



EUROPEAN COMMISSION

Brussels, 27.05.2013

C (2013) 3138 final

PUBLIC VERSION

This document is made available for information purposes only.

**Subject: State aid SA.35979 (N/2013) (ex PN/2012) – Romania
Start-up aid to airlines departing from Oradea Airport**

Sir,

1. PROCEDURE

- (1) Following pre-notification discussions, by electronic notification of 2nd April 2013 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 Oradea Airport (hereafter: "OA") to other EU airports. The notification has been registered under case number SA.35979.

2. DESCRIPTION OF THE MEASURE

2.1. Oradea Airport

- (2) OA had 40 000 passengers in 2012.

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 OA between 2007 and 2012					
2007	2008	2009	2010	2011	2012
41 612	42 454	39 108	40 438	46 290	40 000

- (3) According to the Romanian authorities the closest airports from OA are Arad (116 km), Satu Mare (135 km) and Cluj-Napoca (147 km), all of which are in Romania, and Debrecen (70 km) in Hungary. There are no current or projected high speed rail services anywhere near Oradea.

2.2. Objective of the measure

- (4) 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 OA and other EU airports.

2.3. National legal basis

- (5) The new aid scheme is based on *Proiectul de Hotarare al CJ Bihor privind aprobarea ajutorului financiar la infiintare pentru deschiderea de noi rute si/sau frecvente de operare aeriene la Regia Autonoma Aeroportul Oradea.*

2.4. Budget

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

Year	EUR
2013	519 792
2014	507 416
2015	495 040
2016	482 664
2017	470 288
Total	2 475 200

2.5. Duration of the scheme and the aid

- (7) The aid will be accorded for a period of five years. The period in which contracts for start-up aid for the opening of new destinations departing from OA may be concluded extends over a period of five years, until 31 December 2017. Aid contractually agreed can still be disbursed until 31 December 2022. The Romanian authorities have declared that this is contingent to the prior approval of the European Commission.

2.6. Beneficiaries

- (8) 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.
- (9) Undertakings of all sizes are eligible. The maximum estimated number of beneficiaries of the scheme is 10.

2.7. Form of aid

- (10) 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 Oradea, but do not compete with any existing air services to or from the same city or conurbation. Aid will not be granted for opening of routes already operated from Debrecen airport at the time a call for tenders is issued. None of the routes in question are currently operated by a high-speed rail service.

2.8. The call for tenders

- (11) Bihor County Council and OA propose to issue public calls for tenders to airlines that might have an interest in inaugurating new services to and from Oradea. The call for tenders will set out: the routes to be opened (individual routes or groups of routes), the frequency of the route(s), the intensity and duration of the aid, the eligibility conditions, documents and information required to apply, selection criteria, contact details, penalties, and deadlines.
- (12) Bihor County Council and OA 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 Bihor County Council's and OA's websites.
- (13) It is planned to issue between one and four calls for tender per year.

2.8.1. Eligibility criteria

- (14) Any air operator which fulfils the following requirements can apply for this call for tenders:
- The applicant must have an air operating license issued by a Member State of the EU, in accordance with EC Regulation 1008/2008²;
 - The applicant must have compulsory insurance against accidents covering passengers, cargo, mail, and third-party liability under the terms of EC Regulation 785/2004³;
 - 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 from the aforementioned airport, 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.

² OJ L 293 of 31.10.2008.

³ OJ L 138 of 30.4.2004.

- The applicant must not have any financial debts to OA, and must not be in litigation with OA at the time of the call for tenders.

2.8.2. *Routes*

(15) Bihor 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 eligible routes as:

- Routes leading to an increase in passenger levels;
- New schedules with additional frequencies resulting in an increase in the net volume of passengers (in particular a non-daily frequency becoming daily) can be eligible for support;
- A seasonal route becoming permanent, which results in an increase in the net volume of passengers (in particular a non-permanent route becoming permanent) can be eligible for support;
- 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 OA to another EU airport are eligible;
- No retrospective application can be made for support if a route has already been announced;
- The overall period for which the airline undertakes to operate the route on OA must be at least twice the period for which start-up aid is granted for that specific route.

(16) The Romanian authorities have confirmed that financing 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 city or the same conurbation, and which serve the same or a similar destination under the same criteria.

(17) Furthermore, aid must not be paid when the new air route is already being operated by a high-speed rail service under the same criteria.

2.8.3. *The Business Plan*

(18) 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 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.
- (19) The business plan must also show that the route would become profitable on own merits upon suspension of the aid.

2.8.4. The Operational Plan

- (20) 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 throughout the year are expected on the route operated from OA 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 OA;
 - The schedule of flights indicating the different hours and days of operating the route.

2.8.5. The Financial Plan

- (21) 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 financial turnover generated by the route (with and without financing provided). This information should be broken down per year.

2.9. Eligible costs

- (22) 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 at OA incurred in order to launch the route. 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

- (23) The aid will be granted for a period of up to five years, and will be accorded in a

degressive way, in other words it will gradually reduce over the period. Since Bihor County is considered a disadvantaged region in the European Union in the sense of Article 107(3)(a) TFEU, the amount of aid granted in any one year may be up to 50% of total eligible costs for that year and total aid may not exceed an average of 40% of eligible costs.

- (24) Depending on the eligible costs mentioned in the tender of the operators and finally agreed in the contract to be concluded between Bihor County Council and the airline, the costs will be justified and grounded in the business plans included in the tenders.
- (25) The aid will not exceed 20 EUR per boarded passenger in the first year and will be paid in a degressive way, gradually reducing each year.
- (26) This maximum amount of aid per boarded passenger was determined by a calculation involving the expected advertising costs, the expected number of extra passengers and the maximum intensity of aid of 50%.
- (27) The period of operation of a new route must be at least double the period for which aid is granted. In the case that the new route becomes profitable before the end of the period for which aid is to be granted, the aid will cease. However, in these circumstances the airline in question must still continue to operate the new route until the total period of operation is at least double the period for which aid is granted. Non-compliance with these conditions will result in penalties for the airlines involved.
- (28) 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. Bihor County Council and OA will request a declaration of the airline on the subject prior to granting the aid.

2.11. Selection procedure

- (29) 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 tenders, or which are not filed within the deadline of the call, will not be considered.
- (30) 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.
- (31) The remaining offers will be evaluated and ranked on the following criteria:
 - Technical value: frequency (minimum 2 flights per week), estimated traffic, number of destinations offered, marketing: 40%;
 - Financial value: amount of the financing requested per passenger boarded: 40%;
 - Date of route start-up: 20%.

- (32) Bihor County Council will carry out an analysis of the impact of the new route on competing routes prior to granting start-up aid.
- (33) The financing provided to operate a route will be subject to budget availability.
- (34) 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 Bihor County Council, following discussions, if and where necessary.
- (35) 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

- (36) In case an air carrier fails to meet its contractual service obligations under this program, the contract to be concluded between Bihor 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.
- (37) In case the airline fails to operate a route for the additional period of time (as defined in paragraph (27)) after the aid has expired, it will be required to return the aid received in full up until the date of the closure of the destination in question, plus interest at a market rate. 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.
- (38) 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 Bihor County Council with interest.

2.13. Payment

- (39) Bihor County Council will pay the grants monthly, taking into account the eligible costs and 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

- (40) The authority responsible for dealing with complaints concerning the implementation of this program, as well as the procedural deadlines for appeals, will be specified in the calls for tender as follows:
- (41) Any appeal filed by an applicant during the selection procedure or within 10 days of the announcement of the selected applicant designated to operate the new route will be considered by Bihor County Council. Bihor 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

- (42) OA 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

- (43) The Romanian authorities engage to modify the proposed start-up scheme for airlines departing from OA in order to meet the requirements of any future aviation guidelines, once they enter into force.

3. ASSESSMENT OF THE MEASURE

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

- (44) 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"*.
- (45) 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.
- (46) 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.
- (47) Selective economic advantage: The public financing is directed to certain eligible airlines, to the exclusion of competitors. It is therefore selective.
- (48) 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.

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.

- (49) 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

- (50) 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.

- (51) As mentioned in paragraph (14) 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.

- (52) 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 OA 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 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.

- (53) The aid is to be granted to encourage airlines to launch new routes from OA to one or more EU destinations. As mentioned in paragraph (10) 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 conurbation.⁹ In addition, there is

⁶ OJ L 240 of 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.

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

no high-speed rail service at Oradea. 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 degressive and of limited duration

(54) As mentioned in paragraphs (7) and (25) above, aid will be available for a maximum of 5 years and will be accorded in a degressive way. The public financing is thus both degressive and time-limited.

(55) 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 (27)) 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

(56) Eligible costs will be real start-up costs incurred. As detailed in paragraph (9) above, regular operating costs will not be subsidised. This condition is thus complied with.

(f) The degressive 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, degressive 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.

(57) 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.

(58) As detailed in paragraph (27) 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.

(59) As detailed in paragraphs (25) and (34) above, the aid will be taking into account the

Community carriers to intra-Community air routes, the notion of an "airport system" no longer exists in European Union law.

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

(60) As set out in paragraph (12) 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

(61) 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.

(62) Bihor 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.

(63) As set out in paragraph (42) above OA 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.

(64) As outlined in paragraphs (40) and (41) 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

(65) As detailed under paragraphs (36) - (38) 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

- (66) As mentioned in paragraph (28) above, the call for tenders for airlines stipulates that this condition is complied with.

3.3. Conclusion

- (67) 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