of aid of 50%.
- (29) The period during which the airline undertakes to operate the route must be greater than the period during which the airline benefits from the start-up aid for that specific route. The period of operation must therefore be at least double of the period for which aid is granted. If the new route becomes profitable before the end of the five years period, airlines must operate for an additional period of 50% of the period for which aid was granted. Otherwise the airline will be subject to penalties of non-compliance.
- (30) Start-up aid cannot be combined with other types of aid granted for the operation of a route, such as aid of a social nature granted to certain categories of passengers and compensation for discharging public services. In addition, such aid cannot be granted when access to a route has been reserved for a single carrier under EC Regulation No 1008/2008. Also, such aid cannot be combined with other aid granted to cover the same costs, including aid paid in another state. Dolj County Council will request a declaration of the airline on the subject prior to granting the aid. The airline will have to declare that they will not cumulate the aid.

2.11. Selection procedure

- (31) The proposals which do not provide the sufficient technical, professional and relevant financial guarantees and those which do not include the documents requested in the call for proposals, or which are not filed within the deadline of the call, will not be considered.
- (32) The preliminary selection criteria will be the eligibility of the applicant. Offers which are not in conformity with the objective and requirements of the call will be eliminated.

- (33) The remaining offers will be evaluated and ranked on the following criteria:
- Technical value: quality and suitability of technical, commercial, marketing, sales and human resources made available for the development of the route, expected results: 40%
 - Financial value: amount of the financing requested per passenger: 40%
 - Date of route start-up: 20%
- (34) Dolj County Council will carry out an analysis of the impact of the new route on competing routes prior to granting start-up aid.
- (35) The financing provided to operate a route will be subject to budget availability.
- (36) A contract stipulating the amount of financing to be granted per departing passenger, the plan to be implemented by the air carrier and the conditions linked to the aid will be signed by the air carrier and the Dolj County Council, following discussions, if and where necessary.
- (37) The air carrier will be responsible for the implementation of the plan and for developing the new air route as approved, for the eligibility and for the receipt of the financing.

2.12. Penalties and repayment

- (38) In case an air carrier fails to meet its contractual service obligations under this program, the contract to be concluded between Dolj County Council and the airline will provide that payment of the aid may be ceased, either in whole or in part, and the air carrier must repay the public contribution received, as well as any other penalties that may be prescribed by Romanian law.
- (39) In case the airline fails to operate the additional period of time (as defined in paragraph (29)) after the aid has expired for a destination part of this scheme, it will be put in the position of fully returning the aid received up until the date of the closure of the destination in question, plus an interest at the market level. Calculations will be made from the moment aid was initially granted up to the moment of its full recovery, in accordance with EU regulations on state aid recovery.
- (40) If the airline decides to close the route for which it receives financial support before the end of the period it was required to maintain the route, all aid received will be repaid to Dolj County Council with related interests.

2.13. Payment

- (41) Dolj County Council will pay the grants monthly, taking into account the number of passengers actually carried during each month, on the basis of the presentation of the beneficiary of the monthly report to that effect.

2.14. Appeal procedures

- (42) The authority responsible for dealing with complaints concerning the implementation of this program, as well as the procedural deadlines for appeals, are specified in the call for tenders as follows:
- (43) Any appeal filed by an applicant during the selection procedure or within 10 days after the announcement of the selected applicant designated to operate the new route will be considered by Dolj County Council. Dolj County Council will appoint a Committee of analysis and resolution of appeals. This Committee will formulate a response within 5 days from the date of filing the appeal.

2.15. Reporting

- (44) CA undertakes to publish, on an annual basis, the list of routes receiving public financing, the air carriers operating these routes, the amount of aid granted, and the number of passengers actually carried.

2.16. Revision of the 2005 Aviation Guidelines

- (45) The Romanian authorities engage to modify the start-up scheme allocated to airlines departing from CA in order to meet the requirements of future aviation guidelines, once they have entered into force.

3. ASSESSMENT OF THE MEASURE

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

- (46) According to Article 107(1) TFEU *"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"*.
- (47) The criteria laid down in Article 107(1) are cumulative. Therefore, in order to determine whether the notified measure constitutes State aid within the meaning of Article 107(1) TFEU, all the above mentioned conditions need to be fulfilled. Namely, the financial support should:
 - (a) be granted by the State or through State resources,
 - (b) favour certain undertakings or the production of certain goods,
 - (c) distort or threaten to distort competition,
 - (d) affect trade between Member States.
- (48) State resources: Since the notified measure involves financing granted by the Romanian authorities, it involves the use of State resources and is imputable to the State.

- (49) Selective economic advantage: The public financing is directed to certain eligible airlines, to the exclusion of competitors. It is therefore selective.
- (50) Distortion of competition and impact on trade: When aid granted by a Member State strengthens the position of an undertaking compared with other undertakings competing in intra-Union trade, the latter must be regarded as affected by that aid⁴. It is sufficient that the recipient of the aid competes with other undertakings on markets open to competition⁵. Support by the Romanian authorities of new air services distorts or threatens to distort competition inside the market as they involve air transport which is a fully liberalized market.
- (51) On the basis of the above, the Commission concludes that the notified aid scheme involves aid within the meaning of Article 107(1) TFEU. By having notified the planned measure to the Commission and not having put it into effect before its approval by the latter the Romanian authorities have observed the stand-still obligation under Art 108 (3) TFEU

3.2. Compatibility of the aid

- (52) The 2005 Aviation Guidelines set out in point 79 several conditions to be complied with in order for start-up aid to be found compatible with the internal market under Article 107(3)(c):
- (a) The aid is paid to air carriers with a valid operating licence issued by a Member State pursuant to Council Regulation (EEC) No 2407/92 on licensing of air carriers⁶.*
- (53) As mentioned in paragraph (19) above, the Romanian authorities have indicated that beneficiaries would be air carriers as defined by Regulation 1008/2008⁷. The first condition set forth by the Guidelines is therefore fulfilled.
- (b) The aid is paid for routes linking a regional airport in category C or D to another EU airport.*
- (54) CA has less than 1 million passengers and therefore qualifies as category D airport pursuant to the Guidelines. The aid is granted to airlines opening new routes from CA to other airports located in the EU. The second condition is thus observed.
- (c) The aid will apply only to the opening of new routes or new schedules, which will lead to an increase in the net volume of passengers. This aid must not encourage traffic simply to be transferred from one airline or company to another. In particular, it must not lead to a relocation of traffic which is unjustified with regard to the frequency and viability of existing services leaving from another airport in the same*

⁴ See, in particular, Case 730/79 Philip Morris v Commission [1980] ECR 2671, paragraph 11; Case C-53/00 Ferring [2001] ECR I-9067, paragraph 21; Case C-372/97 Italy v Commission [2004] ECR I-3679, paragraph 44 .

⁵ Case T-214/95 Het Vlaamse Gewest v Commission [1998] ECR II-717.

⁶ OJ L240, 24.8.1992, p.8.

⁷ The Commission notes, that following the entry into force of *Regulation (EC) No 1008/2008 of 24 September 2008 on common rules for the operation of air services in the Community*, Regulation 2407/92 has been repealed and, according to Article 27 of Regulation 1008/2008, references to the repealed Regulation shall be construed as references to Regulation 1008/2008.

city, the same conurbation⁸ or the same airport system, which serve the same or a similar destination under the same criteria.

Also, start-up aid must not be paid when the new air route is already being operated by a high-speed rail service under the same criteria.

- (55) The aid is to be granted to encourage airlines to launch new routes from CA to one or more EU destinations. As mentioned in paragraph (15) above the call for tenders is limited to the opening of new routes or schedules which will lead to an increase in the net volume of passengers and which do not simply transfer traffic from one airline to another. There is no other airport in the same city or conurbation⁹. In addition, there is no high-speed rail service at Craiova. This condition is thus fulfilled.

(d) The route receiving the aid must ultimately prove profitable, i.e. it must at least cover its costs, without public funding. For this reason start-up aid must be digressive and of limited duration

- (56) As mentioned in paragraphs (12) and (27) above, aid will be available for a maximum of 5 years and will be accorded in a digressive way. The public financing is thus both digressive and time-limited.

- (57) The call for tenders lays down the requirement that applicants have to provide a business plan which shows the profitability of the route after the aid has expired. A penalty mechanism is foreseen for the case that the airline fails to operate the additional period of time (as defined under paragraph (29)) after the aid has expired. This condition is thus fulfilled.

(e) The amount of aid must be strictly linked to the additional start-up costs incurred in launching the new route or frequency and which the air operator will not have to bear once it is up and running

- (58) Eligible costs will be real start-up costs incurred. As detailed in paragraph(14)above, regular operating costs will not be subsidised. This condition is thus complied with.

(f) The digressive aid may be granted for a maximum period of three years. The amount of aid in any one year may not exceed 50% of total eligible costs for that year and total aid may not exceed an average of 30% of eligible costs.

For routes from disadvantaged regions, i.e. the outermost regions, the regions referred to in Article 87(3)(a), and sparsely populated regions, digressive aid may be granted for a maximum period of five years. The amount of aid in any one year may not exceed 50 % of total eligible costs for that year and total aid may not exceed an average of 40 % of eligible costs. If the aid is granted for five years, it may be maintained at 50 % of total eligible costs for the initial three years.

⁸ Council Regulation (EEC) No 2408/92 on access for Community air carriers to intra-Community air routes (OJ L 240, 24.8.1992, p.8).

⁹ Following the entry into force of Regulation (EC) No 1008/2008 on common rules for the operation of air services in the Community on 1 November 2008, repealing Regulation (EC) No 2408/92 on access for Community carriers to intra-Community air routes, the notion of an "airport system" no longer exists in Community law.

- (59) Romania belongs to the disadvantaged regions in the sense of article 107 (3) (a) TFEU. Aid is granted for a maximum period of five years. The aid intensity cannot go beyond 50% of the eligible costs of a specific year and 40% for the whole duration. This condition is observed.

The period during which start-up aid is granted to an airline must be substantially less than the period during which the airline undertakes to operate from the airport in question.

- (60) As detailed in paragraph (29) above the period of aid has to be substantially less than the period of operation.

(g) The aid payments must be linked to the net development of the number of passengers transported.

- (61) As detailed in paragraphs (27) and (36) above, the aid will be taking into account the number of passengers; therefore there is a clear link between the number of passengers carried and the amount of aid paid. The aid will be paid monthly after the airline has reported the actual number of passengers transported.

(h) Any public body which plans to grant start-up aid to an airline for a new route, whether or not via an airport, must make its plans public in good time and with adequate publicity to enable all interested airlines to offer their services. The notification must in particular include the description of the route as well as the objective criteria in terms of the amount and the duration of the aid

- (62) As set out in paragraph (17) above this requirement is complied with.

(i) When submitting its application, any airline which proposes a service to a public body offering to grant start-up aid must provide a business plan showing, over a substantial period, the viability of the route after the aid has expired. The public body should also carry out an analysis of the impact of the new route on competing routes prior to granting start-up aid

- (63) The call for tenders lays down the requirement that the applicants submit a business plan of the route. The mandatory elements to be included therein are specified in the call for tenders. In this sense, express reference is made to the fact that such plan must demonstrate the viability of the route in question after the aid has expired.

- (64) Dolj County Council undertakes to carry out an analysis of the impact of the new routes in question on competing routes prior to granting start-up aid. This condition is thus observed.

(j) States must ensure that the list of routes receiving aid is published annually for each airport, in each instance indicating the source of public funding, the recipient company, the amount of aid paid and the number of passengers concerned.

- (65) As set out in paragraph (44) above CA undertakes to publish the required data. Therefore this condition is complied with.

(k) Where applicable, appeal procedures must be provided for at Member State level to ensure that there is no discrimination in the granting of aid.

(66) As underlined in paragraph (42) and (43) above, the call for tenders provides for a procedure to deal with complaints regarding the implementation of the scheme.

(l) Penalty mechanisms must be implemented in the event that a carrier fails to keep to the undertakings that it gave in relation to an airport when the aid was paid. A system for recovering aid or for seizing a guarantee initially deposited by the carrier will allow the airport to ensure that the airline honours its commitments

(67) As detailed under paragraphs (38) - (40) above, penalty mechanisms have been put in place. This condition is thus fulfilled.

(Paragraph 80) Start-up aid cannot be combined with other types of aid granted for the operation of a route, such as aid of a social nature granted to certain categories of passengers and compensation for discharging public services. In addition, such aid cannot be granted when access to a route has been reserved for a single carrier under Article 4 of Regulation (EEC) No 2408/92¹⁰, and in particular paragraph 1(d) of that Article. Also, in accordance with the rules of proportionality, such aid cannot be combined with other aid granted to cover the same costs, including aid paid in another State

(68) As mentioned in paragraph (30) above, the call for proposals for airlines stipulates that this condition is complied with.

3.3. Conclusion

(69) In view of the foregoing, the Commission concludes that the compatibility criteria laid down by the Guidelines are satisfied in the present case. The Commission therefore concludes that the aid is compatible with Article 107(3)(c) TFEU.

¹⁰ Following the entry into force of Regulation (EC) No 1008/2008, Regulation 2408/92 has been repealed and, according to Article 27 of Regulation 1008/2008, references to the repealed regulation shall be construed as references to Regulation 1008/2008. Article 4(1)(d) of Regulation 2408/92 has been replaced by Article 16(9) of Regulation 1008/2008.

4. DECISION

The Commission has accordingly decided to consider the aid to be compatible with the Treaty on the Functioning of the European Union

If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site:
<http://ec.europa.eu/competition/elojade/isef/index.cfm>.

Your request should be sent by registered letter or fax to:

European Commission
Directorate-General for Competition
State aid Greffe
1049 Brussels
Fax: +32 2 296.12.42

Yours faithfully,
For the Commission

Joaquín Almunia
Vice-president