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C(2020) 1160 final

<p>In the published version of this decision, some information has been omitted, pursuant to articles 30 and 31 of Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union, concerning non-disclosure of information covered by professional secrecy. The omissions are shown thus [...]</p>	<p style="text-align: center;"><b>PUBLIC VERSION</b></p> <p>This document is made available for information purposes only.</p>
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**Subject: State Aid SA.56244 (2020/N) – Romania – Rescue aid to TAROM**

Excellency,

The European Commission (“the Commission”) wishes to inform Romania that, having examined the information supplied by your authorities on the State aid referred to above, it has decided not to raise any objections, as it is compatible with the internal market pursuant to Article 107(3)(c) of the Treaty on the Functioning of the European Union (“TFEU”).

The Commission has based its decision on the following considerations:

**1. PROCEDURE**

- (1) Following pre-notification contacts, on 19 February 2020, Romania notified to the Commission a project to grant a rescue loan to the Romanian airline Compania Nationala de Transporturi Aeriene Romane “TAROM S.A.” (“TAROM” or “the beneficiary”). On 19 and 20 February 2020, the Commission requested further information, which Romania submitted on 19 and 20 February 2020.
- (2) On 19 February 2020, the Romanian authorities agreed exceptionally to waive their right deriving from Article 342 TFEU in conjunction with Article 3 of EC Regulation 1/1958 and to have the planned Decision adopted and notified pursuant to Article 297 TFEU in the English language.

Bogdan AURESCU  
Minister for Foreign Affairs  
Aleea Alexandru nr. 31, Sector 1,  
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## 2. THE BENEFICIARY

- (3) TAROM is a Romanian airline headquartered in Otopeni, Ilfov. TAROM was set up as a State company in 1954 and has been 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<sup>1</sup>. 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 (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. It holds 50% of shares in Romanian Fuelling Services S.R.L. and is a minority shareholder in several other companies<sup>2</sup>.
- (4) TAROM is mainly active in the air transport of passengers, cargo and mail. It currently has 1795 employees, out of which 446 operate in the maintenance department. It has been a member of the SkyTeam alliance since 2010.
- (5) TAROM is a single hub carrier, its hub being located at the OTP Bucharest Henry Coanda International Airport ("Bucharest Otopeni Airport" or "OTP Airport"). In 2020 TAROM intends to operate 18 000 frequencies on 8 domestic and 30 international routes to the EU, the Middle East and North Africa. 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.

### *TAROM's financial situation*

- (6) Over the last five years, TAROM's financial situation has significantly deteriorated, in particular with regard to profit. The company is loss making since at least 2008 and, as reflected in Table 1 below, it has registered significant losses in recent years. TAROM's subscribed share capital in 2018 was EUR 760.00 million and in 2019 EUR 758.92 million<sup>3</sup>. Its accumulated losses over the 2004-2019 period amount to RON 3 362.13 million (ca. EUR 715.35 million)<sup>4</sup>. Hence, at least for the past two years, the accumulated losses exceed half of TAROM's estimated share capital.

Table 1 – TAROM's turnover and financial results over the past five years in million EUR (financial reporting under IFRS).

	2015	2016	2017	2018	2019
	(in million EUR)				

<sup>1</sup> 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").

<sup>2</sup> 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%), CREAC S.A. (25%), Association for the Promotion and Development of Tourism Bucharest (11.1%).

<sup>3</sup> For 2019 Romania presented preliminary figures, as audited accounts are not yet available for the year ending on 31 December 2019. For yearly figures on the financial situation of TAROM, Romania submitted IFRS audited financial reports as of 2015.

<sup>4</sup> Annex 4 of the Notification, preliminary figures for 2019 – audited account not yet available.

<b>Result of the year</b>	-12.59	-12.78	-37.34	-38.89	-36.46
<b>Accumulated losses</b>	-556.29	-569.06	-606.40	-642.42	-715.35
<b>Reserves</b>	[...]	[...]	[...]	[...]	[...]
<b>Turnover</b>	241.86	228.36	218.13	254.46	285.38

*Source: Notification by Romania – Annex 4*

- (7) Romania explained that TAROM’s deteriorating financial situation in recent years is mainly due to an ageing and non-homogenous fleet<sup>5</sup> involving high maintenance costs and high fuel charges. This, in turn, negatively affects the company's operational and overall profit, operational cash flow and cash resources. The failure by the company’s management to address these issues, coupled with intense competition from low-cost carriers, has led to an acute liquidity shortage.

*Need for the rescue loan*

- (8) The Romanian authorities submitted that, without rescue aid, the company would manage to survive up to one month. Should all payments be made as envisaged, in March 2020 TAROM would be incapable of serving its debts. The liquidity shortage would not only jeopardise current operations but may even put TAROM at risk of losing its operating licence.
- (9) According to Article 3 of Regulation EC 1008/2008, no undertaking established in the EU may carry passengers by air in commercial transport without an operating license. Pursuant to Article 9 of the Regulation, the licensing authority shall suspend or withdraw the licence of an air carrier if it is no longer satisfied that it can meet its actual and potential obligations for a 12-month period. The authority may grant a temporary licence, not exceeding 12 months pending financial reorganisation of the company provided that safety is not at risk, and there is a realistic prospect of a satisfactory financial reconstruction within that time period. Whenever insolvency proceedings are opened against an EU air carrier, the authority must assess the financial situation of a company within three months after the opening of insolvency proceedings and on the basis of the findings review the status of the operating licence, in compliance with Article 9 of the Regulation.
- (10) Romania further explained that it sees no alternative to granting rescue aid. Any supplementary funding by the State as a majority shareholder would be unlikely to pass the market investor test. Also, given TAROM’s delicate financial situation, Romania considers it extremely unlikely that the company would be able to receive a loan in the amount needed to ensure its liquidity needs from the market.

*The situation of Romanian transport infrastructure and the significance of air transport*

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<sup>5</sup> TAROM has 25 aircrafts: 4 Boeing 737-300 (average age 26 years), 4 Airbus 318-111 (average age 13 years), 4 Boeing 737-700 (average age 17 years), 4 Boeing 737-800 (average age 2 years), 7 ATR 42 (average age 19 years) and 2 ATR 72 (average age 10 years). The average age of the whole fleet is 15 years (source: notification).

- (11) The general condition and reliability of road and rail infrastructure in Romania remains poor<sup>6</sup>. Romania has the lowest quality of road infrastructure among all EU countries (Global Competitiveness Report 2018). Romania is also among the poorest performers in road safety in the EU<sup>7</sup>. Motorways and national roads in Romania account for slightly more than 20% of the road network, and ca. 90% of national roads have only one traffic lane in each direction<sup>8</sup>. All of this hampers mobility and road safety.
- (12) As for the railway infrastructure, the Romanian network is the eighth largest in the EU and Romania performs well in terms of railroad density, but the rail system is very inefficient and continues to deteriorate<sup>9</sup>. This is largely due to an advanced state of disrepair due to a chronic lack of maintenance, where most of the track-related assets require renewal<sup>10</sup>. Heavy underinvestment in maintenance reduces train speed, which in turn decreases railroad efficiency<sup>11</sup>.
- (13) Romania submits that the Romanian regions, and in particular the North-East regions, are poorly inter-connected. The Romanian part of the Trans-European Transport (TEN-T) Core Network for road and rail needs to be further developed<sup>12</sup>. In particular, Romania submits that the Romanian sections of the TEN-T Rhine-Danube and Orient-East Mediterranean corridors still need to be completed. The missing links include the Sibiu-Pitești motorway and the Brașov-Predeal and Timișoara-Craiova-Calafat rail connections.
- (14) Although there has been some improvement to the road and rail infrastructure in recent years, according to the Romanian authorities they are still far from providing efficient and qualitative means of transport and, as a result, air transport remains paramount for regional development. In particular, out of seven domestic flight routes that TAROM operates<sup>13</sup>, five connect Bucharest in Southern Romania with cities in Northern Romania. Given the missing links in rail and road connections (see recital (13)), including on routes connecting Southern parts of the country with Northern parts, the air connections remain vital for efficient

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<sup>6</sup> European Commission, DG Mobility and Transport: Transport in the European Union: Current Trends and Issues, March 2019. <https://ec.europa.eu/transport/sites/transport/files/2019-transport-in-the-eu-current-trends-and-issues.pdf>

<sup>7</sup> European Commission, DG Mobility and Transport: Transport in the European Union: Current Trends and Issues, March 2019. <https://ec.europa.eu/transport/sites/transport/files/2019-transport-in-the-eu-current-trends-and-issues.pdf>

<sup>8</sup> European Commission, DG Mobility and Transport: Transport in the European Union: Current Trends and Issues, March 2019. <https://ec.europa.eu/transport/sites/transport/files/2019-transport-in-the-eu-current-trends-and-issues.pdf>

<sup>9</sup> European Parliament, Policy Department B: Romania's General Transport Master Plan and Rail System: In-Depth Analysis, 2015.

<sup>10</sup> European Parliament, Policy Department B: Romania's General Transport Master Plan and Rail System: In-Depth Analysis, 2015.

<sup>11</sup> European Commission, DG Mobility and Transport: Transport in the European Union: Current Trends and Issues, March 2019. <https://ec.europa.eu/transport/sites/transport/files/2019-transport-in-the-eu-current-trends-and-issues.pdf>

<sup>12</sup> European Commission, DG Mobility and Transport: Transport in the European Union: Current Trends and Issues, March 2019. <https://ec.europa.eu/transport/sites/transport/files/2019-transport-in-the-eu-current-trends-and-issues.pdf>

<sup>13</sup> Bucharest – Satu Mare, Bucharest – Suceava, Bucharest – Baia Mare, Bucharest – Oradea, Cluj - Iasi, Iasi – Timisoara, Bucharest – Sibiu

regional connectivity. The flights by TAROM connect the regions not only within Romania but also with destinations abroad.

*Market impact of TAROM's exit*

- (15) Romania explains that without an operating license, which is currently at risk (see recitals (8) to (10)), TAROM would not be allowed to carry flight passengers and would have to immediately cease operations. TAROM would thus be unable to ensure the return journey for passengers whose travel has already begun. In total TAROM has registered ca. 460 000 bookings, out of which ca. 62 000 domestic and ca. 398 000 international, for the next six months. Almost 63 000 of these bookings are for routes exclusively operated by TAROM.
- (16) Romania sets out that an abrupt ceasing of operations would cause a significant disruption for passengers on domestic routes which are only served by TAROM and would undermine regional connectivity. According to Romania, passengers who have made bookings on routes served exclusively by TAROM would have significant difficulties in finding alternative travel arrangements. This is due to the fact that competitors would most likely not enter these routes spontaneously, especially in the short term. It is also highly improbable that these routes would be fully served by competitors even in the longer term.
- (17) According to Romania, this is because the domestic routes currently served exclusively by TAROM<sup>14</sup> would not be attractive for competitors active on the Romanian market, which are mainly low-cost airlines. Indeed, demand on these routes is low in terms of passengers per flight and it would not be profitable to operate with large aircraft. TAROM is able to serve these particular routes with its small ATR aircraft, which are best fitted for routes below 1 000 km. However, low-cost carriers in general do not operate such small planes, which can be used only for small distances and a reduced number of passengers, as their business model is based on quantity and a homogenous fleet, in order to minimise costs.
- (18) Romania sets out that TAROM has 520 000 passengers in a calendar year on the routes that it is serving exclusively or almost exclusively<sup>15</sup> (the seven domestic routes quoted in footnote 14 above as well as eight international routes<sup>16</sup> which mostly connect Bucharest with other capitals). Romania considered alternatives for the routes where TAROM has no direct competition (for TAROM's direct flights), analysing multiple elements such as proximity airports, time between proximity airport and destination, minimum time and number of stops needed to get to the destination. The analysis revealed that there are no equivalent alternatives operated by competitors. Alternative flights to international destinations have one or two stops, thus significantly increasing the flights' duration and costs. For domestic flights, passengers would need to use proximity airports, again incurring higher travel time and costs.
- (19) According to Romania, TAROM has currently ca. 460 000 bookings for the next six months, out of which 63 000 on routes operated exclusively by TAROM.

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<sup>14</sup> TAROM has seven exclusive domestic routes: Bucharest – Satu Mare, Bucharest – Suceava, Bucharest – Baia Mare, Bucharest – Oradea, Cluj - Iasi, Iasi – Timisoara, Bucharest – Sibiu

<sup>15</sup> Routes, where TAROM has a market share of over 90%

<sup>16</sup> TAROM's exclusive international routes include Bucharest – Chisinau, Bucharest – Thessaloniki, Bucharest – Sofia, Bucharest – Beirut, Bucharest – Cairo, Bucharest – Erevan and Bucharest – Tbilisi.

Romania submits that the transport of these passengers could not be taken over or replaced by other airlines at short notice, despite the existence of low cost carriers operating both international and regional flights in and to/from Romania. Romania submits that other legacy or low cost airlines are unlikely to find the additional capacity within months. The Romanian authorities further submit that even provided that other low cost airlines replace TAROM on some routes, the services would not be replicated to TAROM's standards (meaning lower frequencies and poorer service offer, i.e. not including catering, luggage, seat reservation), thus affecting in particular business traffic. Moreover, many of those passengers would have to travel by road in the future and the impact on the fluidity and safety of the road network, already one of the worst performing in the EU (see recital (11)) would be tremendous, according to Romania.

- (20) Romania also sets out that, beyond TAROM, a large number of other companies in the value chain would be affected by TAROM stopping operations, in particular its local/national suppliers, towards whom TAROM has currently ca. EUR 22.77 million (RON 107 million, as of end 2019) outstanding liabilities. The most affected companies are likely to include National Airport Company, as well as several fuel, catering and handling companies.
- (21) Romania further highlights the importance of the aviation industry for the national economy, in particular for employment, SMEs and tourism. The aviation sector has positive spill-over effects on other parts of the economy. Every euro spent in the aviation sector guarantees three euros for the overall economy, and every job in aviation creates three more jobs elsewhere. The number and quality of air connections can play a decisive role in the location choice of large firms' headquarters<sup>17</sup>. In addition, this can represent a major benefit for less developed or smaller cities.
- (22) Furthermore, Romania submits that the exit of TAROM from the market would have detrimental economic effects on domestic airports. The traffic that TAROM generated at the OTP Airport in 2019 is estimated at around 2.9 million passengers. According to Romania, TAROM's grounding would likely cause layoffs at the OTP Airport, a loss of 20% of traffic, around 3 million passengers and turnover of EUR 33 million. For small domestic airports that rely heavily on TAROM for their business, such as Satu Mare where TAROM operates all but two flights a week, this could even mean closure.
- (23) The potential revocation of TAROM's license would further lead to TAROM losing its slots. Once lost it would be highly unlikely that TAROM could recover the slots, as the slots that TAROM holds in the main European hubs are historical and enable TAROM to operate convenient morning and afternoon flights.

*Restructuring aid to TAROM before Romania's accession to the EU*

- (24) Romania explains that in 2004, before Romania's EU accession, TAROM has received restructuring aid in the form of a State loan and a State guarantee on several loans totalling USD 715.364 million (around EUR 650 million). This measure was approved by the Romanian Competition Council (RCC, the national competition authority) on the basis of the then applicable State aid legislation.

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<sup>17</sup> [https://ec.europa.eu/transport/modes/air/25years-eu-aviation\\_en](https://ec.europa.eu/transport/modes/air/25years-eu-aviation_en)

More specifically, the aid pertained to (i) a series of loan agreements concluded by TAROM for the acquisition of aircraft, which were guaranteed by the Romanian State, and (ii) a loan agreement entered into solely by the Romanian State, for the benefit of several companies, including TAROM, for the acquisition of aircraft (“the Dexia loan agreement”). The RCC monitored the implementation of the restructuring plan over the restructuring period 2002-2005.

- (25) Romania further explains that the Romanian State took over the payment obligations pursuant to the aid granted under the 2004 RCC decision and made corresponding payments for the reimbursement of the loans, including interest and other related costs. These payments extended over the lifetime of the various loans, up to the maturity of the Dexia loan in 2019. All payments made by Romania in this context were capitalised in the form of share capital increases in TAROM in favour of the Romanian State in the year following the payment, in line with the requirements of Law 136/1998 amending the Governmental Decision establishing TAROM as a share company<sup>18</sup>. Hence, it was already established in 1998 by the aforementioned law that any payments by the State for the acquisition of new aircraft would be reflected in corresponding increases in the share capital owned by the State in the company. Thus, the series of capital increases in TAROM were not subject to subsequent individual approvals by the RCC but followed automatically from the above mentioned law.
- (26) Romania submits that all payments made by the Romanian State in this context as well as the corresponding capital increases in TAROM are implementing the restructuring measures authorised by the RCC in 2004. Indeed, a guarantee is deemed to have been granted on the date when it was given and not on the date when it is invoked or when subsequent payments are made. This is also in line with the provisions of the Commission’s Guarantee Notice<sup>19</sup>. The measure was thus granted before Romania’s EU accession in 2007. Each of these payments was, in line with the legal requirements applicable to TAROM at the time of the 2004 RCC Decision (see recital (25) above), converted into corresponding capital increases. Romania thus considers that all payments and capital increases were awarded to TAROM within the scope of the State aid authorised by the RCC in 2004.
- (27) Furthermore, Romania submits that, as the approved measures took place before Romania’s accession to the EU on 1 January 2007, and given that the 2004 RCC decision predates the period during which the Commission could formally raise objections to RCC decisions, the State aid measures authorised by the 2004 RCC Decision constitute existing aid for the purpose of the application of EU State aid rules, as defined in the Accession Treaty<sup>20</sup>. Romania therefore considers that TAROM did not receive any State aid in the last 10 years.

### *Cartel investigation into TAROM*

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<sup>18</sup> Article 15 of 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.

<sup>19</sup> Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees (2008/C 155/02), point 2.1

<sup>20</sup> See Point 2 (c) – Competition policy in Annex 5 of the Act concerning the conditions of accession of the Republic of Bulgaria and Romania and the adjustments to the treaties on which the European Union is founded (the “Accession Treaty”).

- (28) Romania informed the Commission that TAROM is subject to an antitrust investigation by the RCC for its role as facilitator in the coordination of commercial pricing policies in tourism products and/or packages of travel services by travel agencies in Romania. In January 2020, the RCC addressed a Statement of Objections to TAROM, which proposes to impose a fine equivalent to [...] % of its 2019 turnover (approximately EUR [...] million) on the company. The RCC Plenary may take its decision regarding the existence of an infringement and the amount of the fine subsequent to a hearing scheduled for 24 March 2020. A final decision could be notified to TAROM before the end of the rescue period and, if a fine is imposed, it would be due within 30 days from the date of notification. TAROM has made no provisions in its accounts for the payment of a possible fine.
- (29) Romania explains that, if a company does not pay the fine within 30 days from the communication of the sanctioning decision, the decision becomes immediately enforceable. This may involve the imposition of a lien or garnishment on that company's assets. Romania also explains that challenging the decision in the national court would not in itself suspend the payment of the imposed fine.

### 3. THE NOTIFIED MEASURE

- (30) The notified rescue aid consists of a loan of RON 175 952 000 (ca. EUR 36.66 million) to be granted for maximum six months. The rescue loan will be provided on the basis of the *Governmental Emergency Ordinance concerning the establishment of the legal framework regarding the granting of an individual state aid for the rescuing of TAROM* ("EGO")<sup>21</sup>, which the Romanian Government adopted on 4 February 2020. The EGO provides for the rescue loan to be granted by the Ministry of Public Finance through the State Treasury under the terms of a loan agreement to be concluded between the Ministry and TAROM. The EGO granting the aid contains a standstill obligation in compliance with Article 108(3) of the TFEU, whereby the aid will be granted to TAROM solely following approval from the Commission. Thus, the effective granting of the aid is conditional upon authorisation by the Commission of the rescue aid.
- (31) According to the draft loan agreement, the loan can be drawn for a duration of maximum six months from the granting of the aid. Reimbursement is due at the end of the six months, with the possibility for prior (partial) reimbursement.
- (32) The loan is collateralised by a pledge on 8 planes (4 Boeing 737-700 evaluated at EUR [...] million and 4 Airbus A318 evaluated at EUR [...] million). According to the draft loan agreement, the value of the collateral must always be at least 120% of the loan amount, plus related interest.
- (33) Pursuant to the draft loan agreement, and as set out in the EGO, the loan bears an interest of 6-month Romanian Interbank Offered Rate (ROBOR) published by the National Bank of Romania on the last business day of the month prior to granting the loan, plus a risk margin of no less than 400 basis points, which will be non-variable throughout the term of the loan. However, the interest rate can never fall below 1-year ROBOR + 400 basis points, which is the minimum interest rate set

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<sup>21</sup> Emergency Government Ordinance No. 12/2020 of 4 February 2020.



out in point 56 of the 2014 Rescue and Restructuring Guidelines (the “R&R Guidelines”)<sup>22</sup>. The draft loan agreement provides that if the 6-month ROBOR is lower than the 1-year ROBOR, the interest rate will be adjusted through the margin of basis points so as to ensure that it is never below 1-year ROBOR plus 400 basis points.

- (34) The loan will be paid out in one instalment at the date of granting. However, the Romanian authorities committed to carry out a regular monitoring, based on the monthly cash flow situation, so as to ensure that (i) the company does not have any cash surplus nor any unused liquidity from own resources and (ii) that the loan is not used for paying the fine that the RCC may impose on TAROM.
- (35) In particular, according to the Ministerial Order “for the approval of the manner of granting and managing the state aid, including the setting up of the settlement and the verification of the destination of the amounts granted as individual state aid for the rescue of the Romanian National Company for Air Transportation – TAROM SA, based on the European Commission decision”, the Ministry of Transport has set up the following measures regarding the use of the loan: (i) at the beginning of each month, TAROM has to provide an estimate of the cash flows for the month to come, taking as starting point the available liquidity at the beginning of the month and leaving at the end of the month excess liquidity of maximum EUR 0.5 million, for urgent unforeseen needs, as well as a list of all payments expected to be made during that month and their purpose<sup>23</sup>; (ii) the documents mentioned under point (i) above will be accompanied by a statement by the general manager and the economic director of TAROM, engaging their personal liability, according to which (a) all payments declared under point (i) for a given month, made from the rescue aid correspond to the expenses set out in the liquidity plan based on which the Commission approved the aid and that these payments shall not include the payment of a potential fine to be levied by the RCC; and (b) the existing and expected liquidities of TAROM during the month to come will not allow the company to carry out the payments mentioned under point (i) from its own resources; (iii) within five days of the end of each month, TAROM will provide a detailed report on payments made during the past month, indicating in particular the liquidity available at the beginning of the period, the payments made from the rescue aid during the period, TAROM’s revenues during the period, its overall expenses during the period and the financial resources available at the end of the period; (iv) any amount of the rescue aid not used at the end of the six months period will be reimbursed to the Ministry of Public Finance; (v) every month, the amount of the rescue loan that has been used will be published in the Romanian public State aid register.
- (36) Romania provided a liquidity plan, demonstrating TAROM’s liquidity needs over the next six months, showing a total liquidity shortage of RON 175 952 000 (ca. EUR 36.66 million). This amount does not include the amount of the possible

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<sup>22</sup> Communication from the Commission, Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty, OJ C 249 of 31 July 2014, p. 1

<sup>23</sup> According to Article 1.4 of the Ministerial Order, if additional payments than those already forecasted by TAROM for a given month, arise, TAROM can up-date its initial forecasts and, if accepted by the Ministry, receive additional payments during that month. In any event, the maximum amount of the loan granted to TAROM pursuant to the loan agreement remains unchanged and can never be exceeded.

cartel fine that the RCC may impose on TAROM during the rescue period. The plan is based on historical data and includes forecasts for the future, taking into account the specific situation linked to TAROM's fleet changes.

- (37) More specifically, for the period between March and August 2020, the liquidity plan envisages a total cash inflow of EUR [...] million and cash outflow of EUR [...] million, with cash available at the end of February of EUR [...] million. It is expected that inflows are mainly generated from the sale of seats on scheduled flights (EUR [...] million) and, to a lesser extent, sales to tour operators on charter flights (EUR [...] million), code share (EUR [...] million) and sale commissions (EUR [...] million), as well as revenues from the sale of old ATR aircraft based on an enforceable buy-back contract with the lessor<sup>24</sup> (totalling EUR [...] million). The main outflows are (i) fuel costs (EUR [...] million), (ii) aircraft maintenance costs and repair (amounting to EUR [...] million, out of which EUR [...] million for regular maintenance and repair, EUR [...] million for ATR repairs related to the buyback conditions and EUR [...] million for jets repairs (Boeing and Airbus), (iii) personnel costs (EUR [...] million), (iv) handling, navigation charges and landing costs (EUR [...] million), (v) CO2 certificates (EUR [...] million), (vi) lease costs for ATRs (EUR [...] million), (vii) administrative costs (EUR [...] million), as well as costs related to (viii) pre-payments of B-MAX aircraft (EUR [...] million), (ix) payments related to lease and maintenance of two B737-800 aircraft (EUR [...] million) and to (x) compensatory payments for salaries (EUR [...] million). Additional outflows stem from ancillary costs related to marketing, payment of catering, overdue supplies, totalling EUR [...] million<sup>25</sup>.
- (38) The table below reflects the monthly and the total aid amount needed to cover the liquidity needs of TAROM based on the liquidity plan.

Table 2: Monthly and total aid amount needed by TAROM between March and August 2020

Million EUR	March	April	May	June	July	August	Total
Cash at the beginning of the month	[...]	[...]	[...]	[...]	[...]	[...]	
Net cash increase/ decrease	[...]	[...]	[...]	[...]	[...]	[...]	
Cash at the end of the month	[...]	[...]	[...]	[...]	[...]	[...]	
Cash at the end of the month (for urgent needs)	500	500	500	500	500		
<b>Rescue aid amount needed</b>	<b>12.311</b>	<b>11.674</b>	<b>10.381</b>	<b>825</b>	<b>1.467</b>	<b>-</b>	<b>36.657</b>

Source: Annex 2 to the Notification

- (39) A considerable amount of the outflows is linked to pre-payments of EUR [...] million for the acquisition of 5 Boeing 737-8 MAX aircraft that will fall due in the coming months. These payments relate to a purchase agreement concluded by TAROM on 4 May 2018 for the necessary replacement of old aircraft. The five Boeing 737-8 MAX to be delivered will thus replace the oldest airplanes in TAROM's fleet, which will not be operated anymore as from the moment the

<sup>24</sup> The income from the buy-back operation are expected to be received in two tranches of which EUR 21.10 million in June and EUR 8 million in July.

<sup>25</sup> As per Annex 2 to the Notification – updated Liquidity Plan submitted on 20 February 2020.

deliveries will start in 2023. The purchase will thus not increase TAROM's fleet capacity but merely allows it to serve its current routes and frequencies as in the past.

- (40) The pre-payments are made according to the pre-payment schedule that is part of the purchase agreement. The first two pre-payments of EUR [...] million and EUR [...] million have been made according to schedule, respectively when the purchase offer was accepted and at the signing of the contract in May 2018. Due to its deteriorating financial situation, TAROM was unable to carry out a third pre-payment of EUR [...] million due in 2019 (in five instalments of EUR [...] million each, to be paid in January, March, May, July and September), nor the first instalment of EUR [...] million of the pre-payment due in 2020, but has negotiated with Boeing a postponement until April/May 2020 for the 2019 pre-payment and until June 2020 for the first two instalments of the 2020 pre-payment, to which Boeing agreed, as reflected in the liquidity plan. As from July 2020, the pre-payments are expected to be made again according to schedule, that is to say an instalment of EUR [...] million in July. These amounts are thus included in the liquidity plan.

Table 3: TAROM timeline of contractual pre-payments (in EUR) for Boeing B-MAX

	Advance payments						
	at acceptance	1.25% signing of contract	1.25% (12 months after signing contract)	5% (36 months before the delivery)	5% (27 months before the delivery)	2.5% (24 months before the delivery)	15 % Total Advance payments
January	[...]	[...]	[...]	[...]	[...]	[...]	[...]
March	[...]	[...]	[...]	[...]	[...]	[...]	[...]
May	[...]	[...]	[...]	[...]	[...]	[...]	[...]
July	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Sept.	[...]	[...]	[...]	[...]	[...]	[...]	[...]
<b>Total</b>	[...]	[...]	[...]	[...]	[...]	[...]	[...]

Source: Notification

#### 4. ASSESSMENT OF THE MEASURE

##### 4.1. Existence of State aid

- (41) According to Article 107(1) TFEU, "[s]ave 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".
- (42) The qualification of a measure as aid within the meaning of this provision therefore requires that the following cumulative conditions 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.

- (43) The Commission notes that Romania notified the measure as State aid and does not dispute its State aid character.
- (44) The decision to grant the notified measure was taken by the Romanian Government by the adoption of the Emergency Ordinance of 4 February 2020 (see recital (30)). The measure will be implemented through a loan agreement concluded by the Romanian Ministries of Public Finance and of Transport with the beneficiary TAROM (see recitals (33) to (35)). The loan agreement specifies that the amount of the rescue loan will be granted from the State treasury current account. The measure is thus imputable to the State and granted through State resources.
- (45) The notified measure allows TAROM to finance its liquidity gap (except for the liquidity need related to paying the possible antitrust fine, see recitals (34) to (36) and (71) to (76)) for the continuation of its operations during the six months between March 2020 and August 2020. Given its delicate financial situation, as described in recitals ((6)) to ((7)), TAROM could not raise the required funds on the market (see also recital (10)). Thus, the measure is giving TAROM access to finance that the company would not have been able to obtain on the market. The notified measure thus confers an economic advantage to TAROM over its competitors.
- (46) The notified measure will be granted in the form of a Treasury loan for an amount of RON 175 952 000 (ca. EUR 36.66 million) to the exclusive benefit of TAROM, determined by reference to its specific liquidity needs. As set out in recital (45) above, the loan could not have been obtained by TAROM from the market and thus confers the company an advantage. As the Court has stated<sup>26</sup>, 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. This is so regardless of whether there are operators on the relevant markets that are in a comparable situation. In any event, the loan is not part of a broader measure of general economic policy to provide support to undertakings in a comparable legal and economic situation, active in the aviation sector or other economic sectors, but is extended only to TAROM. Therefore, the Commission concludes that the notified measure is selective within the meaning of Article 107(1) TFEU.
- (47) 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<sup>27</sup>. The aviation market is open to competition in the EU. TAROM operates routes within Romania and internationally within Europe. It is in direct competition with other EU airlines. The notified measure is

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<sup>26</sup> See judgment of 4 June 2015 *Commission v MOL*, C-15/14 P EU:C:2015:362, paragraph 60.

<sup>27</sup> See, in particular, judgment of 17 September 1980, *Philip Morris Holland BV v Commission*, 730/79, EU:C:1980:209, paragraph 11; judgment of 22 November 2001, *Ferring SA v Agence centrale des organismes de sécurité sociale (ACOSS)*, C-53/00, EU:C:2001:627, paragraph 21; judgment of 15 December 2005, *Italy v Commission*, C-66/02, EU:C:2005:768, paragraph 44.

therefore liable to distort or threaten to distort competition and to affect trade between Member States.

#### **4.2. Conclusion on the existence of aid**

- (48) In light of the above, the Commission concludes that the notified measure in favour of TAROM involves State aid under Article 107(1) TFEU and will therefore assess its lawfulness and compatibility with the internal market.

#### **4.3. Lawfulness of the aid**

- (49) The Commission notes Romania's commitment, as spelled out in the EGO that the notified measure will not be implemented before the prior authorisation by the Commission.
- (50) In light of the above, the Commission concludes that the notified measure will be granted to TAROM in observance of the standstill obligation laid down in Article 108(3) TFEU. Thus, the notified measure does not constitute unlawful State aid.

#### **4.4. Compatibility of the aid**

- (51) Under Article 107(3)(c) TFEU, the Commission can authorise aid if it is granted to promote the development of certain economic sectors and if this aid does not adversely affect trading conditions to an extent contrary to the common interest. In view of the nature and aims of the State aid at stake, the Commission will assess whether the State loan complies with the provisions on rescue aid laid down in the R&R Guidelines.

##### *4.4.1. Eligibility*

- (52) In order to be eligible for rescue aid, an undertaking must qualify as an undertaking in difficulty pursuant to section 2.2 of the R&R Guidelines. In particular, point 20 of the R&R Guidelines stipulates that an undertaking is considered to be in difficulty when, without intervention by the State, it will almost certainly be condemned to going out of business in the short or medium term. This would be the case when at least one of the circumstances described in point 20, letter a) to d) of the R&R Guidelines occurs.
- (53) As described in recital (6) above, more than half of TAROM's subscribed share capital has disappeared as a result of accumulated losses. The company thus qualifies as an undertaking in difficulty pursuant to point 20(a) of the R&R Guidelines.
- (54) According to point 21 of the R&R Guidelines, a newly created undertaking is not eligible for rescue aid. TAROM is not a newly created undertaking, as it was established in 1954 (see recital (3)).
- (55) Furthermore, according to point 22 of the R&R Guidelines, a company belonging to a larger business group is not normally eligible for aid under the guidelines, except where it can be demonstrated that the company's difficulties are intrinsic and are not the result of an arbitrary allocation of costs within the group, and that the difficulties are too serious to be dealt with by the group itself.

- (56) As described in recital (3), TAROM is not part of a larger business group. Within the structure of the Romanian State, TAROM is an independent centre of decision-making. Moreover, it is not integrated or managed together with other State-owned entities.
- (57) Therefore, the Commission concludes that the requirements of point 22 of the R&R Guidelines are met.

#### *4.4.2. Contribution to an objective of common interest*

- (58) Under point 38(a) of the R&R Guidelines, in assessing whether the rescue aid can be declared compatible with the internal market, the Commission examines whether the State aid contributes to a well-defined objective of common interest in accordance with Article 107(3) TFEU. In this respect, the Member State must demonstrate that the aid aims to prevent social hardship or address a market failure. According to point 44 of the R&R Guidelines, this is in particular the case when one of the circumstances listed from letter a) to g) are met.
- (59) The Romanian authorities submit that TAROM provides an important service which it would be difficult for competitors to replicate. In particular, as the sole operator of many national air connections and given the bad shape of the road and rail network, Romania has demonstrated that TAROM is instrumental in ensuring regional connectivity.
- (60) In the event that TAROM would have to stop operations, up to 460 000 passengers who booked flights with TAROM for the next six months would be affected. On routes that are served exclusively by TAROM, the company's exit is likely to affect directly around 63 000 passengers (see recital (15)).
- (61) As regards in particular the domestic routes served exclusively by TAROM, it appears unlikely that other competitor airlines would step in to fully cover these routes, as their willingness to enter this market is presumably low (see recitals (17) to (19)). Eliminating TAROM's domestic flights on routes which TAROM's competitors are unlikely to cover (see recital (17)) would mean that the passengers would be unable to reach their destinations on similar terms, thus negatively affecting the connectivity of the regions in Romania.
- (62) As explained in recitals (11) to (14), the road and rail infrastructure in Romania is in poor condition, and there are no workable alternatives to air transport, which is important for maintaining and fostering domestic mobility and interconnectivity. Romania has demonstrated that, even accounting for the proximity airports and a combination of other means of transport, there are no real meaningful alternatives for passengers on routes served exclusively by TAROM, in particular for domestic flights.
- (63) In addition, ceasing of operations by TAROM could be detrimental to the economic situation in the regions of Romania. As stated in recital (22), TAROM's exit from the market would likely mean the loss of revenue, decline in traffic and layoffs at the OTP Airport, and even more serious consequences for small domestic airports such as Satu Mare, which could even face the risk of closure. Given the spill-over effects of the aviation sector for the other sectors of economy (see recital (21)), this could mean decrease in economic activity of the regions

concerned. In turn, worse economic situation could decrease the demand for travel services.

- (64) On the basis of the information provided by the Romanian authorities, the Commission finds that, in line with point 44(b) of the R&R Guidelines, there is a concrete risk of disruption of passenger flight services in Romania (and on a certain number of destinations having an origin or destination in Romania) that cannot be replicated in the short-term by other airlines.
- (65) Therefore, the Commission concludes that the information provided by the Romanian authorities demonstrates that by averting an imminent and potentially disruptive liquidation process, the notified measure contributes to a well-defined objective of common interest.

#### *4.4.3. Appropriateness*

- (66) Under point 38(c) of the R&R Guidelines, the Commission will not consider an aid measure to be compatible with the internal market if other, less distortive measures allow the same objective to be achieved. In this respect, rescue aid must fulfil the conditions laid down in point 55 from letter a) to e) and 56 of the R&R Guidelines.
- (67) The planned rescue aid is a loan to TAROM of up to RON 175 952 000 (ca. EUR 36.66 million) that is to be used to cover liquidity needs (except for the liquidity need related to paying the possible antitrust fine, see recitals (34) to (36) and (71) to (76)) for a period of maximum six months, as set out in the liquidity plan provided by the Romanian authorities (see recitals (36) to (38)).
- (68) As stated in recital (33), the loan bears a basic interest rate of minimum 1-year ROBOR or, if its nominal value is higher, of six-months ROBOR, plus a risk margin of minimum 400 basis points. The remuneration of the notified measure is thus not less than the reference rate set out in the Reference Rate Communication for weak undertakings offering normal levels of collateralisation (currently 1-year IBOR plus 400 basis points) and complies with the provisions of point 56 of the R&R Guidelines.
- (69) Romania also undertakes to communicate to the Commission not later than six months after the notified measure has been authorised either proof that the loan has been reimbursed in full, or a restructuring plan, or a liquidation plan setting out in a substantiated way the steps leading to the liquidation of the beneficiary within a reasonable time frame without further aid.
- (70) The Commission also notes that the loan will only be used to cover the costs specified in the liquidity plan (see recitals (34) to (38)). As set out in recital (36), pre-payments for aircraft are based on purchase agreements entered into two years ago and are being carried out according to schedule, as per the company's contractual obligations. Any non-payment of the due instalments would immediately trigger an obligation to pay a significant amount of penalties and would gravely endanger the restoration of the company's viability in the subsequent restructuring phase. Also, the purchased planes will not increase TAROM's fleet capacity as they merely replace aircraft that will be scrapped because it is too old to continue operating. Therefore, TAROM will not use the

rescue aid to finance structural measures or other activities than carrying out flights.

- (71) As set out in recital (28), the Commission notes that TAROM has received a Statement of Objections from the RCC regarding its alleged involvement in a cartel and may have to pay a fine in this context. The final decision by the RCC may be taken during the rescue period and a possible fine would fall due within 30 days from the notification of the decision to the company.
- (72) The EU courts' case law<sup>28</sup> has established that the compatibility assessment of a State aid measure must also ensure that the result is not contradictory to other Treaty provisions. As a consequence, State aid rules must be applied consistently with other Treaty rules. In particular, if State aid would be used for covering a company's costs for paying a fine imposed by a competition authority, this would impair the effectiveness of such a penalty and of the competition rules in general<sup>29</sup>. As a consequence, when assessing the compatibility of the notified rescue aid, the Commission must also take into account the effects of the ongoing cartel investigation regarding TAROM and prevent that the rescue aid is put to a use that would impair the effectiveness of the possible cartel fine.
- (73) To this effect, the Romanian authorities committed to ensure that the rescue loan, or any part of it, will not be used to pay the possible cartel fine from the RCC's ongoing cartel investigation.
- (74) The Commission notes that the liquidity need for the payment of the fine is not included in TAROM's liquidity plan for the rescue period. The total net amount of TAROM's liquidity needs, excluding the possible fine, amounts to RON 175 952 000 (ca. EUR 36.66 million), which precisely corresponds to the amount of rescue aid notified by Romania.
- (75) Moreover, as set out in recitals (34) and (35), the Ministry of Transport will carry out a stringent monitoring to ensure that the loan is used in line with the Commission's State aid decision. In particular, TAROM will have to prepare detailed estimates of all payments to be made on a monthly basis, submit an estimate, based on detailed in- and outflows, of the amount needed from the rescue loan every month, at the end of each month submit a detailed report for all payments made and income received. The monitoring measures also ensure that the State aid will not be used to cover a potential cartel fine. Additionally, TAROM's management will be personally liable for ensuring that the rescue loan is used in accordance with the Commission's decision approving the aid and that no part of the rescue aid will be used for paying a possible fine to be imposed by the RCC.
- (76) The Commission is thus satisfied that the liquidity need corresponding to the possible cartel fine can be severed from TAROM's other liquidity needs during the rescue period, as set out in the liquidity plan submitted by the Romanian authorities. Also, the regular monitoring by the Romanian authorities will ensure

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<sup>28</sup> See Case C-225/91 *Matra v Commission*, EU:C:1993:239, paragraphs 41-44.

<sup>29</sup> See, by analogy, Case C-429/07 *Inspecteur van de Belastingdienst v X BV*, EU:C:2009:359, paragraph 39.



that TAROM will not have the possibility to use the rescue loan for repaying the possible fine.

- (77) In view of the information provided by the Romanian authorities, the Commission concludes that the notified measure meets the conditions laid down in points 38(c), 55 and 56 of the R&R Guidelines and therefore the form of the aid allows rescuing TAROM in the least distortive way.

#### 4.4.4. *Proportionality of the aid/aid limited to the minimum*

- (78) Under point 38(e) of the R&R Guidelines, aid must not exceed the minimum needed to achieve the objective of common interest. As specified in point 60 of the R&R Guidelines, rescue aid must be restricted to the amount needed to keep the beneficiary in business for six months. In determining that amount, the Commission uses the outcome of the calculation based on the formula set out in Annex I of the R&R Guidelines. The Commission will authorise aid exceeding the result of that calculation only if it is duly justified by the provision of a liquidity plan setting out the beneficiary's liquidity needs for the coming six months.
- (79) Romania submits that the amount for which authorisation is sought is in excess of the formula of Annex I of the R&R Guidelines. This is because TAROM's working capital of the previous years does not provide for certain payments related to the current company strategy, the fleet changes decided in 2018 and the implementation of new IT systems, payments which are due in the next 6 months and mandatory under contracts already closed by TAROM in the past.
- (80) The RON 175 952 000 (ca. EUR 36.66 million) amount of the loan required by Romania to be approved as rescue aid exceeds the result of the formula set out in Annex I of the R&R Guidelines. Therefore, in line with point 60 of the Guidelines, the Romanian authorities provided a liquidity plan setting out the company's liquidity needs for the 6 months to come, starting from March 2020.
- (81) The Commission notes that part of the financial data provided is too recent to have yet been audited (in particular the financial accounts of 2019). However, the Commission, has no reason to question the validity of the provided financial data. Operating expenditure items such as personnel costs, depreciation, and directly attributable costs are in a similar range compared to previous years. Moreover, there are no manifest discrepancies in other operating revenue and other operating expenditure.
- (82) As stated in recitals (36) and (38), Romania has provided a liquidity plan for TAROM, setting out the company's liquidity needs between 1 March 2020 and 31 August 2020. According to this plan, the liquidity needed by TAROM over the next six months amounts to RON 175 952 000 (ca. EUR 36.66 million). This corresponds to the maximum amount of the rescue loan to be provided by Romania. The liquidity plan thus demonstrates that the amount of the rescue loan does not exceed the liquidity needs of the company for the next six months.
- (83) The cash flow estimate provided by Romania shows that TAROM can expect limited operating revenues entirely insufficient to meet its operating costs and other liquidity needs imminent in the next six months. This is due to the fact that for airlines, revenues in the winter season are traditionally low and due to its high

costs due to an ageing fleet, TAROM does not have any cash reserves to face the slack season.

- (84) In order to continue operations, and not put at risk its licence and slots, TAROM needs liquidity in the amount specified in the liquidity plan as endorsed by Romania. The assumptions of the liquidity plan seem to be plausible. In particular, it takes due account of the expected bookings, it does not overestimate the costs when compared to similar historic time periods for operations, and it provides conservative figures with respect to the exceptional inflows (collection from sale of ATRs) as well as the amounts strictly corresponding to the company's contractual obligations with regard to the exceptional outflows.
- (85) The Commission therefore concludes that the notified measure is indeed proportionate and restricted to a minimum amount, in line with point 60 of the R&R Guidelines.

#### *4.4.5. Negative effects*

- (86) Under point 38(f) of the R&R Guidelines, the negative effects of the aid on competition and trade between Member States must be sufficiently limited, so that the overall balance of the measure is positive.
- (87) According to the Romanian authorities, TAROM or any entity controlled by it, has not received any rescue aid, restructuring aid or temporary restructuring support in the last ten years and the Romanian authorities confirm that no such aid has been granted.
- (88) The Commission also assessed a series of capital increases carried out by the Romanian State in TAROM up to 2019 and found that they were implementing restructuring aid granted in the form of a loan and a State guarantee to TAROM in 2004, before Romania's EU accession, and approved by the RCC (see recital (24)). The guarantee was called and the capital increases correspond to payments made by the State either for reimbursing the loan or as guarantor for the repayment of the other loans. It is thus normal, that the payments occur over the duration of the loan agreement. The payments were made in connection with the loan and the guarantee, pursuant to the aid approved by the 2004 RCC Decision and thus constitute existing aid. Furthermore, these payments translated into capital increases as required by the legal framework applicable to TAROM at the time of the 2004 RCC Decision (see recital (25)). As such, the series of capital increases do not constitute a separate aid measure, as they were automatically deriving from the existing Law 136/1998 and are a mere implementation of the aid approved by the 2004 RCC decision.
- (89) Consequently, the Commission concludes that "one time, last time" principle required in section 3.6.1. points 71 and 74 of the R&R Guidelines, is respected.

#### *4.4.6. Transparency*

- (90) According to point 38(g) of the R&R Guidelines, Member States, the Commission, economic operators and the public must have easy access to all relevant acts and pertinent information about the aid awarded. This means that the Romanian authorities must respect the provisions on transparency laid down in point 96 of the R&R Guidelines. The Commission notes that Romania undertakes

to respect those obligations. The relevant information shall be made available on the websites: [www.tarom.be](http://www.tarom.be) , [www.ajutordestat.ro](http://www.ajutordestat.ro) , [www.mt.gov.ro](http://www.mt.gov.ro) .

#### **4.5. Conclusion on the compatibility of the aid**

- (91) In the light of the findings above, the Commission concludes that the notified measure meets the conditions of compatibility with the internal market set out in the R&R Guidelines. The Commission therefore considers that the notified measure provided to TAROM is compatible with the internal market.
- (92) In addition, the Commission reminds the Romanian authorities of their obligation to submit annual reports to the Commission, in accordance with point 131 of the R&R Guidelines.
- (93) The Commission reminds the Romanian authorities to notify a restructuring or a liquidation plan for TAROM if the rescue aid cannot be reimbursed by TAROM within six months.

#### **5. CONCLUSION**

The Commission has accordingly decided not to raise objections to the rescue aid on the grounds that it is compatible with the internal market pursuant to Article 107(3)(c) of the Treaty on the Functioning of the European Union.

The Commission recalls that Romania has committed to make sure that the rescue aid will not be used to finance the payment of a cartel fine.

Yours faithfully,

For the Commission

Margrethe VESTAGER  
Executive Vice-President