



2024/1675

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COMMISSION DECISION (EU) 2024/1675

of 16 February 2024

on the State aid SA.62829 (2023/C) implemented by Romania for Blue Air Aviation SA

(notified under document C(2024) 910)

(Only the Romanian version is authentic)

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first subparagraph of Article 108(2) 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 ⁽¹⁾ cited above and having regard to their comments,

Whereas:

1. PROCEDURE

- (1) On 20 August 2020, the Commission decided not to raise objections to planned aid to Blue Air Aviation SA ('Blue Air') in the form of a State guarantee on a loan totalling RON 300 775 000 (EUR 62,13 million) ⁽²⁾, out of which EUR 28,29 million (RON 136,9 million) as damage compensation pursuant to Article 107(2), point (b), of the Treaty on the Functioning of the European Union ('TFEU') and EUR 33,84 million (RON 163,8 million) as rescue aid pursuant to the Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty (the 'R&R Guidelines') ⁽³⁾ and Article 107(3), point (c), TFEU (the 'rescue aid decision') ⁽⁴⁾.
- (2) Romania issued the State guarantee on 20 October 2020. Blue Air drew on the loan from EximBank S.A. on 23 October 2020. On 22 April 2021, Romania communicated to the Commission Blue Air's initial restructuring plan that was supported with a prolongation of the State guarantee to six years in total.
- (3) On 12 August 2021, the Romanian authorities provided information for the assessment of the restructuring aid supporting the initial restructuring plan.
- (4) On 20 August 2021, the Commission provided a preliminary assessment of the restructuring aid and requested additional information.
- (5) On 16 November 2021, Romania communicated to the Commission Blue Air's amended restructuring plan (the 'restructuring plan') and provided information for the assessment of the restructuring aid supporting the plan.
- (6) In a videoconference on 17 May 2022, the Commission requested clarifications and pointed to key information that was still needed to assess the compatibility of the restructuring aid. On 18 May 2022, the Commission confirmed in writing the main points discussed and recalled the main outstanding issues on the compatibility of the aid to be clarified by Romania.

⁽¹⁾ OJ C 195, 2.6.2023, p. 18.

⁽²⁾ The exchange rate RON/EUR = 0,20656 is used for illustrative purposes in this decision.

⁽³⁾ Communication from the Commission – Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty (OJ C 249, 31.7.2014, p. 1).

⁽⁴⁾ Commission Decision of 20 August 2020 in Case SA.57026 (2020/N) – Romania – COVID-19 – Aid to Blue Air (OJ C 430, 11.12.2020, p. 2).

- (7) On 8 July 2022, the Commission requested information from the Romanian authorities related to the restructuring plan and the supporting aid. The Commission sent a reminder on 6 September 2022. Romania did not provide the requested information.
- (8) On 29 September and on 5 December 2022, following press reports mentioning an abrupt and temporary cease of operations of Blue Air and after the Commission had requested an update, Romania informed the Commission about the situation of the activities of Blue Air and about the steps that Romania had taken after the State guarantee referred to in recital (1) had been called.
- (9) By letter dated 17 April 2023 ('the opening decision'), the Commission informed Romania that it had decided to initiate the procedure laid down in Article 108(2) TFEU in respect of the aid. After two reminders, Romania submitted its comments on 5 September 2023.
- (10) The Commission decision to initiate the formal investigation procedure was published in the *Official Journal of the European Union* ⁽⁵⁾. The Commission called on interested parties to submit their comments.
- (11) The Commission received comments from one interested party. It forwarded them on 1 August 2023 to Romania, which was given the opportunity to react but did not do so.

2. THE BENEFICIARY

2.1. Blue Air's activities

- (12) Blue Air is a Romanian joint stock company, established first as Blue Air Airline Management Solutions SRL and operating since August 2013. Blue Air took over in a tender process the air transport activity of Blue Air Transport Aerian SA when the latter ceased operations. In 2018, Blue Air Airline Management Solutions SRL changed the name and the legal form to Blue Air Aviation S.A. Up to November 2022, Airline Invest S.A., a private Romanian company with no other activity than holding the shares of Blue Air, owned 76,18 % of the share capital of Blue Air, while two individuals owned, respectively, stakes of 23,81 % and 0,1 %.
- (13) Blue Air grew its operations over the years although with financial imbalances. By end of 2019, Blue Air had an annual turnover of approximately EUR 414 million and operated 23 Boeing-737 aircraft transporting 4,2 million passengers a year, 60 % of which were Romanian citizens living abroad. As of September 2021, Blue Air had 1 058 employees with four operational bases in Romania and one in Italy to provide (i) international and domestic passenger air transport services; (ii) charter services to travel agencies; and (iii) wet lease aircraft ⁽⁶⁾.
- (14) According to the information in the restructuring plan communicated on 16 November 2021, Blue Air's network was, nearly exclusively European with around 90 point-to-point destinations, in competition mainly with Tarom, Ryanair and Wizz Air. Blue Air operated 20 of these routes as a sole operator. In 36 of these routes, another air carrier also provided transport services. On the other routes, two or more carriers operated along with Blue Air.

2.2. Blue Air's difficulties and earlier rescue aid

- (15) Romania explains that, until 2018, Blue Air experienced accelerated growth, carrying out heavy investments in opening new bases and routes. Blue Air carried out its activity and expansion programme without proper access to finance, resulting in liquidity and solvency issues. The rescue aid decision noted Blue Air's negative equity of

⁽⁵⁾ Cf. footnote 1.

⁽⁶⁾ Under a wet leasing arrangement, the owner supplies the aircraft as well as at least one crew member. The owner assumes operational responsibility, which includes performing maintenance, procuring insurance, and other legal responsibilities of operations.

EUR 18,9 million by 31 December 2019 and accumulated losses of EUR 37,7 million exceeding its subscribed share capital of EUR 0,2 million and reserves of EUR 0,62 million. In addition, the rescue aid decision noted that the COVID-19 pandemic had a significant negative impact on Blue Air's performance since the beginning of March 2020 ⁽⁷⁾. Losses and negative equity accumulated, forcing Blue Air to file for pre-insolvency on 6 July 2020.

- (16) As set out in the rescue aid decision, the State guarantee referred to in recital (1) was related to a loan financing, alongside damage compensation under Article 107(2), point (b), TFEU, also a portion of the negative cash balance expected between September 2020 and February 2021, as set out in Blue Air's liquidity plan. The loan was granted for six years, with the commitment to notify a restructuring plan within six months from the granting. First-rank mortgages on certain assets of Blue Air and third parties secured the State guarantee ⁽⁸⁾.
- (17) The draft Government Emergency Ordinance that Romania provided in its notification of the rescue aid specified that the collateral for the State guarantee included, among other assets, a 75 % shareholding in Blue Air held by Airline Invest SA and one individual in the share capital of Blue Air. If the guarantee were executed, the property of the collateral would be transferred to the State, which would become a shareholder ⁽⁹⁾. The value of the collateral was not set out in the ordinance.
- (18) On 5 December 2022, the Romanian authorities informed the Commission that the State guarantee in favour of the lender EximBank S.A. had been executed and that the Ministry of Finance had fully paid the amounts related to the guaranteed loan contracted by Blue Air.

3. DESCRIPTION OF THE RESTRUCTURING PLAN AND SUPPORTING AID

3.1. Restructuring plan: duration and planned restructuring measures

- (19) The restructuring plan for Blue Air covers the period from 1 October 2020 until 30 September 2025, coinciding with the beneficiary's financial years 2021-2025. During this period, several operational restructuring measures are being or will be implemented, in particular, measures to (i) reduce fleet costs; (ii) reduce maintenance cost, including the disposal of aircraft; (iii) maintain service and ensure travel flexibility for passengers; (iv) restructure the airport and routes network to include main hub airports; (v) change commercial strategy to become a leading low-cost carrier in Central and Eastern Europe; (vi) increase the contribution of direct sales channels; (vii) transform IT systems; (viii) make organisational adjustments and reduce staff costs; (ix) renew fleet, to save on the cost of fuel and CO₂ certificates; (x) open up technical and maintenance activities to the market through a transfer to a newly created entity; and (xi) reschedule debt and prevent insolvency.

3.2. Financing of the restructuring plan

- (20) The amount of the financial resources needed to cover the restructuring costs is EUR 194,26 million. Romania submits that the costs would be financed partly with restructuring aid, for an amount of EUR 33,84 million, and partly with an own contribution from Blue Air, for an amount of EUR 160,42 million.

⁽⁷⁾ Rescue aid decision, recitals (11) to (13), (36) and (102).

⁽⁸⁾ Rescue aid decision, recitals (19), (20)(g) and (45) to (48).

⁽⁹⁾ The draft submitted in notification was adopted as Ordonanta de Urgenta Guvernului Romaniei n° 139 din 19 august 2020, published in Monitorul Oficial n° 763 of 20 August 2020. Article 4(2) of the draft ordinance provided in the notification set out the list of collateral pledged as mortgage and Article 9(2) laid down the principle of transfer to and ownership by the State if the guarantee was executed, through the Ministry of Transport, Infrastructure and Communications.

- (21) As regards the financing of the restructuring plan, Romania first informed the Commission that the State guarantee covering the rescue aid loan was maintained, henceforth as restructuring aid in favour of Blue Air, up to the six years maturity of that loan, allowing for its repayment by 2026. Subsequently, on 5 December 2022, Romania informed the Commission that the State guarantee had been executed and that the Ministry of Finance had fully paid the amounts related to the guaranteed loan contracted by Blue Air. In implementation of the legal provisions related to the collateral of the guarantee, the State took over, through the State Assets Administration Authority, 75 % of the shares in Blue Air ⁽¹⁰⁾, while the rest of 25 % of the total share capital of Blue Air remained with Airline Invest S.A. (1,191 %) and one individual (23,809 %).
- (22) As regards the alleged non-aided part of the financing, the restructuring plan includes, in particular, the following additional sources:
- (a) debt write-offs of service obligations to third parties amounting to EUR 34,79 million. Third parties include: (i) Italian passengers; (ii) Romanian and Italian creditors as part of judicial composition agreements; and (iii) various creditors after contract negotiations;
 - (b) Blue Air shareholders other than the State would repay EUR 28,57 million debt owed by Blue Air to private aircraft lessors, thus becoming temporarily creditors of Blue Air; the shareholders would convert such debt into equity of Blue Air through three phases that were to be completed at the end of 2022, thus freeing Blue Air from repaying the debt;
 - (c) a divestiture of aircraft which are currently pledged in favour of NAFA- and ALC- Aero Leasing 3 Designated Activity Company, expected to result in an own contribution of EUR 5,89 million. Romania mentions that the sale procedure was to be completed in October 2023;
 - (d) external financing in the amount of EUR 54,47 million, which includes the set-up of a joint venture to operate a new airline of the amount of EUR 14,47 million and EUR 40 million funding to cover liquidity gap in 2021 and 2022 and to ensure the sustainability of operations during the restructuring period;
 - (e) internally generated resources, which include EUR 30,02 million planned net results (earnings) expected during the financial year 2022.

3.3. Restoration of long-term viability: financial projections

- (23) The restructuring plan describes that the number of aircraft is planned to increase from 19 in 2020 to 23 in 2023 and remain stable thereafter until 2025. The available seats per kilometre would increase from 7,2 million in 2019 and 3,2 million in 2020 to 10,2 million in 2023 and remain stable until 2025. Moreover, Romania explains that the operational restructuring measures aim to ensure that Blue Air will accelerate the network restructuring process to ensure business continuity by rapid and continuous adjustment of the available capacity to demand.
- (24) The restructuring plan forecasts Blue Air attaining positive earnings before interest, tax depreciation and amortisation ('EBITDA') and a margin of EBITDA to revenues of 16,8 % as of 2022, expected to increase until the end of the restructuring period, as shown in Table 1. In addition, according to the cash flow estimates in the plan, between 2022 and 2025, Blue Air's cash inflow would be approximately EUR 600 million and cash outflow approximately EUR 580 million, with a positive cash balance as from 2022, reaching EUR 21 million at the end of the restructuring period.

⁽¹⁰⁾ As now in force as amended by law n° 162 of 30 May 2022 published in Monitorul Oficial n° 534 of 31 May 2022, Article 9(2) of the Government Emergency Ordinance n° 139 of 19 August 2020 designates the State Assets Administration Authority as holder of the related Blue Air and other assets on behalf of the State –instead of formerly the Ministry of Transport, Infrastructure and Communications.

Table 1

Selected financial data from the restructuring plan (financial years 2021 to 2025, data in EUR millions)

	Restructuring period				
	FY21	FY22	FY23	FY24	FY25
Revenues	112,01	344,02	424,63	443,31	460,75
EBITDA	(58,21)	57,76	98,24	104,86	103,59
EBIT	(58,49)	19,09	39,77	42,86	42,46
Net result	(68,04)	30,02	8,83	12,95	19,93
Cash flow balance	(3,81)	19,45	11,65	12,07	21,28
EBITDA margin	– 51,9 %	16,8 %	23,1 %	23,6 %	22,5 %

Source: Restructuring Plan, Sections 4 and 7, pages 16 and 46.

- (25) The restructuring plan includes financial projections in a base case scenario with the financial data presented in Table 1. The projections do not include any information on the equity position and amount of capital employed, nor a pessimistic scenario. The plan does not explain how Blue Air would remedy the solvency problems evidenced by the deeply negative equity position recorded in recital (15). Moreover, the cumulated net results between 2021 and 2025 shown in Table 1 suggest that the equity position would not materially improve and become positive during the restructuring period, even if fresh capital would be injected as planned (see recital (22)).
- (26) When communicating the restructuring plan, Romania was confident that Blue Air would generate enough resources to fully repay the aided loan during the restructuring period. However, at the same time, Romania also stressed that the beneficiary's survival was still at risk due to the significant losses incurred as from 2020 and due to limited liquidity.

3.4. Measures limiting distortions of competition

- (27) Romania proposed structural measures and reductions of business activities, as well as behavioural measures aimed at limiting distortions of competition caused by the restructuring aid.

3.4.1. Structural measures – divestments and reduction of business activities

- (28) Divestments and reduction of business activities to be undertaken by Blue Air are the following:
- (a) reducing the unprofitable operational bases and routes, including the closure of nine routes by October 2021 and the closure of the Larnaca (Cyprus) and Iași (Romania) bases as from April 2020;
 - (b) return in advance of four aircraft;
 - (c) externalisation of administration, health, safety and security of work and benefits and compensation activities;
 - (d) in addition, as the most important measure to limit distortions of competition, according to Romania, the aircraft maintenance subsidiary Blue Air Technic S.R.L., would extend the provision of maintenance services to companies other than Blue Air.

3.4.2. Behavioural measures

- (29) According to the submission by the Romanian authorities, behavioural measures were laid down in the legal basis for the State guarantee and related loan agreement ensuring that aid is used only to finance the restoration of long-term viability, so that the loan will not be used for:
- (a) aggressive commercial expansions or excessive risk-taking;
 - (b) acquisition of competitors or other operators, including upstream or downstream operations;
 - (c) cross-subsidisation of other economic activities of integrated enterprises that were in difficulty in December 2019;
 - (d) in addition, the remuneration of any of the beneficiary's management members will not be increased above the level existing in December 2019, until the loan and the State guarantee are repaid.

3.5. Role of Blue Air in Romania and counterfactual to the aid

- (30) According to the Romanian authorities, given the poor state of the road and rail network in Romania, Blue Air is instrumental in ensuring inter-regional connectivity on its route network. Romania explained that Blue Air's growth in the past 15 years of operation – considering also the activity of its predecessor company – had followed the Romanian migration pattern. Blue Air offered its services at prices affordable for Romanian workers living abroad. The company had continued to develop domestic routes, together with the Romanian incumbent carrier Tarom, but at more competitive prices, to compensate for the terrestrial connectivity gap, assuring the connectivity of more than 700 000 citizens per year. Some of those short distance routes were poorly addressed by international carriers.
- (31) Romania submitted that Blue Air also played an important role for the local economy, in that it created turnover on small, regional airports and contributed to the State budget through taxes and social security payments. Romania submitted that the beneficiary had highly experienced training staff and provides professional training courses with high added value, for example 'ab initio' training for pilots, and recurring training for pilots, cabin crew and technical staff. According to Romania, this was important for the Romanian economy.
- (32) In its initial submissions, Romania argued that Blue Air's exit from the market would cause market failure and social hardship within the meaning of point 44 of the R&R Guidelines. Blue Air's market exit would be detrimental to the Romanian economy and connectivity because of Blue Air's important role in transporting migrant workers and small entrepreneurs to, from and within Romania. Romania submitted that it would be difficult for competitors to step in and replicate in the short to medium term the destinations and slots of Blue Air's unique network.
- (33) On 29 September 2022, following the Commission's request, Romania informed that Blue Air had initially suspended all flights as from 6 September 2022 until 10 October 2022, due to lack of funding for normal operations including fuel costs. In the short term, Wizz Air, Ryanair or Tarom repatriated or offered seats to tens of thousands of stranded passengers of Blue Air.
- (34) On 5 December 2022, Romania explained that Blue Air had informed the Ministry of Transport and Infrastructure that it would not resume flights before March 2023 and that it was in discussions with potential investors who could provide financing to resume air transport operations. At that time, according to Romania, only one of the six Boeing-737 aircraft in Blue Air's fleet was airworthy.
- (35) On 18 November 2022, the Romanian authorities decided to suspend the operating licence of Blue Air, starting from 21 November 2022 until 31 March 2023. Romania informed the Commission that this suspension can be reviewed if Blue Air presents a financial recovery plan in which it is demonstrated that it has identified the financial resources suitable and necessary to finance the air transport operations at a volume that allows it to fulfil its obligations.

3.6. Grounds for initiating the procedure

- (36) In the opening decision, the Commission preliminarily considered that (i) the continuation of the State guarantee beyond six months (recitals (1) and (21)); as well as (ii) the enforcement of the collateral securing the State guarantee and transfer to State ownership of 75 % of the shares held by former shareholders of Blue Air after execution of the guarantee and payment of the loan amounts outstanding as described in recitals (8) and (20), could involve State aid within the meaning of Article 107(1) TFEU. The Commission preliminarily concluded that the aid was already put into effect and assessed whether such aid was compatible with the internal market.
- (37) The Commission had doubts whether the restructuring aid complied with the principal requirements of the R&R Guidelines. In particular, the Commission had doubts (i) whether the definitive exit of Blue Air from the market would create social hardship or market failure, in terms of air connectivity in Romania; (ii) regarding the presence of a sufficient real and actual own contribution free of aid from the beneficiary; (iii) on the restoration of its long-term viability; and (iv) on the absence of meaningful compensatory measures.

4. COMMENTS FROM INTERESTED PARTIES

- (38) Ryanair Designated Activity Company ('Ryanair') submitted comments on 29 June 2023. Ryanair agrees with the Commission's interim finding of incompatibility of the restructuring aid and requests that Romania is not authorised to increase such aid in vain efforts to revive Blue Air that ceased operations more than 10 months earlier. Ryanair considers that the ceasing of Blue Air transport operations is now effective, with no passengers left and that no impact to air connectivity in Romania is apparent after competitors stepped in most domestic or international routes formerly served by Blue Air.
- (39) Ryanair also considers that the restructuring aid is disproportionate in that the missing own contribution and burden sharing are insufficient and, moreover, not apt to support the viability of Blue Air premised on a now obsolete restructuring plan, in particular after slots in coordinated airports in the internal market and nearly all staff were lost. The inability of Blue Air to obtain a new air operator certificate based on its organisation to ensure the safety of transport operations would fatally compromise its viability. The plan would also be in contravention of the R&R Guidelines as it contemplated the discontinuance of unprofitable routes only and an actual expansion of Blue Air's capacity.

5. COMMENTS FROM ROMANIA

- (40) The Romanian authorities did not address the comments from the interested party or the doubts that the Commission raised on the compatibility with the internal market. Their observations include factual clarifications on the insolvency of Blue Air and steps taken in that context.
- (41) The Romanian authorities (Ministry of Finance) explain that following the notification of the opening of insolvency proceedings by Tribunalul Bucureşti – Secţia a Vll-a Civilă, in case No 8307/3/2023 against Blue Air, published in B.P.I. No 5743/31.03.2023, the National Tax Administration submitted, within the deadline set by the court, an application for registration in the insolvency estate for the total amount of RON 411 707 165 (EUR 82,81 million) of secured debt and budgetary claims.
- (42) After rejection of some amounts (value added tax), the preliminary table of claims and debtors of Blue Air was published in B.P.I. No 11066. According to the preliminary table, the General Directorate for Large Taxpayers was included with the amount to be claimed of RON 84 964 821 (EUR 17,1 million) in the order of preference provided for in Article 159(1)-(3) of Law No 85/2014, as well as the Ministry of Finance with the claim of RON 342 365 589 (EUR 68,86 million) in the order of preference provided for in Article 159(1)(3) of the same legislative act. The amount of State aid granted to the company was also entered as valid claim under the condition that the market value of the goods (guarantees) forfeited for the recovery of the State aid in accordance with Article 9(2) of Government Emergency Ordinance No 139/2020 will be determined.

- (43) The Romanian authorities (State Assets Administration Authority) also explain and recall that, according to the legal basis of the State guarantee as amended, in the event of the enforcement of the State guarantee, the relevant collaterals, including shares of Blue Air held by former shareholders were to be fully transferred to the State, through the State Assets Administration Authority, and the State was to become a shareholder.
- (44) Accordingly, on 8 December 2022, as decided by the General Assemblies of the Shareholders of Blue Air Aviation S.A., Airline Invest S.A. and Blue Air Technic S.R.L., the Romanian State through the State Assets Administration Authority became Blue Air's 75 % majority shareholder through the voluntary transfer of guaranteed shares from their owners to the State Assets Administration Authority, which did not have any option whether to take them or not. Blue Air's shareholders at the time voluntarily took all necessary steps to register these decisions also in the Trade Register, which was completed on 12 December 2022.
- (45) The Romanian authorities also informed that since the date of the opening of the insolvency proceedings on 31 March 2023, Blue Air has not carried out a commercial activity in accordance with its business object and that, given the cessation of its core business, collective dismissals of staff and procedures for accessing the Salaries Guarantee Fund were launched.
- (46) In that setting, the Romanian authorities consider that the transfer of shares did not confer any direct or indirect advantage on Blue Air and that Blue Air did not obtain any economic advantage on the amounts of the loan due, taking into account the almost complete lack of funds held in the accounts in December 2022 and the state of cessation of payments since September 2022. As a result, the Romanian authorities submit that this transfer of Blue Air's shares did not contain any amounts of money available which could have conferred any economic advantage on Blue Air by failing to repay the State guaranteed loan.

6. ASSESSMENT OF THE AID

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

- (47) By virtue of Article 107(1) TFEU *'save as otherwise provided in the Treaties, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market.'*
- (48) The qualification of a measure as aid within the meaning of this provision therefore requires the following cumulative conditions to be met: (i) the measure must be imputable to the State and financed through State resources; (ii) it must confer an advantage on its recipient; (iii) that advantage must be selective; and (iv) the measure must distort or threaten to distort competition and affect trade between Member States.

6.1.1. Continuation beyond six months of the State guarantee: economic advantage

- (49) In the rescue aid decision, the Commission concluded that the State guarantee granted to a company in difficulty within the meaning of the R&R Guidelines constituted State aid to Blue Air under Article 107(1) TFEU ⁽¹⁾. For the reasons set out therein, reinforced by the fact that Blue Air's financial and operational situation has worsened compared to August 2020 when the rescue aid was approved, the Commission's view is that the State guarantee, for the portion of loan granted as rescue aid, also insofar it was continued beyond the six-month period referred to in that rescue aid decision, constitutes State aid for the full amount of loan guaranteed.

⁽¹⁾ Rescue aid decision, recitals (69) to (75).

- (50) For illustration, it appears that Blue Air could no longer meet its normal operating costs and, in the absence of market finance, had to stop operations in September and October 2022 (recitals (32) and (33)). It follows that Blue Air would not have been able to obtain at market conditions the liquidity of RON 163,8 million (EUR 33,84 million) provided by the State guarantee, neither when that guarantee was initially granted or later on, when it was kept in place after the expiry of the rescue aid period.
- (51) The finding of an economic advantage is not contradicted by the examination of the possible market-conformity of the behaviour of the Romanian authorities. The exposure of the Romanian State in favour of Blue Air results from a guarantee that Romania provided for public policy reasons related, inter alia, to maintaining air transport connectivity in the context of public health measures adopted to contain the spread of the COVID-19 pandemic ⁽¹²⁾. In other words, a market player in the same position as the Romanian State would not have granted or maintained the guarantee at issue. The State's conduct following the grant of the guarantee is merely the consequence of the State aid that it had previously granted in its capacity as a public authority, and hence it has not been driven by factors that a market operator would, in normal market conditions, have taken into account in its economic calculations ⁽¹³⁾.

6.1.2. *Enforcement of the collateral securing the State guarantee and transfer of Blue Air shares to State ownership: economic advantage*

- (52) As regards the second measure examined in the opening decision, and contrary to the preliminary view expressed therein, the Commission considers that the enforcement of the collateral securing the State guarantee and transfer to State ownership of 75 % of the shares of Blue Air after the State was forced to repay Blue Air's loan under the guarantee does not constitute State aid within the meaning of Article 107(1) TFEU separate from the aid already embedded in that State guarantee.
- (53) In the opening decision, the Commission considered that the substitution in the ownership of shares from private to public does not as such provide to Blue Air a direct economic advantage because of the mere change of ownership. Yet, the Commission preliminarily found that the substitution of a debt title allowing the State to be reimbursed of the loan amounts due to EximBank S.A. by a share ownership title, which no longer requires reimbursement from Blue Air, frees the funds in cash that Blue Air formerly had to secure from its operations. In addition, the Commission voiced doubts on whether the takeover of the collateral occurred by reference to the market values of such collateral. The information provided by the Romanian authorities during the formal investigation procedure shows that no disbursement of funds, especially to the benefit of Blue Air, has accompanied the change of ownership title (recitals (43),(44)). Moreover, the holding of shares by the State in no way diminishes its entitlement as creditor for the amounts of enforced guarantee to claim reimbursement of the money owed by Blue Air (recital (42)). It follows that the substitution of the State's debt title for an equity instrument, through a transfer of 75 % of the shares in Blue Air to the State, has not procured to Blue Air an economic advantage that would be separate from the advantage that it had obtained through the State guarantee for the amount of loan dues related to the rescue aid.

6.1.3. *State guarantee: State resources, selectivity and effect on trade and competition*

- (54) The State guarantee, also as it was kept in place following the expiry of the rescue aid period, involves the resources of the Romanian State by decisions taken by the State and favours only Blue Air. As regards the criterion of selectivity, as the Court has stated, where individual aid is at issue, the identification of the economic advantage is, in principle, sufficient to support the presumption that a measure is selective ⁽¹⁴⁾. This is so

⁽¹²⁾ Rescue aid decision, recitals (85) to (97) and (50) to (63).

⁽¹³⁾ See judgment of the Court of Justice of 6 March 2018, *Commission v FIH Holding and FIH Erhvervsbank*, C-579/16 P, EU:C:2018:159, paragraph 58.

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

regardless of whether there are operators on the relevant markets that are in a comparable situation. In any event, whilst Tarom benefitted of a similar State guarantee by virtue of the same emergency ordinance as Blue Air, the State guarantee under examination is not part of a general measure available to all undertakings active in the air transport sector in Romania; therefore, the measure is selective.

- (55) The aid measure, which allowed Blue Air to remain on the market, was consequently liable to improve its competitive position in the internal market, where Blue Air provided air transport services in various Member States in competition, among others, with Ryanair and Wizz Air (recital (14)). Therefore, that measure must be regarded as liable to distort or threaten to distort competition and affect trade between Member States.

6.1.4. *Conclusion on the presence of aid*

- (56) In light of the assessment of the cumulative conditions for the presence of State aid, the Commission concludes that the transfer to State ownership of 75 % of Blue Air's shares does not constitute State aid. However, the State guarantee, as it was granted and kept in place beyond the rescue aid period, constitutes State aid under Article 107(1) TFEU. The Commission will therefore assess its lawfulness and compatibility with the internal market.

6.2. **Lawfulness of the aid**

- (57) According to Article 108(3) TFEU, the Commission shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or to alter aid. If it considers that any such plan is not compatible with the internal market having regard to Article 107, it shall without delay initiate the procedure provided for in paragraph 2 of that Article and the Member State concerned shall not put its proposed measures into effect until this procedure has resulted in a final decision.
- (58) Moreover, according to Article 1(c) of Regulation (EU) 2015/1589 (the Procedural Regulation) ⁽¹⁵⁾, alterations to existing aid constitute 'new aid' that is notifiable pursuant to Article 2(1) of that Regulation. Under Article 3 of the Procedural Regulation, aid that is notifiable shall not be put into effect before the Commission has taken, or is deemed to have taken, a decision authorising such aid.
- (59) The rescue aid decision authorised aid to Blue Air in the form of a State guarantee, to secure repayment of the rescue loan it had received. This measure as set out in the draft legal basis notified to the Commission was conditional on the communication of a restructuring plan within six months, to be endorsed by the Commission. The Romanian authorities communicated to the Commission an initial restructuring plan within six months of the first drawdown on the guaranteed loan (recital (2)). The prolongation of the duration of the guarantee, first approved for six months as rescue aid, could therefore be temporarily authorised in line with point 55(d) of the R&R Guidelines.
- (60) However, to date and despite reiterated requests, Romania has not submitted a feasible, coherent and far-reaching restructuring plan that the Commission can endorse in line with point 45 of the R&R Guidelines. The State guarantee as it was granted and kept in place beyond the rescue aid period therefore amounts to unlawful aid.

6.3. **Compatibility of the aid and the legal basis for the assessment**

- (61) The Commission must assess if the restructuring aid can be found compatible with the internal market. It is up to the Member State to invoke possible grounds of compatibility, and to demonstrate that the conditions for compatibility are met.

⁽¹⁵⁾ Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ L 248, 24.9.2015, p. 9, ELI: <http://data.europa.eu/eli/reg/2015/1589/oj>).

- (62) Article 107(3), point (c), TFEU provides that State aid can be authorised where it is granted to promote the development of certain economic activities and where this aid does not adversely affect trading conditions to an extent contrary to the common interest. The R&R Guidelines provide rules and conditions for the compatibility assessment of restructuring aid to undertakings in difficulty pursuant to Article 107(3), point (c), TFEU.
- (63) The assessment of the compatibility of the restructuring aid with the internal market must involve the examination whether the conditions of the R&R Guidelines are met. When submitting the restructuring plan, Romania claimed that such conditions were met in the present case. However, Romania has not invoked or reiterated any such grounds of compatibility in response to the opening decision. The Commission will nonetheless assess compatibility in light of the doubts raised in the opening decision.

6.3.1. *Contribution to the development of an economic activity or area*

- (64) 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. Point 44 of the R&R Guidelines lays down a non-exhaustive list of such situations. By enabling the beneficiary to continue its operations, the aid prevents such market failure or social hardship and therefore, contributes to the development of the activities or areas that would have been affected by the beneficiary's market exit. In case of restructuring aid, this is however only true where the aid indeed enables the beneficiary to compete in the marketplace on its own merits, which can only be ensured if the aid is accompanied by a restructuring plan restoring the beneficiary's long-term viability.

6.3.1.1. *Restoration of long-term viability*

- (65) According to point 45 of the R&R Guidelines, in the case of restructuring aid, the Commission will require that the Member State concerned submits a feasible, coherent and far-reaching restructuring plan to restore the beneficiary's long-term viability. The restructuring plan must restore the long-term viability of the beneficiary within a reasonable timescale and on the basis of realistic assumptions as to future operating conditions that should exclude any further State aid not covered by the restructuring plan. According to point 52 of the R&R Guidelines, long-term viability is achieved when an undertaking is able to provide an appropriate projected return on capital after having covered all its costs including depreciation and financial charges.
- (66) First, Romania stated that, provided that European air traffic had been restored, Blue Air's results and financial position would have improved by summer 2022. Moreover, Blue Air's cash flow projections are premised on optimistic demand, revenue and/or cost assumptions. Table 1 shows that Romania expects net positive cash flows from Blue Air operations in excess of EUR 10 million for 2023, and in excess of EUR 19 million for 2022. Yet, according to the developments in autumn 2022, Blue Air was unable to pay the direct costs necessary for the operation of flights (e.g. CO₂ allowances, fuel expenses) and to pay back dues on the rescue loan (see recitals (20) and (32)).
- (67) Second, as set out in recital (25) and Table 1, Romania failed to provide a set of key economic indicators for the restructuring period and data requested by the Commission on the profitability of Blue Air for the duration of restructuring plan. A mere hypothetical profit apparent in the plan communicated to the Commission is by no means a sufficient indication of long-term viability. The restructuring plan does not contain specific projections on the equity position or capital employed or gearing allowing to draw any conclusion on solvency and on whether Blue Air's equity position would become positive and solid. The missing information regarding the return on equity and return on capital employed as compared, for instance, to the cost of capital and to comparable airlines, make it impossible to assess whether Blue Air would eventually be viable at the end of the restructuring period.

- (68) Third, Romania did not submit any sensitivity analysis, setting out how the projections of the baseline scenario would evolve in a more pessimistic scenario. Such scenario should need to show and demonstrate how financial indicators would vary, while still generating sufficient earnings to cover operating costs and ensure Blue Air's standing on the market without further State aid at the end of the period (see recital (25)).
- (69) The serious doubts the Commission had whether the restructuring plan was in line with the criteria set out in the R&R Guidelines and would lead to the restoration of viability of Blue Air have not been removed and are further corroborated by the inability of Blue Air to maintain operations. The restructuring plan has not been updated following the cessation of operations or the adoption of the opening decision.

6.3.1.2. Development of certain economic activities or areas

- (70) As set out in recital (30), Blue Air provided, in particular, low-cost air transport services to Romanian citizens living abroad. It linked Romanian regions inside the country and with other European destinations and thus contributed to ensuring connectivity in a country where the poorly developed road and rail network does not constitute a viable alternative to air transport.
- (71) Were Blue Air to definitively cease operations, Romania claimed that there could be a risk that no competitor would step in to offer flights, on some routes where Blue Air was the sole operator, or that prices would increase on routes that were operated with only one other competitor. This could lead to a decrease of activity in this segment of the air transport sector. Romania also put forward other broader benefits to the Romanian economy brought about by Blue Air (recitals (30) to (31)).
- (72) However, Blue Air is currently experiencing serious financial difficulties, which have led to the suspension of its operating licence and to the grounding of its fleet as from November 2022. As a result, other airlines have replaced, at least partially, the purported non-replicable services provided by Blue Air (recitals (32) and (38)), without this partial replacement being refuted by Romania.
- (73) Pursuant to points 23 and 43 of the R&R Guidelines, an undertaking in difficulty can only be considered fit to contribute to the development of an economic activity or area if it carries out a far-reaching restructuring plan capable of ensuring its long-term viability (points 27, 45 and 52 of the R&R Guidelines). The Commission had serious doubts whether the restructuring plan communicated by Romania was apt to restore Blue Air's long-term viability (recitals (66) to (69)) so that air transport services it provides continue to be provided during the restructuring period and thereafter on a lasting basis. These doubts have not been removed.
- (74) As Blue Air's long-term viability is to date not ensured, the Commission concludes that the restructuring plan does not show that the beneficiary would be able to compete in the marketplace on its own merits at the end of the restructuring period, and hence that its market exit would be remedied by that restructuring, contributing to the development of an economic activity.
- (75) Moreover, since Blue Air has temporarily ceased air transport operations and the services it provides have at least partially been taken over or replicated by other airlines on routes formerly served by Blue Air, the Commission concludes that Romania has not shown that Blue Air's definitive exit from the market, in the light of the replication of its service that has already taken place, would create social hardship or market failure, notably in terms of air connectivity of Romania.

6.3.2. *The aid measure must not unduly affect trading conditions to an extent contrary to the common interest*

6.3.2.1. Proportionality and own contribution

- (76) According to point 62 of the R&R Guidelines, to ensure the proportionality of the restructuring aid, a significant contribution to the restructuring costs is required from the own resources of the aid beneficiary, its shareholders or creditors or the business group to which it belongs, or from new investors. Such own contribution should normally be comparable to the aid granted in terms of effects on the solvency or liquidity position of the beneficiary.
- (77) While the restructuring plan is premised on market funding for more than 50 % of the restructuring costs of Blue Air (recital (20)), which appears to be in line with point 64 of the R&R Guidelines, this contribution must, according to point 63 of the R&R Guidelines, be real, that is to say actual, excluding future expected profits such as cash flow.
- (78) As stated in recital (22)(a) and (b), an application for debt restructuring on Romanian and Italian creditors' claims amounting EUR 63,36 million in the form of debt write-offs and conversion of debt into equity was approved by the competent courts. However, Romania has not provided proof of definitive and binding commitments by the creditors on aid free or market terms, and hence the Commission has no elements to conclude that this particular financing constitutes a real and actual own contribution.
- (79) Romania also put forward the sale of aircrafts as another source of own contribution, (see recital (21)(b)). However, Romania acknowledged that the divestiture of these assets was to be completed in October 2023. Romania estimated that the hypothetical revenues from the sale would amount to EUR 5,89 million. The Commission has received no evidence about such sale actually occurring. It follows that the expected proceeds from sales of aircraft are not effective or actual. In any event, such proceeds, even if accepted, would only amount to slightly above 3,5 % of the total own contribution (see recital (20)).
- (80) Additionally, according to the information submitted by Romania, a project was to be set up with a potential investor providing up to EUR 54,47 million external finance (see recital (21)(c)). Yet, Romania did not provide evidence from investors willing to support this potential contribution of fresh new finance to the restructuring plan. Moreover, there is no assurance that negotiations to attract market financing would materialise, given the absence of binding commitments from identified investors and the exit of former shareholders from Blue Air as per recital (20).
- (81) Likewise, Romania included EUR 30,02 million in 2022 internally generated resources as a source of own contribution (see recital (22)(e)). However, Romania did not present any evidence that would confirm these net planned results were in fact achieved and why hypothetical profits should be considered as actual source of own contribution pursuant to point 63 of the R&R Guidelines, which excludes expected profits such as cash flow.
- (82) Therefore, the Commission concludes that the sources of financing identified by Romania (while they were expected to materialise before the date of this decision) are mostly hypothetical and do not constitute a significant, real and actual own contribution to restructuring costs. The funding of the restructuring plan does not correspond to the requirements of the R&R Guidelines as regards the own contribution sufficient in amount and actual in nature ensuring the proportionality of the aid.

6.3.2.2. Measures limiting distortions of competition

- (83) According to point 76 and following of the R&R Guidelines, when restructuring aid is granted, measures must be taken to limit distortions of competition, so that adverse effects on trading conditions are minimised as much as possible and positive effects outweigh any adverse ones. In particular, measures limiting the distortion of competition should usually take the form of structural measures, i.e. clear-cut divestitures of non-loss-making activities which would need to be abandoned anyway to preserve viability.

- (84) The Commission doubted in the opening decision whether any of the proposed measures described in detail in recitals (28) and (29) would constitute structural or valid competition measures.
- (85) Romania has not put forward any information that could dispel the Commission's doubts. In particular, Romania has not shown that the provision to third parties of repair and maintenance services by an entity or subsidiary of Blue Air that used to provide such services in-house only to companies or entities under the same control as Blue Air is not a mere commercial choice increasing its revenues. Romania has failed to show that the repair and maintenance services at issue are so unique that providing them on the market makes up for or mitigates the distortion of competition.
- (86) Romania has also failed to provide any evidence that the routes that have been proposed for closure were profitable or that the closure of airport bases was not necessary to save costs in any event and apt to free an important or rare resource capable of attracting interested competitors. Moreover, Romania's plan does not include any divestment of profitable activities or assets of Blue Air, such as self-standing businesses, and/or slot releases at congested airports.
- (87) Finally, the restructuring plan as communicated to the Commission provides for an increase of Blue Air's aircraft fleet and market presence measured in available seats per kilometre compared to the period immediately before the restructuring plan was devised and started to be implemented (recital (23)). In contrast, points 78 and 79 of the R&R Guidelines point to measures reducing the beneficiary's market presence and/or capacity, especially in markets with significant excess capacity.

6.3.3. *Weighing up the positive effects of the aid with the negative effect on the internal market*

- (88) A carefully designed State aid measure should ensure that the overall balance of effects avoid adversely affecting trading conditions to an extent contrary to the common interest and is positive. The R&R Guidelines set out the criteria under which the Commission assesses the compatibility of aid for the restructuring of an undertaking in difficulty 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.
- (89) In light of the findings of the assessment above (in this Section 6), the Commission concludes that, on the one hand, it was not shown that the restructuring aid, in particular after the cessation of air transport activities of Blue Air, would contribute to the development of the economic activity or air connectivity of Romania. On the other hand, the restructuring aid does not comply with the principal requirements of the R&R Guidelines that seek to ensure that the competition distortion generated by the aid are duly limited. The restructuring aid, therefore, must be held to negatively affect trading conditions to an extent contrary to the common interest, and hence it is not compatible with the internal market pursuant to Article 107(3), point (c), TFEU.

7. **RECOVERY**

- (90) According to the TFEU and the established case-law of the Union Courts, the Commission is competent to decide that the Member State concerned shall alter or abolish aid when it has found that it is incompatible with the internal market.⁽¹⁶⁾ The Union Courts have also consistently held that the obligation on a Member State to abolish aid regarded by the Commission as being incompatible with the internal market is designed to re-establish the previously existing situation⁽¹⁷⁾.
- (91) In this context, the Union Courts have established that this objective is attained once the recipient has repaid the amounts granted by way of unlawful aid, thus forfeiting the advantage which it had enjoyed over its competitors on the internal market, and the situation prior to the payment of the aid is restored⁽¹⁸⁾.

⁽¹⁶⁾ Judgment of 12 July 1973, *Commission v Germany*, C-70/72, EU:C:1973:87, paragraph 13.

⁽¹⁷⁾ Judgment of 21 March 1990, *Belgium v Commission*, C-142/87, EU:C:1990:125, paragraph 66.

⁽¹⁸⁾ Judgment of 17 June 1999, *Belgium v Commission*, C-75/97, EU:C:1999:311, paragraphs 64 and 65.

- (92) In line with the case law, Article 16(1) of the Procedural Regulation states that ‘where negative decisions are taken in cases of unlawful aid, the Commission shall decide that the Member State concerned shall take all necessary measures to recover the aid from the beneficiary.’
- (93) Thus, given that the restructuring aid for an amount of EUR 33,84 million (RON 168,4 million) was implemented since 22 April 2021 (see recital (2)) in breach of Article 108(3) TFEU, and is to be considered as unlawful and incompatible aid, it shall be recovered in order to re-establish the situation that existed on the internal market prior to its granting. Recovery shall cover the time from the date when the aid was prolonged in the absence of a valid restructuring plan until effective recovery. The amount to be recovered shall bear interest from the date when the State guarantee became unlawful on 22 April 2021, after the duration of the rescue aid, approved for six months, had expired in the absence of a valid restructuring plan, until effective recovery. The Commission notes that the fact that the State guarantee might have come to an end when the State repaid the rescue loan at the lender’s request has in no way eliminated the advantage that stemmed, for the beneficiary, from that guarantee. On the contrary, that advantage was in fact used to the fullest extent possible, and it continues to remain with the beneficiary for as long as the State’s ensuing claim vis-à-vis Blue Air is not repaid with interest.

8. CONCLUSION

- (94) The Commission finds that Romania has unlawfully implemented the restructuring aid to Blue Air consisting of the continuation of the State guarantee beyond six months and substitution of the former creditor in breach of Article 108(3) TFEU. Romania should recover that aid with interest. However, the enforcement of the collateral securing the State guarantee and transfer to State ownership of 75 % of the shares of Blue Air does not amount to State aid,

HAS ADOPTED THIS DECISION:

Article 1

The transfer of 75 % of the shares of Blue Air Aviation SA to Romania does not constitute State aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union.

Article 2

The ad hoc State aid consisting of the State guarantee totalling RON 163,8 million (EUR 33,84 million) unlawfully kept in place in favour of Blue Air Aviation SA by Romania in breach of Article 108(3) of the Treaty on the Functioning of the European Union is incompatible with the internal market.

Article 3

1. Romania shall recover the incompatible aid referred to in Article 2 from the beneficiary.
2. The sums to be recovered shall bear interest from the date on which the aid became unlawful on 22 April 2021 until their actual recovery.
3. The interest shall be calculated on a compound basis in accordance with Chapter V of Commission Regulation (EC) No 794/2004 ⁽¹⁹⁾ and with Commission Regulation (EC) No 271/2008 ⁽²⁰⁾ amending Regulation (EC) No 794/2004.

⁽¹⁹⁾ Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ L 140, 30.4.2004, p. 1, ELI: <http://data.europa.eu/eli/reg/2004/794/oj>).

⁽²⁰⁾ Commission Regulation (EC) No 271/2008 of 30 January 2008 amending Regulation (EC) No 794/2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ L 82, 25.3.2008, p. 1).

4. Romania shall cancel all outstanding payments of aid referred to in Article 2 with effect from the date of notification of this Decision.

Article 4

1. Recovery of the aid referred to in Article 2 shall be immediate and effective.
2. Romania shall ensure that this Decision is implemented within four months following the date of notification of this Decision.

Article 5

1. Within two months following notification of this Decision, Romania shall submit the following information:
 - (a) the total amount (principal and recovery interests) to be recovered from the beneficiary;
 - (b) a detailed description of the measures already taken and planned to comply with this Decision; and
 - (c) documents demonstrating that the beneficiary has been ordered to repay the aid.
2. Romania shall keep the Commission informed of the progress of the national measures taken to implement this Decision until recovery of the aid referred to in Article 2 has been completed. It shall immediately submit, on simple request by the Commission, information on the measures already taken and planned to comply with this Decision. It shall also provide detailed information concerning the amounts of aid and recovery interest already recovered from the beneficiary.

Article 6

This Decision is addressed to the Republic of Romania.

The Commission may publish the amounts of aid and recovery interest recovered in application of this decision, without prejudice to Article 30 of Council Regulation (EU) 2015/1589.

Done at Brussels, 16 February 2024.

For the Commission
Margrethe VESTAGER
Executive Vice-President