



2025/775

24.4.2025

**COMMISSION DECISION (EU) 2025/775**

**of 29 April 2024**

**on the State aid SA.59344 – 2021/C (ex 2021/N, ex 2020/PN) – Restructuring aid to TAROM**

*(notified under document C(2025) 2968)*

**(Only the English text is authentic)**

**(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 108(2), first subparagraph, thereof,

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1), point (a), thereof,

Having called on interested parties to submit their comments pursuant to the provisions cited above <sup>(1)</sup> and having regard to the comments received from third parties in the course of the procedure,

Whereas:

**1. PROCEDURE**

- (1) Following pre-notification contacts <sup>(2)</sup>, on 28 May 2021 the Romanian authorities notified the Commission of their intention to grant restructuring aid to TAROM S.A. ('TAROM').
- (2) By letter dated 5 July 2021, the Commission informed the Romanian authorities that it had decided to initiate the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union ('TFEU') in respect of the restructuring aid. The Romanian authorities submitted their comments on the observations contained in that letter on 11 August 2021.
- (3) The Commission Decision to initiate the procedure ('the opening decision') was published in the *Official Journal of the European Union* <sup>(3)</sup> on 3 September 2021. The Commission called on interested parties to submit their comments.
- (4) Besides the comments received from the Romanian authorities, the Commission received comments within the prescribed period from one interested party, namely Wizz Air Hungary Zrt. ('Wizz Air') <sup>(4)</sup>. It forwarded those comments to the Romanian authorities, which were given the opportunity to react. The comments of the Romanian authorities were received by letter dated 12 November 2021.
- (5) The Romanian authorities sent further information to the Commission on 29 July 2021, 14 February 2022, 27 May 2022, 23 September 2022, 21 November 2022 and 21 December 2022, 24 February 2023, 27 March 2023, 5 April 2023, 12 April 2023, 20 April 2023, 30 May 2023, 28 June 2023, 13 July 2023, 18 July 2023, 21 July 2023, 24 July 2023, 28 July 2023, 31 July 2023, 3 August 2023, 22 August 2023, 7 September 2023, 13 September 2023, 28 September 2023, 7 November 2023, 12 December 2023, 12 January 2024, 17 January 2024, 1 February 2024, 8 February 2024, 15 February 2024, 7 March 2024, 19 March 2024, 21 March 2024, 25 March 2024, 26 March 2024, 29 March 2024, 4 April 2024, 12 April 2024, 15 April 2024, 16 April 2024, 17 April 2024, 19 April 2024 and 25 April 2024.

<sup>(1)</sup> OJ C 355, 3.9.2021, p. 10.

<sup>(2)</sup> Those exchanges started on 24 August 2020 when the Romanian authorities pre-notified a draft restructuring plan and included, until the notification, exchanges of emails, technical discussions during video and teleconferences and preliminary feedback on the draft restructuring plan.

<sup>(3)</sup> See footnote 1.

<sup>(4)</sup> Submission by Wizz Air of 4 October 2021.

- (6) On 14 March 2024, the Commission received a complaint <sup>(5)</sup> by Wizz Air Malta Limited ('Wizz Air Malta'), on which Romania submitted observations on 28 March 2024, 4 April 2024, 16 April 2024, 19 April 2024 and 24 April 2024.
- (7) On 11 July 2023, the Romanian authorities exceptionally agreed to waive their rights deriving from Article 342 TFEU in conjunction with Article 3 of Council Regulation No 1/1958 <sup>(6)</sup>, and to have this Decision adopted and notified pursuant to Article 297 TFEU in English <sup>(7)</sup>.

## 2. DESCRIPTION OF THE MEASURES

### 2.1. The beneficiary

- (8) TAROM is a Romanian airline that was set up as a State company in 1954. It was reorganised under the 1997 Government Ordinance <sup>(8)</sup> and set up as a joint-stock company under Law No 136/1998 <sup>(9)</sup> as Romania's national air transport company. The Romanian State, represented by the Ministry of Transport, Infrastructure and Communications ('Ministry of Transport'), owns directly 97,25 % of the shares. The remaining minority shareholdings are held by two public companies: Bucharest Airports National Company ('CNAB') 1,44 % and Romatsa RA (Romanian Air Traffic Service Administration) 1,23 %, and by one private shareholder, the Investment Fund Muntenia, which owns 0,08 % of the shares. The Romanian authorities submit that TAROM is not part of a larger business group as it is an independent centre of decision-making, not managed together with other State holdings. TAROM holds [...] – and is a minority shareholder in several other companies, such as [...] or [...] <sup>(10)</sup>.
- (9) TAROM is mainly active in the air transport of passengers, cargo and mail. As of 19 December 2023, following organisational restructuring, TAROM has 1 156 employees, of whom approximately [...] are in the Technical Division (maintenance and repair operations). It has been a member of the SkyTeam alliance since 2010. TAROM is a single-hub carrier headquartered at OTP airport in the region of Ilfov. As at December 2023, TAROM's fleet comprised 18 aircraft operating on 28 routes, of which 21 are international and 7 are domestic. On its international routes TAROM connects Bucharest with capitals in and outside Europe, as well as with other hubs in Europe. In addition to scheduled flights, TAROM also offers transport services to tour operators; in 2023, the estimated share of charters in TAROM's total net revenue was [...] %. As a result of the COVID-19 pandemic, TAROM lost 73 % of its pre-pandemic traffic in 2020, and went from carrying 3,1 million passengers in 2019 to carrying 900 000 passengers in 2020. Recovery started in 2021, when passenger figures increased to 1,6 million and accelerated in 2022, when TAROM transported approximately 2,2 million passengers. The number of passengers transported in 2023 is estimated at [...] million, which is still [...] % below the pre-pandemic level of TAROM's traffic, that is to say the level in 2019.
- (10) In 2019, TAROM's share of the Romanian air traffic market was [...] %, while the largest airline in that market, the low-cost-carrier ('LCC') Wizz Air, had a share of 25,7 %. Blue Air, the second largest player had a 17,1 % share and Lufthansa was the fourth largest airline, closely behind TAROM with a share of 12,3 %. Those market shares remained more or less stable over the last years, with Wizz Air reaching 25,2 %, Blue Air 18,6 %, TAROM [...] % and Lufthansa 10,6 % in 2022. In 2023, the situation changed, including due to the insolvency of Blue Air, with Wizz Air increasing its share to 37,5 %, TAROM coming second with [...] % and Ryanair becoming the third largest

<sup>(5)</sup> SA.113203 – Alleged State aid to TAROM.

<sup>(6)</sup> Regulation No 1 determining the languages to be used by the European Economic Community (OJ 17, 6.10.1958, p. 385/58).

<sup>(7)</sup> By letter dated 29 December 2021.

<sup>(8)</sup> Government Ordinance No 45/1997 regarding the establishment of the Commercial Company 'National Romanian air transport company – TAROM' – S.A.

<sup>(9)</sup> Law no. 136/1998 of 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>(10)</sup> More specifically, apart from [...], TAROM holds stakes in the following companies: [...].

competitor on the market, with a share of 13,7 %, close to that of TAROM. Lufthansa with 5,6 % and a new entrant, HiSky <sup>(11)</sup>, reaching 5,3 % were the fourth and fifth largest competitors in 2023. TAROM's current main competitors on the Romanian market are thus Wizz Air, which is the dominant player with 30 aircraft based in Romania, providing approximately 170 routes from six bases (OTP, Cluj, Craiova, Iași, Sibiu, Timișoara) and a second LCC, Ryanair. The latter has become the third largest airline in the Romanian market, offering connections from three airports (OTP, Cluj and Iași) on approximately 44 routes. As the Romanian authorities submit, the air transport market in Romania is characterised by a high degree of concentration and rivalry between the first five to six carriers dominating the market. The combined market share of the top five airlines grew to 78 % in 2023. The air transport industry is relatively competitive and at the end of 2023 there were 20 registered airlines operating scheduled and charter flights in the Romanian market. The market is dominated by LCCs, currently Wizz Air, Ryanair and HiSky (sales-wise approximately 57 % in 2023 and in terms of passengers carried approximately 70 % market share in 2022 (the three above-mentioned LCCs and Blue Air)). Out of the airlines carrying out regular flights to and from the Romanian airports, only four companies have bases across Romania, namely three LCCs (Wizz Air, Ryanair, HiSky) and TAROM.

## 2.2. The background of the measures

### 2.2.1. The rescue aid

- (11) On 19 February 2020, the Romanian authorities notified to the Commission their plans to grant rescue aid in favour of TAROM. At the time of that notification, according to the Romanian authorities, TAROM was in financial difficulty given its accumulated losses mainly due to an ageing and non-homogenous fleet involving high maintenance costs and high fuel charges, which, in turn, was negatively affecting TAROM's profit, operational cash flow and cash resources. By Decision of 24 February 2020 <sup>(12)</sup> ('the rescue aid decision'), the Commission approved a RON 175 952 000 (approximately EUR 36,66 million at then applicable exchange rates) loan in favour of TAROM ('the rescue loan') on the basis of Article 107(3), point (c), TFEU as interpreted by the Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty ('R&R Guidelines') <sup>(13)</sup>. The Romanian authorities confirm that, except for the rescue aid granted pursuant to the rescue aid decision, neither TAROM nor any subsidiary controlled by it have received rescue or restructuring aid within the meaning of the R&R Guidelines in the past ten years and that TAROM's restructuring plan does not entail any capital injections or investments in entities in which TAROM holds participations.
- (12) On 4 May 2022, the General Court dismissed Wizz Air's application for annulment of the rescue aid decision <sup>(14)</sup>. By its judgment of 11 January 2024, the Court of Justice of the European Union ('the Court of Justice') dismissed Wizz Air's appeal against the 2022 judgment of the General Court <sup>(15)</sup>. In particular, the Court of Justice confirmed that the General Court had not erred in law in finding that, for the purposes of assessing whether there is a risk of disruption to an important service which is hard to replicate, within the meaning of point 44(b) of the R&R Guidelines, the Commission was not required to take into account the size of the market in which TAROM operates or that airline's share of that market <sup>(16)</sup>.

### 2.2.2. The financial difficulties of TAROM

- (13) The Romanian authorities submit that TAROM is an undertaking in difficulty as more than half of its subscribed share capital has disappeared as a result of accumulated losses, as per point 20(a) of the R&R Guidelines. TAROM

<sup>(11)</sup> HiSky entered the Romanian air transport market in March 2021, providing some regular flights as well as charter flights. As per December 2023, the company operates a fleet of seven aircraft, operating approximately 25 routes, of which two domestic routes connecting OTP Airport with Cluj and Timișoara respectively.

<sup>(12)</sup> Commission Decision of 24 February 2020 C(2020) 1160 final in case SA.56244 (2020/N) – Romania – Rescue aid to TAROM (OJ C 310, 18.9.2020, p. 1).

<sup>(13)</sup> OJ C 249, 31.7.2014, p. 1.

<sup>(14)</sup> Judgment of the General Court of 4 May 2022, *Wizz Air Hungary v Commission*, T-718/20, ECLI:EU:T:2022:276.

<sup>(15)</sup> Judgment of the Court of Justice of 11 January 2024, *Wizz Air Hungary v Commission*, C-440/22 P, ECLI:EU:C:2024:26.

<sup>(16)</sup> *Idem*, paragraph 39.

has been accumulating losses since 2004 and has registered significant losses in recent years. TAROM's subscribed share capital in 2021 was approximately RON 3,57 billion <sup>(17)</sup> (approximately EUR 717,21 million <sup>(18)</sup>). TAROM recorded losses of EUR 90,3 million in 2020, EUR 66,6 million in 2021 and EUR 55,7 million in 2022, accumulated losses of RON 3 623 825 813 in 2020 (approximately EUR 728,03 million) and of RON 3 951 281 534 in 2021, representing approximately EUR 793,81 million. TAROM's equity turned negative in 2021 and stood at EUR - 51 283 857 at the end of 2021, EUR - 90 884 124 at the end of 2022; TAROM's preliminary 2023 results show equity of EUR [...] as at 31 December 2023.

- (14) The Romanian authorities further submit that TAROM fulfils the criteria under national law for being placed in collective insolvency proceedings at the request of its creditors, as per point 20(c) of the R&R Guidelines. Under Romanian national law, any creditor with receivables against its debtor exceeding RON 50 000 (approximately EUR 10 045) that are overdue for more than 60 days may file an insolvency petition in court. The debtor may however defend against the creditor's petition indicating that even if the above conditions are met, it has sufficient liquidity. TAROM is at a risk that certain creditors may, at any point in time, choose to file for the opening of insolvency proceedings.
- (15) The Romanian authorities explain that there are several reasons for the financial difficulties of TAROM; both internal and external factors led to a decline in TAROM's competitiveness and an increase in operating costs. Firstly, TAROM has been operating an old fleet (TAROM's average jet aircraft age is between 13 and 18 years, and four of its Boeing 737-300 are on average 25 years old), which was highly diversified (that is, Avion de Transport Régional G.I.E. ('ATR'), Boeing and Airbus) and required high maintenance costs, technical upgrades and modernisation. Also, TAROM has been operating a significant number of unprofitable routes <sup>(19)</sup> and in 2019 it had only three routes that reached the C3 <sup>(20)</sup> profitability level. Second, market entry of other players, particularly LCCs led to increasing pressure on TAROM's pricing. Third, workforce issues were present in the form of low workload, higher than necessary labour cost, increased bureaucracy, demotivation of employees, and difficulties in attracting and retaining skilled people. Fourth, there have been inefficiencies in operations, which included inefficiencies in the Technical Division (such as low productivity, gap of certifications and technical skills, excessive management levels, lack of performance indicators) and in the Acquisition department (unstandardised, manual, unplanned and decentralised acquisition process, low productivity, lack of performance indicators) and unprofitable (domestic and international) ticketing agencies. In addition, increasing fuel and other costs and limited additional revenues eroded TAROM's profitability. The main cause for the deteriorating operating performance is the misaligned evolution of operating expenses compared to revenues; the operating costs with the highest adverse impact are the fuel costs, the maintenance costs for the ageing fleet, as well as the costs arising from inefficiencies in operations.
- (16) This has led to a significant accumulation of losses, which has caused TAROM to have negative equity, and to an accumulation of debt and a depletion of cash reserves, which has caused TAROM to have negative cash flows. Finally, the period of the COVID-19 pandemic intensified the losses in 2020 and 2021 due to a significant decrease in flight activity and consequently in revenues. While TAROM has twice received damage compensation aid under

<sup>(17)</sup> Notification form, 21 December 2022.

<sup>(18)</sup> The exchange rate used in this Decision is RON 1 = EUR 0,2012 (and conversely EUR 1 = RON 4,9706, which is the exchange rate recorded by the European Central Bank (ECB) on 6 March 2024.

<sup>(19)</sup> Such as, for example the routes linking Bucharest (OTP airport) to Tbilisi, Alicante, Erevan, Hamburg, Larnaca, Sibiu, Stockholm, Valencia, Barcelona, Munich, Vienna, and the Cluj – Iași and Iași-Timișoara routes. These routes were unprofitable at C3 level profitability and some of them were unprofitable also at C1 level profitability (see footnote 20).

<sup>(20)</sup> C3 level profitability represents the result after deducting the direct operating costs, aircraft expenses and administrative costs, whereas C1 level profitability takes only direct operating costs into account and C2 level profitability takes only direct operating costs and aircraft expenses into account.

Article 107(2), point (b), TFEU <sup>(21)</sup> for the damage suffered as a direct consequence of governmental measures aiming to prevent the spread of COVID-19, those aid measures were not targeted to address or reduce TAROM's financial difficulties that existed already before the outbreak of the pandemic but merely to compensate the airline for losses directly caused by the exceptional circumstance of the pandemic and of the related traffic restrictions.

- (17) As the Romanian authorities submit, all of TAROM's assets that have a certain value, and in particular all the aircraft owned by TAROM, are pledged as part of the current financing agreements or as guarantees against outstanding debt (such as, for example Airbus 318 aircraft are pledged for the rescue loan referred to in recital (11); also, the State aid that TAROM received pursuant to the first damage compensation decision was granted in the form of a loan guarantee which TAROM had to secure against its assets). Moreover, the aircraft that will enter TAROM's fleet as part of the fleet renewal programme, stem from lease agreements and thus would not be available as securities (see recital (61)). Hence, according to the Romanian authorities, TAROM will not have enough assets in the future to secure loans. Due to the lack of assets to serve as collateral, the Romanian authorities claim that TAROM will not be able to secure any bank financing and no short-term financing alternatives have been identified.

### 2.3. The restructuring aid measures

- (18) The Romanian authorities notified to the Commission as restructuring aid the following two measures in favour of TAROM: (i) a series of share capital increases <sup>(22)</sup> through the State's capital injection equivalent to a total of approximately EUR 45,77 million (of which RON 12 518 000 or approximately EUR 2,7 million have already been carried out in 2023 <sup>(23)</sup> and the remaining EUR 43,07 million will be carried out as from 2024; all increases carried out and to be carried out in RON); and (ii) a debt write-off in the amount of the rescue loan with interest amounting to EUR 49,53 million in total (jointly 'the restructuring aid measures'). The amount under (i) above covers TAROM's cash deficit over the restructuring period, including an amount of EUR 5,99 million for the repayment of instalments of the loan guaranteed pursuant to the first damage compensation decision ('COVID-19 loan'). The amount of the debt write-off consists of the principal of the rescue loan of approximately EUR 36,7 million, capitalised interest for the period May 2020 <sup>(24)</sup>-April 2024 and any foreign exchange rate differences that occurred during that period. The Romanian authorities submit that after the corresponding amount is written off, the obligation of TAROM to repay the rescue loan and the related costs will be cancelled. Together, the two restructuring aid measures amount to approximately EUR 95,3 million.
- (19) The funding for the measures will be provided from the budget of the Ministry of Transport. Restructuring aid will be provided on the basis of Article 20 of Government Ordinance No 45/1997 on the establishment of the Commercial Company 'Romanian National Air Transport Company – TAROM' S.A., as modified by Government Emergency Ordinance 113/2021 of 10 October 2021 ('the GEO'), based on which a governmental decision approving the amount and the form of State aid will be issued after the adoption of a Commission decision authorising the restructuring aid for TAROM and in accordance with such decision. The Romanian authorities submit that the GEO thus contains a standstill obligation in compliance with Article 108(3) TFEU, whereby the aid

<sup>(21)</sup> Commission Decision of 2 October 2020 C(2020) 6910 final in case State aid SA.56810 (2020/N) – Romania – COVID-19: Aid to TAROM (OJ C 94, 19.3.2021, p. 1) – the first damage compensation decision; Commission Decision of 29 April 2022 C(2022) 2934 final in case State aid SA.63360 (2021/N) – Romania COVID-19 – TAROM damage compensation II (OJ C 378, 30.9.2022, p. 1) – the second damage compensation decision.

<sup>(22)</sup> Also referred to in this Decision as 'capital increase(s)' or 'capital injection(s)'.

<sup>(23)</sup> On 29 November 2023, the Romanian authorities informed the Commission that TAROM would be unable to repay an instalment of the COVID-19 loan for which the Commission's first damage compensation decision (referred to in recital (16)) had approved State aid in the form of a public guarantee and consequently asked for the Commission services' view on the execution of the guarantee. The Commission services informed Romania that a mere execution of the guarantee, where the guarantor repays the creditor and the rights of the creditor are transferred to the guarantor, would not involve new aid. However, as, according to Romanian law, the public owner of TAROM had the obligation to supply the means for repaying the instalment in the form of a capital increase, the Romanian authorities notified this capital increase as part of the restructuring aid. The total amount of capital increases for repaying COVID-19 loan instalments during the restructuring period will not exceed EUR 5,99 million, consisting in the EUR 2,7 million already granted in 2023 and an amount of EUR 3,29 million planned in 2024. The remaining instalments of the loan after 2024 will be repaid by TAROM from own resources.

<sup>(24)</sup> While the Commission approved the rescue loan on 24 February 2020 (see recital (11)), the Romanian authorities granted the aid only on 29 April 2020.

will be granted to TAROM only after the Commission has authorised the aid, and the date of granting of the aid will be the date of the commitment of the national authorities to grant the aid, subject to the approval of the Commission. Romania submitted that the standstill obligation has not been applied to approximately EUR 2,7 million granted in several instalments in RON in March 2023, June 2023 and September 2023 for the repayment of instalments of a COVID-19 loan.

#### 2.4. The initial restructuring plan for TAROM

- (20) On 28 May 2021, the Romanian authorities notified to the Commission a restructuring plan ('the initial restructuring plan') supported by EUR 190,7 million restructuring aid composed of (i) a EUR 40,6 million debt write-off by Romania of the loan granted as rescue aid (EUR 36,7 million principal and corresponding interest); (ii) a EUR 92,9 million capital injection by Romania; and (iii) a EUR 57,2 million grant.
- (21) The initial restructuring plan encompassed the period from 2021 to 2025. The initial restructuring plan projected that TAROM would post profits in 2024, attaining a return on capital employed ('ROCE') of 7,38 % in 2024. The total restructuring costs that were expected to arise in the five-year initial restructuring period amounted to EUR 408,5 million.
- (22) The initial restructuring plan included the following series of measures:
- (a) fleet renewal: the phasing in of new and phasing out of old aircraft, leading to a change in fleet of 29 planes in 2020 to 17 planes in 2024, with overall similar capacity in terms of available seat kilometres ('ASK') <sup>(25)</sup> at the end of the restructuring;
  - (b) commercial optimisation measures: route optimisation, unbundling of services, increased focus on charter flights, etc.;
  - (c) organisational efficiency measures: resizing of the core structure to adapt to the current and future level of activity, optimisation of the Technical Division, etc.;
  - (d) cost optimisation measures: fuel costs reduction, staff reduction, employees' relocation, etc.
- (23) Neither the private minority shareholder of TAROM (the Investment Fund Muntenia) nor TAROM's creditors were to provide burden sharing in any form and it was not clear whether the minority shareholders that do not contribute to the burden sharing would be asked to give up their respective shares to the State.
- (24) The following measures to limit distortions of competition were envisaged: (a) ceasing the operation of flights to 10 destinations, both international and domestic, and releasing corresponding slots; (b) divestiture of TAROM's minority shareholdings in companies [...], [...] and [...]; and (c) outsourcing part of TAROM's maintenance and repair operations (Technical Division) via a joint venture with [...], an external private supplier. As behavioural measures, the Romanian authorities proposed that TAROM would abstain from purchasing shareholdings in other enterprises during the initial restructuring period, except where indispensable to ensure its long-term viability, and from using the aid as publicity when selling its products.

<sup>(25)</sup> In the airline industry an available seat kilometre is the fundamental unit of production for a passenger-carrying airline, measuring passenger carrying capacity. It is calculated by multiplying the number of seats available for passengers by the distance flown in kilometres.

## 2.5. Reasons for initiating the formal investigation procedure

- (25) As it had doubts as to whether the notified restructuring aid would be found compatible with the internal market under Article 107(3), point (c) TFEU as interpreted by the R&R Guidelines, on 5 July 2021, the Commission initiated a formal investigation procedure for the following reasons: the extent of the own contribution, the burden sharing, the return to viability, and measures to limit distortions of competition. Moreover, the Commission raised certain concerns with regard to the appropriateness of the aid.

### 2.5.1. Appropriateness of aid

- (26) At the time of adoption of the opening decision, the planned aid instruments and amounts appeared to be adequate to address TAROM's problems of solvency and liquidity and could therefore be deemed appropriate; namely, the grant and debt write-off was deemed to address TAROM's liquidity needs whereas the capital increase was targeted at improving its solvency <sup>(26)</sup>.
- (27) As stated in the opening decision <sup>(27)</sup>, the provision of restructuring aid in the form of a (non-remunerated) grant of EUR 40,6 million and a debt write-off of EUR 57,2 million would, however, not allow the State acting as aid grantor to reap any benefits from a successful restructuring even though, after the end of the initial restructuring period, TAROM was expected to post positive net results.

### 2.5.2. Own contribution

- (28) It appeared that the purported own contribution by TAROM put forward by the Romanian authorities in the amount of EUR 217,8 million was neither real, nor actual <sup>(28)</sup>. For most of the own contribution, the Romanian authorities relied on negotiations for finance lease contract(s) with potential lessors or banks. However, without a firm commitment for financing from a lessor or a bank, the EUR 150,9 million of the finance lease could not be considered as a real and actual own contribution <sup>(29)</sup>. Furthermore, no market investor or lender was firmly backing the initial restructuring plan <sup>(30)</sup>. The sale procedure for TAROM's assets (aircraft and minority participations in vertically related companies), which was put forward as another source of financing, had not started and there was neither an upfront buyer for TAROM's minority participations, nor were the corresponding valuation reports ready <sup>(31)</sup>. In addition, it would need to be confirmed whether the purchase of TAROM's assets by CNAB would be carried out at conditions that a market economy operator would have accepted, given that CNAB is State-owned <sup>(32)</sup>.
- (29) The preliminary assessment of the initial restructuring plan showed that at most only 25 % of the restructuring costs could be considered as financed through real, actual and aid free own contribution <sup>(33)</sup>, whereas point 64 of the R&R Guidelines required an own participation of in principle at least 50 % of such costs, and the Romanian authorities did not put forward any arguments showing particular hardship or exceptional circumstances which would justify the proportion of TAROM's own contribution to be below 50 % of the restructuring costs.

### 2.5.3. Burden sharing

- (30) The Romanian authorities acknowledged that neither the private minority shareholder of TAROM (the Investment Fund Muntenia) nor TAROM's creditors would provide burden sharing in any form, and it was not clear whether the minority shareholders that do not contribute to the burden sharing would be asked to give up their share to the

<sup>(26)</sup> Recital (50) of the opening decision.

<sup>(27)</sup> Recital (49) of the opening decision.

<sup>(28)</sup> Recital (52) of the opening decision.

<sup>(29)</sup> Recital (52) of the opening decision.

<sup>(30)</sup> Recital (52) of the opening decision.

<sup>(31)</sup> Recitals (53) and (54) of the opening decision.

<sup>(32)</sup> Recital (54) of the opening decision.

<sup>(33)</sup> Recital (57) of the opening decision.

State <sup>(34)</sup>. The Commission thus doubted whether the aid met the criteria laid down in points 65 to 67 of the R&R Guidelines, according to which aid to cover losses should only be granted on terms which involve adequate burden sharing by existing investors, which would normally mean that incumbent shareholders and subordinated creditors must absorb losses in full before any State intervention has taken place.

#### 2.5.4. *Restoration of long-term viability and restructuring within a reasonable timescale*

- (31) As noted in the opening decision <sup>(35)</sup>, the initial restructuring plan contained estimations based on the Eurocontrol 5-year forecast Europe 2020-2024 and, thus, on credible hypotheses concerning COVID-19 vaccination campaign scenarios. According to the baseline scenario, a return to profitability would occur by 2025. Furthermore, TAROM's 2025 financial ratios (return on assets ('ROA'), ROCE and net profit margin) would be in line with the historical financial ratios of TAROM's peer group. However, the restructuring plan contained no explanation of the reasonableness of the level of profitability that TAROM would allegedly achieve in 2025 and further clarifications on the tests, weighted average cost of capital ('WACC') <sup>(36)</sup> components and peer group selection were required. The expected level of profitability appeared optimistic, considering TAROM's historical performance. Moreover, in the pessimistic scenario, the return to profitability would only be achieved as from 2027, i.e. outside the duration of the restructuring period that was to run until 2025. The requirement of point 47 of the R&R Guidelines, that is that the restructuring plan must restore the long-term viability of the beneficiary within a reasonable timescale in both the baseline and the pessimistic scenarios, was thus not met. In both the baseline and the pessimistic scenario, the Romanian authorities did not provide sufficient information regarding the composition of the peer group, nor the figures underlying the peer group data.
- (32) The Commission thus had doubts that the initial restructuring plan was of appropriate duration and would lead to the restoration of viability of TAROM at the end of the initial restructuring period because it was not apparent that TAROM would provide a sufficient return and would be capable of remaining on the market without further aid <sup>(37)</sup>.

#### 2.5.5. *Presence and effectiveness of meaningful measures to limit distortions of competition*

- (33) In the opening decision <sup>(38)</sup>, the Commission preliminarily considered that it was not sufficiently established that real structural measures to limit competition distortions were envisaged. Firstly, out of the proposed slot releases, only a limited number concerned potentially congested airports, and the Romanian authorities did not provide the necessary information to allow the Commission to assess whether the flight times proposed for the released slots would indeed correspond to highly congested airport conditions. The Romanian authorities proposed to divest minority shareholdings in companies with activities ancillary to flight transport, but the divestment plans were vague, lacking in particular valuation reports of the assets and information on the profitability of the companies concerned. The Commission considered that the strong doubts that it had on the proportionality of the aid and on TAROM's own contribution made it necessary that proceeds from market-based sales and divestitures of assets would contribute to reducing the amount of restructuring aid, whilst reducing the negative effects of the aid on other air carriers. Furthermore, despite the considerable reduction in the number of aircraft, the overall flight capacity of TAROM expressed in terms of ASK would not materially change by the end of the restructuring plan.
- (34) Finally, apart from barring TAROM from purchasing shareholdings in other enterprises during the restructuring period, except where indispensable to ensure its long-term viability, and from using the aid as publicity when selling its products, the Romanian authorities did not propose any other behavioural measures.

<sup>(34)</sup> Recital (56) of the opening decision.

<sup>(35)</sup> Recitals (59) to (64) of the opening decision.

<sup>(36)</sup> WACC stands for weighted average cost of capital, a calculation of a firm's cost of capital in which each category of capital is proportionately weighted.

<sup>(37)</sup> Recital (64) of the opening decision.

<sup>(38)</sup> Recitals (65) to (72) of the opening decision.



- (35) The Commission thus had doubts whether, in the absence of firm and clear structural and behavioural measures, the negative effects of the aid on competition were mitigated to a satisfactory extent.

### 3. OBSERVATIONS OF ROMANIA

- (36) The Romanian authorities provided their observations on the opening decision by a letter dated 11 August 2021 <sup>(39)</sup>.
- (37) With respect to TAROM's own contribution, the Romanian authorities indicated that discussions with aircraft lessors were still ongoing at the time of their response and added that, in parallel, discussions had been initiated regarding the possibility for TAROM to obtain a USD [...] million corporate facility from an aircraft finance company [...].
- (38) With regard to the planned sale of TAROM's minority participations in [...], the Romanian authorities submitted two updated valuation reports for [...] and for [...], which contained lower values than those considered in the initial restructuring plan and announced the submission of an updated report for [...]. [...].
- (39) As concerns the aircraft sales, the Romanian authorities indicated that two Boeing 737-300 were expected to be sold by September/October 2021 and that seven ATR 42-500 would be sold back to ATR during the fourth quarter of 2021. Romania also announced that two more Boeing 737-300 aircraft would be offered for sale before the end of 2021.
- (40) With regard to the concerns of the Commission in relation to burden sharing, the Romanian authorities indicated that such concerns had been well understood but that the approach to solving them still had to be decided.
- (41) The Romanian authorities further indicated that the Commission's concerns about the restoration of TAROM's viability and the measures to limit competition distortions had been noted and that an updated business plan addressing those concerns would be submitted to the Commission at a later stage. The Romanian authorities provided data about the peer group and the schedule of slot releases.
- (42) Finally, in relation to the implementation of the measures proposed by TAROM in the initial restructuring plan, the Romanian authorities explained that TAROM's Administration Council had on 30 July 2021 approved the start of the next phase of the staff restructuring programme and that a formal meeting with the trade unions had been held on 3 August 2021.

### 4. COMMENTS FROM THE THIRD PARTY

- (43) On 4 October 2021, in the course of the formal investigation procedure, the Commission received comments from Wizz Air.
- (44) Wizz Air considered that its procedural rights had been violated due to the high level of redacted information in the opening decision, which allegedly prevented Wizz Air from submitting meaningful comments.
- (45) Wizz Air agreed with the Commission's finding that the conditions of proportionality of the restructuring aid and of burden sharing were not satisfied. According to Wizz Air, TAROM had been in difficulty for many years and the restructuring plan did not address the problem of poor management. Wizz Air also claimed that the air traffic forecasts were based on outdated data and should be revised downwards. Wizz Air considered that the choice of TAROM's peer group was inappropriate, as it contained mostly flag carriers and some airlines that may have been in financial difficulty during the comparison period. In addition, Wizz Air considered that the aid was neither appropriate nor proportionate, but claimed that due to heavy redaction of financial information in the opening decision it was impossible to make more detailed comments.

<sup>(39)</sup> Submission by Romania of 11 August 2021.

- (46) Wizz Air further held that the restructuring aid did not respect the 'one time, last time' condition of the R&R Guidelines, given that TAROM had been in a constant state of restructuring due to financial difficulties over more than 10 years since the granting of previous aid approved by the Romanian Competition Council in 2004.
- (47) With regard to the measures to limit distortions of competition, Wizz Air noted that the restructuring plan did not include downsizing of capacities nor a reduction of activities, which had been required in previous Commission decisional practice in airline restructuring. Wizz Air contended that TAROM should downsize its activities at least in the same proportion as unaided competitors did on average. Wizz Air also considered that slot divestments should at least be in equal proportion to the reduction in TAROM's fleet. Wizz Air also considered the proposed behavioural commitments to be insufficient given the significant amount of restructuring aid requested by TAROM. In particular, Wizz Air suggested that it would be appropriate to impose on TAROM the management remuneration restrictions imposed on some airlines in the context of COVID-19 recapitalisation measures, given that (i) TAROM was in financial difficulty before 31 December 2019 unlike other recipients of COVID-19 recapitalisation aid; and (ii) TAROM's deteriorating financial situation was in part due to poor management.
- (48) Finally, Wizz Air raised the issue of compliance with point 44(b) of the R&R Guidelines, on which the Commission had not raised doubts in the opening decision. In that respect, Wizz Air submitted that TAROM had been steadily pushed out of markets that it used to serve and had therefore lost its role of the past in providing essential connectivity to Romania. Wizz Air held that TAROM's services were already being replicated by competitors, including Wizz Air, the largest operator on Romanian routes (approximately 40 % of the capacity) as well as Blue Air with 13 % of the domestic market and that, consequently, TAROM's service would not amount to that of a national infrastructure provider as suggested in the opening decision. According to Wizz Air, the domestic market, in which the Commission claims that TAROM fulfils an important service, is extremely small (less than 10 % of total air traffic to, from and within Romania) and TAROM's share in the domestic market is 63 %, which consequently is only 6,3 % of the total capacity of the Romanian market (i.e. domestic and international) and therefore TAROM's services on the domestic market are not important. Wizz Air considers that, in light of the limited number of TAROM's exclusive domestic routes, the amount of the restructuring aid would be disproportionate to the objective of preserving those routes, so that the Commission should find out whether public service obligations could not be implemented on those routes instead. Finally, Wizz Air claimed that over 3 000 planes were grounded in the EU as of July 2021, and that significant excess capacity would, in the case of TAROM's market exit, certainly and rapidly trigger new entry on its routes in a post-COVID market environment characterised by lower demand and residual travel restrictions.
- (49) Wizz Air also alleged that there was no evidence that TAROM had exhausted market options for securing financing before asking for aid from the Romanian State and that such financing was available in the market for other airlines. Moreover, Wizz Air alleged that the absence of availability of financing from TAROM's creditors showed that those creditors did not believe in TAROM's viability, because otherwise they would not have risked a liquidation of TAROM, which was likely in the absence of any financing raised.

##### 5. OBSERVATIONS OF ROMANIA ON THE COMMENTS FROM THE THIRD PARTY

- (50) In response to Wizz Air's comments which they received on 12 October 2021, the Romanian authorities submitted the following observations on 12 November 2021:
- (a) as regards the alleged violation of Wizz Air's procedural rights, the Romanian authorities submitted that only business secrets were redacted, which the Commission was obliged to protect as it was bound by professional secrecy;
- (b) the Romanian authorities agreed with the Commission's preliminary findings in the opening decision regarding the aid's contribution to the development of an economic activity, the avoidance of social hardship and the existence of market failure, and with the fact that the aid appeared to be appropriate to address TAROM's problems of solvency and liquidity;

- (c) with respect to the matters related to the confidence of market economy investors, TAROM had made significant efforts to secure support of investors for financing the fleet renewal and it had already received some financing offers;
- (d) the selection of comparator airlines chosen by TAROM for benchmarking purposes was appropriate in view of the figures underlying the peer group data;
- (e) with respect to the appropriateness of the aid, the Romanian authorities clarified that it was to be granted in proportion of approximately 50 % in the form of a share capital increase, with the balance in the form of a direct subsidy and a debt write-off (of the rescue aid in the form of a repayable loan and corresponding interest). The Romanian authorities submitted that the grant and debt write-off would address TAROM's liquidity needs at the beginning of the restructuring period, whereas the capital increase would improve its solvency. According to the Romanian authorities, other instruments (such as guarantees or loans) or amounts would either compromise the restructuring objectives or imply an unbearable financial cost, hampering TAROM's long-term viability;
- (f) with respect to the proportionality of the aid, the Romanian authorities proposed that minority shareholders be asked to either contribute or give up their shares to the State in order to address the burden-sharing concerns, and a finance lease be accepted as own contribution as it is a sign of trust from financial markets of trust in the airline's return to viability;
- (g) with respect to the 'one time, last time' criterion, the Romanian authorities confirmed that TAROM had not received any rescue aid, restructuring aid, temporary restructuring aid or any non-notified aid in the last 10 years prior to the notification of the restructuring aid, and the last restructuring aid TAROM had received was approved by the Romanian Competition Council before Romania's accession to the Union and covered the 2002-2005 restructuring period;
- (h) with respect to measures limiting the distortion of competition, the Romanian authorities indicated that TAROM had decided to implement further measures such as:
  - (1) ceasing the operation of flights to an additional five destinations at airports congested at the highest level, accounting for 13,2 % of the total number of flights in the originally submitted business plan, and which would result in TAROM effectively ceasing operations on 56 % of its highly congested destinations by the end of 2022. The Romanian authorities indicated that this would reduce the number of TAROM's destinations to 25, which corresponded to a 54 % reduction in international activities and to a 42 % reduction in domestic activities compared to 2019 and would constitute a further 10 % reduction in the number of flights from the previously proposed flight plan (compared to the 2019 baseline, namely – 27,6 % instead of – 7,8 %);
  - (2) reducing the number of aircraft to 15 (instead of 17 in the initial restructuring plan) and bringing forward to 2023 (instead of 2024) the point in time when the fleet would start operating in its long-term composition;
  - (3) as a consequence of the additional changes described in points (1) and (2), the overall number of ASK would also decrease by [...] % as compared to the 2019 baseline.

## 6. THE UPDATED RESTRUCTURING PLAN

- (51) On 19 April 2024, the Romanian authorities submitted to the Commission an updated restructuring plan dated 18 April 2024<sup>(40)</sup> ('the updated restructuring plan') and subsequently provided additional information that also forms part of the updated restructuring plan.
- (52) The updated restructuring plan identifies the weaknesses that caused TAROM's difficulties (as outlined in recitals (15) to (17)), describes the counterfactual scenario in which TAROM would not receive the aid (see Section 6.1) and establishes a comprehensive set of measures that TAROM will implement to remedy its difficulties and to become viable in the long-term (Section 6.2).

<sup>(40)</sup> The updated restructuring plan of 18 April 2024 replaced earlier interim versions of the restructuring plan submitted by the Romanian authorities.

### 6.1. Alternative scenario without the aid

- (53) Romania submits that as of December 2023, TAROM had overdue debt amounting to approximately EUR [...] million and its available cash was limited to [...] million. Given the repeated deferral of certain debts, Romania submits that there is growing impatience among TAROM's key creditors to be paid. According to information submitted by Romania, TAROM has in particular unpaid leasing rates towards three aircraft lessors as well as significant debt towards CNAB, the handling company at OTP airport. The latter debt is secured with mortgages on real estate owned by TAROM, two ATR 72-500 aircraft, mortgages on TAROM's participations in [...], [...], as well as a mortgage on the receivables on the future sale of the [...] slot (see recital (119)). As all of TAROM's assets that have a certain value have either been sold to finance the cost of restructuring (see recitals (60) and (77)) or are pledged under ongoing financing arrangements, such as the rescue loan and the COVID-19 loan guaranteed pursuant to the first damage compensation decision (see recitals (17) and (54)) or for existing debt, no short-term alternative financing channels are open to the airline.
- (54) The Romanian authorities explain that without the restructuring aid, TAROM would quickly run out of cash and would not be able to sustain daily operations. If the airline started to repay some of its debt in 2024, its cash flow would be negative. The planned restructuring measures could not be carried out, due to lack of financing, which would further affect TAROM's revenues. Moreover, the rescue aid, for which TAROM pledged part of its aircraft as collateral, would fall due and need to be repaid, which would result in the enforcement of the collateral. TAROM would also be unable to pay the lease rates for existing aircraft, which would be grounded.
- (55) The Romanian authorities explain that creditors with long-due debt would start enforcement actions and, if not paid, could request that TAROM be put in insolvency proceedings. If put into insolvency (which is very probable in light of TAROM's situation both in terms of solvency and liquidity), TAROM's operating licence would be withdrawn, which would mean that its planes (to the extent that they would not have already been seized and/or grounded through individual enforcement, see recitals (53) and (54)) would be grounded and that it would have to cease operations. According to Article 3 of Regulation (EC) No 1008/2008<sup>(41)</sup> of the European Parliament and of the Council, no company established in the Union may carry flight passengers in commercial air transport without an operating licence. Pursuant to Article 9(1) of that 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 competent authority can issue a temporary licence only if there is a realistic prospect of a satisfactory financial reconstruction within that time period. According to the Romanian authorities, in view of TAROM's over-indebtedness and lack of liquidity, such prospect would only exist if the notified measures were granted. If this were not the case, TAROM's operating licence would have to be suspended or revoked, which would entail an immediate grounding of all of TAROM's aircraft. Moreover, Article 9(2) of Regulation (EC) No 1008/2008 stipulates that whenever there are clear indications that financial problems exist or when insolvency or similar proceedings are opened against a Union-licensed airline, the licensing authority shall without delay make an in-depth assessment of that airline's financial situation and on the basis of its findings review the status of the operating licence within three months. The consequences that the cessation of TAROM's operations would have, according to the Romanian authorities, on the Romanian air transport market are set out in Section 6.6.
- (56) According to the Romanian authorities, even if TAROM were able to survive 2024, which cannot be assumed, its business would not be sustainable without the restructuring aid. This is because in the absence of the aid, TAROM would be unable to implement the fleet renewal as planned and so would have to carry on business with its inefficient mix of old aircraft, which is one of the main reasons for its current difficulties. Moreover, part of the fleet would be grounded due to unpaid lease rates or enforcement of assets pledged as collateral (see recitals (53) and (54)). In addition, other parts of the restructuring measures could also not be carried out due to lack of financing, which would perpetuate the problems that caused TAROM's difficulties and have a further negative impact on its operations.

<sup>(41)</sup> Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community (OJ L 293, 31.10.2008, p. 3).

- (57) Romania submits that TAROM does not have other possibilities to raise sufficient financing to keep it in business over the next three years. As set out in recital (53), TAROM has no assets against which it could obtain short-term financing and continues to have negative equity in 2024 (see recital (88)). A limited downsizing of activities in the form of sales of participations is underway but constitutes a lengthy process and would not bring sufficient proceeds in time to avoid an insolvency filing. The same applies to the sale of the [...] slot, which is [...] (as explained in recital (119)). TAROM has managed to obtain a finance lease for the delivery of one Boeing 737-8 MAX with a value of EUR [...] million, excluding interest; [...].

## 6.2. Restructuring measures

- (58) The restructuring period in the updated restructuring plan spans from January 2021 until December 2026. The updated restructuring plan is based on several key pillars, which include fleet renewal, an optimised routes plan and various operational efficiency measures that have been or will be implemented during the restructuring period.

### 6.2.1. Fleet renewal

- (59) The redesign of the fleet aims to use aircraft that are suited for TAROM's needs and to reduce costs (for maintenance, leasing, fuel, etc.). From a fleet of 29 aircraft of seven different types<sup>(42)</sup> in 2021, TAROM's fleet will be reduced to 14 aircraft of just four different types<sup>(43)</sup> by 2025. The number of aircraft will then remain at 14 at least until the end of the restructuring period.
- (60) As of December 2023, TAROM's fleet comprised 12 jet type aircraft and 6 ATRs. Fleet renewal efforts are underway and are planned to be finalised by [...]. In 2022, TAROM sold all four Boeing 737-300 aircraft together with one Boeing 737-300 engine for EUR [...] in total. In 2023, TAROM sold all seven ATR 42-500 aircraft for EUR [...]. In total, the proceeds from aircraft sold in 2022 and 2023 amount to approximately EUR [...] million. The sales process for the four Airbus 318 aircraft has started and by January 2024, [...] preliminary offers had been received. On 7 March 2024, the Romanian authorities informed the Commission that TAROM had selected [...] as successful buyer in the sales procedure, with an offer in the amount of USD [...] million (approximately EUR [...] million) for the four Airbus 318 aircraft; [...]. On 1 April 2024, a letter of intent was signed between TAROM and the prospective buyer. The four Boeing 737-700 aircraft will leave service gradually, all to be sold indicatively in [...].
- (61) The phasing out of the aircraft will be accompanied by the phasing in of four new Boeing 737-8 MAX which are planned to enter TAROM's fleet in [...], one of them under a finance lease agreement and three under operational lease agreements, for which negotiations took place [...]. Until now, the finance lease agreement for one Boeing 737-8 MAX was concluded (see recital (57)) and one operational lease agreement for one Boeing 737-8 MAX was concluded on [...] with [...] as lessor and TAROM as lessee. The main economic effect of the fleet renewal will thus become apparent in [...], while growth will remain more modest in 2024, due to continued operations with older aircraft.
- (62) TAROM's fleet will be more streamlined and uniform, allowing it to have a more competitive price structure and to operate more efficiently, creating savings deriving from a modern and harmonised fleet. In addition to reducing operating costs, this is expected to achieve a more uniform fleet which will lead to further efficiency gains; to offer better services with modern aircraft, in line with customer demand; and to streamline the fleet through a significant reduction in the number of aircraft.

### 6.2.2. Commercial optimisation

- (63) The updated restructuring plan envisages measures concerning: (a) routes optimisation (see recital (64)); (b) ancillary revenues (see recital (65)); and (c) closing of agencies, marketing actions and communication (see recitals (66) and (67)).

<sup>(42)</sup> Fleet of 29 aircraft consisted of: 4 × Boeing 737-300, 4 × Boeing 737-700, 4 × Boeing 737-800, 4 × Airbus 318, 4 × ATR 72-600, 2 ATR 72-500, 7 ATR 42-500.

<sup>(43)</sup> Fleet of 14 aircraft to consist of: 4 × Boeing 737-MAX 8, 4 × ATR 72-600, 2 × ATR 72-500, 4 × Boeing 737-800.

*Optimised routes plan*

- (64) TAROM has carried out an in-depth analysis of its existing routes, to determine their performance, taking into account the evolution of demand following the COVID-19 pandemic, and to define and implement operational efficiency measures. As a result, TAROM is streamlining its activities through the closure of a number of routes and the reduction of frequency on existing routes. While none of the routes to be maintained was C3 profitable in 2019, each of them will become C3 profitable by 2029 and 23 of the routes will be C2 profitable already at the end of the restructuring period in 2026. Each remaining route, with the exception of those to/from [...], is planned to be operated [...]. This, together with the fleet restructuring, is expected to increase TAROM's load factor from approximately [...] % in 2019 to approximately [...] % at the end of the restructuring period and above [...] % after that period (see recital (101) and Table 5). Actual figures for 2022 display a load factor of [...] %. Indeed, the Romanian authorities submit that while TAROM has not (yet) reached the load factor levels of its competitors (which are typically between 80 % and 90 % depending on the airline, see also Figure 2 in recital (217)), it is the only one of the top five airlines active on the Romanian market (Wizz Air, Ryanair, Lufthansa, Air France-KLM, TAROM) that has been able to increase its load factor in 2022 as compared to 2019.

*Ancillary revenues*

- (65) TAROM intends to generate ancillary revenues from various sources. Services offered at extra cost would include [...]. The Romanian authorities submit that ancillary revenues are estimated at approximately [...] % of total revenues in the long run. TAROM argues, that this is a conservative estimate when compared with the industry benchmarks for traditional airlines (4,5 % on average achieved in the past years) and even more so for LCCs (that would have generated approximately 12,5 % of revenues from such ancillary services, or even 31,1 % in the case of Ryanair in 2019). According to the Romanian authorities, ancillary services started to generate revenue slowly at the end of 2021 and grew in 2022. The Romanian authorities submit that [...]. As a result, based on preliminary (non-audited) figures for 2023, revenues from ancillary services increased between 2022 and 2023 by approximately [...] times and for 2023 amounted to approximately EUR [...] million, which was approximately [...] % of total revenues.

*Closing of agencies, marketing actions and communication*

- (66) As the cost of internal ticketing agencies continued to be high compared to their contribution to TAROM's revenues and sales through those agencies – which continuously decreased and fell to a mere [...] % in 2023 – TAROM decided to restructure its ticket network. The updated restructuring plan provides for the closure of several agencies located in Romania, while the remaining ones would become regional agencies taking over the activities of the other agencies in the region. Moreover, only two international ticketing agencies would continue to operate, in Brussels and in Chisinau, while the remaining 12 international agencies would be closed. The Romanian authorities inform the Commission that 12 domestic agencies and 12 international agencies have been successfully closed, with only four domestic and two international agencies still operating. The closure of domestic agencies was expected to generate savings of approximately EUR [...] per year, with sales similar to those of 2019. Based on 2022 actual figures, the Romanian authorities submit that those estimates have been largely surpassed, triggering savings of approximately EUR [...] million in 2022. The closure of international agencies was expected to generate savings of approximately EUR [...] million per year with more or less constant sales compared to 2019.
- (67) Furthermore, the process of restructuring will be accompanied by marketing actions supported by the use of digital tools and by an improved communication strategy.

### 6.2.3. Organisational efficiency

- (68) As part of organisational efficiency measures, TAROM is carrying out a staff restructuring. The number of employees has been reduced from 1 765 in July 2020 to 1 154 as of December 2023, partly based on a voluntary leave programme, and organisational improvements are being implemented. The target headcount before implementing the outsourcing measures is 1 316 employees. TAROM has started filling vacant positions and is working towards reaching this target. This is expected to trigger salary savings of approximately EUR [...] million per year <sup>(44)</sup>.
- (69) To further improve its cost position, TAROM intends to reorganise its Technical Division and develop a new maintenance, repair, and overhaul ('MRO') strategy, including a possible outsourcing of MRO operations. However, after several unsuccessful trials, TAROM is still searching for a suitable partner for that outsourcing. While TAROM is actively pursuing internal improvements in the Technical Division and its research and negotiations to achieve the outsourcing of MRO, the cost effects of that measures have not been included in the projections in the updated restructuring plan.

### 6.2.4. Cost optimisation

#### *Fuel cost reduction*

- (70) TAROM aims to reduce fuel consumption through a series of measures, including [...]. This should lead to savings of approximately [...] % in 2024 and [...] % as from 2025. Further savings are expected from the use of the more fuel-efficient Boeing 737-8 MAX aircraft. The accumulated savings are estimated at approximately EUR [...] million until 2029, and the benefits will be captured in the financial projections starting from 2025. Overall, by 2025 the new aircraft will generate a total fuel consumption reduction of approximately [...] %, and a better fuel management system will result in an additional reduction in fuel consumption of up to approximately [...] % which together will be equivalent to savings of EUR [...] million in 2025. [...].

#### *Handling costs reduction*

- (71) According to Romania, the OTP airport is implementing a modernisation and automation programme, which started in October 2023 and is expected to be finalised by August 2024. While this is expected to have a positive impact on the internal handling costs, the process remains outside the control of TAROM. Therefore, the Romanian authorities took a prudent approach and did not include savings related to this modernisation process in the projections in the updated restructuring plan.

#### *Employee relocation and head office building rent*

- (72) The letting of the TAROM head office building, located near the Bucharest OTP airport and the relocation of employees to a rented office building should generate net revenues and cash flows of approximately EUR [...] to [...] million per year, starting in 2025.

## 6.3. Financing of the restructuring plan

### 6.3.1. Restructuring costs

- (73) The Romanian authorities submit that the total cost of TAROM's restructuring amounts to EUR 172,96 million. The main cost item of the restructuring measures is the fleet renewal at EUR [...] million. Moreover, TAROM plans on having a cash shortfall of approximately EUR 43 million during the restructuring period. Other restructuring costs concern notably redundancy payments for laid off staff, the closing of ticketing agencies, communication and marketing costs, the relocation of employees, consulting services. The cost of restructuring will be financed partly by State aid amounting to EUR 95,3 million, and partly by an own contribution by TAROM, amounting to EUR 77,66 million (see recitals (75) to (79)).

<sup>(44)</sup> Page 129 of the updated restructuring plan.

### 6.3.2. Sources of financing of the restructuring measures

#### (a) Public funding

- (74) The Romanian State would support the restructuring of TAROM with restructuring aid of approximately EUR 95,3 million (see recital (18)).

#### (b) Own contribution

- (75) The Romanian authorities submit that the sources of TAROM's own contribution to the costs of the restructuring measures are expected to consist of the finance lease concluded for one new Boeing 737-8 MAX aircraft, and the sale of aircraft.

##### *Finance lease*

- (76) The Romanian authorities submit that, on [...], TAROM concluded an aircraft finance lease agreement for one Boeing 737-8 MAX aircraft with a private lessor [...]. The duration of the lease is [...] years, and the overall value amounts to EUR [...] million in principal and to a further EUR [...] million in interest, making a total to be paid by TAROM to the lessor of EUR [...] million. The Romanian authorities consider that the own contribution attributable to the finance lease amounts to approximately USD [...] million (approximately EUR [...] million), which corresponds to the principal, excluding interest, payable under the lease agreement.

##### *Sale of aircraft*

- (77) As stated in recital (60), TAROM's aircraft to be sold include four Boeing 737-300, four Boeing 737-700, four Airbus 318, and seven ATR 42-500. The four Boeing 737-300 aircraft were sold to [...] and one Boeing 737-300 engine was sold to [...] in 2022 for EUR [...] million in total. The seven ATR 42-500 aircraft were sold to [...] based on a contract signed in May 2023, with a sales price of EUR [...] million. The buyer for the four Airbus 318 has been selected, with the successful offer amounting to USD [...] million (approximately EUR [...] million) (see recital (60)). The sale of the remaining aircraft is underway, but the selection of the buyer(s) has not yet taken place for the four Boeing 737-700 (EUR [...] million in expected revenues). All sales have been carried out through competitive tendering processes, after expert valuations of the aircraft.

- (78) In view of the above, the Romanian authorities put forward an amount of EUR [...] million of own contribution by TAROM from the sale of aircraft, corresponding to the proceeds from the aircraft sales that have already been completed.

##### *Total own contribution*

- (79) The Romanian authorities consider that based on the above figures for the aircraft sales and finance lease, TAROM's own contribution amounts to EUR 77,66 million, which is equivalent to 44,9 % of the total restructuring costs of EUR 172,96 million.

#### (c) Other expected sources of revenues

- (80) According to the Romanian authorities, TAROM may earn other revenues during the restructuring period (sale of existing shareholdings, outsourcing of MRO, as per recitals (124) and (125)), further aircraft sales (four Airbus 318 aircraft and four Boeing 737-700, see recital (77)), and the sale of the [...] slot (see recital (119)) which will also contribute to its finances. However, no binding offers have been endorsed for those sales, so that the possible revenues are not yet certain and have thus not been put forward by Romania as own contribution by TAROM.



### 6.3.3. *Burden sharing*

- (81) The Romanian authorities submit that, while it is uncertain whether the minority shareholders <sup>(45)</sup> would participate in the share capital increase of EUR 43,07 million to be carried out as part of the restructuring aid, their shareholding would be diluted through that increase from currently 2,75 % to approximately [...] % after the increase (and the Ministry of Transport will hold share capital of approximately 98,5 % after the share capital increase). This would correspond to a 46 % reduction of the minority shareholders' stake in TAROM. According to the Romanian authorities, this will ensure that minority shareholders will contribute to the absorption of losses and will not reap the benefits of the restructuring aid.
- (82) The share capital increase will be preceded by a share capital reduction of RON [...] billion (approximately EUR [...] million) whereas the current share capital is approximately RON 2,26 billion (approximately EUR 454.65 million). The Romanian authorities explain that, as TAROM's accumulated losses as of 31 December 2022 amounted to RON 4,16 billion, the share capital reduction of RON [...] million will not result in a full absorption of losses. Moreover, the Romanian authorities submit that under Romanian law, companies are obliged to maintain a minimum share capital (i.e. the minimum share capital for joint stock companies, which is relevant for TAROM, is RON 90 000). Consequently, a share capital reduction to absorb losses in full is materially not feasible for TAROM.
- (83) However, according to the Romanian authorities, adequate burden sharing of shareholders will be ensured through the share capital increase following the share capital reduction (see recital (81)).
- (84) Moreover, in the case of TAROM, the State, as main shareholder, has been overseeing the strategic and commercial decisions of TAROM. The company's operation has also not been funded with subordinated debt or hybrid (loss-absorbing) funding likely to be partly written-off in line with the burden sharing requirements of the R&R Guidelines.
- (85) With regard to TAROM's creditors, TAROM has not managed to obtain any debt cancellations but has nonetheless obtained a debt deferral from two of its main creditors: [...] and [...] and also from various other suppliers to which payments were deferred. Moreover, all of TAROM's lessors [...], have agreed not to exercise their right of reclaiming the leased aircraft when TAROM could not pay certain lease instalments.

### 6.4. **Financial projections**

- (86) The Romanian authorities provided financial projections in both a Baseline and a pessimistic ('Setback') scenario.
- (87) Given that the sale of the [...] slot, and the proceeds thereof, are uncertain (see recital (119)), TAROM provided financial projections in both the Baseline and Setback scenarios with, in each scenario, a variant including the expected income from the sale of the [...] slot and another variant excluding such income but considering the revenues from the leasing of that slot instead. The Baseline scenario, in the variant including the sale of the slot at [...] airport, is influenced in [...] by the revenues from the sale of that slot <sup>(46)</sup>. In view of the uncertainty regarding the sale, both variants will be considered in the Commission's assessment of both the Baseline and the Setback scenarios, that is both the one with the sale and the one with the lease of the slot rather than the sale.

<sup>(45)</sup> Public companies CNAB and Romatsa RA, and the private company Investment Fund Muntenia; see recital (8).

<sup>(46)</sup> The sale of the [...] slot is planned to take place in the course of [...] for a price set in the financial projections of TAROM at USD [...] million. The entire proceeds of the sale, if it were to happen as planned, are booked as an 'other operating income' in the projected profit and loss accounts of TAROM in [...]. As the slot is not on TAROM's balance sheet, the entire proceeds will be recognised as an income and will accordingly have a positive impact on TAROM's equity position to that extent as soon as [...]. However, the Romanian authorities explain that TAROM will only be paid in the course of [...], which payment is reflected in TAROM's provisional cash flows statement for the year [...].

- (88) The following tables present an overview of financial projections in the Baseline scenario:

Table 1

**Selected financial indicators – Baseline scenario, including [...] slot sale <sup>(47)</sup>**

[...]

[1] ROA = Net results/Total assets	[4] Adjusted EBITDA Margin = EBITDA excl. Income from Grants/ Operating revenues
[2] ROCE = EBIT/ Capital employed	[5] EBIT Margin = EBIT/ Operating revenues
[3] ROE =Net result/ Equity	[6] Capital employed = Total equity + Non-current liabilities

Source: TAROM's Updated Restructuring Plan.

Table 2

**Selected financial indicators – Baseline scenario, excluding [...] slot sale**

[...]

[1] ROA = Net results/Total assets	[4] Adjusted EBITDA Margin = EBITDA excl. Income from Grants/ Operating revenues
[2] ROCE = EBIT/ Capital employed	[5] EBIT Margin = EBIT/ Operating revenues
[3] ROE =Net result/ Equity	[6] Capital employed = Total equity + Non-current liabilities

Source: TAROM's Updated Restructuring Plan.

- (89) The Romanian authorities explain that the financial projections in the Baseline scenario take into account a mitigated market development, aligned with Eurocontrol traffic forecasts published in October 2023 <sup>(48)</sup>.
- (90) The mechanism used in the model to estimate the number of passengers is based on a bottom-up approach, taking into account TAROM's market share on each route, based on current capacity and frequency of flights, as well as historical passenger evolution, perceived shifts in demand and competition on the route. The figures are based on a number of fixed and variable parameters derived from TAROM's historical values, including the variations since 2020 triggered by the COVID-19 pandemic, future prospects and the impact of efficiency measures, where relevant. That impact is expressed as a percentage of savings that is reflected in the profitability of each route. The values represent a yearly average.
- (91) As shown in Figure 1 and set out in Table 3 for 2024 and 2025, the projections for the number of passengers are below both the baseline and the low Eurocontrol recovery curves and they remain well below the baseline curve until the end of the restructuring period and beyond. Moreover, Romania indicated that TAROM has performed a reasonability assessment of the outcome, by reviewing the load factor for each route and adjusting, where

<sup>(47)</sup> 'e' stands for 'estimated' and 'f' stands for 'forecasted'.

<sup>(48)</sup> Updated Restructuring plan, p. 21: 'Eurocontrol: Seven-Year-Forecast Update 2023-2029', October 2023. The Commission notes that Eurocontrol issued a revised Forecast in February 2024. Eurocontrol indicates that 'Despite a strong Summer 2023, the number of European flights showed lower-than-expected volumes since November 2023 – with local disparities between Eastern and Western States. In addition, there has been a downwards revision in the economic forecasts for 2024 at the European level. As a result, the flight forecast has been revised slightly downwards until 2027. At ECAC level, the number of flights is likely to reach 10,6 million in 2024, reflecting growth of 4,9% (±2,3pp) compared to 2023, and accounting for 96% of 2019 levels. This trend is expected to continue, with an increase to 10,9 million (99 %) in 2025, and further to 11,2 million (101 %) by 2026. On a monthly basis, for ECAC, the number of flights is likely to reach the 2019 levels during Summer 2025. Beyond 2025, flight growth is expected to average 2,0 %/year (±1,4pp), rising to over 12 million flights in 2030. This forecast is subject to various uncertainties, such as geopolitical events, economic shocks, and ongoing challenges in the aviation industry and users are strongly advised to consider the low-to-high range of forecast values for their plans'. As far as Romania is concerned, Eurocontrol's February 2024 forecast compares as follows to its (Base case) October 2023 forecast (2019 = 100): 10/23 2024 = 113 v 02/24 = 110 (TAROM Base case = 97); 10/23 2025 = 116 v 02/24 = 114 (TAROM Base case = 110); 10/23 2026 = 119 v 02/24 = 118 (TAROM Base case = 114).

appropriate, the number of passengers carried ('PAX') (for example, lowered in instances where the PAX growth could not be met by the available capacity on the route). Finally, the total outcome (sum of passengers on all routes) was checked against the recovery curves estimated based on Eurocontrol growth rates.

Figure 1

### Scenarios for (Romania specific) air passenger demand recovery (index 2019 = 100)

[...]

Source: TAROM's updated Restructuring Plan.

Table 3

### Number of passengers v Eurocontrol recovery driven curves, only for routes to be operated as per updated restructuring plan (in million PAX)

[...]

Source: TAROM's updated Restructuring Plan.

- (92) The revenue projections are based on the modelling of passenger figures described in recitals (90) and (91). As can be seen from Table 1, TAROM's operating revenues in the Baseline scenario (including the [...] slot sale) are expected to gradually increase over the coming years, to exceed pre-COVID-19 levels in 2024 and to reach EUR [...] million in 2026, at the end of the restructuring period.
- (93) With respect to assumptions regarding pricing and the average revenues expected from passengers, the Romanian authorities explain that TAROM developed an explicit commercial strategy that translates into clear and meaningful actions for pricing and revenue management whereby, for each specific route, TAROM now has a strategy that aligns with its broad commercial objectives in terms of fleet and capacity planning, market positioning and competitive offerings. In that context, the Romanian authorities explain that TAROM uses new tools and systems in order to be able to respond quickly to market behaviour and be aware of the pricing strategies of benchmark competitors on each route with a view to maintaining focus on tariff structure and prices at each level of fare.
- (94) The Romanian authorities also indicate that, as part of its new commercial strategy, [...].
- (95) In that context, the Romanian authorities explain that through the new Revenue Management system, TAROM [...]. Furthermore, the Romanian authorities submit that TAROM will [...].
- (96) In addition to adopting this [...], the Romanian authorities indicate that [...]. The Romanian authorities explain that [...], as can be seen in Table 4.

Table 4

### Evolution of average revenues from passengers (2019-2026) <sup>(49)</sup>

[...]

Source: TAROM's Updated Restructuring Plan.

- (97) Finally, the Romanian authorities submit that TAROM plans to grow the passengers' expectations in terms of services and flexibility and is [...]. This will generate additional ancillary revenues.

<sup>(49)</sup> Yq refers to the fuel surcharge tax applied by airlines to some of their ticket prices (depending on the routes).

- (98) In that respect, the Romanian authorities explain that the average revenue from ancillary services expected varies between EUR [...] to EUR [...] per passenger (on domestic routes) and is projected to reach EUR [...] per passenger (on international routes, with [...] expected to generate EUR [...] to [...] per passenger). The Romanian authorities indicate that in their revenue projections, they took a prudent stance with regard to the overall revenue expected from ancillary services, as – based on past performance – TAROM is not yet in a position to achieve the same revenue levels as traditional airlines for such services. Therefore, the expected revenue is set at maximum [...] % of total revenues, while traditional carriers on the market have obtained on average 4,5 % from ancillary products and/or services in the past years, while low-cost carriers generated approximately 12,5 % of revenues, with Ryanair achieving 31,1 % in 2019.
- (99) The Romanian authorities submit that the constant increase in revenues and net results represents the continuation of a development that had already started in 2018 and 2019, when TAROM had been able to significantly increase its passenger numbers from 2,41 million in 2017 to 3,13 million in 2019, and which was only halted in 2020 by the impact of the COVID-19 pandemic.
- (100) TAROM has carried out an in-depth review of its routes, frequencies and types of aircraft used, so as to optimise the profitability of its network. Coupled with the operational efficiency measures in the updated restructuring plan, [...].
- (101) The most significant cost item for an airline is its aircraft. TAROM has undertaken an in-depth restructuring of its fleet, consisting in: (i) eliminating the oldest aircraft in the fleet, which generated the highest maintenance and fuel costs; (ii) harmonising the types of aircraft operated to further reduce technical costs (aircraft as well as crew); (iii) flying the most suitable aircraft on each route based on extensive tests; (iv) optimising frequencies for each route based on the type of aircraft and the load factor. Those measures are having a positive impact on TAROM's business, as demonstrated by the steady growth in the airline's load factor over the past five years. Indeed, the load factor has increased from [...] % in 2019 to [...] % in 2023 and is expected to grow further after the restructuring period as can be seen in Table 5 (lower expected levels in 2025/2026 are due to the implementation of the fleet restructuring). The estimates in Table 5 concern only regular routes, excluding charter routes.

Table 5

**Expected annual load factor on regular routes (2023 – 2029)**

[...]

Source: TAROM's updated Restructuring Plan (a = actual and f = forecasted figures).

- (102) TAROM has also implemented a far-reaching cost optimisation programme, including the closing of ticketing agencies, the relocation of its headquarters, staff reorganisation, etc. (see Sections 6.2.3 and 6.2.4).
- (103) As indicated in recitals (86) and (87), to take account of possible unfavourable market developments, the Romanian authorities submitted business projections for TAROM in a 'Setback' scenario. As TAROM's revenue is mainly generated from the operation of regular passenger flights, a lower market development resulting in fewer passengers would have the highest impact on the business projections. In addition, the Romanian authorities submit that fuel represents a very significant cost item for airlines, and that fuel prices have shown fluctuations in recent years. Therefore, the Setback scenario takes account of those two sensitivities.

- (104) The Setback scenario assumes that the main parameters influencing TAROM's profits, namely the number of passengers and fuel prices, will both develop below expectations, to account for a potential negative evolution of the market. In particular, in the Setback scenario, the Romanian authorities assume both an increase in fuel prices of [...] % with respect to the Baseline scenario, and a decrease in 'PAX' of 2 % with respect to the Baseline scenario, from 2024 (as actual figures are known up to 2023). Regarding passenger numbers, the estimates in the Setback scenario remain well below Eurocontrol's low recovery curve during the entire restructuring period and exceed it only slightly for the first time in 2027<sup>(50)</sup>. Romania submits that the actual figures for 2022 show that TAROM's passenger forecasts were exceeded for international and domestic flights by 8,35 % and 6,86 % respectively. While the actual 2023 figures were lower than TAROM's estimates, Romania submits that this is largely due to the events in the Middle East, which affected the routes to Tel Aviv, Amman and Cairo, and a considerable share of charter flights, [...].
- (105) The following tables present an overview of financial projections in the Setback scenario and take into account the fact that the sale of the [...] slot is uncertain (see recital (119)) that is, Table 6 includes the impact of the sale of the slot [...] while Table 7 does not.

Table 6

**Selected financial indicators – Setback scenario, including [...] slot sale**

[...]

Source: TAROM's Updated Restructuring Plan.

Table 7

**Selected financial indicators – Setback scenario, excluding [...] slot sale**

[...]

Source: TAROM's Updated Restructuring Plan.

- (106) While, as shown in Tables 6 and 7, TAROM's operating revenues in the Baseline scenario significantly recovered in 2022 and are planned to return to almost pre-COVID-19 levels in 2023 to reach EUR [...] million in 2025 and EUR [...] million at the end of the restructuring period in 2026, in the Setback scenario, the revenues remain slightly lower, reaching EUR [...] million in 2026 (or EUR [...] million in the event that the lease rather than the sale of the [...] slot is considered).
- (107) The Romanian authorities further submit that both the Baseline and the Setback scenarios forecast TAROM's EBITDA to turn positive in 2023.
- (108) Accordingly, following the more pessimistic traffic assumptions in the Setback scenario, TAROM's revenues will grow less, while assumed higher fuel prices as compared to the Baseline scenario will increase its costs. This leads to revenues of EUR [...] million at the end of the restructuring period, compared to EUR [...] million in the Baseline scenario (including the sale of the [...] slot). The higher fuel costs assumed in the Setback scenario will, just like the lower revenues (but to a lesser extent, given the assumed lower level of flying operations), contribute to a lower EBITDA level (of EUR [...] million) in the Setback scenario (including the sale of the [...] slot) than in the Baseline scenario (with EUR [...] million).

<sup>(50)</sup> The Commission notes that the Romanian Authorities' observations remain valid and applicable when the revised Eurocontrol forecast figures of February 2024 are considered. See in that respect footnote 48.

- (109) In this context, the Romanian authorities explain that TAROM's net income is planned to turn positive in 2024 in the Baseline scenario (EUR [...] million) and, according to the lower market development forecasts, is expected to turn positive a year later (2025) in the Setback scenario (EUR [...] million excluding the sale of the [...] slot which is expected to take place in [...]). It should be noted that the data for [...] also includes the income generated by the sale of aircraft projected for that year (see recitals (60) and (61)), without which the net income for that year would not be positive in the Setback scenario. On that basis, the Romanian authorities submit that the net income is planned to increase by the end of the restructuring period to EUR [...] million in the Baseline scenario and EUR [...] million in the Setback scenario (or EUR [...] if the leasing rather than the sale of the [...] slot is considered) and that the net income in 2026 is not affected by any sale of assets, whether aircraft or slots.
- (110) In the Baseline scenario, TAROM's net income margin on sales would gradually increase towards the end of the restructuring period, with an expected level of [...] % by 2026 as shown in Table 8. The year [...] includes the impact of the sale of assets. The Romanian authorities submit that such level is expected to be in line with or slightly above the ratio achieved by TAROM's selected group of peer companies<sup>(31)</sup> before the COVID-19 outbreak (average values) and that it is expected to be achieved through the restructuring measures undertaken.

Table 8

**Net Profit Margin on Sales (from the updated Restructuring Plan's Baseline scenario)**

[...]

Source: TAROM's updated Restructuring Plan.

- (111) The Romanian authorities submit that by the end of the restructuring period TAROM's equity is expected to be positive both in the Baseline (EUR [...] million in 2026) and Setback scenarios, both including and excluding the sale of the [...] slot. The sale of the [...] slot is planned to take place in [...] and to contribute about EUR [...] million to TAROM's equity position. The Romanian authorities further indicate that, if the [...] slot were not to be sold, it would be leased and would therefore generate revenues, which would partly compensate the income not achieved from the sale and thereby contribute to the positive equity position at the end of the restructuring period in the Baseline and the Setback scenario. As can be seen in Table 6, in the Setback scenario, if the [...] slot is sold, TAROM's equity position is expected to turn positive at the end of the restructuring period with total equity of EUR [...] million. If the slot is leased, the Romanian authorities submit that TAROM's equity position would still be expected to turn positive at the end of the restructuring period with total equity of EUR [...] million in the Setback scenario.
- (112) The ROCE looks at the return from operating activities employing the assets that have been financed by the debt and equity capital invested in the company. The Romanian authorities submit that, in the Baseline scenario, with a projected ROCE ratio of [...] % at the end of the restructuring period, TAROM is expected to achieve a result in line with the selected peer group<sup>(32)</sup> average of 12 % in 2019, i.e. the last full year prior to the COVID-19 pandemic. They further indicate that TAROM's ROCE at the end of 2026 results from its projects to structurally increase its profitability (through cost reductions and restructuring measures including at the level of revenues) coupled with a decrease of the level of capital employed as a result of the use of finance lease instruments. The Romanian authorities explain that another downward influence on the level of capital employed results from the fact that TAROM will no longer have any significant aircraft ownership (only two ATR 72-500), meaning that no major capital expenditure will be incurred in that respect.

<sup>(31)</sup> The peer group is comprised of TAROM's main competitors on their busiest routes (Amsterdam (AMS), Paris (CDG) and Frankfurt (FRA)): Combined Air France/KLM SA, Deutsche Lufthansa AG, easyJet plc, Ryanair Holdings plc, SAS AB, Wizz Air Holdings Plc, Jet2 plc and KLM Royal Dutch Airlines alone.

<sup>(32)</sup> For the composition of the peer group, see footnote 51.

- (113) The Romanian authorities submit that the projected level of profitability and the resulting ROCE are expected to ensure the long-term viability of TAROM. Furthermore, they submit that, in the Baseline scenario, TAROM's expected ROCE will be higher than its WACC <sup>(53)</sup> (of [...] % as calculated at the end of June 2023 <sup>(54)</sup>) and that, as such, TAROM is expected to create value for its shareholders and other providers of capital. The Romanian authorities submit that this conclusion remains even more valid in the recent conjuncture (first quarter of 2024 at least) of a downward trend in interest rates.
- (114) With respect to the net debt to EBITDA ratio, the Romanian authorities submit that it is projected to improve to an investment grade level of well below three by the end of the restructuring period (as shown in Table 9) essentially as a result of the higher level of projected EBITDA that is expected to increase from approximately EUR [...] million in 2023 to EUR [...] million by the end of the restructuring period (or over EUR [...] million in the Setback scenario).

Table 9

**Net Debt / EBITDA (from the updated Restructuring Plan's Baseline scenario)**

[...]

- (115) Given that, as per the Baseline scenario, 2025 is planned to be the first year with consistent profits and cash flows, the interest coverage ratios calculated in the updated restructuring plan, which measure the ability of TAROM to service its debts, are positive but at rather low levels especially when compared to TAROM's peers <sup>(55)</sup> (as shown in Table 10).

Table 10

**EBITDA to interest ratio (from the updated restructuring plan's Baseline scenario)**

[...]

- (116) The Romanian authorities acknowledge that the ratio referred to in recital (115) is rather modest but underline that it is projected to be achieved in a relatively short period of three years until the end of the restructuring period. They further submit that the differences to the ratios achieved by major airlines such as Ryanair, Wizz Air or Lufthansa are to be expected as those much larger airlines benefit from larger economies of scale and pursue a more aggressive

<sup>(53)</sup> TAROM provided information on the WACC calculation, estimates and sources in its latest Business Plan. To estimate its WACC, TAROM used the standard WACC formula:  $WACC = [(K_e * (1 - \text{gearing})) + [K_d * \text{gearing}]]$ , where  $K_e$  is the Cost of Equity (estimated at 13,3 %) and  $K_d$  is the Cost of Debt (estimated at 6,0 %).

To estimate the Cost of Equity, TAROM relied on the standard CAPM formula,  $K_e = ((1 + R_f) * (1 + CRP) - 1) + (\text{Equity Beta} * EMRP)$ , where  $R_f$  is the risk-free rate, CRP is the country risk premium, equity beta is a measure of the volatility of an asset compared to the market, and EMRP is the expected market risk premium. TAROM's assumptions are the following:  $R_f$  of 2,4 % (equal to the 10-year German Government bonds); CRP of 3,6 % (derived from S&P long term foreign currency ratings and EUR bond spreads analysis); equity beta of 1,11 (obtained by relying on median asset beta and gearing of the peer group companies for TAROM's sector); EMRP of 6,5 % (derived from the historical difference between the return on risky securities, calculated from a stock index, and the return on (quasi) risk-free capital market investments).

To estimate the Cost of Debt, TAROM used the standard formula:  $= [(1 + CRP) * (1 + R_f) - 1 + CS] * (1 - T)$ , where CS is the Credit Spread, and T is the marginal tax rate of 16 %. The Romanian authorities derived the Credit spread of 1 % as the difference between EUR bonds rates for companies in the same industry as TAROM and German government bonds with similar maturities.

<sup>(54)</sup> Given that the applicable interest rates have been slowly but surely decreasing since October 2023, the Commission notes the Romanian authorities' conservative approach to keep the WACC from October 2023 instead of a revised version which could have been legitimately lower.

<sup>(55)</sup> For the composition of the peer group, see footnote 48.

reduction of operating expenses, alongside fleet and network simplifications. Finally, the Romanian authorities argue that, according to aviation experts, the overall debt levels in the airline industry will remain high over several more years and that, as a consequence, differences between the 2019 and 2026 ratios ought to be expected in the current market conditions following a severe pandemic and several macro-economic challenges <sup>(56)</sup>.

#### 6.5. Measures to limit distortions of competition

- (117) The Romanian authorities put forward structural and behavioural measures aiming to limit distortions of competition generated by the restructuring aid.

##### 6.5.1. Structural measures

###### *Downsizing and capacity reduction*

- (118) TAROM's restructuring period started in January 2021. While the measures to limit competition distortions that Romania offered should in principle be evaluated against the competitive situation prevailing in 2020, such a comparison with TAROM's 2020 network of routes and ASK would show a heavily distorted picture. This is because, as a result of the restrictive measures taken in 2020 by governments all over the world to prevent the spread of the COVID-19 pandemic, airlines were forced to ground most if not all of their planes during several months due to the closure of hundreds of routes in the European and global airspace. Even after June 2020, when restrictive measures were partially and temporarily relaxed in Romania and in other countries, many routes, especially at international level, remained affected by flight restrictions or prohibitions and clients remained averse to travelling due to uncertainty with regard to the evolution of the pandemic and the applicable rules. Consequently, the comparison in terms of ASK, routes and frequencies is carried out on the basis of 2019 figures, which are unaffected by the distortion that came about as a result of the COVID-19 pandemic.
- (119) The Romanian authorities submit that TAROM will close in total 14 routes <sup>(57)</sup> compared to its pre-COVID-19 network of 41 routes. 13 of those routes have already been closed and one more – between the [...] airport, which is one of the most congested airports, and the OTP airport – will be closed as a result of the leasing of the [...] slot to a third party starting from [...], after which it is planned to sell the slot. A bidding process was launched in 2023 under the relevant UK rules and a potential buyer submitted a tentative offer for the slot (which was valued by the advisory company [...] on 17 March 2023 at approximately EUR [...] million) of approximately EUR [...] million. However, the potential buyer withdrew from the negotiations and the bidding process continues. TAROM has received [...] offers at valuations of approximately EUR [...] million, with bidders interested in acquiring the slot as from the winter 2025 season. [...]. The Romanian authorities have assured the Commission that TAROM will sell the slot at the [...] airport towards [...] but no later than at the end of the restructuring period.
- (120) As a result of routes closure, TAROM will operate on 27 routes instead of on 41 as compared to 2019. This represents a reduction of 34 % in the number of routes as compared to 2019. In 2019, the 14 routes to be closed represented [...] % of TAROM's turnover (with a turnover of EUR 50,23 million in 2019) and [...] % of the total number of regular flights. [...] <sup>(58)</sup> [...] <sup>(59)</sup> [...]. Eight of those routes concern level 3 congested airports and one

<sup>(56)</sup> In support of their evaluation, the Romanian Authorities mention that one of McKinsey's senior partners stated in 2021 that leverage ratios will likely not return to 2019 levels until 2030 and that the managing director and global airline practice lead at Alton Aviation Consultancy would have indicated that 'the increased airline debt load is expected to be a substantial burden for the foreseeable future'.

<sup>(57)</sup> Those are: (i) in the first round of routes closures: eight routes from/to OTP airport: Alicante; Erevan; Hamburg; Larnaca; Sibiu; Stockholm; Tbilisi; Valencia; (ii) in the second round of routes closures: six routes in total, distributed as follows: four additional routes from/to OTP airport: Barcelona, Munich, Vienna and London (as from October 2024, see also recital (118)) and two routes not involving OTP airport: Cluj – Iași and Iași – Timișoara.

<sup>(58)</sup> Cluj – Iași and three routes from/to OTP airport: Sibiu, Tbilisi and Vienna.

<sup>(59)</sup> See footnote 19.



route concerns a level 2 congested airport <sup>(60)</sup>, with competitors operating in all nine airports. Romania commits to ensuring, that none of the closed routes will be re-opened during the restructuring period and that no other new routes will be opened during the restructuring period. Thus, the number of routes operated by TAROM during the restructuring period, following all routes closures envisaged in the updated restructuring plan, will not exceed 27 routes.

- (121) Moreover, TAROM will reduce the number of flights for 19 of the 27 routes that will be maintained compared to the 2019 level; those reductions will vary greatly depending on the destination and will be in the range between 6 % to 76 % for domestic flights compared to 2019. As regards domestic routes, the frequency reductions will be between 6 % and 15 % <sup>(61)</sup> except for one route where the reduction reaches 76 % <sup>(62)</sup>. On one domestic route, the frequency will increase <sup>(63)</sup>. On average, TAROM expects to reduce its number of flights on domestic routes between 2019 and 2026 by 16 % [...]. On international routes, the reduction of flights will be between 9 % to 40 % compared to the 2019 level. On average, TAROM expects to reduce its number of flights on international routes between 2019 and 2026 by 34,7 % (this includes also closed routes). This represents a 28 % reduction in the total number of scheduled flights (27 % reduction if including charter flights) in 2026 compared to the 2019 levels. The Romanian authorities state that, in 2022, there was competition on all routes concerned by frequency reductions with the exception of one (Satu Mare), which according to the Romanian authorities means that TAROM's competitors will be able to increase their frequencies. Nine of the routes with frequency reductions concern congested airports.
- (122) Furthermore, TAROM will gradually reduce its fleet by phasing out existing aircraft from 29 aircraft operated in 2020 and 2021 to reach a steady level of 14 aircraft as from 2025 (see also recitals (59) to (61)). This means that at the end of the restructuring period, TAROM will operate with only approximately half of its 2019 fleet. Romania commits to ensuring that until end-2024, TAROM's fleet will not exceed 18 aircraft and that from end-2025 until the end of the restructuring period, the fleet will comprise 14 aircraft maximum.
- (123) Even though from 2025 TAROM will operate with only approximately half of its 2019-level fleet, the capacity reduction measured in terms of ASK is lower than the fleet reduction because a series of smaller aircraft will be replaced by larger ones. The 'ASK' metric measures supply, and as such represents a capacity indicator of an airline, as opposed to passengers (PAX), which represent a measure of demand. The reduction in ASK is the result of fleet reduction, closure of routes and frequency reductions and means a reduction of the airline's market presence. TAROM's ASK in 2019 on C1 profitable routes was [...] and ASK projected in 2026 on C1 profitable routes is [...], which means a reduction on C1 profitable routes of [...] % in 2026 compared to 2019. TAROM's total ASK in 2019 was [...] and its total projected ASK in 2026 is [...], which represents thus a total reduction of [...] % in that period. The Romanian authorities submit that the described reductions will be maintained as a minimum reduction throughout the entire duration of the restructuring period, while in some years the reduction as compared to 2019 will be even higher.

#### *Divestitures*

- (124) TAROM plans to sell its participations in three entities – [...] <sup>(64)</sup>. The Romanian authorities provided data that, with the exception of 2020 which was significantly negatively affected by the COVID-19 pandemic, [...] and [...] have been profitable in all years since 2018. Based on the valuation reports provided by the Romanian authorities, TAROM's participation in [...] has been valued at EUR [...] million and in [...] at EUR [...] million. In the case of [...]. The Romanian authorities provided a commitment that TAROM will sell its participations in [...] and [...], but no later than by the end of the restructuring period in 2026.

<sup>(60)</sup> Level 3 congested airports: Alicante; Hamburg; Stockholm; Valencia; Barcelona; London; Munich; Vienna. Level 2 congested airport: Larnaca.

<sup>(61)</sup> [...].

<sup>(62)</sup> [...].

<sup>(63)</sup> [...].

<sup>(64)</sup> For the details on TAROM's stakes in these companies and their profile, see recital (8).

- (125) TAROM has also explored ways for outsourcing (part of) its MRO (Technical Division), however the discussions with potential partners that could take over TAROM's MRO or participate in a joint venture were not successful and no final agreement has been reached. Given that the plans for the MRO outsourcing are uncertain, despite the determination of TAROM to pursue this course of action, its impact is not included in the business plan.

#### 6.5.2. Behavioural measures

- (126) The Romanian authorities further committed to ensuring that TAROM would refrain from:

- (a) acquiring shares in any company during the restructuring period, except where indispensable to ensure its long-term viability and subject to Commission approval; and
- (b) publicising State support as a competitive advantage when marketing its products and services.

#### 6.6. Effects of TAROM's market exit

- (127) Romania submitted that TAROM's market exit would have a significant negative effect on connectivity in Romania and would affect the hundreds of thousands of passengers on all routes who rely on TAROM's network for their travels, with the strongest impact on the ten routes currently solely operated by TAROM<sup>(65)</sup>. In particular, Romania considers that previous examples from markets where TAROM ceased operations show that it is unlikely that other carriers would take over on some routes as many discontinued routes are still not operated today: out of the 25 routes closed by TAROM during the past three years, nine (36 %) are currently not operated by any other airline and three (12 %) are operated by LCCs to distant secondary airports<sup>(66)</sup>. Most of them were not operated even under normal market conditions prior to the COVID-19 pandemic. For example, the recently closed routes to Tbilisi and Erevan remained unserved and are currently not operated out of Romania by any carrier. Moreover, none of the domestic routes recently closed by TAROM<sup>(67)</sup> is currently being operated at all. Romania submits that the same would likely occur if TAROM exited the market for its routes to Beirut and Cairo. Romania contends that, overall, competitors would intend to serve TAROM's main destinations but not the routes that are less attractive for them (due to various reasons including lower demand; lack of appropriate, small aircraft; preference for point-to-point connections as opposed to the hub-and-spoke model operated by TAROM; connectivity-based business model; preference for cheaper secondary airports, etc.).

- (128) Romania submits that TAROM's business model is based on a hub-and-spoke system, the key characteristic of which is that it connects the own hub to major regional or European hubs and thus allows passengers to have access to routes not served by their proximity airport. Moreover, it enables TAROM to operate certain low-density routes that may not be profitable as point-to-point connections, but that feed into its hub-and-spoke model. Romania submits that in the event of TAROM's failure, the hub-and-spoke model would likely not be replicated by competitors, who either mainly operate point-to-point routes, connecting one secondary airport to another one, based on the lowest airport charges and operating slots that are often less convenient for connecting or business passengers, but cheaper, or transport passengers towards their own hubs. According to Romania, the former is in particular the case for TAROM's two main competitors on the Romanian market, Wizz Air and Ryanair (see recital (10)). The new entrant, HiSky is also operating as LCC, often using mid-day slots, which are not convenient for time sensitive

<sup>(65)</sup> According to the submission of the Romanian authorities of 29 March 2024, those ten routes are the following: (i) four international routes from OTP airport to Cairo, Sofia, Amman and Beirut; (ii) the international route from OTP to Budapest which is currently solely operated by TAROM, and on which a new entrant (Wizz Air) has announced a start of operations as from June 2024; (iii) five domestic routes from OTP airport to Iași (IAS), Oradea (OMR), Satu Mare (SUJ), Suceava (SCV) and Baia Mare (BAY).

<sup>(66)</sup> For example, Iași-Munich is currently not operated, instead Wizz Air flies from Iași to Memmingen, which is located at a distance of 115 km from Munich.

<sup>(67)</sup> Cluj – Iași, Iași – Timișoara, OTP – Sibiu.

travellers. The traditional airline with the highest share in the Romanian market is Lufthansa, which had a market share of approximately 11 % between 2019 and 2022, but whose share has since fallen to 5,6 % in 2023. The flag carriers operating in the Romanian market, such as Lufthansa and Air France-KLM are mainly transporting passengers towards their own hubs and are thus also unlikely to connect Bucharest with other capitals / important cities than those where their hubs are located or to connect domestic Romanian airports to Bucharest. According to Romania, TAROM's exit would therefore lead to a significant decrease in connectivity and mobility for Romanian citizens and businesses.

(129) TAROM traditionally operates in primary airports and holds convenient slots and frequencies for ensuring connections to its passengers. This is often not the case for LCCs, that are rather targeting cheaper airports, which are often located at some distance to main hubs or, if they fly to primary airports, are targeting slots that are less convenient for connecting flights (or for round trips) and thus cheaper. Moreover, a significant reduction in flight frequencies would be expected to have a direct and significant impact on time-sensitive passengers such as business clients. For example, neither Ryanair nor Wizz Air connect OTP airport with Brussels; instead, they land at the regional airport of Charleroi, located approximately 60 km south of Brussels. HiSky, while flying directly to Brussels, has much lower weekly frequencies than TAROM, with only three weekly flights to Brussels, where TAROM has the double of that, even after the planned frequency reductions. While TAROM is implementing a significant reduction of its core activities, the airline continues operating its historical slots, convenient for connecting and business passengers, on many primary international airports as well as on regional airports, maintaining a high level of connectivity, as illustrated by the example of the route to Brussels. According to Romania, TAROM's market exit thus could result in negative consequences for regional development and for the economic situation in the regions concerned.

(130) In addition, according to Romania, if TAROM exits the market, this would likely trigger fare increases on routes on which there is only one other competitor (duopoly) <sup>(68)</sup> and that would become a monopoly. This is demonstrated for example by the evolution of fares on two routes where TAROM ceased to operate and where there was only one airline left (Stockholm and Hamburg). Furthermore, Romania provides a price analysis between TAROM and competitors on key routes showing that most prices offered by TAROM on the respective routes are cheaper than those offered by other legacy carriers (for example, Bucharest-Amsterdam, Bucharest-Frankfurt, Bucharest-Paris). Romania also claims that the existence of prices lower than TAROM's on such routes by certain LCCs is in fact associated with a lower level of the overall service, thus not contradicting the fact that TAROM has consistently cheaper prices on comparable services. Also, as mentioned in recital (129), TAROM has a network of convenient slots and frequencies in a certain number of main airports. Romania therefore considers that TAROM's market exit would have a significant negative impact on passengers in terms of fare prices, airline services and convenient connections for out- and inbound transfer flights.

(131) Furthermore, Romania submits that certain developments observed after the COVID-19 pandemic regarding regional connectivity seem to constitute short-term adaptations by certain carriers to seize opportunities to cover fixed costs. According to Romania, it seems fair to assume that in the medium to long-term, such carriers will go

<sup>(68)</sup> According to the submission of the Romanian authorities of 29 March 2024, TAROM is currently operating with only one other competitor on the following international routes to/from OTP airport: Amsterdam (AMS) with KLM; Belgrade (BEG) with Air Serbia; Brussels (BRU) with HiSky; Nice (NCE) with Wizz Air; Paris (CDG) with Air France; Prague (PRG) with Czech Airlines (code share but only TAROM actually operating the route); Chisinau with HiSky and on the following domestic routes to/from OTP airport: Cluj (CLJ) with HiSky; Timișoara (TSR) with HiSky. In addition, on the route Bucharest OTP airport to Budapest that is currently solely operated by TAROM, a new entrant (Wizz Air) has announced the start of operations as from June 2024.

back to their pre-COVID-19 strategies in order to ensure the viability of routes. This concerns in particular the LCC Blue Air that had started serving certain primary airports such as Amsterdam Schiphol, London Heathrow, Paris Charles de Gaulle or Frankfurt, which was also facilitated by the temporary suspension of slot usage rules during the validity of the restrictions linked to the COVID-19 pandemic <sup>(69)</sup>. However, in September 2022, Blue Air ceased operations on all of those routes, leaving TAROM the only local operator to service such hubs. On 31 March 2023, Blue Air entered insolvency proceedings and has not carried out any commercial operations since that date. On 16 February 2024, the Commission adopted a decision finding aid granted by Romania to Blue Air under the R&R Guidelines incompatible with the Single Market and ordered Romania to recover approximately EUR 33,84 million from Blue Air <sup>(70)</sup>.

- (132) The insufficient regional connectivity, especially after Blue Air's insolvency, is aggravated by the fact that Romania's road and train network is not well developed and is in a poor state of maintenance.
- (133) As already described in the rescue aid decision <sup>(71)</sup>, Romania has the lowest quality of road infrastructure among all Member States and is among the poorest performers in road safety in the EU. Motorways and national roads in Romania account for only approximately 20 % of the road network, and approximately 90 % of national roads have only one traffic lane in each direction. Those elements hamper mobility and road safety. As for the railway infrastructure, it is in an advanced state of disrepair due to a chronic lack of maintenance, where most of the track-related assets require renewal. This reduces train speed and decreases railroad efficiency <sup>(72)</sup>. The Romanian part of the Trans-European Transport (TEN-T) Core Network for road and rail needs to be further developed. Romania submits that the Romanian regions, and in particular the North-East regions, are poorly inter-connected <sup>(73)</sup>.
- (134) As a result, air transport remains paramount for regional development and the connectivity of citizens. In particular, all seven domestic flight routes that TAROM operates <sup>(74)</sup>, connect Bucharest in Southern Romania with cities in Central and Northern Romania. Given the missing links in rail and road connections, including on routes connecting Southern parts of the country with Central and Northern parts, the air connections remain vital for efficient regional connectivity. According to the Romanian authorities, air connections between OTP airport and domestic airports take approximately one and a half hour, while travelling those routes by car or by train would take at best close to five times as long by car and over eight times as long by train. The Romanian authorities explain that, for example, a train ride from Bucharest to Satu Mare (of approximately 617 km) typically takes between 13 and 20 hours; a car ride between seven and ten hours. Similar scales apply for travelling to Oradea, Suceava, Baia Mare, Iasi, Cluj and Timisoara. According to the Romanian authorities, in case of TAROM's market exit, the [...] passengers currently transported by TAROM on the five domestic routes where no other airline is present would have to travel by road, which would significantly increase traffic and accidents on national routes (only 10 % of which have more than one lane per direction) and would further increase traveling time. Romania submits that it is unlikely that those routes would be operated by competitors due to the reasons set out in particular in recital (128).

<sup>(69)</sup> During the COVID-19 pandemic, Union rules according to which in any given year airlines must use at least 80 % of their slots in order to be able to maintain them during the following year had been temporarily amended, in connection with the restrictions imposed by Member States on airlines in order to contain the spread of the COVID-19. Those rules are set out in Council Regulation (EEC) No 95/93 of 18 January 1993 on common rules for the allocation of slots at Community airports (OJ L 14, 22.1.1993, p. 1).

<sup>(70)</sup> Commission Decision C(2024) 910 final of 16 February 2024, not yet published.

<sup>(71)</sup> In particular recitals (11) to (14).

<sup>(72)</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>(73)</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.

<sup>(74)</sup> After the closure of the routes Cluj-Iași, Iași-Timișoara and OTP-Sibiu, TAROM operates the following seven domestic routes during the restructuring period: from OTP to Baia Mare, Cluj, Iași, Oradea, Satu Mare, Suceava and Timișoara.

#### 6.7. Commitments provided by Romania

(135) To ensure the full implementation of certain restructuring measures or measures limiting distortions of competition occurring in the future, Romania has provided the following commitments:

- (a) to ensure that TAROM fully divests all its shares in [...] and by 31 December 2026 at the latest;
- (b) to ensure that TAROM leases as from [...] and fully divests by 31 December 2026 at the latest its slots at the [...] airport;
- (c) to ensure that TAROM respects a cap on the number of routes in operation, which shall not exceed a maximum of 28 routes and, as from [...] until 31 December 2026 shall not exceed 27 routes;
- (d) to ensure that TAROM respects a cap on the number of aircraft not exceeding a maximum of 18 until 31 December 2025 and 14 for the remainder of the restructuring period until 31 December 2026;
- (e) to reduce frequencies on the routes in operation on average by 28 % for regular flights (and by 27 % including charter flights), in 2026 <sup>(75)</sup> compared to the frequencies on those routes registered in 2019;
- (f) to ensure a reduction of capacity in terms of ASK reduction of [...] % throughout the restructuring period as compared to 2019 on routes that were level C1 profitable in 2019;
- (g) to ensure that TAROM refrains from acquiring shares in any company except where indispensable to ensure the long-term viability of TAROM and, in that case, subject to the Commission's prior approval; and
- (h) to ensure that TAROM refrains from publicising State support as a competitive advantage when marketing products and services.

#### 6.8. Complaint by Wizz Air Malta

(136) On 14 March 2024, Wizz Air Malta submitted to the Commission services a complaint concerning alleged unlawful State aid to TAROM. Wizz Air Malta put forward three distinct allegations as to why the State aid received by TAROM was unlawful.

(137) First, according to Wizz Air Malta, between October 2022 and December 2023, the Romanian State, through the Ministry of Transport, carried out seven capital increases into TAROM for a total amount of approximately EUR 7,8 million, that is more than EUR 6 million in excess of the amount of capital increase approved by the second damage compensation decision in the amount of approximately EUR 1,9 million. To the extent that the excess over the approved capital increase would be attributed to the first damage compensation decision, this would, according to Wizz Air Malta, amount to a substantial alteration of the authorised aid, given that the Commission authorised a State guarantee on borrowing for an amount of RON 93,88 million (approximately EUR 19,33 million), and not a capital injection.

(138) Second, Wizz Air Malta alleged that TAROM benefitted from unlawful State aid, in an amount it did not quantify, consisting in TAROM only illusorily guaranteeing its debt owed to CNAB for the provision of its services. CNAB is a State-owned company controlled by the Ministry of Transport, for the provision of its services. Wizz Air Malta submits that, according to a specific contractual guarantee provision, the Ministry of Transport (that is TAROM's principal shareholder) would need to give consent for the enforcement of the guarantee (that is to say the assets pledged by TAROM as collateral in the event of a default). This effectively means that the debtor's shareholder, which happens also to be a controlling entity of the creditor, would need to give consent for the activation of the collateral, which is a condition that a private creditor would not accept. Wizz Air Malta did not have at its disposal information on whether the Romanian government actually exercised its discretion.

<sup>(75)</sup> Frequency reductions and ASK reductions are implemented over the duration of the restructuring period and vary slightly during that period (in some years, some routes have slightly higher reductions than in the reference year 2026 and in some years slightly lower ones).

- (139) Third, according to Wizz Air Malta, TAROM's proposed sale of one or more slots at the [...] airport, which was approved by TAROM's shareholders in July 2023, could happen at a price which may not reflect the fair market value. Should the agreed price be below the market value, this could constitute an aid to the buyer. However, based on public information, it is not known to Wizz Air Malta whether TAROM is planning to proceed with the sale and at what price.

#### 6.9. Romania's observations on the complaint by Wizz Air Malta

- (140) On 28 March, 4 April, 16 April, 19 April and 24 April 2024, Romania submitted its observations regarding the complaint lodged by Wizz Air Malta.
- (141) With regard to the first allegation, concerning unlawful capital injections, Romania first explains, that, according to the legal basis for the aid, as recorded by the first damage compensation decision approving State aid in the form of a public guarantee, as well as under the guarantee agreement itself, the Ministry of Transport, as majority owner of TAROM, has the obligation to provide the financial means for ensuring the repayment of the guaranteed loan. Romania submits that, as it is not a party to the loan agreement, the Ministry of Transport cannot repay the lending bank directly and that according to Romanian law, its only means for providing TAROM with the requisite financing is by way of a capital increase against new shares.
- (142) Romania further explains that shareholder decisions approving capital injections are not always followed by actual injections, as appears from decisions recorded in subsequent shareholder meetings, which bring the actual amount of capital injections carried out on the basis of the Commission's first damage compensation Decision to RON 12 518 000 (approx. EUR 2,7 million) to date, corresponding to the first three instalments of the corresponding loan.
- (143) This amount is included in the notified restructuring aid, and in particular in the EUR 45,77 million capital increase (see recital (18)), taking into account that the amount of EUR 2,7 million was needed to cover TAROM's liquidity needs in 2023. The amount injected based on the Commission's second damage compensation decision corresponds precisely to the approved aid amount in the form of a capital increase of RON 9 439 155 (approximately EUR 1,9 million). Romania further explains that no other capital increases have taken place to date during the restructuring period.
- (144) With respect to the second allegation concerning unlawful aid resulting from additional guarantees of existing debt to CNAB encumbering certain assets of TAROM as collateral in the event of a default, the Romanian authorities consider it to be equally unfounded. This is in particular because TAROM and CNAB are two independent undertakings established under Romanian company law. Romania submits that the contractual provision on the guarantee in question, subjecting the execution of the additional collateral to the approval of the main shareholder was introduced unilaterally by TAROM's shareholders. However, while the Ministry of Transport is the majority owner of both TAROM and CNAB, it is subject to Government Emergency Ordinance No 109/2011 on corporate governance of public enterprises. Those rules specify that the public supervisory authority (that is the Ministry of Transport) cannot intervene in the decision-making process, management and current operation of public enterprises and that any decisions taken in violation of this limitation are null and void. The Romanian authorities consider that those provisions would prevent the Ministry of Transport from withholding its consent should CNAB decide to enforce its claims concerning the activation of the guarantee. Moreover, Romania underlines that TAROM and CNAB are strictly behaving as market economy operators with regard to the existing liabilities between them, as evidenced by (i) several shareholder decisions requesting CNAB's management to take all necessary measures to prevent any prejudice towards CNAB and mandating the board of directors to deal with a potential extension of guarantees, without referring to the necessity of obtaining the approval of the supervisory authority<sup>(76)</sup>; (ii) TAROM's continued payments to reduce its debt towards CNAB; (iii) the commercial decision by CNAB to defer certain dues as long as there is manifest goodwill from TAROM; (iv) the extension of guarantees in favour of CNAB with additional pledges, for example on receivables from the sale of the [...] slot as a consequence of CNAB's shareholder decision to resort to all legal means to avoid prejudice to CNAB<sup>(77)</sup>; (v) the fact that TAROM's debt is subject to delay penalties, so that CNAB receives a consideration for the extension of repayment terms; (vi) CNAB's awareness of the fact that an immediate enforcement of securities would likely lead to TAROM's insolvency, whereas the approval of the restructuring plan by the Commission would enable TAROM to repay its debt, accrued with late

<sup>(76)</sup> For example, CNAB's Shareholder Decision No 14 of 10.10.2022, points 3 and 4, CNAB's Shareholder Decision No 18 of 5.12.2022, point 3, CNAB's Convening Notice No 147 of 22.5.2023, point 1, jointly with CNAB's Shareholder Decision No 11 of 27.6.2023, point 1.

<sup>(77)</sup> CNAB's Shareholder Decision No 14, op. cit.

payment penalties in the near future. In addition, to underline the fact that the contractual provision in question has no influence on TAROM's business conduct, TAROM's board of directors has requested the shareholders assembly to remove it from the relevant securities agreement concluded between CNAB and TAROM. Romania undertook to submit the amended agreement to the Commission, once it has been enacted. On 17 April 2024, Romania submitted the Decision No 9/16.04.2024 of the general meeting of shareholders, rejecting the amendment of the guarantee agreement that introduced a provision to the effect that the execution of securities would require the consent of the supervisory authority (the Ministry of Transport) and instructing the Board of Directors to take all necessary measures to eliminate that provision from the guarantee agreement.

- (145) With regard to the third allegation concerning the sale of the [...] slot below market value, Romania submits that TAROM has done its utmost to achieve the highest sales price for the slot. This is demonstrated by many factors such as, in particular, the fact that (i) TAROM has commissioned an independent expert valuation by [...] to estimate the market value of the [...] slot sale and lease before starting the bidding process and to accompany the sales process; (ii) TAROM actively sought bids from approximately 20 companies after discussing options and potential buyers with Airport Coordination Limited, the world's largest slot coordinator; (iii) during the first sales process which started in March 2023, TAROM sought improved offers and subsequently selected the company having submitted the highest bid, before continuing contract negotiations over several months, until the bidder had to abort the process in November 2023 [...]; (iv) a second sales process was launched by TAROM in December 2023 and again, [...] (see recital (119)).

## 7. ASSESSMENT OF THE RESTRUCTURING AID MEASURES

- (146) The Commission will first assess whether the public financing of TAROM's restructuring plan as defined in recital (18) entails State aid within the meaning of Article 107(1) TFEU, and if this is the case, will subsequently determine whether such aid is lawful and compatible with the internal market.

### 7.1. Existence of State aid

- (147) 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'.

- (148) The qualification of a measure as aid within the meaning of Article 107(1) TFEU therefore requires the following cumulative conditions to be met: (i) the measure must be imputable to the State and financed through State resources; (ii) it must confer an advantage on its recipient; (iii) that advantage must be selective; and (iv) the measure must distort or threaten to distort competition and affect trade between Member States.

- (149) The Commission notes that Romania has notified the measures as constituting State aid. That notification does not discharge the Commission from itself examining whether the measures involve State aid.

#### 7.1.1. State resources and imputability to the State

- (150) As set out in recital (30) of the rescue aid decision, the RON 175 952 000 (approximately EUR 36,66 million) loan in favour of TAROM was to be granted by the Ministry of Public Finance through the State Treasury under the terms of a loan agreement between that Ministry and TAROM, in implementation of an emergency ordinance of the Romanian government. Therefore, the decision to grant the rescue loan was imputable to the State and involved

State resources. As part of the restructuring aid, the amount corresponding to the rescue loan (with interest and any foreign exchange rate differences) will be written off (see recital (18)). The decision to waive the repayment of the rescue loan with interest is taken by the State and will be borne by the State budget.

- (151) As stated in recital (19), the legal basis for granting the restructuring aid is Government Ordinance No 45/1997 as modified by Government Emergency Ordinance 113/2021 and pursuant to those Government Ordinances, the funding for the restructuring aid measures will be provided by the Ministry of Transport. The decision to grant the two restructuring aid measures was thus taken by the State and the funding for both measures comes from the State budget.
- (152) The Commission therefore concludes that the notified restructuring aid measures involve State resources and the decisions to grant the measures are imputable to the State.

#### 7.1.2. *Advantage*

- (153) The Commission is required to verify whether the measures favour TAROM in that no market operator holding shares in TAROM would, in a situation as close as possible to that of Romania, take a similar decision and grant the same measures at the same conditions, leaving aside any benefits expected by Romania in its position as public authority <sup>(78)</sup>.
- (154) The presence of such an advantage can be inferred from the fact that TAROM has significant accumulated losses and negative equity (recitals (13) and (88)), nearly all of TAROM's assets are already pledged as securities for past or current financing and TAROM has been unable to obtain sufficient capital or to raise debt finance at market conditions without public support (recitals (17), (53) and (54)).
- (155) The measures will help TAROM finance the continuation of its operations and the implementation of its restructuring plan by giving it access to finance that TAROM, given its specific situation and the current circumstances, has not been able to obtain on the market. In this regard, it is doubtful that TAROM would be able to attract such funding from the private market at similar conditions.
- (156) The Commission therefore concludes that the measures confer an economic advantage on TAROM within the meaning of Article 107(1) TFEU.

#### 7.1.3. *Selectivity*

- (157) The measures will be granted solely for the benefit of TAROM. As the Court of Justice has stated <sup>(79)</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 notified measures are not part of a broader measure of general economic policy to provide the same type of ad hoc support to all undertakings that are in a comparable legal and factual situation in the light of the objective of the measures (considering that all economic operators should in principle cover their own costs), active in the aviation sector or other economic sectors, but is made available only to TAROM.
- (158) Therefore, the Commission concludes that the measures are selective within the meaning of Article 107(1) TFEU.

#### 7.1.4. *Distortion of competition and effect on trade*

- (159) 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 aid. It is sufficient that the recipient of

<sup>(78)</sup> Judgment of the Court of Justice of 20 September 2017, *Commission v Frucona Košice*, C-300/16 P, ECLI:EU:C:2017:706, paragraph 59; judgment of the Court of Justice of 5 June 2012, *Commission v EDF*, C-124/10 P, ECLI:EU:C:2012:318, paragraphs 78, 79 and 103.

<sup>(79)</sup> Judgment of the Court of Justice of 4 June 2015, *Commission v MOL*, C-15/14 P, ECLI:EU:C:2015:362, paragraph 60.



the aid competes with other undertakings on markets open to competition. In that regard, the fact that an economic sector has been liberalised at Union level is an element which may serve to determine that the aid has a real or potential effect on competition and on trade between Member States.

- (160) TAROM provides passenger air transport services to, from and within Romania and competes on that market in particular with Wizz Air, Ryanair, HiSky, Lufthansa and other airlines. The aviation market is open to competition in the Union and service provision from one Member State to another. The measures provide financing to TAROM at conditions that it could not have obtained on the private market and free it from charges that it would have had to bear under normal market conditions. The measures thus strengthen TAROM's position on the Romanian air transport market compared to its competitors, who did not benefit from those measures.
- (161) The restructuring aid measures are therefore liable to distort or threaten to distort competition and to affect trade between Member States.

#### 7.1.5. *Conclusion on the existence of State aid*

- (162) In view of the above, the Commission concludes that the restructuring aid measures constitute State aid to TAROM within the meaning of Article 107(1) TFEU.

#### 7.2. **Lawfulness of the restructuring aid measures**

- (163) The Commission notes that capital increases totalling EUR 2,7 million have already been carried out in 2023, out of the total notified capital increase of EUR 45,77 million (recitals (18) and (19)). The Commission also notes that under the GEO, the remainder of the notified restructuring aid measures will not be implemented before their approval by the Commission (recital (19)).
- (164) In light of the above, the Commission concludes that Romania has granted that part of the notified measures without a Commission decision finding the measures compatible with the internal market. In doing so, Romania has breached the standstill obligation laid down in Article 108(3) TFEU. Thus, that part of the notified restructuring aid measures in favour of TAROM constitutes unlawful State aid.

#### 7.3. **Compatibility of the aid with the internal market**

- (165) Under Article 107(3), point (c), TFEU, the Commission may consider aid to facilitate the development of certain economic activities or of certain economic areas to be compatible with the internal market where such aid does not adversely affect trading conditions to an extent contrary to the common interest.
- (166) It does not result from the notification that the restructuring aid or the conditions attached to it, or the economic activities facilitated by the aid, could entail a violation of a relevant provision of Union law. In particular, the Commission has not sent a reasoned opinion to Romania on a possible infringement of Union law that would bear a relation to this case and the Commission has not received any complaints or information that might suggest that the State aid, the conditions attached to it or the economic activities facilitated by the aid might be contrary to relevant provisions of Union law.
- (167) According to Article 107(3), point (c), TFEU, in order for the aid to be declared compatible, on the one hand, it must aim to facilitate the development of certain economic activities or of certain economic areas and, on the other hand, it must not adversely affect trading conditions to an extent contrary to the common interest.
- (168) Under the first condition, the Commission examines whether the aid is intended to facilitate the development of certain economic activities. Under the second condition, the Commission balances the positive effects of the proposed aid for the development of the activities which the aid is intended to support against the negative effects that the aid may have on the internal market <sup>(80)</sup>.

<sup>(80)</sup> Judgment of the Court of Justice of 22 September 2020, *Austria v Commission* (Hinkley Point C), C-594/18 P, ECLI:EU:C:2020:742, paragraph 19.

- (169) In the R&R Guidelines, the Commission set out the criteria which it examines when assessing the compatibility of a company's restructuring aid with the internal market pursuant to Article 107(3), point (c), TFEU <sup>(81)</sup>.
- (170) Romania considers that the restructuring aid can be declared compatible with the internal market pursuant to the R&R Guidelines.
- (171) In view of the nature and aim of the State aid at stake and the claims of the Romanian authorities, the Commission will assess whether the planned funding supporting the restructuring complies with the relevant criteria laid down in the R&R Guidelines.
- (172) In examining whether restructuring aid has an adverse effect on trading conditions to an extent that is contrary to the common interest, the Commission carries out a balancing test in accordance with Article 107(3), point (c), TFEU and the R&R Guidelines. In carrying out that test, if the beneficiary is eligible to receive restructuring aid, the Commission weighs the positive effects of the aid against the negative effects on competition and trade between Member States created by the impact of the State aid. When making that assessment, it considers the need for State intervention, the appropriateness, proportionality, transparency of the aid, the 'one time, last time' principle and measures to limit distortions of competition, as set out in the R&R Guidelines.

#### 7.3.1. Eligibility: sectoral scope and undertaking in difficulty

- (173) In order to be eligible for restructuring aid, a beneficiary must qualify as an undertaking in difficulty as defined in Section 2.2 of the R&R Guidelines. In particular, point 20 of the R&R Guidelines sets out 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 points 20(a) to (d) of the R&R Guidelines occurs.
- (174) As explained in recital (7) of the opening decision and in recitals (6), (53) and (57) of the rescue aid decision, TAROM has depleted more than half of its subscribed share capital as a result of accumulated losses and has thus fulfilled the criterion set out in point 20(a) of the R&R Guidelines since 31 December 2018 and up to the adoption of the opening decision in July 2021 (see recital (39) of that decision). That situation has not changed since July 2021, as appears from the financial data submitted by Romania described in recitals (13), (16) and (88), showing that TAROM has continued to make losses after 2019 and had negative equity at the end of 2023. It follows that TAROM fulfils the criteria of point 20 (a) of the R&R Guidelines and thus qualifies as an undertaking in difficulty.
- (175) According to point 21 of the R&R Guidelines, a newly created undertaking, that is an undertaking in the first three years of operations in the relevant field of activity, is not eligible for restructuring aid. TAROM is not a newly created undertaking for the purpose of the R&R Guidelines, since it was established in 1954 (see recital (8)), so more than three years ago.
- (176) According to point 22 of the R&R Guidelines, a company belonging to or being taken over by a larger business group is not normally eligible for restructuring aid, unless 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.
- (177) TAROM's difficulties mainly stem from an ageing and non-homogenous fleet and operational inefficiencies (recital (15)). TAROM does not belong to a larger business group and the State has sole control over it through the Ministry of Transport (recital (8)) so that it is a public undertaking in which the State is exercising sole control by virtue of its ownership and financial participation <sup>(82)</sup>. TAROM is thus not part of a larger group nor is it in the process of being taken over by a group.

<sup>(81)</sup> R&R Guidelines, point 38.

<sup>(82)</sup> See Article 2, point (b) of Commission Directive 2006/111/EC of 16 November 2006 on the transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertakings (OJ L 318, 17.11.2006, p. 17).

- (178) It follows from the fact that the State has sole control over TAROM that, in this case, any financial support from the State to TAROM to assist it with its difficulties would qualify as aid unless carried out at market conditions. Therefore, while TAROM's difficulties are intrinsic, the question of whether they are the result of an arbitrary allocation of costs within the group, and whether the difficulties are too serious to be dealt with by the group itself does not arise.
- (179) Moreover, according to point 18 of the R&R Guidelines, undertakings active in the coal and steel sector and financial undertakings are not eligible for aid under the R&R Guidelines. As set out in recital (9), TAROM is active in the air transport of passengers, cargo and mail. It follows that TAROM is neither active in the coal or steel sector nor a financial undertaking and is thus not excluded from receiving restructuring aid pursuant to point 18 of the R&R Guidelines.
- (180) On the basis of the above, the Commission concludes that TAROM is an undertaking in difficulty and is eligible for restructuring aid.

### 7.3.2. *The aid facilitates the development of certain economic activities or certain economic areas*

- (181) Under Article 107(3), point (c), TFEU, for State aid to be considered compatible with the internal market, it must facilitate the development of certain economic activities or certain economic areas.
- (182) In that regard, to show that restructuring aid is intended to facilitate the development of such activities or areas, the Member State granting such aid must demonstrate that the aid aims to prevent social hardship or address a market failure. In the specific context of restructuring aid, the Commission notes that, as acknowledged in point 43 of the R&R Guidelines, market exit is important for the wider process of productivity growth. Thus, merely preventing an undertaking from exiting the market does not sufficiently justify the granting of State aid. On the contrary, rescue and restructuring aid are among the most distortive types of State aid, as they interfere with the process of market exit. However, in certain situations, restructuring an undertaking in difficulty may contribute to the development of economic activities or areas, also beyond the very activities carried out by the beneficiary. This is the case where in the absence of such aid, the beneficiary's failure would lead to situations of market failure or social hardship, inhibiting the development of the economic activities and/or areas that would be affected by such situations. A non-exhaustive list of such situations is provided in point 44 of the R&R Guidelines.
- (183) Such situations occur, inter alia, when the beneficiary, whose failure the aid seeks to avert, is carrying out an important service which is hard to replicate and where it would be difficult for any competitor simply to step in, which could lead to a risk of disruption of that important service (point 44(b) of the R&R Guidelines). By enabling the beneficiary to continue its operations, the aid thus prevents such market failure or social hardship. In the case of restructuring aid, however, this is only true where the aid enables the beneficiary to compete in the marketplace on its own merits, which can only be ensured if the aid is premised on the implementation of a restructuring plan that restores the beneficiary's long-term viability.
- (184) While the Commission, in the opening decision, raised no doubts regarding the fulfilment of the criterion of social hardship and/or market failure, the Commission received comments on this issue from an interested party, the airline Wizz Air. Wizz Air argued in particular that TAROM had lost market share over the past years to Wizz Air and to Blue Air, who, at the time when Wizz Air provided its comments, held 40 % and 13 % of the market respectively. As a result, according to Wizz Air, TAROM did not play an important role on the Romanian air transport market that could be equated with that of a national infrastructure provider.
- (185) The Commission, hence, will first assess whether the aid is intended to prevent a situation of market failure or social hardship (Section 7.3.2.1) and whether it is accompanied by a restructuring plan to restore the beneficiary's long-term viability (Section 7.3.2.2).

7.3.2.1. Prevention of social hardship or market failure contributing to the development of an economic activity or area

- (186) Among the situations where rescuing an undertaking in difficulty may contribute to the development of economic activities or areas, point 44(b) of the R&R Guidelines relates to cases where there is a risk of disruption of an important service which is hard to replicate and where it would be difficult for any competitor simply to step in.
- (187) Based on the data submitted by Romania, the Commission considers that TAROM plays an important role in providing connectivity to Romanian citizens, businesses and regions.
- (188) In particular, TAROM, unlike its main competitors currently active on the Romanian market, i.e. Wizz Air and Ryanair (recital (10)), operates a hub-and-spoke network (recital (130)), connecting the various regions of Romania to the capital and ensuring connecting international flights. This allows passengers to have access to routes that are not served by their proximity airport.
- (189) Moreover, TAROM is focussed on providing connections to primary airports at good frequencies and convenient times for its passengers, which is particularly important for time sensitive travellers such as business clients (recital (129)).
- (190) Connections to primary airports at good frequencies and convenient times are of particular importance for the Romanian market, because of the poor state of the Romanian rail and road network, which renders travel by rail or road much longer than air travel, unreliable and uncomfortable (see recitals (132) to (134)). As at 29 March 2024, TAROM is the sole operator on ten routes, while on nine others, there is only one other airlines present <sup>(83)</sup> (recital (130)). This means that if TAROM were to exit the market, the routes where it is currently operating alone would not be served anymore, while there would be a monopoly situation on those where there is currently only one other airline present. Only on nine <sup>(84)</sup> routes TAROM is currently facing more than one competitor (see also recital (197)).
- (191) TAROM's main competitors on the Romanian market operate point-to-point connections and are unlikely to change their routes model because they aim to achieve the most cost-efficient outcome by selecting airports and/or slots that offer the cheapest price (recitals (127) and (128)). Moreover, traditional airlines such as Lufthansa and Air France-KLM, are mainly channelling passengers from Bucharest towards their own hubs rather than connecting Romanian regions between themselves or Bucharest with other important cities around the world (see also recitals (128) and (129)). This would leave many regional passengers, who rely on the hub-and-spoke model, unserved and would negatively affect business clients, who have to optimise traveling time and need reliable connections at convenient hours and frequencies.
- (192) The Commission notes that in point 44 (b) of the R&R Guidelines the reference to a national infrastructure provider is merely by way of example and does not imply that every undertaking worthy of restructuring thanks to the importance of the service it provides within the meaning of that point would need to be equated to the role of a national infrastructure provider.
- (193) Moreover, the size of the market the undertaking is active in or that undertaking's share of the market is also not determinant for establishing the importance of the service that risks being disrupted. This has been confirmed recently by the Court of Justice in an appeal case brought by Wizz Air <sup>(85)</sup> concerning the rescue aid in favour of TAROM. In its judgment in that case, the Court held in particular that 'although the size of the market in which the beneficiary of the aid operates and its market share may be factors indicating the importance of the service provided by that beneficiary, it does not follow either from point 44(b) of the R&R Guidelines or from its context, that that importance necessarily depends on those factors and that, in particular, the failure of the beneficiary of the aid is likely to give rise to serious social hardship or severe market failure only on condition that the market in which it

<sup>(83)</sup> Wizz Air has announced the start of operations on the OTP-Budapest routes as from 17 June 2024. From that date, TAROM would then be the sole operator on nine routes and a duopoly would exist on ten routes.

<sup>(84)</sup> Once TAROM will have sold its [...] slot, the number of routes where it faces more than one competitor will be eight.

<sup>(85)</sup> Judgment of the Court of Justice of 11 January 2024 in Case C-440/22 P, *Wizz Air Hungary v Commission*, ECLI:EU:C:2024:26, paragraphs 35 to 39.

operates exceeds a certain size'. The Court of Justice confirmed the General Court's view that the limited size of the market did not prevent a service provided on that market from being classified as important within the meaning of the R&R Guidelines, notably where, as the General Court had found, the cessation of operations by TAROM, entailing a concrete risk of disruption of some passenger air transport services in Romania, would be detrimental to the connectivity of the regions in Romania exclusively served by that airline and to the economic situation of those regions.

- (194) While it is true that TAROM's market share had been decreasing or stagnant over some years, the beneficiary has been able to significantly increase its passenger numbers in recent years, going from 2,41 million in 2017 to 3,13 million in 2019 (see also recital (99)). With the implementation of its restructuring plan as well as the cessation of operations of Blue Air in September 2022 (see also recital (131)), this trend is likely to continue in the future, as is also shown by TAROM's business projections. In any event, it is not TAROM's market share but its role in providing the connectivity to Romania's regions that attests to the importance of TAROM's service within the meaning of point 44 (b) of the R&R Guidelines.
- (195) As already set out in recitals (43), (44) and (45) of the opening decision, the Commission is aware that competitors have entered some domestic routes operated by TAROM. For instance, in summer 2020 Blue Air entered three of the routes where TAROM was the only operator: Bucharest-Oradea (which route, following the cessation of operations by Blue Air is again solely operated by TAROM), Cluj-Iași and Iași-Timișoara (on which TAROM is currently not operating anymore and no other airline has stepped in since Blue Air and TAROM stopped operating those routes), followed by HiSky on the routes Bucharest-Timișoara and Bucharest-Cluj in 2021. This seems to indicate that the size of the aircraft is not necessarily an impediment for competitors to enter domestic routes, where demand is in general lower than on international routes. In addition, as regards international routes, the few examples of price differences between TAROM and other carriers that Romania provided are not sufficiently robust to allow the Commission to draw a conclusion as to the likely price increases and lack of alternative entry if TAROM were to exit those routes.
- (196) However, while other carriers could enter – at least temporarily – on some of the routes, it cannot be assumed that competitors would be able and ready to take over TAROM's role in ensuring convenient connectivity for Romanian citizens and businesses at affordable prices (see recital (130)) by replicating all or a major part of the routes and flight services that TAROM has been operating at national and international level without disruptions for customers in the medium to long term. Especially, after Blue Air's market exit, there is a clear risk that regions in Northern and Central Romania, which are also not well connected by road and rail to the South, would be compelled to resort to very long and uncomfortable train rides or to resort to the road network which is mostly in a poor state of maintenance and is largely one-lane only (see recitals (133) and (134)).
- (197) In particular, as at 29 March 2024, out of a total of 28 routes served by TAROM, the beneficiary is the sole operator on five domestic and four international routes (see recital (127)) and on 10 further routes (eight international and two domestic) there is only one other competitor (duopoly) (see recital (130)). There is no evidence that competitors would be ready to replicate this network provided through the hub-and-spoke system that TAROM is operating. The latter connects regional airports to the capital via OTP airport, while competitors on the Romanian market are mainly providing point-to-point services or are transferring passengers to their hubs (that is Munich, Vienna, Warsaw, etc.). In particular, since TAROM exited the five routes Iași-Timișoara, Cluj-Iași, Bucharest-Sibiu, Bucharest-Erevan, Bucharest-Tbilisi, no other competitor has stepped in. After the cessation of operations by Blue Air in September 2022, only one other airline, the new entrant HiSky, is currently carrying out intra-Romanian flights on two routes, namely the routes Bucharest-Timișoara and Bucharest-Cluj (recital (130)).
- (198) The air connections of the various regions with the capital are particularly important in Romania, because of the poor state of the Romanian road and rail network. The latter is therefore not a viable option for travelling on longer distances, as is evidenced by the particularly long delays (and sometimes difficult conditions) prevailing on many routes. Romania explains, for example, that the Romanian regions and in particular the North-East regions are

poorly inter-connected, with important links of the trans-European transport network (TEN-T) still to be completed (see recital (133)). As a result, air transport is paramount for regional development. In this respect, the seven domestic routes operated by TAROM which connect OTP airport with central and northern airports, remain vital for efficient regional connectivity (see recital (134)). The routes served by TAROM connect Romania's northern regions not only with the south of the country but also, through Bucharest, with destinations abroad.

- (199) The fact that TAROM is of limited size does not per se prevent its service from being regarded as important within the meaning of point 44 (b) of the R&R Guidelines. Furthermore, the existence of a certain degree of substitutability does not in itself exclude the risk of disruptions. For example, time sensitive passengers, such as business travellers might be significantly hampered in their travel, given the poor road and train network, which in turn may affect a large number of enterprises that rely on the flexibility offered by TAROM's numerous and convenient connections from regional airports towards the capital and back and by extension the regions these enterprises are active in. This is a service not offered by LCCs such as Wizz Air, whose offer is very price sensitive and typically based on less expensive slots or airports with the lowest fees. Moreover, TAROM's main competitors mainly operate point-to-point connections, while Lufthansa and Air France-KLM mainly connect passenger to their own hubs (see recital (128)) and HiSky is not offering the same service level as TAROM, flying to secondary airports, at more inconvenient slots and offering only a small number of routes. In this context, the loss of TAROM's hub-and-spoke system combined with the level of service it is offering (convenient slots, good frequencies, many primary airports, affordable prices) would be particularly detrimental and there is no indication that competitors would replicate such a network and service.
- (200) The Commission therefore considers that the restructuring aid will prevent the risk of disruptions on the Romanian air transport market that TAROM's market exit is likely to give rise to.

*Conclusion on prevention of social hardship or market failure*

- (201) While Romania also invoked the circumstances referred to in points 44(c) and 44(f) of the R&R Guidelines, the Commission is satisfied that the condition of avoiding social hardship or market failure is met in accordance with point 44(b) of the R&R Guidelines, and it is thus not necessary to assess Romania's arguments in this regard.
- (202) Also, it is to be noted that the Commission did not raise doubts as regards the fulfilment of this compatibility criterion in its opening decision, while the comments raised by Wizz Air on its own initiative have been addressed in this section.
- (203) In the light of the above, the Commission concludes that the aid contributes to the development of the economic activity of air transport in Romania in that it prevents the exit of an undertaking that would have triggered a serious risk of disruption to an important service that is hard to replicate and where it would be difficult for any competitor simply to step in (point 44 (b) of the R&R Guidelines).

**7.3.2.2. Restructuring plan and return to long-term viability**

- (204) Under point 46 of the R&R Guidelines, the granting of restructuring aid must be conditional on the implementation of a restructuring plan that would restore the viability of the beneficiary. The implementation of restructuring measures to remedy the causes that led to the beneficiary's difficulties, by enabling it to become viable in the long-term, is a necessary condition for the restructuring aid to serve the development of the economic activities and areas where the beneficiary operates.
- (205) Under points 45 to 48 of the R&R Guidelines, restructuring aid should only be granted to support a realistic, coherent and far-reaching restructuring plan, the measures of which must be designed to restore long-term viability within a reasonable timescale, excluding any further aid beyond the one supporting the beneficiary's restructuring plan. The restructuring plan must identify the causes of the beneficiary's difficulties and the beneficiary's own weaknesses, and outline how the proposed restructuring measures will remedy the beneficiary's underlying problems.

- (206) The results of the restructuring must be demonstrated in a baseline and in a pessimistic scenario, by identifying performance parameters and the main foreseeable risk factors. To demonstrate its long-term viability, the beneficiary must achieve an appropriate return on capital invested after covering all its costs, including depreciation and financial charges, without depending on optimistic assumptions about factors such as variations of price or demand, and must be able to compete in the marketplace on its own merits.
- (207) TAROM's updated restructuring plan has been designed to tackle the problems identified by the beneficiary after a thorough assessment of the reasons for its financial difficulties and with the purpose of making it viable again. As set out in recital (15), TAROM's main problem was its ageing and non-homogenous fleet. This is fully addressed by the fleet renewal program (see Section 6.2.1), which will result in a more uniform, modern fleet adapted to TAROM's needs and will trigger significant cost savings. Furthermore, the problem of unprofitable routes will be addressed by the routes optimisation programme which is being implemented during the restructuring period and which will result in reducing the number of aircraft per route and in reaching C3 profitability on all routes by 2029 (see recital (64)). The second major problem of TAROM was its high operating costs, which will be tackled by increasing organisational and operational efficiency, as well as through cost optimisation (see recital (66) and Sections 6.2.3 and 6.2.4). Through the staff reorganisation, these measures will also result in improving identified work force issues. Finally, TAROM also plans to increase ancillary revenues, which were very limited in the past, and has started selling extra services (recital (65)).
- (208) The six-year duration of the plan, encompassing the period from 1 January 2021 until 31 December 2026, is not unreasonably long, given that Romania's air traffic is expected to recover to pre-COVID-19 levels only by the summer of 2024 (see recital (89)). Moreover, some restructuring measures are by their nature being implemented over a longer time period, such as for example the fleet renewal (where first the lease agreement needs to be negotiated and signed, then planes need to be built and delivered) and will thus deploy their full savings and efficiencies only in 2025 according to TAROM's restructuring plan (recitals (59) to (62)).
- (209) In the next section, the Commission will first assess the credibility of the assumptions underlying the beneficiary's updated restructuring plan and will then assess the evidence of the beneficiary's return to viability at the end of that plan.

*Assessment of the main assumptions underlying the financial projections*

- (210) The Commission has carefully reviewed the key assumptions underlying the financial projections of the updated restructuring plan submitted by Romania.
- (211) With regard to the credibility of the assumptions underlying the revenue projections, the Commission notes that, with respect to volumes, TAROM applied Eurocontrol's post-COVID-19 projection scenarios for air passengers demand<sup>(86)</sup> to the routes it will continue to operate following the implementation of the measures to limit the distortions of competition (which include the reduction of its fleet over the restructuring period as well as reductions in the number of routes served by TAROM and reductions of the number of flights on those routes). The level of reduction in the number of flights compared to 2019 can be seen in Table 11.

Table 11

**Evolution of TAROM's (actual and projected) number of flights since 2019**

[...]

Source: TAROM's updated Restructuring Plan.

- (212) The combination of the reduced total number of routes, flights and aircraft results in an overall ASK decrease of [...] % (counting only C1 profitable routes), in a reduction in ASK of [...] % (counting all routes), and in a reduction of [...] % (when charter flights are included) compared to the 2019 baseline, as can be seen in Table 12. The

<sup>(86)</sup> See footnotes 48 and 50 with respect to TAROM's choice and use of Eurocontrol's forecasts.

Commission also notes that the traffic forecast by TAROM on all the routes included in its projections is based on TAROM's own actual numbers and model until 2022 as well as IATA's total estimated market for the remainder of the restructuring period <sup>(87)</sup>.

Table 12

**TAROM's ASK evolution (in million ASK)**

[...]

Source: TAROM's Updated Restructuring Plan.

- (213) While ASK measures supply, the volume of passengers represents a measure of demand. The use of larger aircraft on several destinations will stimulate demand through better pricing, help to maximise profitability of routes and help to grow the load factors. Passenger load factor, which determines the portion of filled or demanded capacity is associated with ASK capacity. Indeed, with a reduced and capped aircraft fleet, TAROM would be in a position to operate viably only if it can use its aircraft more efficiently, with higher load factors.
- (214) In 2019, TAROM was far from operating as an efficient airline as its load factor for the year was a mere [...] %, the lowest out of the top five airlines operating in the Romanian market. This was also significantly lower than the average load factor recorded at European level of 85,2 % <sup>(88)</sup>.
- (215) Since then, commercial optimisation measures have led to a constant improvement in this critical efficiency indicator for TAROM although there is still significant room to grow when compared to competition.

Figure 2

**Load factor <sup>(89)</sup> for the top five airlines active in Romania (% , 2019-2023 estimate)**

[...]

Source: TAROM's Updated Restructuring Plan.

- (216) In this respect, as shown in Table 13, TAROM made significant progress after the COVID-19 pandemic period, with load factor increases of close to [...] % on average in 2023 when compared to 2019.

Table 13

**TAROM's Load factor evolution 2023/2022 (post-COVID-19) v 2019 (pre-COVID-19)**

[...]

Source: TAROM's Updated Restructuring Plan.

<sup>(87)</sup> The total market for 2018-2022 is based on IATA's calculations of TAROM's market shares and on TAROM's actual PAX data for 2018-2022. Total market for 2023-2029 based on 2019 value and the Eurocontrol recovery rates. Market shares are based on IATA calculations concerning air traffic in 2018-2022. TAROM's market share for 2023-2029 is based on the PAX estimated in its model and on the total estimated market.

<sup>(88)</sup> From 'IATA State of the region: Europe' dated June 2020 that can be accessed at <https://www.iata.org/en/iata-repository/publications/economic-reports/regional-briefing---europe---june-2020/>. An alternative source is the information published by ICAO for 2019 which shows a load factor approximately the same (85 %) available at [https://www.icao.int/annual-report-2019/Documents/ARC\\_2019\\_Air%20Transport%20Statistics.pdf](https://www.icao.int/annual-report-2019/Documents/ARC_2019_Air%20Transport%20Statistics.pdf) (page 4).

<sup>(89)</sup> For Wizz Air, Lufthansa, Ryanair and Air France-KLM, the load factor presented is calculated for the total operating base, not only for Romania. Load factors are provided as per the annual reports (according to financial year calendars) for all airlines apart from TAROM (company data presented, including an estimate for 2023). For Lufthansa and Air France-KLM 2023 figures, the data is presented for the first nine months of 2023, while for Wizz Air and Ryanair the data concerns the financial year ending at 31 March 2023.



- (217) In addition to the information presented in table 13, the Romanian authorities indicated that TAROM's average load factor for 2023 reached [...] % as can be seen in Table 5. They further explained that TAROM expects slightly lower load factors in 2025 and 2026 as a result of the introduction of the new, larger capacity aircraft, which will lead to a slight increase in ASK volume <sup>(90)</sup> (even though the routes and frequencies will not change). However, the load factor should slowly rise again in subsequent years (starting from 2027) with the expected operating performance improvements of TAROM (see Table 5 in recital (101)).
- (218) As a result, in line with Eurocontrol's market forecast (see recitals (89) to (91), TAROM's traffic is expected to reach pre-COVID-19 levels by 2025 and to grow, on average, by [...] % per year for the period 2025-2029, thereby reaching an expected total annual number of passengers of [...] million at the end of the restructuring period as shown in Figure 3.

Figure 3

### Evolution of TAROM's capacity and regulated flights <sup>(91)</sup>

[...]

Source: TAROM's Updated Restructuring Plan.

- (219) As such, and as can be seen in Table 14, the number of passengers estimated by TAROM for both the Baseline and the Setback scenarios are, in 2024, 2025, as well as at the end of the restructuring period in 2026, below the Eurocontrol driven recovery curves – both the base and the low scenarios. In particular, TAROM's Baseline scenario remains conservatively below the Eurocontrol Base curve for the remainder of the period analysed, and below the Eurocontrol Low curve for 2024, 2025 and 2026. Similarly, TAROM's Setback scenario remains below the Eurocontrol Low curve in 2024, 2025 and 2026, marginally exceeding this curve starting from 2027.

Table 14

### Number of TAROM's passengers v Eurocontrol recovery driven curves, only for routes to be operated as per the restructuring plan (in million PAX)

[...]

Source: TAROM's Updated Restructuring Plan.

- (220) The accuracy and the credibility of those projections is further strengthened by the Romanian authorities' indication that the actual number of passengers TAROM flew in 2022 <sup>(92)</sup> on the regular routes, which it will continue to operate, was [...] % higher than its forecasts on the basis of the Eurocontrol projections, in the updated restructuring plan submitted to the Commission.
- (221) In particular, with respect to international flights, [...].
- (222) With respect to domestic flights, [...].
- (223) While, contrary to 2022, the actual number of passengers for the full year 2023 (2 333 839) is [...] % lower than TAROM's estimation in the updated restructuring plan (which was carried out based on the actual figures for the first 9 months of that year), that negative variance is largely attributable to the unrest that started in October 2023 in the Middle East and which affected traffic to Tel Aviv, Amman and Cairo, as well as charter flights to [...]. When those destinations are removed from the calculation, the variance in the actual figures compared to the projections for regular international flights is lower than 2 % and that for regular domestic flights is lower than 1 %, as can be seen in Table 15.

<sup>(90)</sup> This increase is planned to take place at the end of the restructuring period as a result of the fleet restructuring and following the prior reduction as one of the restructuring measures implemented as part of the updated restructuring plan.

<sup>(91)</sup> Regulated flights encompass scheduled commercial (domestic and international) flights, as opposed to charter (non-scheduled) flights.

<sup>(92)</sup> In TAROM's reply to the Commission's Request for Information (number 3) submitted on 24 February 2023 and from its submission on 1 February 2024.

Table 15

**Number of passengers in 2023, variation of actual v estimated values (PAX, %)**

[...]

Source: TAROM's Updated Restructuring Plan.

- (224) Overall, in 2022 and 2023, two years with major unpredictable events outside TAROM's control (Russia's war of aggression against Ukraine and unrest in the Middle East), the variance in the number of passengers when compared to the projections in the updated restructuring plan were either positive (2022) or negative by less than 4 % (2023).
- (225) In summary, taking the above into consideration, the Commission considers that the estimation of the number of passengers in the Baseline and in the Setback scenario is realistic and credible for the following main reasons:
- (1) it combines the evolution of TAROM's fleet capacity with a more efficient commercial approach which would see its load factor improve to better levels than its starting position in 2019;
  - (2) the load factor is, across the entire restructuring period, estimated based on conservative levels compared with competitors (and actually the lowest among them);
  - (3) the Baseline scenario number of passengers is below both the Eurocontrol Base curve and low curve for 2024 and 2025;
  - (4) the Setback scenario number of passengers remains below the Eurocontrol Low curve in 2024, 2025 and 2026, and only marginally above as from 2027 (which is outside of the restructuring period);
  - (5) variances between the actual figures and the projections included in the restructuring plan were either positive (2022) or slightly negative for justifiable reasons independent of TAROM's conduct of operations (2023).
- (226) Finally, at the request of the Commission and notwithstanding the above, the Romanian authorities demonstrated that TAROM's profitability could even withstand an additional, unexpected, reduction in the number of passengers up to an annual 5 % variation against the Baseline scenario. This would correspond to the worst of Eurocontrol Base v Low variations in the period 2024-2026, and worse than the variance of the 2023 projections when compared to the actual passenger numbers recorded (that is, – 3,7 % overall, while on the regular routes outside the Middle East the difference was lower). In such a case (and maintaining a simultaneous [...] % fuel price increase, see recital (238) for the impact of jet fuel price sensitivities), the viability of TAROM would still be achieved in 2025 and maintained in 2026 <sup>(93)</sup>.
- (227) With regard to the credibility of the assumptions underlying TAROM's pricing projections, the Commission takes note of TAROM's new differentiated commercial strategy that should enable it to optimise pricing across the customer base (as described in recitals (94) to (98), as well as the prudent pricing approach generally applied by TAROM in particular with respect to the adjustment of prices to inflation <sup>(94)</sup> over the duration of the restructuring period (as explained in recital (98) and as can be seen in Table 4).
- (228) Similarly, the Commission acknowledges the very conservative projections of the contribution by ancillary services sales to the overall revenues from passengers as they will not reach more than [...] % at any point in time during the restructuring period (as explained in recitals (65) and (98)).

<sup>(93)</sup> As demonstrated in the Romanian authorities' analyses submitted to the Commission on 21 March 2024.

<sup>(94)</sup> Indexation rates used in the projections for 2023, 2024, 2025 and 2026 are 9,3 %, 5,6 %, 4,2 % and 3,30 % respectively and as such appear reasonable and in line with the Commission's latest forecast for Romania of 9,7 % in 2023, 5,8 % in 2024 and 3,6 % in 2025 (available at [https://economy-finance.ec.europa.eu/economic-surveillance-eu-economies/romania/economic-forecast-romania\\_en](https://economy-finance.ec.europa.eu/economic-surveillance-eu-economies/romania/economic-forecast-romania_en)).

- (229) For the above reasons, the Commission considers that TAROM's projections in terms of revenues from passengers are reasonable and credible over the restructuring period, in particular with respect to the high inflation environment the largest price increases have taken place between 2022 and 2024, and the very conservative projections of increases over the remainder of the restructuring period.
- (230) With regard to the credibility of the assumptions underlying the costs projections, the Commission notes that TAROM's updated restructuring plan includes the implementation of measures aimed at: (i) increasing operational efficiency and work effectiveness through a combination of re-organisation of its activities, aircraft fleet reconfiguration, personnel restructuring, process improvement and adoption of the latest technologies; as well as (ii) enhancing the utilisation of resources with a focus on costs reduction through, for instance, a fuel consumption reduction programme, employees relocation and the letting of the head office building. The Commission further notes that TAROM has closed a large number of unprofitable ticketing agencies, which has generated additional cost savings.
- (231) The projected savings <sup>(95)</sup> of those various measures are estimated by TAROM to amount to less than EUR [...] million per year when fully implemented. Those savings represent less than 1 % of TAROM's annual cost base and, as such, cannot be considered as overestimated or unrealistic.
- (232) For instance, the variable maintenance and aircraft expenses are the most influential elements of costs generated by the exploitation of the fleet. The values differ significantly between aircraft due to their characteristics, allocations per routes, age and especially contractual costs of the leasing and TAROM's internal accounting policies (the updated restructuring plan forecasts that variable maintenance of Boeing 737-800, ATR 72-600 and Boeing 737-8 MAX aircraft will increase by [...] % in 2025-2026, [...] % in 2027 and [...] % in 2028-2029, [...]).
- (233) On the basis of the above, the Commission finds TAROM's overall costs projections to be credible.
- (234) However, for conservativeness and in addition to the above, the Commission tested TAROM's financial projections with respect to possible adverse developments in the jet fuel price. Indeed, fuel cost is a significant component of any airline's operating cost structure and, as such, deserves particular attention when assessing projections and their possible impact on the profitability and viability of any airline. This is particularly true for TAROM as it has not achieved a net profit over the last decade.
- (235) When first preparing its restructuring plan and related financial projections, TAROM used, as a baseline for the jet fuel price estimation, a data series from Fitch (historical and forecast values for Jet/kerosene, Rotterdam) and supplemented this information with IATA's jet fuel price monitor as published on IATA's website and media reports on BMI <sup>(96)</sup> jet fuel forecast.
- (236) As a result, the corresponding restructuring plan's assumptions were as follows:

<sup>(95)</sup> Part of the savings generated by the restructuring measures are offset by an increase in certain costs. The closure of the agencies will move part of the PAX reservations to online booking and/or other channels that have higher commissions. Similarly, the externalisation of the handling will generate an increase of the handling costs. However, in both of those cases the increases in costs are offset by the savings generated. The negative impact has been reflected as a percentage increase in costs.

<sup>(96)</sup> BMI is a provider of independent and data-driven market insights, analysis and forecasts across themes, countries and sectors, with deep insight into emerging markets. BMI is part of Fitch Solutions which is a provider of insights, data and analytics. Fitch Solutions is part of Fitch Group, a global leader in financial information services with operations in more than 30 countries. Fitch Group is owned by Hearst. See [www.fitchsolutions.com](http://www.fitchsolutions.com).

Table 16

**Average of the Fitch data series with reports on BMI for average annual (forecast) values (USD/ton)**

Year	2022	2023	2024	2025	2026	2027	2028	2029
Baseline jet fuel price (USD/ton)	1 105	852	829	837	821	821	821	821

Source: TAROM's Restructuring Plan.

- (237) However, in 2022, TAROM's actual average cost of jet fuel was [...] USD/ton. Compared to the above baseline value (1 105 USD/ton), this corresponds to a [...] multiplier (actual v baseline). In October 2023, based on the information available for the first nine months of that year, TAROM's actual average cost of jet fuel was [...] USD/ton, representing a multiplier of [...] versus the considered baseline (852 USD/ton).
- (238) In light of those discrepancies, the Commission requested the Romanian authorities to review their fuel assumptions so to make sure that their financial projections would be both realistic and credible.
- (239) The Romanian authorities proceeded with such an adjustment of the projections for the annual average fuel price with a view to accommodating potentially higher future prices. This resulted in an estimated average jet fuel price for TAROM in 2023 of [...] USD/ton.
- (240) Consequently, the multiplier versus the baseline considered for 2023 became [...] ([...] v [...] USD/ton). That multiplier was further applied to the forecasted baseline series, generating the jet fuel price assumptions that are now included in the updated financial projections of the updated restructuring plan as follows:

Table 17

**Adjusted projections of jet fuel price in restructuring plan (USD/ton)**

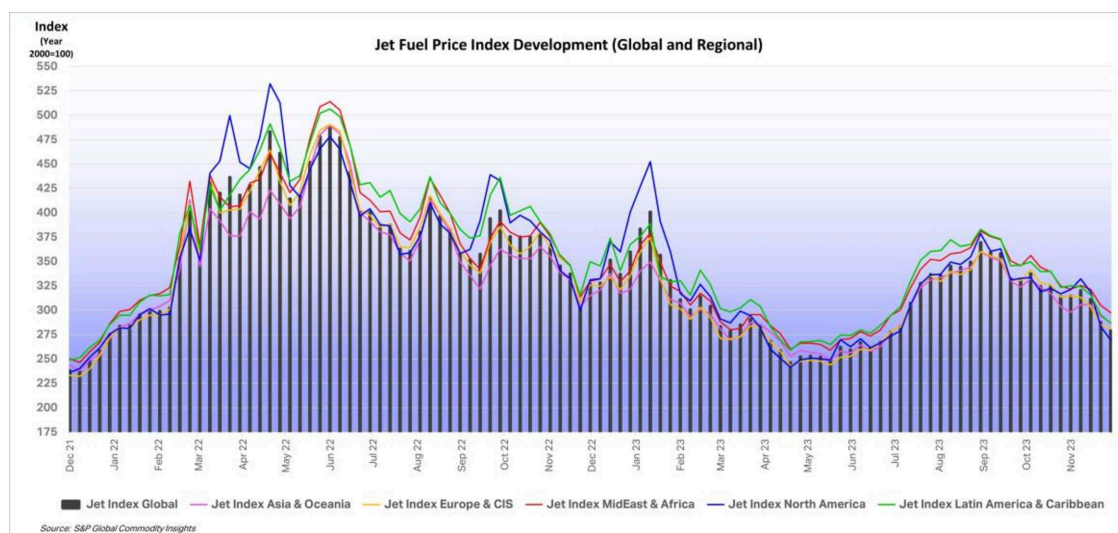
[...]

Source: TAROM's updated Restructuring Plan.

- (241) Acknowledging the volatility of the oil market and related fuel products, the Commission considers those projections as reasonable. This approach is further shown to be conservative by the fact that, since the adjustment was implemented, jet fuel prices have been steadily (and significantly) decreasing as can be seen in Figure 4. For example, for the week ending 15 December 2023, the jet fuel price for Europe was 824,80 USD/ton, almost 18 % lower than the 969,85 USD/ton value of 6 October 2023.

Figure 4

Chart from IATA's Jet Fuel Price Monitor web page as of 15 December 2023 (<https://www.iata.org/en/publications/economics/fuel-monitor/>)

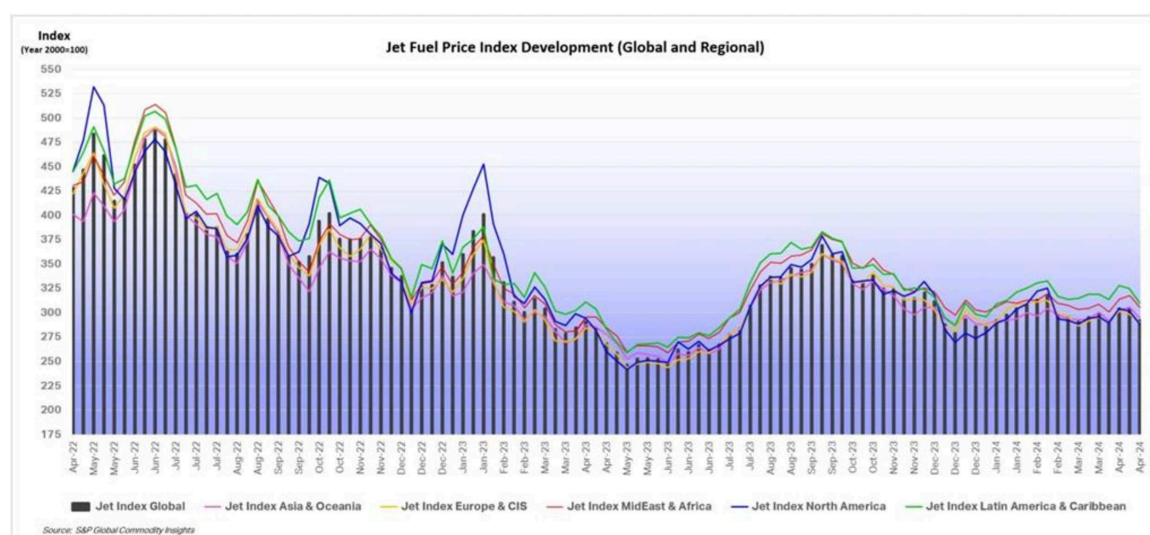


Source: TAROM's Updated Restructuring Plan.

- (242) Recent developments remain within the boundaries of TAROM's projections as can be seen in an updated version (as of 24 April 2024) of the Jet Fuel Price Index Development, as depicted in Figure 5.

Figure 5

Chart from IATA's Jet Fuel Price Monitor web page as of April 2024 (<https://www.iata.org/en/publications/economics/fuel-monitor/>)



- (243) On that basis, the Commission considers that TAROM's fuel price assumptions are more pessimistic in terms of future development than the current actual evolution of the market and can therefore be considered as conservative.
- (244) To further confirm this assessment, the Commission requested the Romanian authorities to perform fuel price sensitivities and to check how the financial projections and TAROM's profitability would be affected by hypothetical fuel price variations.

- (245) As explained above, the average price of fuel for 2023 was estimated at [...]USD/ton and the actual price at the end of 2023 was [...]USD/ton, thus already lower than this estimation. This confirms that the adjusted projections of the updated restructuring plan were conservative.
- (246) The Commission notes that TAROM's sensitivity calculations show that, other things remaining equal, the financial model could withstand an increase of the fuel price up to [...] % with respect to the reasonable and conservative assumptions already built into the projections.
- (247) In light of the above, the Commission, whilst acknowledging the uncertainty of possible future oil price developments, considers that the values projected for the remainder of the restructuring period are conservative, reasonable and therefore credible.

*Assessment of the beneficiary's return to viability*

- (248) Having established the credibility of the assumptions underlying the financial projections, the Commission will now assess whether, based on those projections, the beneficiary is able to return to viability by the end of the restructuring period. More specifically, the Commission will verify whether, by the end of 2026, the beneficiary can be expected to generate a sufficient rate of return from its operation and to be able to compete on its own merits.
- (249) Under the Baseline scenario, thanks to the generation of revenues comparable to the pre-COVID-19 situation (that is, 2019) and the contributions from the identified restructuring measures, the Commission notes that TAROM will be able to post a positive EBITDA in 2023, for the first time since 2019 (recital (107)). TAROM's operating income (EBIT) and net income are, in turn, projected to become positive in 2024 thanks to the expected evolution of air traffic, the improvement of TAROM's load factor, cost and revenue level based on the continued implementation of the restructuring measures in particular with respect to the fleet reconfiguration and cost saving initiatives (recitals (109) and (110)). As the Commission considers the various assumptions in terms of revenues (both in volumes and prices) and costs themselves to be realistic and credible (see recitals (227) to (247)), the results and consequences of the implementation of those projections in TAROM's updated restructuring plan all sustain the argument that the restructuring plan will secure the long-term viability of the beneficiary as required under the Commission's R&R Guidelines.
- (250) This conclusion applies not only to the indicators listed above (EBITDA, EBIT and net income) but also to TAROM's equity position which is expected to be positive under both scenarios by the end of the restructuring period (in the case of the Baseline scenario with EUR [...] million by 2026 and EUR [...] million when considering the lease rather than the sale of the [...] slot), albeit only marginally (with EUR [...] million) in the case of the Setback scenario considering the lease rather than the sale of the [...] slot.
- (251) Among other things <sup>(97)</sup>, as a consequence of the level of the net income indicated above, the ROCE, which considers the return generated by an undertaking on the assets financed by both debt and equity capital, is also expected to be positive by the end of the restructuring period (in 2026) at [...] % in the case of the Baseline scenario (and slightly above [...] % in the case of the Setback scenario) (recitals (112) and (113)). Such levels of ROCE compare favourably to those of TAROM's peer group (recital (112)) and are vindicated by the above assessment by the Commission of the financial projections the Romanian authorities submitted (see recitals (227) to (247)). Those projections are underpinned by a number of restructuring measures positively affecting TAROM's revenue and cost bases and demonstrate the expected structural increase of TAROM's profitability.

<sup>(97)</sup> The decrease of the level of capital employed resulting from the fact that TAROM will no longer have any significant fleet ownership (following the restructuring measures affecting its fleet composition, in particular the sale of own aircraft and its replacement with leased one as from 2025) contributes also positively to the level of the ROCE.

(252) As such, the projected level of ROCE by the end of the restructuring period in both the Baseline and the Setback scenarios is considered by the Commission to meet the requirement that the returns generated by the updated restructuring plan would secure the long-term viability of the beneficiary. This conclusion is evidenced by the fact that TAROM's 2026 ROCE ([...] %) is expected to be higher than the WACC (of [...] % as calculated at the end of June 2023) and that, as a result of the implementation of the restructuring plan, TAROM is expected to create value for its shareholders and other providers of capital. The Commission assessed the estimations of the WACC parameters (described in footnote 53) and found in particular that:

- (a) The 2,4 % risk free rate used by Romania corresponds to the 10-year German government bond daily yield average over the period 2023 to 2024 as well as the average over the most recent 6 and 12 months, as per data from the German central bank <sup>(98)</sup>.
- (b) According to a widely used and recognised source, the average country risk premium for Romania is 2,8 % as of January 2024 <sup>(99)</sup>. The 3,6 % country risk premium used by Romania is thus conservative.
- (c) For the 0,56 asset beta assumption provided by Romania, the Commission run a conservative sensitivity. By excluding certain peers from the sample identified by Romania <sup>(100)</sup>, the Commission arrived at an asset beta of 1, which the Commission used in its comparative analysis.
- (d) Information from the comparison dataset shows an equity market risk premium of 4,6 % as of January 2024 <sup>(101)</sup>. The equity market risk premium of 6,5 % used by Romania is thus conservative.
- (e) Concerning the credit spread, the Commission conservatively estimated TAROM's 2026 likely credit rating on the basis of its expected performance in 2026 and, arrived at a more conservative credit spread of 2,35 % <sup>(102)</sup>.
- (f) The tax rate of 16 % used by Romania corresponds to Romania's corporate tax rate.

(253) Table 18 shows a comparison of the results of Romania's and the Commission's analyses. As can be seen, the Commission's assumptions as described above resulted in a WACC range between [...] % and [...] %, with an average of [...] % for TAROM. This is in line with the WACC of [...] % provided by Romania. Moreover, both the WACC estimated by Romania and even the upper limit of the range identified by the Commission are below the ROCE of [...] % that TAROM is expected to reach in 2026 (see recital (112)). The Commission therefore considers that a WACC of [...] % is reasonable.

<sup>(98)</sup> The data is available on the Bundesbank's website (Daily yields of current Federal securities | Deutsche Bundesbank).

<sup>(99)</sup> See Prof. Damodaran's dataset updated in January 2024 (ctryprem.xlsx (live.com)).

<sup>(100)</sup> These companies are: Public Joint Stock Company Aeroflot – Russian Airlines; Sas Ab (Publ); Jet2 Plc and Türk Hava Yollari Anonim Ortakligi. The Commission notes that the exclusion of three of these companies (Public Joint Stock Company Aeroflot – Russian Airlines; Sas Ab (Publ); and Türk Hava Yollari Anonim Ortakligi) leads to an upward adjustment of the asset beta and it is thus very conservative. The Commission notes that even if Jet2 Plc is left in the sample, the WACC results only changes marginally, by 0.1% in all of the Commission's three WACC scenarios.

<sup>(101)</sup> See Prof. Damodaran's dataset updated in January 2024 (ctryprem.xlsx (live.com)).

<sup>(102)</sup> Following Standard and Poor's methodology (see S&P Global, RatingsDirect, Corporate Methodology, 19 November 2013), the Commission looked at the two core financial indicators (debt to EBITDA ratio and Funds From Operations to Debt ratio, sourced from TAROM's updated Restructuring Plan) that are used to identify a company's credit rating. These ratios point to a likely S&P rating of BBB or equivalently Moody's rating of Baa2, which correspond to a credit spread of 2,35 % (see Prof. Damodaran's data, updated in January 2024, ctryprem.xlsx (live.com)).

Table 18

**WACC assessment**

WACC	Romania	Commission		
		low	average <sup>(1)</sup>	high
Risk-Free rate	2,4 %	2,4 %	2,4 %	2,4 %
Country risk premium	3,6 %	2,8 %	3,2 %	3,6 %
Asset beta	0,56	1,01	1,01	1,01
Target gearing	49 %	49 %	49 %	49 %
Equity market risk premium	6,5 %	4,5 %	5,5 %	6,5 %
Cost of equity	13,3 %	11,4 %	13,1 %	14,9 %
Tax	16,0 %	16,0 %	16,0 %	16,0 %
Credit spread	1,0 %	2,4 %	2,4 %	2,4 %
Cost of debt	6,0 %	6,4 %	6,7 %	7,1 %
WACC (post-tax)	9,7 %	8,9 %	10,0 %	11,1 %

<sup>(1)</sup> The value of each parameter used in the 'average' WACC scenario is computed as the simple average of the values of that parameter in the 'low' and 'high' WACC scenarios.

Source: TAROM's updated Restructuring Plan and Commission's analysis.

- (254) Furthermore, the Commission considers that it is common practice and hence reasonable to use a WACC calculated as it stands currently in order to determine what return investors should be expecting on an investment to be made at present but based on future free cash flows, and therefore to compare it with expected future returns measured, among others, by the projected ROCE <sup>(103)</sup>.
- (255) As part of its assessment, the Commission has also considered TAROM's ability to service its short- and long-term financial obligations through the review of ratios such as the net debt-to-EBITDA ratio and the EBITDA to interest ratio.
- (256) Both ratios will achieve satisfactory levels by the end of the restructuring period. Indeed, the net-debt to EBITDA ratio is expected to fall below [...] by the end of 2026, which is considered as investment-grade level <sup>(104)</sup> and contributes to confirming the return to viability of the beneficiary at the end of the restructuring period. It is the growth of TAROM's projected EBITDA over the restructuring period (recitals (107) and (108)) as a result of the revenues and cost saving improvement measures planned by TAROM, as detailed above, that are expected to contribute to the level of that ratio at that point in time.

<sup>(103)</sup> While it is possible to make reasonable estimates and projections based on certain assumptions and analysis, predicting the exact future WACC of a company with certainty is challenging due to the various factors involved and uncertainties inherent in financial markets (the WACC is indeed influenced by various factors such as interest rates, market risk premiums, and the company's capital structure; these factors can change over time due to economic conditions, shifts in market sentiment, or changes in the company's financial structure). Using the current WACC as benchmark can therefore be considered as a reasonable and acceptable proxy short of being able to predict what it could/should be in the future.

<sup>(104)</sup> See S&P Global, RatingsDirect, Corporate Methodology, 19 November 2013, Table 18.



- (257) Similarly, the interest coverage ratio (EBITDA to interest) is expected to develop favourably over the restructuring period thanks to TAROM's improved operating and financial performance and should reach a satisfactory level of [...] by the end of 2026 <sup>(105)</sup> (recitals (115) and (116)), even if at a lower level to that TAROM's peers achieved prior to the COVID-19 pandemic.
- (258) Both ratios demonstrate the ability of TAROM to service its short- and long-term obligations, which is a sign that the beneficiary will be able to perform its operations in the long-term without further aid.
- (259) In accordance with point 50 of the R&R Guidelines, the Romanian authorities have prepared a pessimistic scenario (see recitals (103) to (105)) in order to observe the impact on TAROM's financial results. That Setback scenario is based on more adverse assumptions than those described above.
- (260) As explained in recitals (252) to (259), the Commission's assessment of the Setback scenario confirms that even under more pessimistic assumptions, TAROM would still be able to cover all of its costs, including depreciation and the servicing of its debt obligations, and to stand on the market without the need for additional restructuring aid at the end of the restructuring period, just like in the case of the Baseline scenario.
- (261) Further, given the relevance of the evolution of fuel prices and of passenger numbers for TAROM's viability by the end of the restructuring period, the Commission has requested that the Romanian authorities perform specific, additional sensitivity analyses on these parameters. This request was intended to check the degree to which the updated restructuring plan could accommodate changes in these parameters.
- (262) The basis for such sensitivity analyses are both the Baseline scenario including the sale of the [...] slot (where no variation in fuel price and/or PAX is applied and is referred to as Scenario 'O' or 'B' (for Baseline) that is, the F0/P0 combination in the summary Figure 5) and the related Setback scenario (which already combines a [...] % increase in fuel price with a 2 % decrease in the number of passengers when compared to the Baseline scenario and is referred to as Scenario '1' or 'Sb' (for Setback) that is, the F1/P1 combination).
- (263) Building on those assumptions, Scenario '2' (F2/P2) includes both an increase of [...] % in fuel price and a 4,6 % decrease in the number of passengers when compared to the Baseline scenario (or F0/P0 or 'B'), while Scenario '3' (F3/P3) includes both an increase of [...] % in fuel price and a 6,5 % decrease in the number of passengers when compared to the Baseline scenario.
- (264) As can be seen from Figure 6 below, while both the Baseline and the Setback scenarios generate positive equity positions (as well as net income) <sup>(106)</sup> at the end of the restructuring period, whenever a combination of assumptions includes either a fuel price (increase of [...] %) or passenger numbers (decrease of 6,5 %) evolution from Scenario '3', TAROM's equity position will always (and the net income in most cases) be negative at the end of the restructuring period. In addition, any combination of the following assumptions is expected to lead to negative equity positions:
- (1) fuel price increase of [...] % (F2) with PAX decrease of 2 % (P1);
  - (2) fuel price increase of [...] % (F2) with PAX decrease of 4,6 % (P2).

<sup>(105)</sup> Values between 5 and 9 are considered satisfactory. See S&P Global, RatingsDirect, Corporate Methodology, 19 November 2013, Table 18.

<sup>(106)</sup> Please refer to footnote 107 for clarifications about the relevant levels of projected net income under those circumstances.

Figure 6

**Outcome of the sensitivity analyses on the level of TAROM's equity position and net income <sup>(107)</sup> (YE 2026) in the case of a sale of the [...] slot**

	F0	F1	F2	F3
P0	B			
P1		Sb		
P2				
P3				

Legend:

B Baseline or Scenario 0 (=F0/P0)

F1/P1 Setback scenario or Scenario 1 (=Sb)

F0/P0 Baseline (no variation v baseline) (= B)

F1-F2-F3 Scenarios 1, 2 and 3 for fuel sensitivities

P1-P2-P3 Scenarios 1, 2 and 3 for PAX sensitivities

(265) For the sake of completeness, it must however be indicated that, in the case of the Setback scenario considering the lease rather than the sale of the [...] slot, no other combination than the Sb scenario (F1/P1) will result in a positive equity position/net income at the end of the restructuring period. This means that, in the event that the [...] slot would not be sold but rather leased, any possible combination worse than that of the Setback case (assuming the sale of the [...] slot, that is, 'Sb' in Figure 6) would result in a negative equity/net income <sup>(108)</sup> at the end of the restructuring period to the extent that the income achieved from the disposal of the slot would not be available to offset the lower (passenger) revenues and higher (fuel) costs stemming from either of the Scenarios 2 or 3.

(266) Based on the above, only the combinations F0/P0 (that is, the Baseline scenario excluding the disposal of the [...] slot), F0/P1, F1/P0 and F1/P1 (that is, the Setback scenario excluding the disposal of the [...] slot) would generate a positive equity position/net income <sup>(109)</sup> by the end of the restructuring period (in other words would be indicated as 'green' in Figure 6).

(267) Based on the validation analysis conducted by the Commission of the fuel price and passenger numbers assumptions at the outset of the review of TAROM's updated restructuring plan and of the resulting Baseline and Setback financial models (see recitals (227) to (246)), the Commission has concluded that the combinations that would result in negative equity positions/net income <sup>(110)</sup> (including those considered in recitals (265) and (266)) are based on extreme assumptions which, given the already aggressive starting points of the Baseline and Setback scenarios in those respects, are highly unlikely to materialise barring any exceptional macro-economic and/or geopolitical

<sup>(107)</sup> For accuracy purposes, it must be clarified that the projected net income is not negative but barely above zero in the following 3 combinations: F3/P0 (projected net income of EUR [...]), F2/P1 (projected net income of EUR [...]) and F0/P3 (projected net income of EUR [...]). All other combinations generate a negative net income. For the purposes of its analysis and for simplicity and ease of reference in the context of the present Decision, due to very limited positive amount of net income, the Commission considers that such levels of net income can be assimilated to being not positive (i.e. equal to zero or less) and therefore lumped together with the other combinations' net income levels (even if, arguably, it would not be necessary to do so as the positivity of those combination's net income further supports and validates the Commission's conclusion on those aspects of its assessment).

<sup>(108)</sup> Please refer to footnote 107 for clarifications about the relevant levels of projected net income under those circumstances.

<sup>(109)</sup> Please refer to footnote 107 for clarifications about the relevant levels of projected net income under those circumstances.

<sup>(110)</sup> Please refer to footnote 107 for clarifications about the relevant levels of projected net income under those circumstances.

developments. As such, they can be dismissed as unrealistic in the context of the stress testing of TAROM's financial projections. This is all the more the case knowing that a combination that is actually worse than the Setback scenario (that is, F1/P2, which includes a fuel price increase of [...] % with a PAX decrease of 4,6 %) would itself still result in a positive equity position/net income by the end of the restructuring period (admittedly considering the sale rather than the lease of the [...] slot).

- (268) In view of the above, the Commission's doubts raised in the opening decision have been alleviated. As a consequence, the Commission concludes that the proposed updated restructuring plan is feasible, coherent and far-reaching and is capable of restoring the long-term viability of TAROM within a reasonable timeframe, taking into account the specificity of its business and the time needed to implement and reap the benefits of the planned investments. In that respect and given the duration and contents of the restructuring plan and the market on which TAROM operates, it is appropriate that Romania sees to it that TAROM effectively implements the measures included in the restructuring plan in a timely manner as a condition for the compatibility of the aid. Romania or TAROM should take any action needed to address possible deviations from the financial trajectory and projections that inform the restructuring plan.

### 7.3.3. *Effect on competition and trading conditions between Member States*

- (269) In order to assess whether the aid does not unduly affect competition and trading conditions, it is necessary to identify the positive effects of the aid for the development of an economic activity as well as other positive effects of the aid; to identify the negative effects of the aid on competition and trade; and to examine whether the negative effects are sufficiently limited by mitigating factors ensuring the necessity, appropriateness, proportionality and transparency of the aid. Finally, it is necessary to assess whether the positive effects of the aid outweigh the remaining negative effects of the aid taking into account the mitigating factors, and whether on balance, the aid's impact on the internal market remains positive.

#### 7.3.3.1. *Necessity and incentive effect of the aid*

- (270) Under point 53 of the R&R Guidelines, in order to demonstrate the need for State intervention, Member States that intend to grant restructuring aid must provide a comparison with a credible alternative scenario not involving State aid, demonstrating how the intended objective of avoiding market failure or social hardship would not be attained or would be attained to a lesser degree without the aid. Also, in order to demonstrate that restructuring aid has an incentive effect, Member States must show that, in the absence of the aid, the beneficiary would have been restructured, sold or wound up in a way that would not have achieved the intended objective of avoiding market failure or social hardship (point 59 of the R&R Guidelines).
- (271) The objective of the restructuring aid is to avoid TAROM going out of business, and thereby to avert a situation of market failure and social hardship, which would inhibit the development of air transport services in Romania. That objective is achieved through the implementation of the updated restructuring plan, partially financed by the restructuring aid, which averts TAROM's imminent insolvency, the loss of its operating licence and the cessation of operations that would certainly occur in the absence of aid.
- (272) The updated restructuring plan shows that both the liquidity and solvency issues of the beneficiary need to be addressed to solve its financial problems. Without the aid, in the short-term, TAROM would not be able to comply with its financial obligations or to access market financing (see recitals (15) and (17) and Section 6.1). Moreover, TAROM could not implement its restructuring measures due to a lack of funding, which would not only perpetrate the problems that caused its difficulties but also lead to the grounding of aircraft (see recitals (54) and (55)). In the long term, given the significant accumulated losses (see recitals (13) and (15)) that in the absence of aid would continue and eventually lead to TAROM's insolvency, TAROM is unable to fulfil its financial obligations. It needs to be recalled that TAROM already meets, at least since February 2020, the criteria for being considered an undertaking in difficulty (see recital (11)) and that this has not changed since then (see recital (13)). In the absence of the restructuring aid, its market exit would in all likelihood be inevitable, given TAROM's existing indebtedness, the

fact that all of its assets with a certain value are pledged as collateral for existing financing or debt, the ensuing unavailability of private market financing, the real risk of the loss of TAROM's operating licence and of the grounding of its fleet (recital (17) and Section 6.1. The restructuring aid is therefore necessary for the successful completion of the updated restructuring plan, the implementation of which, in turn, seeks to remedy TAROM's weaknesses, to make it viable in the long term and so to facilitate the development of air transport services in Romania. Without the restructuring aid TAROM would exit the market, depriving Romanian citizens, businesses and regions of an essential instrument of regional connectivity necessary for transport as well as regional economic and social development. The requirement of the necessity of the aid laid down in points 38(b) and 53 of the R&R Guidelines is thus met.

- (273) On the basis of the above, the Commission also concludes that the aid has an incentive effect, as without the restructuring aid TAROM would almost certainly exit the market, risking a disruption of the important service that it provides. Hence, the requirement that the aid has an incentive effect set out in points 38(d) and 59 of the R&R Guidelines is met.

#### 7.3.3.2. Appropriateness of the aid

- (274) Under points 38(c) and 54 of the R&R Guidelines, restructuring aid will not be considered compatible with the internal market if other less distortive measures allow the achievement of the same objective; also, restructuring aid must be properly remunerated. Point 58 of the R&R Guidelines provides that the State aid instruments chosen must be appropriate to the solvency or the liquidity issue they intend to address.
- (275) TAROM faces problems of solvency and liquidity, which the restructuring aid needs to address. The combination of the instruments of capital injection and debt write-off (recital (18)) that are provided as restructuring aid addresses both the significant deterioration of TAROM's equity, which is deeply negative, and the lack of means for servicing existing debt and meeting cash flow needs for regular operation.
- (276) In that respect, the Commission considers the restructuring aid of EUR 95,3 million as appropriate as regards the form, for two main reasons. Firstly, given that TAROM is an undertaking in difficulty whose considerable losses of the past have resulted in negative equity since at least 2020 (recital (13)), in the absence of the restructuring aid improving its solvency, the beneficiary would be unable to build enough equity to offset past losses and to attract significant long-term funding in capital markets. The restructuring aid provides TAROM with the necessary funding in equity to strengthen its solvency and balance sheet position. Secondly, the liquidity projections show that, without the restructuring aid, in 2024 the cash generated from TAROM's operations would be negative if some of the debts (such as rescue aid) were repaid (see recitals (54) to (56)). A major cash deficit forecasted for end-2024 would not be covered and TAROM would not have enough funds to secure the delivery of the four Boeing 737-8 MAX aircraft or pay the leasing rates for its existing aircraft. The Commission did not raise concerns on that aspect in the opening decision.
- (277) For those reasons, the Commission concludes that the form of the restructuring aid is the most appropriate way to address TAROM's problems and that the instruments chosen address both the liquidity and solvency problems of the beneficiary.
- (278) As regards the remuneration to the State, as a result of the significant reduction of the amount of restructuring aid as compared to the initial restructuring plan and the elimination of the direct grant planned under the initial restructuring plan, the Commission's doubts raised in the opening decision in that regard have been alleviated. Moreover, under the updated restructuring plan, the State will be remunerated through expected positive net earnings increasing the value of the State's stake in TAROM. In particular, as a result of the share capital increase, the State's stake in TAROM will increase from the current level of 97,22 % to approximately 98,5 %, which will allow the State to reap almost all the upsides from a successful restructuring of TAROM. Such remuneration to the State can be considered appropriate and the planned restructuring aid is thus appropriately remunerated.

(279) In those circumstances, the Commission considers that the restructuring aid is appropriate.

### 7.3.3.3. Proportionality

(280) Under point 38(e) of the R&R Guidelines, restructuring aid must not exceed the minimum needed to achieve the objective sought by that aid. The amount and intensity of restructuring aid must be limited to the strict minimum necessary to enable the restructuring to be undertaken, in the light of the existing financial resources of the beneficiary, its shareholders or the business group to which it belongs. In particular, a sufficient level of own contribution to the costs of the restructuring must be ensured and, where State support is given in a form that enhances the beneficiary's equity position, burden sharing measures must be implemented. The assessment of those requirements will take account of any rescue aid granted beforehand (point 61 of the R&R Guidelines).

(281) The own contribution of the beneficiary of the restructuring plan must be real and actual and should normally be comparable to the aid granted in terms of effect on the solvency or liquidity position of the beneficiary. Pursuant to point 63 of the R&R Guidelines, the Commission needs to assess whether the various sources of own contribution are real and aid-free. According to point 64 of the R&R Guidelines, the Commission normally considers the own contribution to be adequate if it amounts to at least 50 % of the restructuring costs.

(282) The Commission needs to verify whether the various sources of funding of the updated restructuring plan are actual, that is to say sufficiently certain to materialise during the restructuring period and excluding expected future profits.

(283) The sources of own contribution provided by TAROM come from a finance lease (recital (76)) and the sale of aircraft (recital (78)). As regards the sale of aircraft, TAROM has concluded purchase agreements for EUR [...] million (concerning the sale of four Boeing 737-300 aircraft, one Boeing 737-300 engine, and seven ATR 42-500) (recital (76)). The proceeds stemming from the buyers of these assets are actual and real resources, increasing TAROM's cash position and thus contribute to the restructuring. Given that all buyers of these assets are commercial undertakings that paid a price which resulted from a bidding process (recital (76)), the means are also free of aid. As regards the finance contract concluded for the lease of a new aircraft with a value of approximately EUR [...] million, excluding interest, the lease agreement has been signed. The contribution is therefore actual (contract is signed), real (contributing to the financing of the restructuring through the pre-financing of aircraft obtained from the lessor) and free of aid (negotiated with a private buyer on commercial terms without any State guarantee).

(284) As regards other sources of revenues envisaged by TAROM (recital (80)), namely revenues from the sale of its participations in [...], revenues from the sale of the slot at the [...] airport and the sale of additional aircraft (Airbus 318), they cannot be considered as real and actual. In particular, the sale of the [...] slot is currently being negotiated but no buyer has been selected or price agreed nor a fortiori any agreement signed to that effect. The same is true for the sales of the participations. Valuations have been carried out and agreements for the sales obtained from TAROM's decision-making bodies, but no binding offer has to date been received. In addition, as stated in the opening decision, the envisaged sales of participations cannot be considered as aid free in the absence of having demonstrated compliance with the market economy operator principle (see recital (28)). The sale of the Airbus 318 aircraft is more advanced, however, only a non-binding letter of intent has been signed to date [...]. Should those operations materialise during the restructuring period, they will contribute to reinforce TAROM's viability. However, currently it cannot be considered as sufficiently certain that the sale of those assets would materialise. They therefore do not constitute a real and actual own contribution.

(285) The Commission can therefore accept an amount of EUR 77,66 million as real, actual and aid free own contribution by TAROM to the costs of restructuring and considers that its doubts raised in the opening decision in that regard have been allayed. In view of the fact that the total restructuring costs amount to EUR 172,96 million and that they are financed with restructuring aid for an amount of EUR 95,3 million, the own contribution contributes with 44,9 % to the financing of the restructuring costs and, thus, for less than 50 %.

- (286) In line with point 64 of the R&R Guidelines, the Commission may accept a contribution that does not reach 50 % of the restructuring costs in exceptional circumstances and in cases of particular hardship, if the amount of that contribution remains significant. Those circumstances and cases must be demonstrated by the Member State.
- (287) In the current circumstances, following the outbreak of the COVID-19 pandemic, the Commission considers that, in the case of TAROM and following the Commission guidance provided in respect of the 'Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak' <sup>(111)</sup>, it may be justified that the own contribution remains below the threshold of 50 % of the restructuring costs, because it remains significant and includes additional fresh funding at market conditions.
- (288) The Commission acknowledges that the COVID-19 pandemic and the measures taken to contain it have created exceptional circumstances for the beneficiary, in the context of a serious disturbance of the economy within the meaning of Article 107(3), point (b), TFEU. In this context and since 2020, the activity of TAROM was hit by the COVID-19 pandemic, both on the demand and on the supply side (recital (9)). The COVID-19 pandemic has further resulted in the situation that debt funding markets have been largely shut down or limited for certain sectors and financial institutions in general have reduced their credit limits.
- (289) While the COVID-19 pandemic has ended and the Temporary Framework has expired, the aviation industry has been particularly hit by the impact of the pandemic. According to Eurocontrol forecasts (see recital (91)), air traffic recovered to pre-COVID-19 levels only in the course of 2023, which means 3 years after the height of the crisis. As can be seen from Figure 1, TAROM was hit significantly harder than the industry average in 2020 and its recovery was more difficult in 2021. While TAROM's recovery accelerated in 2022, it remained below the Eurocontrol average recovery rate until 2023 and is expected to remain below the Eurocontrol average recovery rate in both Eurocontrol's baseline and low scenarios up to and including 2025. TAROM's slower growth and recovery to pre-COVID-19 levels compared to the industry average might be partially attributed to the delayed fleet renewal, the effects of which are expected to take effect in 2025 at the earliest.
- (290) Since the own contribution amounts to 44,9 % of the restructuring costs, which constitutes a significant part of those costs and is not far from the 50 % threshold, since the major part of it (approximately 80 %) is provided in the form of fresh financing, and taking into account the impact that the COVID-19 pandemic has had on TAROM's operations, the Commission concludes that in the present case an own contribution of 44,9 % is acceptable.
- (291) Pursuant to points 65, 66 and 67 of the R&R Guidelines, State support given in a form that enhances the beneficiary's equity position can have the effect of protecting shareholders and subordinated creditors from the consequences of their choice to invest in the beneficiary, thus creating moral hazard and undermining market discipline. Consequently, aid to cover losses should only be granted on terms that involve adequate burden sharing by existing investors and State intervention should take place after losses have been fully accounted for and attributed to the existing shareholders and subordinated debt holders. Adequate burden sharing will also mean that any State aid that enhances the beneficiary's equity position should be granted on terms that afford the State a reasonable share of future gains in value of the beneficiary, in view of the amount of State equity injected in comparison with the remaining equity of the company after losses have been accounted for.
- (292) The restructuring aid does not incentivise moral hazard or excessive risk taking that would benefit shareholders or creditors. As set out in Section 6.3.3, the Romanian State that is now the aid provider has been overseeing as majority shareholder the strategic and commercial decisions of TAROM. The company's operation has also not been funded with subordinated debt or hybrid (loss-absorbing) funding likely to be partly written-off in line with the burden sharing requirements of the R&R Guidelines. In that setting, burden sharing by the minority shareholders will be achieved by way of a partial absorption of losses through the capital reduction and subsequent

<sup>(111)</sup> Communication from the Commission – Temporary framework for State aid measures to support the economy in the current COVID-19 outbreak (OJ C 91 I, 20.3.2020, p. 1), as amended by Commission Communications C(2020) 2215 (OJ C 112 I, 4.4.2020, p. 1), C(2020) 3156 (OJ C 164, 13.5.2020, p. 3), C(2020) 4509 (OJ C 218, 2.7.2020, p. 3), C(2020) 7127 (OJ C 340 I, 13.10.2020, p. 1), C(2021) 564 (OJ C 34, 1.2.2021, p. 6), C(2021) 8442 (OJ C 473, 24.11.2021, p. 1) and C(2022) 7902 (OJ C 423, 7.11.2022, p. 9).

capital injection as described in Section 6.3.3. First, TAROM's losses will be partly absorbed by the capital reduction of RON [...] billion. This will be followed by a share capital increase by the State of EUR 43,07 million, which will dilute the stake of minority shareholders <sup>(112)</sup> from an initial 2,75 % to approximately [...] %. In that respect, TAROM's minority shareholders contribute to the restructuring by way of their shareholdings absorbing losses and appropriate dilution of their participation, thus diminishing the need for State aid and reducing moral hazard.

(293) The Commission therefore concludes that the restructuring aid is proportionate.

#### 7.3.3.4. 'One time, last time' principle

(294) To ensure that the negative effects of the aid are limited in order to avoid undue effects on competition and trade and to ensure that the overall balance is positive <sup>(113)</sup>, aid must be granted to undertakings in difficulty in accordance with the 'one time, last time' principle limiting such aid for a period of ten years.

(295) The Commission allows restructuring aid in support of only one restructuring operation and provided, if appropriate, that more than ten years have elapsed since an earlier granting of restructuring aid or after the restructuring plan has come to an end or was halted <sup>(114)</sup>. The Commission permits exceptions to that rule where restructuring aid follows rescue aid as part of a single restructuring operation <sup>(115)</sup>.

(296) The restructuring aid to TAROM supports only one restructuring operation. TAROM (including any subsidiaries controlled by it) did not receive rescue or restructuring aid in the past ten years, apart from the rescue aid approved in February 2020 (see recital (11)) which was granted for six months, which forms a continuum with the restructuring aid under assessment, and with which it forms a single restructuring operation. Therefore, the 'one time, last time' principle is respected.

#### 7.3.3.5. Measures limiting distortions of competition

(297) As explained in points 87 to 93 of the R&R Guidelines, measures to limit distortions of competition generated by restructuring aid and should be set out in proportion to the distortive effects of the aid, and depend on several factors, in particular: (i) the size and the nature of the aid and the conditions and circumstances under which it is granted; (ii) the size and relative importance of the beneficiary in the market and the characteristics of the market concerned; and (iii) the extent to which moral hazard concerns remain following the application of the own contribution and burden sharing measures.

(298) The structural measures might include divestment of assets, reducing capacity or market presence. They should favour the entry of new competitors, the expansion of existing small competitors or cross-border activity, taking into account the market or markets where the beneficiary will have a significant market position after the restructuring, in particular those with excess capacity (points 78 and 79 of the R&R Guidelines). Behavioural measures should ensure that aid finances only the restoration of long-term viability and that it is not abused to prolong serious and persistent market structure distortions or to shield the beneficiary from healthy competition (point 83 of the R&R Guidelines).

(299) As set out in recitals (117) to (124), Romania puts forward the following structural measures to limit distortions of competition: (i) downsizing of activities through the closing of routes, reducing frequency on existing routes and fleet reduction resulting in the capacity reduction expressed as an ASK reduction; and (ii) [...] slot lease and/or sale; and (iii) divestitures of shares in profit-making vertically related companies.

<sup>(112)</sup> Public companies CNAB and Romatsa RA and the private Investment Fund Muntenia; see recital (8).

<sup>(113)</sup> Point 38(f) of the R&R Guidelines.

<sup>(114)</sup> Points 70 and 71 of the R&R Guidelines.

<sup>(115)</sup> Point 72 a) of the R&R Guidelines.

- (300) With regard to the downsizing of activities, as set out in recital (118), it involves the closure of 14 routes out of the 41 that TAROM operated in 2019, representing a reduction of 17 % of the total number of flights operated in 2019 and 18 % of passengers carried. This means a closure of one-third of TAROM's routes, which constitutes a significant part of its activities. While none of the routes concerned was C3 profitable in 2019, it needs to be noted that at the time TAROM only had three such routes (OTP – Budapest, OTP – Sofia and Brussels-Strasbourg), as operations were heavily affected by the inefficient business model. This impact can be partly eliminated by looking at the C1 profitability of routes. In that perspective, 10 out of 14 routes had positive results in 2019. TAROM was experiencing growth on 12 of the 14 routes and 9 of them concern congested airports, where slots are in high demand. On one of the most congested airports in its portfolio, namely [...] airport, TAROM will offer a pair of slots (see recital (119)) for lease starting from October 2024, and ultimately it will offer that slot pair for sale. Those closures clearly give opportunities to competitors to expand on a number of attractive routes. The Romanian authorities committed that TAROM will not re-open any of the closed routes during the restructuring period and will sell the slot at [...] airport [...] but no later than at the end of the restructuring period in 2026 (see recital (119)).
- (301) Despite the fact that TAROM's restructuring period started in 2021, the Commission considers it appropriate to assess the route closures and capacity reductions with regard to the state of operations in 2019 (instead of 2020, as the year immediately preceding the restructuring period), because TAROM's operations in 2020 were significantly affected by the travel restrictions imposed to counteract the spread of the COVID-19 pandemic, as set out in recital (118).
- (302) On its remaining routes, TAROM will partly reduce frequencies; namely, there will be a 28 % reduction in the total number of regular flights (and 27 % reduction if charter flights are included) in 2026 compared to the 2019 levels (see recital (121)). Given that in 2022 there was competition on all routes concerned by frequency reductions with the exception of one (Satu Mare), it can be expected that competitors will be interested in increasing the frequencies of their flights on those routes, especially given the fact that nine of the routes concerned involve congested airports. The reduction in frequencies coupled with the closure of routes and the fleet reduction from 25 aircraft in 2019 to 14 by 2025 that will be maintained until the end of the restructuring period, will result in an ASK reduction of [...] % – and an ASK reduction of [...] % on C1 profitable routes – compared to 2019 levels. This represents an important downsizing of profitable activities.
- (303) Romania has committed to ensure that TAROM will operate a maximum of 18 aircraft until 2025 and a maximum of 14 aircraft for the remainder of the restructuring period.
- (304) Finally, as set out in recital (124), TAROM will divest its participations in [...] and [...]. However, given that only TAROM's [...], only the divestiture of TAROM's participation in [...] can be expected to reduce TAROM's market presence. The divestiture of the stake in [...] will further reduce TAROM's profit-making activities, its presence in the market and again offer the possibility to competitors to enter this profitable business and so to enter or strengthen their position in the Romanian market. The Romanian authorities have committed to ensure that TAROM will sell its participations in [...], as well as in [...], but no later than at the end of the restructuring period in 2026 (see recital (124)).
- (305) This clear package of measures to reduce capacity and activity together with the firm commitments offered by Romania constitute a significant improvement as compared to the initial restructuring plan and have alleviated the Commission's doubts raised in the opening decision.
- (306) Given TAROM's size and market share (see recital (9)), the Commission considers that a downsizing of activities that would go beyond the levels proposed by Romania might prejudice TAROM's business model and affect its long-term viability. Taking into account the considerable amount of fresh financing adduced by TAROM in the form of a finance lease for a new Boeing 737-8 MAX (see recital (76)) and which represents over one-third of the total cost of restructuring, the planned share capital decrease of approximately RON [...] billion out of total share capital of RON 2,26 billion, which represents a significant effort by shareholders to absorb losses, the fact that a total absorption of losses is not possible for TAROM due to the fact that its accumulated losses exceed by far its share capital, the projected dilution of minority shareholders from 2,75 % to [...] %, which amounts to a devaluation of their shareholding of over [...] % (see recital (81)), as well as the deferral of debt obtained from important creditors and



the abstention to reclaim leased aircraft obtained from all lessors (recital (85)), the Commission considers that the risk of moral hazard has been effectively limited and that the package of measures described in recital (300) will open up significant capacity to competitors and offer them the opportunity to enter or strengthen their position in the Romanian market.

- (307) Moreover, as set out in recital (126), Romania has committed to ensuring that TAROM will respect the behavioural measures referred to in point 84 of the R&R Guidelines, namely to refrain from (i) acquiring shares during the restructuring period, except where this would be indispensable for its viability and approved by the Commission; and (ii) publicising State support as a competitive advantage when marketing its products and services. This will ensure that TAROM does not use the aid for expanding its business by acquiring stakes in competitors or to boost its sales with publicity about the support it enjoys from the Romanian State. In this connection, Wizz Air's suggestion that it would be appropriate to impose on TAROM the management remuneration restrictions imposed on some airlines in the context of COVID-19 recapitalisation measures (see recital (47)) needs to be rejected given that, unlike in the present case, the restrictions on the remuneration of members of the beneficiaries' management were among the conditions for compatibility of COVID-19 recapitalisation aid under then applicable legal framework, and Wizz Air has not demonstrated, and it is not evident, how management remuneration restrictions in the present case would contribute to limiting distortions of competition.
- (308) In line with point 83 of the R&R Guidelines, those measures will ensure that aid is used only to finance the restoration of the beneficiary's long-term viability and that it is not abused by creating market distortions or by shielding the beneficiary from healthy competition.
- (309) Therefore, the Commission considers that the measures to limit distortions of competition are appropriate for reducing the negative effects of the restructuring aid.

#### 7.3.3.6. Transparency and reporting

- (310) 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. To this effect, the Romanian authorities have committed to applying the provisions on transparency laid down in point 96 of the R&R Guidelines by making the relevant information available on the websites [www.monitoruloficial.ro](http://www.monitoruloficial.ro), [www.ajutordestat.ro](http://www.ajutordestat.ro), [www.tarom.ro](http://www.tarom.ro) and [www.mt.gov.ro](http://www.mt.gov.ro).
- (311) The Commission considers it necessary for Romania to provide regular reports on the implementation of the updated restructuring plan every 6 months from the date of adoption of this Decision until the end of the restructuring period. These reports will specify, in particular, the dates of the actual disbursement of the funding committed by the State and of the own contribution, any deviations from the financial or operational trajectories of the updated restructuring plan, containment of costs and cost reductions and earnings achieved by the restructuring measures, and the corrective measures envisaged or taken by Romania or the beneficiary where appropriate.

#### 7.3.3.7. Balancing positive and negative effects

- (312) A carefully designed State aid measure must ensure that the overall balance of the effects of the measure is positive by avoiding adversely affecting trading conditions to an extent contrary to the common interest.
- (313) As set out in Section 7.3.2, the restructuring aid has a positive effect, because it contributes to the development of air transport services in Romania. In particular, the aid averts the risk of disruption of an important service (see Section 7.3.2.1) and enables TAROM to implement restructuring measures that will bring the beneficiary back to long-term viability (Section 7.3.2.2).
- (314) In the R&R Guidelines, the Commission laid down the criteria that it examines when assessing the compatibility of restructuring aid with the internal market, ensuring that the development of the economic activity in question does

not adversely affect trading conditions to an extent contrary to the common interest. As explained above, the restructuring aid is necessary and has incentive effect (see Section 7.3.3.1), appropriate (see Section 7.3.3.2) and proportionate (see Section 7.3.3.3). Furthermore, robust safeguards are in place to limit the negative effects of the aid through compensatory measures minimising the distortions of competition (see Section 7.3.3.5) as well as by respecting the 'one time, last time' principle (see Section 7.3.3.4) and the transparency requirements (see Section 7.3.3.6).

- (315) The proposed measures to limit competition distortions, including the overall decrease of TAROM's ASK, reduction in the number of flights (frequencies), closure of routes and reduction of fleet, as well as the divestiture of its participation in [...] will reduce TAROM's presence on the market where it is to remain active after the restructuring and will lead to a certain degree of market opening.
- (316) In light of the above, the Commission considers that the measures to limit the distortions of competition generated by the aid are appropriate for reducing the negative effects of the restructuring aid.
- (317) Consequently, the positive impact of the restructuring aid on the development of air transport activities in Romania outweighs the potential negative effects on competition and trade, which are therefore not adversely affected to an extent contrary to the common interest.

#### 7.4. The assessment of the complaint submitted by Wizz Air Malta

- (318) On 14 March 2024, the Commission received a complaint lodged by Wizz Air Malta ('the complainant'), alleging that Romania had granted additional aid in the context of TAROM's restructuring in three manners: (i) through capital injections during the restructuring period going beyond those approved by the Commission's second damage compensation Decision and/or constituting an alteration of the aid approved by the Commission's first damage compensation Decision in the form of a public guarantee; (ii) the acceptance of a contractual clause resulting in the unenforceability of the collateral given to one of TAROM's creditors, CNAB, a public company having the same majority owner as TAROM, that is to say the Romanian State through its Ministry of Transport; (iii) the sale of the [...] slot below market price. Those allegations are set out in Section 6.8.
- (319) The Commission will assess whether there is any unlawful aid resulting from those measures and to what extent those allegations have an impact on the compatibility of the notified measures with Article 107(3) TFEU.
- (320) On the dates set out in recital (6), Romania submitted its observations on the three allegations raised by the complainant, arguing them to be unfounded for the following reasons: (i) the capital increase of EUR 1,9 million was in line with the aid approved in the Commission's second damage compensation Decision; the capital increases totalling EUR 2,7 million were merely an execution of the public guarantee approved by the Commission's first damage compensation Decision according to the applicable legal and contractual provisions and were in any event part of the notified measures as they related to TAROM's liquidity needs during the restructuring period (see recitals (141) and (143)); (ii) the conditional securities clause had no effect on the market behaviour of either TAROM or CNAB, as the State as the supervisory authority is barred by law from intervening in business decisions of the management and as evidenced by the actual behaviour of the companies, which is based on maximising the likelihood of a full debt repayment accrued by late payment penalties, and will in any event be removed from the agreement (see recital (144)); (iii) TAROM has done the utmost to achieve the highest possible price for the sale of the [...] slot, as demonstrated by the hiring of an independent expert and the ongoing bidding process. Those comments by the Romanian authorities are set out in Section 6.9.
- (321) From Romania's submission on the first allegation, it follows that the capital injections referred to under the first allegation can be divided into three legs: (i) the first leg consists in two capital increases of RON 9 000 000 and of RON 439 155 (together RON 9 439 155 or approximately EUR 1,9 million), carried out pursuant to the second damage compensation decision; (ii) the second leg consists in capital increase amounting to RON 5 394 285, RON 5 460 515 and RON 1 663 200 (together RON 12 518 000) or approximately EUR 2,7 million, which Romania has notified as restructuring aid in the context of the notification in the present case; and (iii) the third leg consists in

shareholder decisions authorising future capital increases up to an amount of approximately RON 14,9 million or approximately EUR 3,21 million, which have not been followed by confirmatory decisions by the shareholders' assembly and which have not been carried out.

- (322) Romania has submitted the relevant shareholder decisions and financial accounts demonstrating that the capital increases actually carried out by the Ministry of Transport in 2022 and 2023 amount to RON 9 000 000, RON 439 155 (together RON 9 439 155 or approximately EUR 1,9 million), RON 5 394 285, RON 5 460 515, RON 1 663 200 (together RON 12 518 000 or approximately EUR 2,7 million) respectively. This is because not all previously approved capital increases had actually been carried out, as TAROM has been able to shoulder part of the instalments of the guaranteed loan from own resources. It follows that the total capital increases carried out to date during the restructuring period amount to RON 21 957 155 (approximately EUR 4,6 million) and not to approximately EUR 7,8 million, as alleged by the complainant. This is confirmed by TAROM's annual accounts (not yet audited for 2023).
- (323) Out of this amount, a capital injection of EUR 1,9 million corresponding to the first leg of the first allegation referred to in recital (321), has been approved by the Commission's second damage compensation decision as compatible aid under Article 107(2), point (b), TFEU and thus has no impact on the assessment of the notified measures.
- (324) The remainder of those EUR 4,6 million, namely EUR 2,7 million, corresponding to the second leg of the first allegation referred to in recital (321) has been notified by Romania in the context of the notification in the present case as restructuring aid. As all loan instalments related to the first damage compensation Decision <sup>(116)</sup> that TAROM will be unable to pay during the restructuring period due to its cash shortfall are covered by capital injections included in the capital increase of EUR 45,77 million notified as restructuring aid, the Commission has assessed the corresponding capital injections as part of the notified measures. The Commission's conclusion on this leg is reflected in the present Decision concerning that capital increase.
- (325) As from 2025, all remaining instalments will be paid by TAROM from its own resources.
- (326) With regard to the remaining capital increases, totalling approximately EUR 3,21 million, which correspond to the third leg of the first allegation referred to in recital (321), while those have in principle been approved by the shareholders' assembly, these decisions merely open the theoretical possibility for such injections but have not been followed by confirmatory decisions by the shareholders' assembly allowing for the execution of such increases. In the absence of such confirmatory decisions, this capital increases have not taken place and it would be premature to assess a hypothetical advantage granted to TAROM.
- (327) With regard to the second allegation concerning a clause in the securities agreement between TAROM and CNAB, the Commission notes that at the current point in time when it is called to conclude its investigation into the compatibility of the notified measures <sup>(117)</sup>, based on the information provided by the complainant the Commission does not have sufficient elements to identify the measure complained of as State aid and to consider it relevant for the compatibility of the notified measures. However, to ensure a diligent examination of the second allegation, while not delaying the procedure concerning the notified measures, the Commission will continue its assessment regarding the second allegation in a separate procedure <sup>(118)</sup>.
- (328) Regarding the third allegation concerning the sale of the [...] slot below its market value, it suffices to note that to date no sale has taken place, such that it is premature to assess whether the hypothetical sale of the [...] slot will be

<sup>(116)</sup> These are the 2023 instalments totalling EUR 2,7 million and the instalments that will fall due in the course of 2024 totalling EUR 3,29 million, together approximately EUR 5,99 million.

<sup>(117)</sup> The pending investigation procedure launched on 5 July 2021, during which the Commission has duly heard interested parties and allayed its doubts set out in the opening decision, falls to be concluded without delay, also in the light of the risk (substantiated by Romania) of some of TAROM's contractors terminating their relationship with the beneficiary in the absence of a final decision on the restructuring aid by a certain date, thereby jeopardising the successful implementation of the restructuring plan.

<sup>(118)</sup> Case SA.113203 (2024/FC).

carried out under normal market conditions and thus whether it would, at the moment of the sale, procure an economic advantage to the buyer of such slot. It follows that this allegation concerns a potential future measure and therefore has no impact on the assessment of the notified measures.

- (329) Based on the above, the Commission concludes that the second leg of the first allegation raised by the complainant is part of the notification in the present case and thus the Commission's conclusion on this leg is reflected in the present Decision concerning the notified restructuring aid, and in particular the EUR 45,77 million capital injection. Regarding the first leg of the first allegation, this has been the subject of a previous Commission decision and is not covered by the notification in the present case and the Commission will take its final position on this allegation in the separate procedure referred to in recital (327)). As regards the third leg of the first allegation, the second allegation and the third allegation, based on the information provided by the complainant the Commission does not have sufficient elements to identify the measures complained of as State aid; however, it will assess these allegations in the separate procedure referred to in recital (327)).

#### 7.5. Conclusion on compatibility

- (330) In light of the above, the Commission concludes that the doubts it raised in the opening decision have been removed and that the negative effects of the restructuring aid on competition and trade are limited, given in particular the beneficiary's limited size, healthy competition on the market as well as the measures limiting the distortions of competition, of which Romania should ensure implementation. Consequently, the positive effects of the restructuring aid on the development of air transport activities, provided Romania ensures implementation of the updated restructuring plan<sup>(119)</sup>, outweigh the remaining negative effects on competition and trade, which are therefore not adversely affected to an extent contrary to the common interest.
- (331) In its assessment, taking into account the comments received from an interested party and from Romania, as well as the modifications to the restructuring plan and supporting restructuring aid introduced to address the doubts raised, the Commission concludes that the restructuring aid complies with Article 107(3), point (c), TFEU as it facilitates the development of air transport services to, from and within Romania and does not distort competition and trade between Member States to an extent contrary to the common interest. The Commission's assessment in this Decision is not called into question by the information provided by the complainant, notwithstanding the further examination of part of that complaint in a separate procedure.

### 8. CONCLUSION

- (332) The Commission finds that Romania has not observed the standstill obligation laid down in Article 108(3) TFEU and has unlawfully granted part of the notified measures, amounting to approximately EUR 2,7 million in 2023. However, the Commission concludes that the restructuring aid, including the part unlawfully granted in 2023, is compatible with the internal market pursuant to Article 107(3), point (c), TFEU,

HAS ADOPTED THIS DECISION:

#### Article 1

1. A EUR 2,7 million capital injection granted in 2023 in favour of TAROM S.A. constitutes State aid and the Commission regrets that it was unlawfully granted by Romania in breach of Article 108(3) of the Treaty on the Functioning of the European Union.
2. The restructuring aid to TAROM S.A., which Romania has partly implemented and is planning to implement, in the form of a capital injection by the State equivalent to approximately EUR 45,77 million (having been carried out and to be carried out in RON) and the debt write-off corresponding to the amount of the rescue loan with interest and any foreign exchange rate differences of EUR 49,53 million, amounting to approximately EUR 95,3 million in total is compatible with the internal market within the meaning of Article 107(3), point (c), of the Treaty on the Functioning of the European Union.

<sup>(119)</sup> Point 122 of the R&R Guidelines.

*Article 2*

Romania shall inform the Commission, within two months of notification of this Decision, of the measures taken to comply with it.

*Article 3*

This Decision is addressed to Romania.

Done at Brussels, 29 April 2024.

*For the Commission*  
Margrethe VESTAGER  
*Executive Vice-President*