COMMISSION DECISION (EU) 2025/1191

of 21 February 2025

on State aid SA. 33769 – C/2015 (ex NN/2015) (ex CP/2011) implemented by Romania for Târgu Mureş Transylvania Airport

(notified under document C(2025) 1127)

(Only the Romanian 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 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 provision cited above ([1]) and having regard to their comments,

Whereas:

1. PROCEDURE

1.1. Proceedings on the alleged public funding to Târgu Mureş Transylvania Airport in the period 2007-2009

(1) On 17 May 2010, Romania notified to the Commission, in accordance with Article 108(3) of the Treaty on the Functioning of the European Union ('Treaty' or 'TFEU'), an aid scheme providing for public support in favour of small regional airports including Târgu Mureş Transylvania Airport ('Târgu Mureş Airport', 'TMA' or the 'Airport'). The notification was registered under case number N 185/2010.

(2) By letter dated 24 May 2011, the Commission informed Romania that it had decided to initiate the formal investigation procedure laid down in Article 108(2) TFEU, under case number SA.30931 (2011/C), (the '2011 Opening Decision') ([2]) in respect of the notified scheme for public funding to suppport the development of airport infrastructure in small regional airports, as well as the public financing to cover operating losses granted to regional airports during the period 2007-2009 which was brought to the attention of the Commission by Romania during the preliminary assessment phase of the notification. The Commission subsequently adopted a corrigendum to that decision on 23 June 2011.

(3) By letter dated 25 July 2011, Romania withdrew its notification. Consequently, on 31 October 2011, the Commission closed its investigation in respect of the notified measure. The formal investigation procedure remained open as regards the public funding granted to Romanian regional airports in the period 2007-2009 to cover operating losses.

([1]) Commission decision SA.33769 (2015/C) (ex 2015/NN) (ex 2011/CP) – Romania – Alleged aid to Târgu Mureş Transylvania Airport, Wizz Air, Ryanair and other airlines (OJ C 104, 18.3.2016, p. 45) (as corrected by the Commission through a Corrigendum adopted on 23 June 2011) and Commission Decision (EU) on State aid SA.30931 (11/C) (ex N 185/10) implemented by Romania for Romanian regional airports (OJ C 207, 13.7.2011, p. 3).

([2]) OJ C 207, 13.7.2011, p. 3.

(4) By a final positive decision of 27 September 2016 (the '2016 Final Decision'), ([3]) the Commission closed the investigation in case SA.30931 with regard to all the airports concerned, with the exception of Airport 'Avram Iancu' in Cluj ('Cluj Airport' or 'CNIA') and TMA.

(5) Consequently, the investigation of the public funding to cover operating losses of TMA between 2007-2009 remained open and will be assessed in this Decision.

1.2. Proceedings on the alleged aid measures to the airlines operating in Târgu Mureş Transylvania Airport, to Târgu Mureş Transiylvania Airport and to its Airport Manager

(6) On 13 October 2011 the Commission received a complaint in accordance with Article 108(3) TFEU, about alleged illegal State aid concerning TMA. The complaint was registered under case number SA. 33769. The complaint was supplemented with further information to the Commission on 14 October 2011, 18 October 2011, 3 November 2011, 24 November 2011, 10 January 2012, 8 November 2012.

(7) On 1 March 2012, the Commission received a second complaint about alleged illegal state aid granted to airline Wizz Air and to TMA. The second complainant supplied additional information to the Commission on 2 April 2012, 20 April 2012, and 15 October 2012.This complaint and the supplementary information were also registered under case number SA. 33769.

(8) On 15 October 2012, the Commission received a third complaint about alleged illegal Sated aid granted to TMA. The complaint was supplemented with further information on 7 December 2012, 26 February 2013, 27 February 2013, 18 September 2013, 5 December 2013, 12 February 2015 and 18 February 2015. This complaint and the supplementary information were also registered under case number SA. 33769.

(9) Several exchanges between the Commission, the Romanian authorities and each of the complainants took place in the period 2011-2015.

(10) By letter dated 31 July 2015, the Commission informed Romania of its decision to initiate the formal investigation procedure laid down in Article 108(2) TFEU with regard to the airport charges imposed on airlines operating at TMA, the public financing of the SGEI granted to the airport manager for the periods 2011-2014 and 2014-2019 and the public financing of the purchase of ground handling infrastructure in 2011 and parking facilities at TMA (the '2015 Opening Decision') ([4]).

(11) By letter dated 26 August 2015, the Romanian authorities asked for the extension of deadline for providing their position.

(12) The Commission finally received comments from Romania on 2 October 2015.

(13) The 2015 Opening Decision was published in the *Official Journal of the European Union* on 18 March 2016. The Commission invited interested parties to submit their comments on the measures in question within one month of the publication date.

(14) The Commission received comments from Carpatair and the Romanian authorities on 15 April 2016, from Wizz Air on 2 May 2016 and from Cluj Airport on 3 May 2016.

(15) The Commission transmitted the third parties' comments to Romania on 22 August 2016. On 22 September 2016, Romania provided its reply to the comments.

(16) The Commission requested additional information from the Romanian authorities by letter dated 24 October 2017. The Romanian authorities responded on 19 February 2018.

([3]) Commission Decision (EU) 2017/1149 of 27 September 2016 on State aid SA.30931 (11/C) (ex N 185/10) implemented by Romania for Romanian regional airports (OJ L 166, 29.6.2017, p. 36, ELI: http://data.europa.eu/eli/dec/2017/1149/oj).

([4]) State aid — Romania — State aid SA.32963 (2015/C) (ex 2012/NN) (ex 2011/CP) — State aid to Wizz Air and Cluj-Napoca Airport — Invitation to submit comments pursuant to Article 108(2) of the Treaty on the Functioning of the European Union (OJ C 104, 18.3.2016, p. 77).

1.3. Procedural steps common to the 2011 and 2015 Opening Decisions

(17) The Commission received additional information from the Romanian authorities on 26 February 2020. The Commission services held a teleconference with the Romanian authorities on 13 March 2020 and sent a request for additional information on 5 May 2020. The Romanian authorities replied on 5 June 2020.

(18) The Commission requested additional information from the Romanian authorities by letters dated 14 February, 4 March, 30 July and 25 September 2024. The Romanian authorities responded on 24 March, 12 April, 30 August and 22 October 2024.

2. TÂRGU MUREŞ AND THE MUREŞ COUNTY

2.1. Overview

(19) Târgu Mureş is a city of 116 000 inhabitants ([5]) in Mureş County. It serves as the administrative centre of the county and is considered a supra-regional economic hub.

(20) Mureș county belongs to the Central Region of Romania (or '*Centru*' in Romanian). This region also includes the counties of Alba, Brasov, Covasna, Harghita, and Sibiu. Centrally positioned in Romania, the region is equidistant from various border crossings.

2.2. Population trends and economic performance

(21) The population of Mureş County has experienced a steady population decline over recent decades. In 1990, the county had an estimated 621 445 inhabitants. By 2010, this number had dropped to 580 672. By 2020, the population further declined to 557 200, and projections indicate a reduction to 436 600 by 2050. The working-age group (15–61 years) is also expected to decrease drastically, from 397 400 in 2010 to 255 300 by 2050 — a decline of 35,8 % ([6]).

(22) During the first decade of the 21st century, Mureş County's GDP growth was the second lowest among the counties in the Central Region, significantly lagging behind Bucharest ([7]).

2.3. Road infrastructure

(23) As of December 2009, Mureş County had 2 098 kilometres of roads, comprising 414 kilometres of national roads and 1 684 kilometres of county roads. However, only 425 kilometres were classified as 'modern' infrastructure ([8]).

(24) At the time of the investigation, the road infrastructure in Mureș County was lacking rapid connections to the rest of the country. The most significant European route passing through Târgu Mureș was the E60, which connects the Hungarian border at Borș to cities like Oradea, Cluj-Napoca, Târgu Mureș, Brașov, Ploiești, Bucharest, and Constanța. Mureș County also had access to several other key transport corridors: the E68 (connecting Hungary's border to Sibiu, Brașov, and other major cities), the E81 (linking Bulgaria to Romania, passing through Bucharest, Pitesti, and Cluj-Napoca), and the E574 and E58, which connect key cities and borders in the region ([9]).

([5]) 2021 data.

([6]) Central Region Development Agency. Demographic Analysis of the Central Region. Geodemographic disparities. Trends and Forecasts (2010).
Available at 31ycx_Analiza si prognoza demografica.pdf.

([7]) The GDP only increased by 39,2 % from 1999 to 2007 compared to a 102 % of the Alba Region and the 84,7 % of the Sibu County and below the average of the region of 59,9 %.
Information from the Central Region Development Agency. Unemployment in the Central Region – Causes and Trends (2010).
Available at: pqn30_somaj.pdf.

([8]) Central Region Development Agency. Transport infrastructure. Key factors in the sustainable development of the Central Region (2011).
Available at: Microsoft Word - Coperta studiu Infrastructura de transport.

([9]) Sustainable Urban Mobility Plan of Târgu Mureș Municipality.
Available at: PMUD Târgu Mureș.

(25) Future infrastructure developments included at the time the planned A3 Transylvania Highway (in Romanian *Autostrada A3*) which aimed to connect Bucharest to the Hungarian border via Braşov, Târgu Mureş, and Cluj-Napoca, passing through Mureş County. Additionally, the planned highway to Moldova would improve links between Târgu Mureş and cities like Roman, Iași, and the Moldovan border ([10]).

(26) At the time of the investigation, traffic flows generated by the Târgu Mureş Transylvania Airport (TMA) could not bypass the Târgu Mureş city centre, which together with the poor quality of rail services had a negative impact on the mobility of the County. Moreover, in December 2018, TMA was only connected to the A3 exit.

3. TÂRGU MUREŞ AIRPORT

3.1. The Airport

(27) Târgu Mureş Transylvania Airport is located 14 km southwest of Târgu Mureş. It is an important infrastructure for the regional connectivity of the Transilvania region, and it supports numerous jobs connected to the aviation services sector.

(28) TMA is located 450 km equidistant from the main capitals of the wider region – located at 450 km to Belgrade, Budapest, Bucharest and Chisinau. The airport serves a region comprising several counties, such as Mureș, Harghita, Covasna, parts of Bistrita, Brasov, Suceava and Sibiu, with a total population of around 2,7 million people.

(29) The closest airports are Cluj Airport, which is approximately 103 km away, or about 1 hour 30 minutes by car, and Sibiu International Airport, which is approximately 120 km away, or about 1 hour 50 minutes by car. All other major airports are more than 2 hours away by car. Passenger numbers of TMA for the period 2005-2019 are shown in the table below.

Table 1

Passenger numbers at TMA between 2005 and 2019 ([11])

2005	2006	2007	2008	2009	2010	2011	2012
12 408	46 882	156 929	69 945	84 062	74 353	257 303	300 427

2013	2014	2015	2016	2017	2018	2019
356 656	343 521	336 694	287 412	566	63 794	179 066

(30) Between 2005 and 2019, several airlines have been providing scheduled flights from the Airport. The activities of the main airlines offering regular flights at TMA are described in the following paragraphs.

(31) Wizz Air began operations at the Airport in June 2006 with a route to Budapest and expanded its activities to five other routes in 2007. In November 2007, Wizz Air ceased its activity at the Airport. In 2008, Wizz Air resumed operations at the Airport with five new routes. In 2009 and 2010, Wizz Air only operated its Budapest route. In 2011, Wizz Air increased its services by re-opening and adding new routes to a total of eight. Since then, Wizz Air has been active at the Airport, operating an average of eight to ten routes until the technical closure of the Airport in 2017. Following the reopening of commercial services from TMA, Wizz Air operated four routes from TMA in 2018 and 2019.

([10]) Sustainable Urban Mobility Plan of Târgu Mureș Municipality.
Available at: PMUD Târgu Mureș.

([11]) The final numbers for years 2007-2009 are slightly different to the numbers from the 2016 Final Decision on the basis of clarifications provided by Romania. The decrease in passenger numbers in November 2016 relates to the temporary closure of the airport in order to refurbish the runway and the apron and a cancellation or transfer of all flights to the Cluj Airport. The work was completed in June 2018.
Source: https://www.aeroportultransilvania.ro/wp-content/uploads/2014/05/Raportul-anual-al-administratorilor-cu-privire-la-bilantul-31-12-2016.pdf.

(32) In 2013, Ryanair operated two routes to Charleroi and Pisa and maintained only the route to Charleroi until mid-2014, when it ceased its activities at the Airport and has not operated any routes since 2014.

(33) Malev operated a route to Budapest from 2005 to 2012.

(34) TAROM operated a route to Bucharest from 2005 to 2014 and in 2018 and 2019.

(35) Carpatair operated a connection with Timisoara from 2005 to 2008.

(36) In addition, several airlines offered charter flights in the period 2005 to 2019 to Denmark (Cimber Air and Wideroe), Egypt (Air Arabia, TAROM and Air Bucharest), Israel (Sun D'Or) and Turkey (Corendon and TAROM).

(37) No cargo flights operated at the airport during the period under investigation. Freight transport mainly took place by means of transit road traffic.

3.2. **Airport Manager**

(38) From 1990 until 2019, the manager of TMA has been the Regia Autonomă 'Aeroportul Transilvania' Târgu-Mureș ([12]). Like most airports in Romania, TMA was part of the Company of Regional Airports in Romania ('RAATR') under the supervision of the Romanian Ministry of Transport until 1997.

(39) Under the Decision of the Government of Romania No 398/1997 (the '1997 Government Decision') ([13]), 13 airports within the structure of RAATR were subordinated to local public authorities, i.e. to the *Consilii Județene* or county councils. This included TMA, which was subordinated to the Mureș County Council. Therefore, from 6 August 1997 to 2019, the Airport Manager operated under the authority of the Mureș County Council ([14]). The 1997 Government Decision envisaged that the financing of the Airport Managers shall be provided from their own sources and, in addition, from allocations from the local budget of the county councils, within the limit of the amounts approved for this purpose ([15]). The financial regime, the mission and the attributions of all Airport Managers were the same for all airports ([16]).

(40) According to the 1997 Government Decision ([17]), the airport's assets and liabilities were taken over by the Mureș County on 30 June 1997 ([18]). The assets transferred included the terminal, the runway, the taxiways and the boarding platforms and were subsequently listed as assets of Mureș County.

(41) The Airport Manager's tasks has been to maintain and operate the airport infrastructure. It offers airport services and charges users (commercial aviation operators and non-commercial 'general aviation' users) for the use of such infrastructure.

(42) In 2011, TMA was entrusted with the provision of an SGEI (the '2011 SGEI') by Regional Decision No 107/2011 of 18 August 2011 of Mureș County Council, (the 'Regional Decision of August 2011' or the '2011 SGEI Entrustment'). This Decision was in place from 18 August 2011 until 30 October 2014.

([12]) It is a self-governing legal person in accordance with Articles 2 and 3 of Romanian Law No 15/1990, on the reorganisation of State economic units as autonomous corporations and commercial companies.
([13]) Decision of the Government of Romania No 398/1997 on the transition of certain autonomous airport administrations from the authority of the Ministry of Transport to the authority of county councils.
([14]) Decision No 37/11.09.1997 of the Mureș County Council.
([15]) Article 3 of the 1997 Government Decision.
([16]) Article 3 and Annex II (Framework Regulation for the organisation and functioning of the Airport Managers) of the 1997 Government Decision.
([17]) Article 1(2) of the 1997 Government Decision.
([18]) Annex 3 of the 1997 Government Decision.

(43) The Airport Manager was entrusted with a second SGEI (the '2014 SGEI') by Mureş County Council Decision No 161/2014 of 30 October 2014 as amended by Mureş County Council Decision No 67/2015 of 18 June 2015 (the 'Regional Decision of October 2014' or the '2014 SGEI Entrustment'). This Decision was valid until 9 May 2019.

4. DETAILED DESCRIPTION OF THE MEASURES

(44) Five measures are covered by this Decision ([19]):

— Measure 1 – Financing of TMA in the period 2007-2009

— Measure 2 – Financing of ground handling infrastructure for TMA in 2011

— Measure 3 – Financing of TMA under the 2011 SGEI Entrustment from August 2011 to October 2014

— Measure 4 – Financing of TMA under the 2014 SGEI Entrustment from October 2014 to 31 July 2019

— Measure 5 – Airport charges for airlines operating at TMA from 21 March 2013 to 16 February 2019.

4.1. Measure 1 - Financing of TMA in the period 2007-2009

(45) The Romanian authorities explained that all small Romanian regional airports were generally loss-making during the period 2007-2009, and that their operating losses were covered by the State on an annual basis ([20]).

(46) Specifically in the case of TMA, the operating result for the reference period as well as the public funding granted is presented in the table below.

Table 2

Operating result of TMA and public financing during 2007-2009 (RON)

Year	2007	2008	2009	Total
Operating costs	4 855 746	6 143 528	7 135 784	18 135 058
Operating revenue	2 979 561	2 016 657	2 018 773	7 014 991
Results of operation deficit/loss	(1 876 185)	(4 126 871)	(5 117 011)	(11 120 067)
Amount of compensation paid from public funds	1 838 540	4 305 247	4 722 536	10 866 323
Funding gap not covered by public funds/overcompensation	(37 645)	178 376	(394 475)	(253 744)
Funding gap not covered by public funds/overcompensation (EUR)	(11 286)	48 440	(93 056)	(152 783)

([19]) As this decision relates to two opening decisions, the Commission has rearranged the numbering of the measures contained in the 2015 Opening Decision in order to improve readability.

([20]) See recital 29 of the 2011 Opening Decision.

(47) In total, TMA received RON 10 866 323 (EUR 2 834 420 ([21])) from Measure 1 during the period 2007-2009. Although the 2008 result was closed with an overcompensation, the total compensation for these three years was lower than the result of the operation, leaving a funding gap of RON 253 744 (EUR 152 783).

(48) According to Romania, the public financing granted annually in the period 2007-2009 represented compensation for the provision of an SGEI, consisting in the overall management of TMA, and complied with the conditions laid down in Commission Decision 2005/842/EC of 28 November 2005 on the application of Article 86(2) of the EC Treaty [now Article 106(2) TFEU] to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest (the '2005 SGEI Decision') ([22]).

(49) In particular:

(a) The operation of SGEI was entrusted to the Airport Manager by the 1997 Government Decision laying down the public service obligations ('PSOs'), the parameters for calculating the compensation and the arrangements for avoiding any overcompensation;

(b) The annual traffic at the Airport did not exceed 1 000 000 passengers.

(50) The 1997 Government Decision sets out that the operating and capital costs of the airports in question would be covered by own resources supplemented by public financing to the extent necessary. Romania considers that this mechanism prevents overcompensation insofar as the airports can only receive the amount necessary to cover all costs. These amounts are paid to the airports at the beginning of the year, on the basis of costs forecasts and any surplus is returned to the State at the end of the financial year. For the period in question, the airport's budget was approved by means of decision of Mureș County Council.

(51) For 2007, the airport's budget was approved by Decision No 3 of 25 January 2007 of Mureș County Council, which approves the budget of Mureș County Council and the amounts allocated for the co-financing of the development programmes of the administrative territorial units of Mureș County for 2007.

(52) For 2008, the airport's budget was approved by Resolution No 56 of 27 March 2008, from the Mureș County Council, on the 2008 revenue and expenditure budget of the 'Transylvania-Târgu Mureș' Autonomous Airport Region Administration, as well as the objectives and performance criteria for the Director of the Region.

(53) For 2009, the airport's budget was approved by Decision No 37 of 29 April 2009 of the Mureș County Council on the approval of the revenue and expenditure budget of the Administration Regia Autonomă Aeroportul 'Transylvania Mureș' for 2009.

4.2. **Measure 2 - Financing of ground handling infrastructure in 2011**

(54) The 2015 Opening Decision noted that the Airport Manager received public support for the financing of ground handling infrastructure in the total amount of RON 3 038 362 (EUR 716 747). According to Romania, those payments were approved by the Mureș County Council prior to the adoption of Regional Decision No 107/2011 of 18 August 2011 of Mureș County Council, which, as explained in recital 42, entrusted TMA with the provision of SGEI.

(55) Romania explained that in order to fulfil its obligations as a provider of services of general economic interest, any airport is obliged to provide the minimum level of ground handling infrastructure necessary to serve the movements of aircrafts exempted by law from airport charges ([23]). Furthermore, the Romanian authorities have explained that the financing of the ground handling infrastructure was limited to the actual cost of the equipment, as shown in the table below.

([21]) The exchange rate in this decision is calculated as the yearly average official EUR/RON exchange rate in accordance with the values offered by the European Central Bank (ECB). In this respect, the exchange rates applied are as follows: 3,34 (2007), 3,68 (2008) and 4,24 (2009).

([22]) OJ L 312, 29.11.2005, p. 67, ELI: http://data.europa.eu/eli/dec/2005/842/oj.

([23]) See recital 143 of the 2015 Opening Decision.

Table 3

Public funding of ground handling infrastructure in 2011 (RON)

	Estimated cost, VAT included	Estimated cost, without VAT	VAT value (share of 24%)	Value of the offered public support, VAT included
Apron buses	205 823	165 986	39 836	205 823
Passenger Luggage cart	59 163	47 712	11 451	59 163
Ground Power Unit (500 kVA)	179 676	144 900	34 776	179 676
Self-propelled stairs	919 823	741 800	178 023	919 823
De-icing unit	1 673 876	1 349 900	323 976	1 673 876
TOTAL	**3 038 362**	**2 450 299**	**588 062**	**3 038 362**
TOTAL EUR	**716 747**	**578 023**	**138 723**	**716 747**

(56) In total, TMA received RON 2 450 299 (EUR 578 023) ([24]) in 2011 from Measure 2.

(57) Romania has explained that, according to the data of the accounting registers of the administration, the amount of RON 588 062 presenting a deductible VAT, was not included in the cost of the ground handling infrastructure purchased in 2011, this value being deducted from the value added tax owed to the state budget and restored afterwards by the governing public authority of Mures County Council.

4.3. Measure 3 – Financing of TMA under the 2011 SGEI Entrustment from August 2011 to October 2014

(58) Under Article 1(2) of the Regional Decision of August 2011, the following activities carried out by the Airport constitute an SGEI:

(a) the construction of airport infrastructure and equipment: runways, terminals, ramps, traffic control tower or installations that directly support them: fire extinguishing facilities, security and safety equipment;

(b) operating the infrastructure, equipment and installations that directly support them, including maintaining, repairing, upgrading or administering the airport infrastructure;

(c) the provision of ancillary services for air transport, with the exception of ground handling services;

(d) the provision of air traffic control services, fire extinguishing service, emergency services, safety;

(e) ensuring, in accordance with the law, the presence of the spaces and utilities necessary for public authorities performing specific control activities at the airport;

([24]) The exchange rate in this decision is calculated as the yearly average official EUR/RON exchange rate in accordance with the values offered by the ECB. In this respect, the exchange rates applied for year 2011 is 4,2391.

(f) processing of flights by aircraft legally exempted from the payment of airport charges ([25]), including processing the passengers of these flights;

(g) acquiring and maintaining the necessary ground service equipment for aircraft legally exempted from the payment of airport charges; and

(h) the protection of the airport infrastructure.

(59) According to the Romanian authorities the activities under points d) to h) above are not of an economic nature and are in the scope of the powers of public authority.

(60) With regard to points f) and g) the Romanian authorities state that certain categories of aircraft are legally exempted from all airport taxes and charges, including ground handling charges, at all Romanian airports.

(61) In accordance with Article 1(3) of the Regional Decision of August 2011, commercial activities, which are not linked directly to the activities of the Airport, may not be supported ([26]). Furthermore, Article 4 of the Regional Decision of August 2011 includes a mechanism for reviewing the compensation to fulfil the PSOs and to avoid overcompensation. The calculation of the compensation takes into account all costs incurred in carrying out the activities related to the SGEI, and a corresponding share of common costs. The revenue to be taken into account for determining the compensation shall include all revenue from the activities covered by the SGEI and any profit from activities other than those relating to the SGEI.

(62) The Romanian authorities have stressed that the Airport Manager was required to keep separate accounts for the activities pertaining to the SGEI and for commercial activities, and to return any potential overcompensation amounts found by any control body, including by the specialised department of the country public authority. The Airport Manger confirms that the 2011 financial statements and the subsequent financial statements were prepared in accordance with the principles of separation of the SGEI expenses and revenues from those relating to commercial activities.

(63) Furthermore, in accordance with County Council Decision No 158/2012 approving the budget of revenues and expenses of the Airport Manager, the Mureș County Council was entrusted with carrying out checks and approving the financial statements submitted by the Airport Manager, in order to avoid overcompensation and to verify that the Airport Manager has fulfilled its PSOs. In the light of the findings resulting from those checks, Mureș County Council shall request the Airport Manager to reimburse any overcompensation or, if necessary, to propose a review of the activities related to the SGEI.

(64) According to the annual financial statements prepared by TMA and verified by the Romanian authorities, the operating result of TMA for the period in which the 2011 SGEI Entrustment was in place is presented below in Table 4. As can be seen in the table below, although in the first year the compensation was positive, it does not offset the level of total losses for the years in which the SGEI was in place.

([25]) According to Article 3(2) of the Romanian Aviation Code, at airports open to commercial traffic, the following types of aircraft are exempted from the payment of the passenger charge, landing charge, parking and lighting charge and air navigation services charge: a) Romanian military aircraft; b) Foreign military aircraft, by virtue of bilateral agreements concluded at the request of the Ministry of Defence; c) Aircraft carrying State representatives in their official capacity; d) Aircraft flying in the interest of the UN, Red Cross or Red Crescent; e) Aircraft carrying out search and rescue missions; f) Aircraft carrying out humanitarian and aid missions; g) Aircraft that must land due to technical difficulties, meteorological conditions or other emergency situations; h) Aircraft landing upon instruction from the Ministry of Transport and/or the Ministry of Defence; i) Other types of aircraft as laid down by the law. Under Article 31(4) the exemptions laid down at letters a) - c) only apply at airports where the Romanian State is the majority shareholder.

([26]) Even though the 2011 SGEI Entrustment allowed also for an investment aid, the scope of this Decision is limited to the assessment of the operating aid up to the amounts set in Table 4.

Table 4

Operating result of TMA and public funding during the 2011 SGEI Entrustment (RON)

Period	2011	2012	2013	January – October 2014	Total
Operating costs	7 924 410	10 517 504	11 605 800	9 115 644	39 163 358
Operating revenue	3 064 460	5 012 189	5 939 214	5 030 556	19 046 419
Result of operation/ Loss	(4 859 950)	(5 505 315)	(5 666 586)	(4 085 088)	(20 116 939)
Compensation amount	4 951 625	5 367 648	5 606 274	3 592 570	19 518 117
Funding gap not covered by the compensation	91 675	(137 667)	(60 312)	(492 518)	(598 822)
Funding gap not covered by the compensation (EUR)	21 626	(30 871)	(13 648)	(110 977)	(134 699)

(65) In total, TMA received RON 19 518 117 (EUR 4 449 930) ([27]) over 2011-October 2014 from Measure 3.

4.4. Measure 4 - Financing of TMA under the 2014 SGEI Entrustment from 30 October 2014 to 9 May 2019

(66) Under Article 1(2) of Regional Decision of October 2014, the following activities constitute an SGEI at TMA:

(a) the administration, routine maintenance, repair, modernization, the extension and the construction of aircraft movement areas (runway, aprons, platforms), control tower, terminals, the electrical plant, administered by the government and related equipment: safety and security systems and equipment, electrical systems, runway lighting, utility networks, fire-fighting systems, control and monitoring system;

(b) the organisation, equipment, maintenance and operation of passengers flows in the airport terminals, the provision of safety and security services;

(c) the ground handling services to state-owned aircraft, including the procurement of related equipment ([28]);

(d) the protection of the airport infrastructure;

(e) the search and rescue operations at the airport's premises;

(f) the guarding and security facilities for emergencies, fire prevention and control;

(g) the provision of the areas, facilities and infrastructure required by the customs administration, border police, air transport police, the Ministry of Internal Affairs and the Romanian Intelligence Service for performing their specific activities; and

(h) free of charge operation for state flights, military flights within certain ministries and government services, emergency flights and other legally regulated situations.

([27]) The exchange rate in this decision is calculated as the yearly average official EUR/RON exchange rate in accordance with the values offered by the ECB. In this respect, the exchange rates applied are as follows: 4,24 (2011), 4,46(2012), 4,42(2013) and 4,44 (2014).

([28]) As regards the ground handling, Romania argued that there is no legal provision expressly prohibiting the inclusion of ground handling in the category of services of general economic interest. The ground handling activity is an auxiliary airport service to the air transport and in the absence of this service, the Târgu Mureș Airport would not be able to discharge its PSOs entrusted by the Mureș County Council.

(67) According to the Romanian authorities, the 2014 SGEI was drawn up in accordance with the Communication from the Commission on the application of the European Union state aid rules on compensation granted for the provision of services of general economic interest ([29]), and the European Union framework for State aid in the form of public service compensation (the '2012 SGEI Framework') ([30]) with account also taken of the 2014 Guidelines on State aid to airports and airlines (the '2014 Aviation Guidelines') ([31]). Regional Decision of October 2014 allows for grants for both investment and operating costs, as compensation for the carrying out of the SGEI.

(a) Under Article 4(2) of Regional Decision of October 2014, investment costs related to the SGEI are compensated based on the funding gap in accordance with the Airport Manager's business plan up to an intensity of 75 % of eligible costs.

(b) Under Article 4(4) of Regional Decision of October 2014, public financing of operating costs is set annually on the basis of the operating funding gap of the SGEI activities based on the Airport Manager's business plan. According to Article 4(5), the compensation for operating costs in the first five years may not exceed 80 % of the operating deficit over the five previous years, and 50 % of that operating deficit for the following five years.

(c) Under Article 4(7) of Regional Decision of October 2014, the amount of compensation (for both operating and investment costs) cannot exceed what is necessary to cover the costs incurred in discharging the PSOs. According to Article 4(9), the cost to be taken into account are only those relating to the SGEI and a proportionate contribution of common costs. In turn, according to Article 4(10) the revenue to be taken into account for the compensation comprise all revenue related to the SGEI, but also any profit from other unrelated activities of the airport. Finally, according to Article 4(11) the compensation shall not exceed the difference between the aforementioned costs and revenue in order to avoid possible overcompensation.

(68) According to Article 2(2) and 2(3), the 2014 SGEI initially would cover a ten-year period, i.e. until 4 April 2024 in order to coincide with the so called 'transition period' for operating aid under the 2014 Aviation Guidelines and envisaged a potential review under the following scenarios: (i) after four years from the initial entrustment, (ii) if the Airport's traffic exceeds 700 000 passengers per year; or (iii) whenever required by the relevant legislation. However, as mentioned, Regional Decision of October 2014 remained valid only until 9 May 2019.

(69) The Romanian authorities have provided information on the Business Plan for TMA covering the period 2014-2024 (the 'Business Plan').

Table 5

Expected ex-ante economic indicators envisaged in the Business Plan (RON)

	Nov-Dec 2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024
Expected revenues based on information available before 30 October 2014	846 516	4 846 379	6 332 114	7 573 193	8 245 434	9 082 977	9 521 429	9 829 847	10 437 231	11 075 896	12 025 874
Expected costs based on information available before 30 October 2014	3 277 736	10 545 013	10 144 747	10 400 653	10 549 657	10 688 923	10 761 272	10 786 230	10 871 790	11 060 259	11 255 273

([29]) Commission Communication on the application of the European Union State aid rules to compensation granted for the provision of service of general economic interest (OJ C 8, 11.1.2012, p. 4).

([30]) Commission Communication on a European Union framework for State aid in the form of public service compensation (OJ C 8, 11.1.2012, p. 15).

([31]) Commission Communication on Guidelines on State aid to airports and airlines (2014) (OJ C 99, 4.4.2014, p. 3).

	Nov-Dec 2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024
Operational funding gap expected on the basis of information available before 30 October 2014	(2 431 220)	(5 698 634)	(3 812 633)	(2 827 460)	(2 304 223)	(1 605 946)	(1 239 843)	(956 383)	(434 559)	15 637	770 601
Estimated compensation	2 431 220	5 698 634	3 812 633	2 827 460	2 304 223	1 605 946	1 239 843	956 383	434 559	0	0
Estimated compensation (EUR)	547 818	1 281 859	849 025	618 862	495 105	338 450	256 266	194 335	88 120	0	0

(70) The amounts actually granted by the Romanian authorities under the 2014 entrustment are presented in the table below.

Table 6

Funding under the 2014 SGEI Entrustment

Compensation	Nov-Dec 2014	2015	2016	2017	2018	Jan-Apr 2019	Total
RON	2 550 353	5 448 221	3 619 000	5 038 198	4 687 908	375 981	21 719 661
EUR	574 662	1 225 531	805 905	1 102 740	1 007 286	79 237	4 795 362

(71) In total, TMA received RON 21 719 661 (EUR 4 795 362) ([32]) over November 2014-April 2019 from Measure 4.

(72) The Romanian authorities have explained that the main reason why the actual compensation was higher than the *ex ante* estimated compensation during the period 2017-2018 was due to the flight restrictions and the complete suspension of flights between November 2016 and June 2018, when the runway was in a state of technical non-compliance, followed by its reconstruction. On 25 June 2018, the operational activity of the airport resumed after a period of 12 months of restricted flight operations (17 November 2016-4 October 2017) and a period of 8 months of flight suspension (4 October 2017-25 June 2018).

4.5. Measure 5 –Airport charges for airlines operating at TMA from 21 March 2013 to 16 February 2019

(73) The Romanian authorities indicate that:

(a) By Government Decision No 455 of 4 May 2011, the Romanian State established the common principles for the levying of airport charges at airports in Romania. According to this piece of legislation, airport charges shall be applied in a non-discriminatory manner to all airport users. Furthermore, airport managers shall have the right to adapt airport charges to certain aspects of public and general interest, including environmental considerations, on the basis of relevant, objective and transparent criteria. ([33]) Finally, the Government Decision appointed the *Regia Autonomă 'Autoritatea Aeronautică Civilă Română'* (i.e., the Romanian Civil Aviation authority) as independent supervisory authority, responsible for supervising the application of the provisions of the Government Decision No 455 ([34]).

([32]) The exchange rate in this decision is calculated as the yearly average official EUR/RON exchange rate in accordance with the values offered by the ECB. In this respect, the exchange rates applied are as follows: 4,44 (2014), 4,46 (2015), 4,49 (2016), 4,57 (2017), 4,65 (2018), 4,75 (2019), 4,84 (2020), 4,92 (2021) and 4,93 (2022).

([33]) Article 5 of Government Decision No 455 of 4 May 2011.

([34]) Article 14 of Government Decision No 455 of 4 May 2011.

(b) Order No 744/2011 of the Ministry of Transport and Infrastructure of Romania of 23 September 2011 (the '2011 Order of the Ministry of Transport'), applies to the following airport charges: (i)) landing fee ([35]); (ii) lighting tariff ([36]), (iii) parking fee ([37]), (iv) passenger service tariff, ([38]) (v) development tariff, ([39]) (vi) transit tariff ([40]) and (vii) transfer fee ([41]). The Order clarifies that the decision to apply any of beforementioned airport charges belongs to the airport manager ([42]). Finally, the Order states that an airport manager may introduce airport charges in a number of specific conditions ([43]) and that these should be applied in a non-discriminatory manner and without distortion of competition between users.

(c) The 2011 Order of the Ministry of Transport was implemented for TMA by Decision of Mureș County Council No 25/2012 of 29 February 2012 (the 'Regional Decision of February 2012'). According to this Decision, the airport charges shall be applied in a transparent and non-discriminatory manner to all users of the airport infrastructure and shall be approved by the Mureș County Council ([44]).

(d) The level of the airport charges was set by the Decision of Mureș County Council No 83/2012 of 6 July 2012, (the 'Regional Decision of July 2012') approving the decision of the Board of Directors of TMA No 7/26 June 2012. It applied only to the airlines operating at TMA. This decision superseded the previous Mureș County Council Decision No 26/2011 of 24 March (the 'Regional Decision of March 2011').

([35]) Annex 1 of the 2011 Order of the Ministry of Transport sets the following conditions for the landing fee:
(a) The fee is calculated on the maximum certificated take-off weight of the aircraft.
(b) Fractions of a tonne less than 500 kg shall be disregarded and those greater than 500 kg shall be considered as one tonne; aircraft with a maximum take-off mass of less than 500 kg shall be charged for one tonne.
(c) The charge is levied for one landing and one take-off and entitles the holder to:
— use of airport facilities and installations, with the exception of lighting;
— use of terminal areas and facilities, except those charged separately;
— aircraft parking, but not more than two hours after landing.
(d) The charge shall, where applicable, also include the airport's costs for capital investment and maintenance works related to aircraft movement surfaces.
(e) In order to encourage increased frequency of operations, the airport managing body may apply discounts of up to 50 % on the landing charge, depending on the number of movements, in increments of up to 5 %.

([36]) Annex 1 of the 2011 Order of the Ministry of Transport sets the following conditions for the lighting tariff:
(a) The charge shall be calculated on the maximum certificated take-off weight of the aircraft.
(b) Fractions of one tonne less than 500 kg shall be disregarded and those greater than 500 kg shall be considered as one tonne; aircraft with a maximum take-off mass less than 500 kg will be charged for one tonne.
(c) The charge shall be levied for each landing and for each take-off using the airport lighting installation and/or lighting devices.

([37]) Annex 1 of the 2011 Order of the Ministry of Transport sets the following conditions for the parking fee:
(a) The charge shall be calculated on the maximum certificated take-off weight of the aircraft and the stand interval.
(b) Fractions of one tonne less than 500 kg shall be disregarded and those greater than 500 kg shall be considered as one tonne; aircraft with a maximum take-off mass of less than 500 kg will be charged for one tonne.

([38]) Annex 1 of the 2011 Order of the Ministry of Transport sets the following conditions for the passenger service tariff:
(a) The charge shall be levied for each passenger boarding at the airport and departing from that airport.
(b) The charge does not apply to transit passengers, transfer passengers and children under 2 years of age.

([39]) Annex 1 of the 2011 Order of the Ministry of Transport sets the following conditions for the development tariff:
(a) The charge shall be levied for each passenger boarding at the airport, departing from the airport, and shall be published together with the period of application.
(b) The charge shall be levied for the duration of the investment objectives for which it is applied.
(c) The charge shall be set in a transparent manner, informing airport users of the investment objectives to be financed by the charge and the duration of the charge.

([40]) Annex 1 of the 2011 Order of the Ministry of Transport sets the following conditions for the transit tariff:
(a) The charge is levied for each passenger boarding at the airport and transferring at that airport.
(b) The charge does not apply to children under 2 years of age.
(c) The charge shall also include, where applicable, the airport's costs for investment purposes related to transfer operations, as well as airport security costs related to transfer passengers.

([41]) Annex 1 of the 2011 Order of the Ministry of Transport sets the following conditions for the transfer fee:
(a) The charge shall be levied for each passenger boarding at the airport and transferring at that airport.
(b) The charge shall not apply to children under 2 years of age.
(c) The charge shall also include, where applicable, the airport's costs for investment purposes related to transfer operations, subject to the requirements set out in point 5(b) and (c), as well as airport security costs related to transfer passengers.

([42]) Article 1(3) of the 2011 Order of the Ministry of Transport.

([43]) Article 4(1) of the 2011 Order of the Ministry of Transport and its Annex 1.

([44]) Article 10(8) of the Regional Decision of February 2012.

(e) The Regional Decision of July 2012 was submitted for legality control to the Ministry of Internal Affairs, as required by the law. No aspects of illegality were raised by the Ministry. The airport charges of the Regional Decision of July 2012 were published in the Aeronautical Information Publication of Romania ('AIP') on 20 September 2012. They entered into force 6 months after publication i.e., on 21 March 2013, in accordance with the legislation in force.

(74) Under the Regional Decision of July 2012, the level of airport charges was that presented in Table 7.

Table 7

Airport charges at TMA based on the Regional Decision of July 2012

Charge	Cost (EUR)
Landing	1,25/tonne
Runway lighting	0,40/tonne
Parking	0,15/tonne/hour
Passenger service fee	1,00/passenger

(75) The Romanian authorities stated that the Airport Manager did not receive the entire passenger service fee of EUR 1 per passenger. Out of this amount, EUR 0,275 per passenger was transferred to the Investigations and Analysis Center for Civil Aviation Safety and EUR 0,05 per boarded passenger was transferred to the Romanian Civil Aeronautical Authority (i.e. a total of EUR 0,325 per boarded passenger is transferred by the Airport Manager to these organisations).

(76) Under the Regional Decision of July 2012, the landing charge of Table 7 can be discounted if the airline makes more than three landings per month at the Airport. The discounts were offered regardless the aircraft type according to the following scale:

Table 8

Discounts to the landing charge at TMA based on the Regional Decision of July 2012

No of landings/month	Discount
3-5	5 %
6-10	10 %
11-15	15 %
16-20	20 %
21-25	25 %
26-30	30 %
31-35	35 %
36-40	40 %
41-45	45 %
More than 46	50 %

(77) Romania provided an Economic Forecast Document which details the revenues from airport charges for 2011-2015, based on ex-post actual data for 2011 and ex-ante forecasts for the period 2012-2015 ([45]). These forecasts were made before the adoption of the Regional Decision of July 2012. At the time the Economic Forecast was drafted, the main international scheduled carrier was Wizz Air, which operated Airbus 320 aircrafts to eight destinations: Madrid, Barcelona, Milan (Bergamo), Rome, Paris, Budapest, Dortmund and London. Tarom operated regular flights to Bucharest.

(78) The Management Plan included in the Economic Forecast Document envisaged an increase of the number of operations from Wizz Air, adding Munich, Frankfurt and Bologna (Forli) to the routes and the establishment of four Ryanair destinations. In addition, another airline, Air Patriot, announced its intention to launch flights from TMA to Bucharest, Vienna and Istanbul from January 2013 ([46]).

Table 9

Average expected revenues on the basis of the Regional Decision of July 2012 ([47])

Year	Rotations Wizz Air	Rotations Others	Total Revenues Wizz Air (EUR)	Total Revenues others (EUR)	Total Revenues Wizz Air (RON)	Total revenues others (RON)
2011	884	130	419 356	61 880	1 811 492,11	358 555,46
2012	936	250	445 536	130 000	1 966 595,90	573 820,00
2013	1 001	350	476 476	182 000	2 102 212,11	808 298,40
2014	1 334	555	634 984	316 350	2 870 127,68	1 429 902,00
2015	1 666	700	999 600	490 000	4 558 176,00	2 234 400,00

5. GROUNDS FOR INITIATING THE FORMAL INVESTIGATION PROCEDURE

(79) In the 2011 Opening Decision the Commission raised doubts as to whether Measure 1 (recitals 45 to 50 above) could be considered compatible with the internal market.

(80) In the 2015 Opening Decision, the Commission raised doubts whether Measures 2 to 5 (recitals 54 to 78 above) could be considered compatible with the internal market.

5.1. Measure 1 - Financing of TMA in the period 2007-2009

(81) The 2011 Opening Decision raised doubts on the SGEI qualification of the economic activity of the Romanian regional airports, including TMA, in the period 2007-2009.

(82) The Commission expressed doubts as to whether the compatibility criteria of the 2005 SGEI Decision were met. In particular, the Commission was concerned about a possible manifest error in the definition of the SGEI, as it was unclear that without these airports, the regions concerned would be insufficiently connected to the rest of the country and the EU if left to the market forces alone ([48]).

([45]) The Romanian authorities have explained that the document covered only 4 years because it was linked to the term of office of the Board of Directors. Romania has explained that this is consistent with Article 8(1) of the Government Emergency Order No 109/2011, which limited the term of office of the management board to four years.

([46]) Air Patriot made the unilateral decision not to operate from TMA. The reasons for such decision are unknown to the Romanian authorities.

([47]) The table includes actual data for 2011 and the forecast for the 2012-2015 period.

([48]) Recitals 107 and 108 of the 2011 Opening Decision.

(83) The investigation initiated by the 2011 Opening Decision was closed by the 2016 Final Decision regarding the financing granted by Romanian authorities between 2007 and 2009 to the airports of Arad, Bacău, Baia Mare, Craiova, Iaşi, Oradea, Satu – Mare, Sibiu, Suceava, Tulcea and Constanța.

(84) The 2016 Final Decision concluded that the public funding to the above- mentioned airports constitutes State aid within the meaning of Article 107(1) TFEU, implemented in breach of Article 108(3) of the TFEU. The Commission's investigation found that the public funding to the Romanian airports was in line neither with the 2005 SGEI Decision nor with the 2012 SGEI Decision ([49]) or the 2012 SGEI Framework because Romania had failed to demonstrate that the airport managers were entrusted with clearly defined PSOs through the alleged entrustment acts on which it relied ([50]). The funding was instead found compatible in the light of the 2014 Aviation Guidelines ([51]). The aid was thus declared compatible with the internal market pursuant to Article 107(3), point (c), TFEU.

(85) The investigation into the public funding granted to CNIA and TMA between 2007 and 2009 remained open as the Commission considered that the measure at stake would be better assessed in separate final decisions which would also cover the measures investigated under the 2015 Opening Decision ([52]).

5.2. **Measure 2 - Financing of ground handling infrastructure in 2011**

(86) Romania considered that the financing of ground handling services was linked to the SGEI tasks of TMA. In this respect, the ground handling infrastructure in question appears to have been used by each flight to and from TMA and was linked to the general operation of the airport.

(87) In the 2015 Opening Decision, the Commission expressed its doubts as to whether TMA was entrusted with a genuine public service and concluded preliminarily that the public financing of ground handling services may then not constitute SGEI compensation.

(88) The Commission further assessed the financing of the ground handling services under the 2005 Aviation Guidelines. The Commission took the preliminary view that the funding of ground handling infrastructure would not constitute an eligible cost for the purpose of assessing the compatibility of investment aid ([53]) and concluded that the financing was *prima facie* incompatible with the 2005 Aviation Guidelines.

5.3. **Measure 3 - Financing of TMA under the 2011 SGEI Entrustment from August 2011 to October 2014**

(89) The 2015 Opening Decision raised doubts as regards the compliance of the 2011 SGEI with the Altmark judgment ([54]) since the Airport Manager was not chosen following a tender procedure and there was no evidence that the compensation was based on the cost of a typical well-run airport operator.

(90) On the basis of the above, the Commission considered that the four Altmark conditions were not cumulatively met and came to the preliminary conclusion that the existence of an advantage could not be excluded.

([49]) Commission Decision 2012/21/EU of 20 December 2011 on the application of Article 106(2) of the Treaty on the Functioning of the European Union to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest (OJ L 7, 11.1.2012, p. 3, ELI: http://data.europa.eu/eli/dec/2012/21(1)/oj).
([50]) Recitals 111 to 113 and 121 of the 2016 Final Decision.
([51]) The measures were declared compatible in the light of points 113, 129, 137 and 172 of the 2014 Aviation Guidelines.
([52]) Recital 69 of the 2016 Final Decision.
([53]) Points 53(iii) and 55 of the 2005 Aviation Guidelines.
([54]) Judgment of 24 July 2003, *Altmark Trans and Regierungspräsidium Magdeburg*, C-280/00, ECLI:EU:C:2003:415.

(91) Moreover, although Romania claimed that the public financing granted to TMA for the period 2011- 2014 constituted compensation for the provision of SGEIs falling under the 2005 SGEI Decision, the Commission raised doubts on whether the compensation was clearly defined in advance in a transparent and objective manner and was proportional to the costs of the SGEI. For the same reasons, the Commission expressed doubts that the measure would meet criteria laid down in the 2012 SGEI Framework and took the preliminary view that the aid cannot be considered compatible under the 2012 SGEI Framework ([55]).

(92) The Commission also assessed the compatibility of the measure with the provisions on operating aid of the 2014 Aviation Guidelines ([56]) granted before the entry into force of these Guidelines. The Commission expressed doubts as to whether the operating aid granted to TMA was appropriate to achieve the objective of common interest, given the proximity between CNIA and TMA. The Commission also raised doubts as to whether the operating aid in question was limited to the minimum necessary and took the preliminary view that the measure did not meet the compatibility conditions laid down in the 2014 Aviation Guidelines.

5.4. Measure 4 - Financing of TMA under the 2014 SGEI Entrustment from 30 October 2014 to 9 May 2019

(93) The Commission noted that the number of passengers of TMA exceeded 200 000 in the years preceding the entry into force of the 2014 SGEI and therefore it was outside the scope of the 2012 SGEI Decision pursuant to Article 2 (1) therein.

(94) The Commission considered that its position regarding the 2011 SGEI compensation was applicable *mutatis mutandis* also to the 2014 SGEI compensation. In particular, based on the information available at the time, the Commission expressed doubts on whether the 2014 SGEI defines in a clear and transparent manner the PSOs, the parameters for calculating the compensation and the arrangements for avoiding any overcompensation and whether it complies with points 17 and 18 of the 2012 SGEI Framework.

(95) The Commission assessed the compatibility of the measure with the 2014 Aviation Guidelines and considered at that stage that, full compliance with the requirements of the Guidelines was not ensured regarding both investment aid and operating aid.

5.5. Measure 5 – Airport charges for airlines operating at TMA from 21 March 2013 to 16 February 2019

(96) As regards the level of airport charges introduced under Measure 5, the Commission took the preliminary view in the 2015 Opening Decision that the market economy operator principle (the 'MEOP') was not respected, resulting in the granting of an economic advantage.

(97) The Commission reached the preliminary view that the economic advantage granted on the basis of the Regional Decision of 2012 was selective because it was granted only to companies belonging to one part of the air transport sector, namely those airlines flying out of TMA. Such an approach was not justified by the nature and general logic of the airport charge system. The Commission questioned the level of the passenger charge of EUR 1 per passenger as being particularly low. Furthermore, it preliminarily considered that the discounts based on the number of landings per month seemed to favour airlines with several routes or high frequencies. The Commission's preliminary conclusion presented in the 2015 Opening Decision was based on a reasoning in accordance with the established case law at that time.

([55]) Recital 218 of the 2015 Opening Decision.
([56]) Point 137 of the 2014 Aviation Guidelines.

6. COMMENTS FROM ROMANIA

6.1. Comments from Romania to the 2011 Opening Decision *(Measure 1)*

(98) Romania's comments on the opening decision mainly referred to the doubts raised by the Commission on the State aid scheme for the financing of infrastructure for airports with annual traffic of less than 1 million passengers, whose notification has been withdrawn.

(99) As regards the public funding to Romanian regional airports, in reply to the view of the Commission according to which the apparent overabundance of airports in certain regions may hinder the development of the airports in question, Romania submitted that the situation of regional airports (with low traffic which does not allow them to reach a level of profitability) was primarily due to the state of development of the regions where those airports were located, rather than to the distance to neighbouring airports.

(100) Romania also clarified that amounts were granted at the moment when the activities were undertaken based on supporting documentation and within the limits of the approved budget.

6.2. Comments from Romania to the 2015 Opening Decision

6.2.1. *Financing of ground handling infrastructure in 2011 (Measure 2)*

(101) The Romanian authorities submit that the cost of the ground handling infrastructure qualify directly for compensation for SGEI services. Romania states that, in order to provide services of general economic interest, each airport must ensure that it has a minimum amount of ground handling infrastructure in order to serve aircraft exempted by law from airport taxes. Airports that do not do so will not be able to carry out their activities safely and securely.

(102) The Romanian authorities clarified during the formal investigation that the infrastructure was used for the commercial activities of the airport, but that the objective of such use was not to increase economic activities, but to maintain the existing ones at a satisfactory level in accordance with the specific aviation requirements.

6.2.2. *SGEI Entrustment Acts (Measures 3 and 4)*

(103) The Romanian authorities submit that both the 2011 SGEI and the 2014 SGEI fulfil all the Altmark conditions and are not likely to confer any advantage to TMA. According to Romania, in both cases, the PSOs were clearly defined ex ante in the public service delegation documents and the mechanisms for calculating the compensation to avoid overcompensation were established beforehand.

(104) Concerning the 2011 SGEI, Romania clarified that TMA is obliged to keep separate accounts for revenues and expenses related to the SGEI and to justify the compensation requested. In addition, according to the Romanian authorities, TMA's activities are subject to a periodic review to verify the basis of costs and compliance with obligations.

(105) Concerning the 2014 SGEI, Romania argued that the entrustment act requires the preparation of a multi-annual business plan, which shows a gradual reduction of the compensation.

(106) Regarding the proximity of TMA to CNIA, Romania submitted that while the distance between the two airports seems to be relatively short (103 km), it takes two hours to travel this distance because of the old roads and the increased traffic level. Rail transport is not well developed and there is no high-speed connection.

6.2.3. *Level of airport charges (Measure 5)*

(107) According to the Romanian authorities, the level of charges was determined following an ex-ante profitability analysis, which took into account many counterfactual scenarios, as a prudent private investor would have done.

(108) The Romanian authorities clarified that the level of the charges was applied in a non-discriminatory manner to all airlines, was published in the Romanian Aeronautical Journal and took into account the 2011 Entrustment Act.

6.2.4. *Financing under Regional Decision No 47/2013 of Mureș County Council*

(109) The 2015 Opening Decision invited the Romanian authorities to clarify the funding provided under the Regional Decision No 47/2013 of Mureș County Council, and in particular whether car parking or any other infrastructure at TMA was included.

(110) The Romanian authorities have clarified that the parking activity of the Airport is not included within the aeronautical activities allocated to the Airport Manager, and therefore, the Mureș County Council has never allocated public funds for financing the parking activity, neither for investments nor to cover operational costs.

6.3. **Comments from interested parties**

6.3.1. *Comments from interested parties to the 2011 Opening Decision*

6.3.1.1. Carpatair

(111) Carpatair submits that operating aid is generally considered illegal and against EU interest, and should only be granted in exceptional circumstances. Granting operating aid to airports would in Carpatair's view be disruptive for the industry, for the following reasons ([57]):

(1) it would create unfair competition between EU airports and allow an airport benefitting from State aid to attract air carriers by offering discounts on airport charges. Airports not benefitting from aid would be unable to compete for carriers effectively;

(2) the measure would urge airports that receive operating aid to grant high discounts to airport charges, and such discounts would not be granted if the airports acted on market terms.

(112) Carpatair points out that operating aid has a negative effect on the air transport and airport services markets as it leads to unfair competition between airports and ultimately unfair competition between airlines operating from those airports. As such, operating aid causes unfair competition between airports in Romania and also affects negatively airports in neighbouring countries such as Hungary ([58]).

6.3.1.2. Romanian Airports Association

(113) The Romanian Airports Association (RAA) is an employers' association, a nonprofit legal entity representing Romanian civil airports.

(114) RAA's comments on the Opening Decision referred to the doubts raised by the Commission on the State aid scheme for the financing of infrastructure for airports with annual traffic of less than 1 million passengers, whose notification has been withdrawn.

([57]) Recital 57 of the 2011 Opening Decision.
([58]) Recital 58 of the 2011 Opening Decision.

6.3.2. *Comments from interested parties to the 2015 Opening Decision*

6.3.2.1. Cluj-Napoca Airport

6.3.2.1.1. Level of airport charges

(115) CNIA stated that an airport charge of EUR 1 per passenger was too low to cover the operating costs of TMA. Furthermore, EUR 0,325 per departing passenger covers security, which was not retained by the Airport Manager, thereby effectively charging only EUR 0,675 per departing passenger. Such low charges prevent Cluj Airport from conducting effective negotiations with the airlines, thus distorting competition.

6.3.2.1.2. SGEI Entrustment Acts

(116) CNIA submitted that the State aid granted to TMA to compensate the SGEI actually covered the costs for the provision of the services to the airline companies. According to CNIA, overcompensation of the SGEI at TMA was made possible through budget transfers from Mureș County Council, without separating the revenues and expenditure relating to the SGEI from those relating to the commercial activities.

6.3.2.1.3. Financing under the Regional Decision No. 47/2013 of Mureș County Council

(117) CNIA submitted that the existence of a potential State aid granted unlawfully under the Regional Decision No 47/2013 is shown by the fact that the decision was annulled by national Courts.

6.3.2.1.4. Wizz Air

(118) Wizz Air argues that the airport's charges are not selective as they were available to existing or potential users of TMA.

7. **ROMANIA'S COMMENTS ON INTERESTED PARTIES' COMMENTS**

7.1. **Comments from Romania to comments of interested parties to the 2011 Opening Decision (Measure 1)**

(119) Romania submits that most of the Romanian regional airports had an annual traffic of less than 50 000 passengers and none of these airports would exceed 300 000 passengers by 2015. On this basis, Romania considers that public support to those airports is unlikely to affect competition and distort trade between Member States ([59]).

7.2. **Comments from Romania to comments of interested parties comments to the 2015 Opening Decision**

7.2.1. *Level of airport charges (Measure 5)*

(120) The Romanian authorities argued that the airport charges under Regional Decision No 83/2012 were set in accordance with the relevant national legislation in force at the time.

(121) The Romanian authorities also stated that the discounts applied were not specially created by the Mureș County Council and TMA for the benefit of Wizz Air but, based on the principle of non-discrimination and equal opportunities, applied rather to all airlines at the airport.

([59]) Recital 66 of the 2016 Final Decision.

(122) The discounts were part of a strategy for reducing risks and reliance on a limited number of small airlines as well as a policy of sustainable growth of airport revenues, including profits from airport activities, linked to an increase of passengers traffic.

(123) Romania, further, argued that TMA did not apply very low airport charges.

7.2.2. *SGEI Entrustment Acts (Measures 3 and 4)*

(124) Romania repeated that the financial situation of regional airports (with low traffic which does not allow them to reach a level of profitability) was primarily due to the state of low economic development of the regions where those airports were located, rather than the distance to neighbouring airports.

(125) Furthermore, the Romanian authorities dispute the alleged overcompensation claim brought forward by CNIA and confirmed that TMA's financial statements as of 2011 were concluded in compliance with the principles of the separation of costs and revenues of SGEI from other business activities following the 2011 SGEI Entrustment.

8. ASSESSMENT OF MEASURE 1 – FINANCING OF TMA IN THE PERIOD 2007-2009

8.1. Existence of aid

(126) By virtue of Article 107(1) TFEU 'any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market'.

(127) The qualification of a measure as State aid within the meaning of this provision thus requires the following cumulative conditions to be met:

(a) the beneficiary is an undertaking;

(b) the measure is financed through State resources and is imputable to the State;

(c) it confers an economic advantage on its recipient;

(d) the advantage is selective; and

(e) the measure must distort or threaten to distort competition and is liable to affect trade between Member States.

8.1.1. *Economic activity and notion of undertaking*

(128) The Commission must first establish whether Measure 1 applies to undertakings within the meaning of Article 107(1) TFEU. The concept of an undertaking covers any entity engaged in an economic activity, regardless of its legal status and the way in which it is financed ([60]). Any activity consisting of offering goods or services on a given market is an economic activity ([61]).

([60]) Judgment of 18 June 1998, *Commission v Italy,* C-35/96, ECLI:EU:C:1998:303; Judgment of 23 April 1991, *Höfner and Elser,* C-41/90, ECLI:EU:C:1991:161.

([61]) Judgment of 16 June 1987, *Commission v Italy,*118/85, ECLI:EU:C:1987:283; Judgment of 18 June 1998, *Commission v Italy,* C-35/96, ECLI:EU:C:1998:303.

(129) It is settled case law that the operation and construction of airport infrastructure must be considered as an economic activity falling within the scope of State aid control. ([62]) Once an airport operator engages in economic activities by offering airport services against remuneration, regardless of its legal status or the way in which it is financed, it constitutes an undertaking within the meaning of Article 107(1) TFEU.

(130) While airport managers must be considered to constitute undertakings in the sense of Article 107(1) TFEU, it must be recalled that not all activities of an airport manager are necessarily of an economic nature ([63]).

(131) The Court of Justice held that activities that normally fall under the State's responsibility in the exercise of its official powers as a public authority are not of an economic nature and do not fall within the scope of the rules on State aid ([64]).

(132) Therefore, the financing of activities falling within the public policy remit or of infrastructure directly related to those activities in general does not constitute State aid ([65]). At an airport, activities such as air traffic control, police, customs, firefighting, activities necessary to safeguard civil aviation against acts of unlawful interference and the investments relating to the infrastructure and equipment necessary to perform these activities are generally considered to be of a non-economic nature ([66]).

(133) However, public financing of non-economic activities must not lead to undue discrimination between airlines and airport managers. Indeed, it is established case-law that an advantage is present when public authorities relieve undertakings of the costs inherent to their economic activities ([67]). Therefore, if, in a given legal system, it is normal that airlines or airport managers bear the costs of certain services, whereas some airlines or airport managers providing the same services on behalf of the same public authorities do not have to bear those costs, the latter may enjoy an advantage even if those services are considered in themselves non-economic ([68]).

(134) As explained in recital 41, the Airport Manager has been and is engaged in constructing, maintaining, and operating the airport infrastructure. It offers airport services and charges users – commercial aviation operators and non-commercial general aviation users – for the use of the airport infrastructure, thereby commercially exploiting the infrastructure. The Airport Manager was therefore engaged in an economic activity in the period under assessment and, thus, constitutes an undertaking within the meaning of Article 107(1) TFEU.

(135) Neither Romania nor the Airport Manager claimed that parts of the financing for the period 2007-2009 were specifically earmarked as compensation for public policy remit costs for the Airport Manager at TMA. In fact, the compensation mechanism put in place for the financing of the Airport Manager between 2007-2009 was designed to cover the difference between the revenues and losses of the Airport Manager, without making a distinction between public policy remit costs and other types of costs.

([62]) Judgment of 12 December 2000, *Aéroports de Paris v Commission*, T-128/98, ECLI:EU:T:2000:290, confirmed by Judgment of 24 October 2002, *Aéroports de Paris v Commission*, C-82/01, ECLI:EU:C:2002:617, paragraphs 75-79. This was confirmed in Judgment of 24 March 2011, *Mitteldeutsche Flughafen AG and Flughafen Leipzig Halle GmbH v Commission*, ('Leipzig-Halle airport' judgment), Cases T-443/08 and T-455/08, ECLI:EU:T:2011:117, in particular paragraphs 93 and 94; confirmed by Judgment of 19 December 2012, *Leipzig-Halle*, Case C-288/11 P, not published, ECLI:EU:C:2012:821.

([63]) Point 34 of the 2014 Aviation Guidelines. Judgment of 19 January 1994, SAT *Fluggesellschaft* / *Eurocontrol*, C-364/92, ECLI:EU:C:1994:7.

([64]) Judgment of 16 June 1987, *Commission v Italy*, C-118/85, EU:C:1987:283, paragraphs 7 and 8, and Judgment of 4 May 1988, *Bodson/Pompes funèbres des régions libérées*, C-30/87, ECLI:EU:C:1988:225, paragraph 1.

([65]) Commission Decision N 309/2002 of 19 March 2003, Aviation security — compensation for costs incurred following the attacks of 11 September 2001 (OJ C 148, 25.6.2003, p. 7).

([66]) See point 35 of the 2014 Aviation Guidelines. Also Judgment of 19 January 1994, *SAT Fluggesellschaft/Eurocontrol*, C-364/92, ECLI:EU:C:1994:7, paragraph 30 and Judgment of 26 March 2009, *Selex Sistemi Integrati* / *Commission*, C-113/07 P, ECLI:EU:C:2009:191, paragraph 71.

([67]) See Judgment of 3 March 2005, *Heiser*, C-172/03, EU:C:2005:130, paragraph 36, and case-law cited.

([68]) Point 37 of the 2014 Aviation Guidelines.

(136) The Commission therefore concludes that Measure 1 does not constitute compensation for public policy remit costs and therefore does apply to an undertaking.

8.1.2. *State resources and imputability to the State*

(137) For a measure to qualify as State aid in the meaning of Article 107(1) TFEU, it needs to be financed out of State resources and be imputable to the State, i.e. granted by the State itself or by any intermediary body acting by virtue of powers conferred on it ([69]). Resources of local authorities are, for the purposes of the application of Article 107 TFEU, State resources. ([70])

(138) The public financing in the period 2007- 2009 was granted directly by the Mureș County Council on the basis of the 1997 Government Decision, i.e. by a local authority through its own resources.

(139) Therefore, the Commission considers that the public financing in the period 2007-2009 was granted through State resources and was imputable to the State.

8.1.3. *Selectivity*

(140) To fall within the scope of Article 107(1) TFEU, a State measure must favour *'certain undertakings or the production of certain goods'*. Hence, only those measures favouring undertakings which grant an advantage in a selective way fall under the notion of State aid.

(141) In the case at hand, the financial support on the basis of the 1997 Decision is selective since aid was awarded only to certain undertakings, specifically to the Airport Manager at TMA. This is an individual measure. Measure 1 is thus selective by definition within the meaning of Article 107(1) TFEU.

8.1.4. *Economic advantage*

(142) The public financing granted to the Airport Manager aimed at offsetting the losses incurred when carrying out its ordinary activity. Nothing in the factual evidence available to the Commission or in the comments received from Romania or third parties suggests that the granting authority could have expected any financial return as a result of those funding measures when it decided to grant them. Therefore, the public financing at issue does not comply with the MEOP.

(143) Romania also claimed that the disputed public financing represented compensation for the provision of an SGEI. In case of undertakings entrusted with the provision of an SGEI, in order to conclude whether the measure under assessment constitutes an economic advantage within the meaning of Article 107(1) TFEU, the Commission must examine the observance of four cumulative conditions set out by the Court in its judgement in the Altmark case. Those conditions may be summarised as follows:

(a) Firstly, the beneficiary must actually be entrusted with PSOs, and these obligations must be clearly defined. ('Altmark 1');

(b) Secondly, the parameters on the basis of which the compensation is calculated must be established in advance, in an objective and transparent manner ('Altmark 2');

([69]) Stardust Marine, judgement, cited paragraphs 53-56. Judgement of the General Court of 12 May 2011, joined cases *Region Nord-Pas-de-Calais,* T-267/08, ECLI:EU:T:2011:209 and *Communauté d'agglomération du Douaisis v European Commission,* T-279/08, ECLI:EU:T:2011:209, paragraph 108. Judgment of the Court of Justice of 24 January 1978, *Van Tiggele,* 82/77, ECLI:EU:C:1978:10, paragraphs 25 and 26; Judgment of 12 December 1996, *Air France v Commission ('Air France'),* T-358/94, ECLI:EU:T:1996:194, paragraph 63.

([70]) Judgment of 12 May 2011, *Nord-Pas-de-Calais*, Joined Cases T-267/08 and T-279/08, ECLI:EU:T:2011:209, paragraph 108.

(c) Thirdly, the compensation must not exceed what is necessary to cover all or part of the costs incurred in the discharge of the PSOs, taking into account the relevant recipient and a reasonable profit for discharging those obligations ('Altmark 3');

(d) Fourthly, where the undertaking entrusted with PSOs, in a specific case is not chosen pursuant to a public procurement procedure which would allow for the selection of the tenderer capable of providing those service at the least cost to the community, the level of compensation necessary must be determined on the basis on an analysis of the costs which an average undertaking, well run and adequately provided with the necessary means would have incurred in discharging those obligations, taking into account the relevant revenues and a reasonable profit for discharging the obligations ('Altmark 4').

8.1.4.1. Altmark 4

(144) The fourth Altmark criterion provides that the compensation must be the minimum necessary in order for it not to qualify as aid. This criterion is fulfilled if the recipient of the compensation has been chosen following a tender procedure that would allow for the selection of the tenderer capable of providing the required SGEI at the least cost to the community or, failing that, if the compensation has been calculated by reference to the costs of an efficient undertaking.

(145) In this case, the beneficiary has not been chosen following a tender procedure. There is also no evidence showing that that the level of compensation has been determined on the basis of an analysis of the costs which a typical undertaking, well run and adequately provided with the means required to be able to meet the necessary public service requirements, would have incurred in discharging those obligations, taking into account the relevant revenues and a reasonable profit for discharging these obligations. The Commission therefore considers that the public financing in question cannot be found to have been determined in line with Altmark 4.

(146) Consequently, the measure under investigation does not comply with Altmark 4.

8.1.4.2. Conclusion

(147) As the Altmark 4 condition was not complied with, the Commission finds that the four Altmark conditions were not cumulatively met in the present case, without having to examine in detail the other Altmark conditions. Since the MEOP is not complied with either, Measure 1 under assessment conferred an economic advantage on the Airport Manager.

8.1.5. *Distortion of competition and effect on trade between Member States*

(148) A measure granted by the State is considered to distort or threaten to distort competition when it is liable to improve the competitive position of the recipient compared to other undertakings with which it competes, which is generally found to be the case if a financial advantage is granted to an undertaking in a liberalised sector where there is, or could be, competition.

(149) When aid granted by a Member State strengthens the position of an undertaking compared with other undertakings competing in intra-EU trade, the latter must be regarded as affected by that aid ([71]).

(150) Since the operation of an airport is an economic activity, competition takes place, on the one hand, between airports to attract airlines and the corresponding air traffic (passengers and freight), and, on the other hand, between airport managers, which may compete between themselves to be entrusted with the management of a given airport. Moreover, in particular with respect to low-cost carriers and charters, airports that are not located in the same catchment areas and even in different Member States can also be in competition with each other to attract those airlines.

([71]) Judgment of 30 April 1998, Het Vlaamse Gewest v Commission, T-214/95, ECLI:EU:T:1998:77 and Judgment of 17 September 1980, Philip Morris v Commission, C-730/79, ECLI:EU:C:1980:209, paragraph 11.

(151) Competition between airports can be assessed in the light of airlines' criteria of choice, and in particular by comparing factors such as the type of airport services provided and the clients concerned, population or economic activity, congestion, whether there is access by land, and the level of charges for use of airport infrastructure and services ([72]). It is not possible to exclude even small airports from the scope of application of Article 107(1) TFEU ([73]).

(152) Since Measure 1 supports a regional airport, TMA, it must be considered liable to distort competition and affect trade between Member States.

8.1.6. *Conclusion on existence of State aid*

(153) On the basis of the above, the Commission concludes that Measure 1 constitutes State aid to the Airport Manager within the meaning of Article 107(1) TFEU.

8.2. **Lawfulness of the aid**

(154) Measure 1 was put into effect before formal approval by the Commission. Therefore, it constitutes unlawful aid, unless it fulfilled at the time the relevant conditions of a Union act providing for an exemption from the notification obligation laid down in Article 108 TFEU for certain categories of aid.

(155) In this case, Romania claimed that the public financing granted to several airports including TMA in the period 2007-2009 represented compensation for the provision of SGEIs and complied with the conditions of the 2005 SGEI Decision. Romania claimed that the 1997 Government Decision laid down in a clear and transparent manner the PSOs, the parameters for calculating the compensation and the arrangements for avoiding any overcompensation.

(156) However, as stated in recital 84, the Commission found that the 1997 Government Decision did not impose clear PSOs on any of the airport managers.

(157) Accordingly, as mentioned, in the 2016 Final Decision, the Commission concluded that Romania had failed to demonstrate that the public funding based on the 1997 Government Decision entrusted airport managers with clearly defined PSOs.

(158) Therefore, the aid was not in line with the 2005 SGEI Decision and was thus implemented in breach of Article 108(3) of the TFEU ([74]). The same conclusion applies to Measure 1 subject to this decision i.e. the State aid implemented based on the 1997 Government Decision in favour of TMA, which was also not in line with the 2005 SGEI and thus implemented in breach of Article 108(3) of the TFEU.

8.3. **Compatibility with the internal market**

(159) For the same reason mentioned in recital 157 i.e. not clearly defined PSO, Measure 1 cannot be found to be compatible under the 2012 SGEI Decision nor with the 2012 SGEI Framework.

(160) The Commission thus has to verify whether the measure is compatible with the General Block Exemption Regulation (the 'GBER') ([75]) which contains provisions on operating aid to regional airports under certain conditions.

([72]) Point 43 of the 2014 Aviation Guidelines.
([73]) Point 45 of the 2014 Aviation Guidelines.
([74]) Recitals 111 to 113 and 121 of the 2016 Final Decision.
([75]) Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (OJ L 187, 26.6.2014, p. 1, ELI: http://data.europa.eu/eli/reg/2014/651/oj).

8.3.1. *Application of the GBER*

(161) The transitional provisions of the GBER specify that it applies to any individual aid granted prior to its entry into force if such aid fulfils all the conditions laid down in GBER, with the exception of Article 9 ([76]).

(162) Pursuant to Article 1(1), point (m), of the GBER, the Regulation is applicable to aid for regional airports. Operating aid to an airport shall be compatible with the internal market within the meaning of Article 107(2) or (3) of the Treaty provided that such aid fulfils the conditions laid down in Article 56(a) paragraphs 3, 4, 10 and 15 to 18 and Chapter I of the GBER are fulfilled ([77]).

(163) The measure under assessment relates to the public financing granted to TMA during the period 2007-2009 to cover its operating losses and it is therefore within the scope of the GBER.

(164) The Commission therefore concludes that the GBER is applicable to Measure 1 as a compatibility basis because of the transitional provisions. Compatibility of the measure with the relevant GBER provisions

8.3.1.1. Compatibility with Chapter I of the GBER

(165) *Transparency requirement*. The GBER applies only to aid in respect of which it is possible to calculate precisely the gross grant equivalent of the aid ex ante without any need to undertake a risk assessment ([78]). This condition is fulfilled since, as explained in recitals 50 to 53 the public funding is provided in the form of annual grants, with a maximum limit set at the amount necessary to operate the airport without making a profit. This limit is set annually ex ante based on the revenue and expenditure budgets submitted by the Airport Manager and approved by decisions of the Mureș County Council.

(166) *Incentive effect* ([79]). In the period 2007-2009, TMA operated under the authority of Mureș County Council. Pursuant to the resolutions of the Mureș County Council mentioned in recitals 51 to 53, there were requests to the public supervisory authority for public funds to cover the financial deficit of TMA according to the annual revenue and expenditure budgets.

(167) *Calculation of aid intensity and eligible costs* ([80]). The Romanian authorities confirmed that the public funding of recitals 46 and 47 was granted on the basis of supporting documents in the public accounting records, separately managed for the costs related to the airport activity. Value added tax has not been taken into account in the calculation of operating costs.

(168) *Cumulation* ([81]). The Romanian authorities have confirmed that for the period 2007-2009, TMA did not benefit from any other type of aid.

(169) *Publication and information* ([82]). Article 58(1) of the GBER provides that aid granted prior to the entry into force of the GBER does not need to fulfil the publication requirements of Article 9 to be considered compatible.

([76]) Article 58(1) of the GBER.
([77]) Article 3 in conjunction with Article 56a(2) of the GBER.
([78]) Article 5(1) of the GBER.
([79]) Article 6 of the GBER.
([80]) Article 7 of the GBER.
([81]) Article 8 of the GBER.
([82]) Article 9 of the GBER.

8.3.1.2. Compatibility with the conditions laid down in Article 56a of the GBER

(170) *The airport shall be open to all potential users* ([83]). TMA was open to all potential users, i.e. all airlines that have requested the use of the airport infrastructure and displayed in recitals 30 to 36, accepting the airport tariffs published in the AIP and applied in a uniform, transparent and non-discriminatory manner.

(171) The Romanian authorities have confirmed that all airlines wishing to operate from the airport in respect of the regulatory framework described above could do so. Therefore, several airlines operated at the airport during the period 2007-2009: TAROM, Carpatair, Malev, Wizz Air, Cimberair.

(172) *The aid shall not be granted for the relocation of existing airports or for the creation of a new passenger airport* ([84]). During the reference period, TMA has not been relocated or transformed from an airfield into a passenger airport; the airport infrastructure has existed and been operated on the same site since 1967.

(173) The aid shall not be granted to airports with average annual freight traffic of more than 200 000 tonnes during the two financial years preceding the year in which aid is actually granted. The aid shall not be expected to result in the airport increasing its average annual freight traffic to above 200 000 tonnes within two financial years following the granting of the aid ([85]). During the two years preceding the period 2007-2009 and in the following two years 2010-2011, no cargo flights were operated at TMA and any freight traffic did not exceed 200 000 tonnes (recital 37). Therefore, this condition is fulfilled.

(174) Operating aid shall not be granted to airports with average annual passenger traffic of more than 200 000 passengers during the two financial years preceding the year in which aid is actually granted ([86]). The number of passengers at TMA in 2005, 2006, 2007 and 2008 did not exceed the threshold (see Table 1), therefore this condition is fulfilled.

(175) The amount of operating aid shall not exceed what is necessary to cover the operating losses and a reasonable profit over the relevant period. The aid shall be granted either in the form of periodic instalments fixed ex ante, which shall not be increased during the period for which the aid is granted, or in the form of amounts defined ex post based on the observed operating losses ([87]). The public financing to TMA under Measure 1 in the period 2007-2009 is shown in Table 5. During the entire period 2007-2009 there was a funding gap not covered by public funds. Therefore, the aid did not exceed what is necessary to cover the operating losses and a reasonable profit. The Romanian authorities have confirmed that the amounts were granted in monthly instalments on the basis of the annual budget drawn up ex ante and regularised ex post on the basis of the execution, as shown in the annual accounts, in order to cover the operating loss without recording a profit.

(176) Operating aid shall not be paid out in respect of any calendar year during which the annual passenger traffic of the airport exceeds 200 000 passengers ([88]). The passenger numbers at TMA amounted to 156 929 in 2007, to 69 945 in 2008 and to 84 062 in 2009 (see Table 1). This condition is therefore fulfilled.

(177) The granting of the operating aid shall not be made conditional upon the conclusion of arrangements with specific airlines relating to airport charges, marketing payments or other financial aspects of the airlines' operations at the airport concerned. ([89]) The Romanian authorities have confirmed that the granting of the aid was not made conditional upon the conclusion of special arrangements with specific airlines and that airport charges were the same for all airlines. Therefore, this condition is fulfilled.

([83]) Article 56a(3) of the GBER.
([84]) Article 56a(4) of the GBER.
([85]) Article 56a(10) of the GBER.
([86]) Article 56a(15) of the GBER.
([87]) Article 56a(16) of the GBER.
([88]) Article 56a(17) of the GBER.
([89]) Article 56a(18) of the GBER.

8.3.1.3. Conclusion of the compatibility with the GBER conditions

(178) Measure 1 complies with the conditions of the GBER and is therefore compatible with the internal market.

8.3.2. *Conclusion on the compatibility of Measure 1*

(179) For the reasons set out in recitals 165 to 177 above, the Commission considers that the operating aid to TMA in the period 2007-2009 is compatible with the internal market on the basis of Article 107(3), point (c), TFEU.

9. ASSESSMENT OF MEASURE 2 – FINANCING OF GROUND HANDLING INFRASTRUCTURE IN 2011

9.1. Existence of aid

(180) The principles regarding the existence of aid listed in recitals 126 to 133, 137, 140, 143 and 148 apply to Measure 2 as well.

9.1.1. *Economic activity and notion of undertaking*

(181) The Commission must first establish weather Measure 2 applies to undertakings within the meaning of Article 107(1) TFEU.

(182) As set out in recital 41, the Airport Manager was engaged in constructing, maintaining and operating the airport infrastructure and offering airport services and charges users – commercial aviation operators and non-commercial general aviation users – for the use of the airport infrastructure, thereby commercially exploiting the infrastructure. The Airport Manager was therefore engaged in an economic activity at the time the investment was made and, thus, constitutes an undertaking within the meaning of Article 107(1) TFEU at the time the aid was granted.

(183) In addition, during the formal investigation as stated in recital 102, Romania confirmed that the equipment which was financed by Measure 2 was used for the general activities of the airport. The Commission therefore concludes that Measure 2 does not constitute compensation for public policy remit costs and therefore does apply to an undertaking.

9.1.2. *State resources and imputability to the State*

(184) The Romanian authorities have confirmed that all the investments stated in Table 3 were paid by the budget of the Mureș County Council, notably: by Regional Decision No 15 of 10 February 2011 the apron bus was financed, by Regional Decision No 94 of 28 July 2011 the luggage trolley and the power unit, by Regional Decision No 84 of 22 June 2011 the stairs and the de-icer.

(185) Therefore, the Commission considers that the financing of ground handling infrastructure in 2011 was granted through State resources and was imputable to the State.

9.1.3. *Selectivity*

(186) The financial support on the basis of the Regional Decisions listed in recital 184 is selective since aid will be awarded only to a single undertaking, specifically to the Airport Manager at TMA. This is an individual measure. Measure 2 is thus selective by definition within the meaning of Article 107(1) TFEU.

9.1.4. *Economic advantage*

(187) The Romanian authorities have stated during the formal investigation procedure that even if the Airport was operating in a free market, the low level of activity would make it impossible for TMA to provide ground handling services in a profitable manner. Therefore, at the time of the financing, the Romanian authorities considered the investment to be a sunk cost, and no financial return was expected. Thus, the public financing at issue does not comply with the MEOP.

(188) Romania also claimed that the public financing represented compensation for the provision of an SGEI. In case of an undertaking entrusted with the provision of an SGEI, in order to determine whether the measure under assessment constitutes an economic advantage within the meaning of Article 107(1) TFEU, as explained in recital 143 above, the Commission must examine cumulatively whether the four Altmark conditions are met.

(189) As explained in recital 144, the Altmark 4 criterion is fulfilled if the recipient of the compensation has been chosen following a tender procedure that would allow for the selection of the tenderer capable of providing the required SGEI at the least cost to the community or, failing that, if the compensation has been calculated by reference to the costs of an efficient undertaking.

(190) In this instance, the beneficiary was not selected through a tendering procedure. Furthermore, the Romanian authorities have not provided any evidence that the level of compensation was determined on the basis of an analysis of the costs that a typical well-managed and adequately equipped undertaking would have incurred in discharging the necessary PSOs. The Commission therefore concludes that the public financing in question does not fulfil the Altmark 4 criterion.

(191) Consequently, Measure 2 does not comply with Altmark 4 and therefore the Altmark conditions are not cumulatively met in the present case, without having to examine in detail the other Altmark conditions. Since, as explained in recital 187, Measure 2 does not comply with the MEOP, it conferred an economic advantage to the Airport Manager.

9.1.5. *Distortion of competition and effect on trade between Member States*

(192) Recitals 148 to 152 are applicable to Measure 2. Since Measure 2 supports a regional airport, TMA, it must be considered liable to distort competition and affect trade between Member States.

9.1.6. *Conclusion on existence of State aid*

(193) On the basis of the above, the Commission concludes that Measure 2 constitutes State aid to the Airport Manager within the meaning of Article 107(1) TFEU.

9.2. **Lawfulness of the aid**

(194) Measure 2 was put into effect before formal approval by the Commission. Therefore, it constitutes unlawful aid, unless it fulfilled at the time the relevant conditions of a Union act providing for an exemption from the notification obligation laid down in Article 108 TFEU for certain categories of aid.

(195) In this case, Romania claimed that the investment was made in compliance with the 1997 Government Decision and that the investment was linked to the compensation for the provision of SGEIs. As stated in recitals 156 and 157, Romania failed to demonstrate that the public funding based on the 1997 Government Decision entrusted airport managers with clearly defined PSOs, therefore the aid was not in line with the 2005 SGEI Decision and was thus implemented in breach of Article 108(3) of the TFEU.

9.3. **Compatibility with the internal market**

(196) For the reasons stated in recitals 157 and 159, Measure 2 cannot be found to be compatible under the 2012 SGEI Decision nor with the 2012 SGEI Framework.

(197) The Commission therefore has to assess whether the measure is compatible with the GBER, which contains provisions on investment aid to regional airports under certain conditions.

9.3.1. *Application of the GBER*

(198) The transitional provisions of the GBER specify that it applies to any individual aid granted prior to its entry into force if such aid fulfils all the conditions laid down in the GBER, with the exception of Article 9 ([90]).

(199) Pursuant to Article 1(1), point (m), of the GBER, the Regulation is applicable to aid for regional airports. Investment aid to an airport shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty provided that such aid fulfils the conditions laid down in Article 56(a) paragraphs 3 to 14 and Chapter I of the GBER ([91]).

(200) Article 2(144) of the GBER defines airport infrastructure as 'infrastructure and equipment for the provision of airport services by the airport to airlines and the various service providers, including runways, terminals, aprons, taxiways, centralised ground handling infrastructure and any other facilities that directly support the airport services, excluding infrastructure and equipment which is primarily necessary for pursuing non-aeronautical activities'. The measure under assessment relates to the public financing of ground handling infrastructure in 2011 and it is therefore within the scope of the GBER.

(201) The Commission therefore concludes that, by virtue of the transitional provisions, the GBER is applicable to Measure 2 as a basis for compatibility.

9.3.2. *Compatibility of the measure with the relevant GBER provisions*

9.3.2.1. Compatibility with Chapter I of the GBER

(202) *Transparency requirement* ([92]). This condition is fulfilled, since the public funding is provided in the form of annual grants, with a maximum limit set at the amount necessary to operate the airport without making a profit. This limit is set annually ex ante based on the revenue and expenditure budgets submitted by the Airport Manager and approved by decisions of the Mureș County Council (see recital 56).

(203) *Incentive effect* ([93]). The Romanian authorities have explained that the investment was needed to fulfil the mandatory crisis management plan in accordance with Government Decision No 443/2005, approving the national security programme. The Romanian authorities have explained that the equipment available at the airport at the time of the investment posed a risk to the airport's operations and flight safety. Since TMA was not able to carry out the investment itself and without the investment the airport would not have been able to operate flights in safe conditions, the incentive effect condition is fulfilled.

([90]) Article 58(1) of the GBER.
([91]) Article 3 in conjunction with Article 56a(1) of the GBER.
([92]) Article 5(1) of the GBER.
([93]) Article 6 of the GBER.

(204) *Calculation of aid intensity and eligible costs* ([94]). The Romanian authorities have presented documentary evidence of the payment of the equipment and have confirmed that the amount of RON 588 062 representing deductible VAT was not included in the cost of the ground handling infrastructure purchased in 2011.

(205) *Cumulation* ([95]). The Romanian authorities have confirmed that TMA did not benefit from any other type of aid to purchase the items.

(206) *Publication and information* ([96]). Article 58(1) provides that aid granted prior to the entry into force of the GBER does not need to fulfil the publication requirements of Article 9 to be considered compatible.

9.3.2.2. Compatibility with the conditions laid down in Article 56a of the GBER

(207) *The airport shall be open to all potential users* ([97]). TMA was open to all potential users, i.e. all airlines that have requested the use of the airport infrastructure, and displayed in recitals 30 to 36, accepting the airport tariffs published in the AIP and applied in a uniform, transparent and non-discriminatory manner.

(208) The Romanian authorities have confirmed that all airlines wishing to operate from the airport in respect of the regulatory framework described above could do so. As explained in recitals 31, 33 and 34, the airlines operating scheduled flights at the airport at the time the investment was granted were WizzAir, Malev and Tarom.

(209) *The aid shall not be granted for the relocation of existing airports or for the creation of a new passenger airport* ([98]). During the reference period, TMA has not been relocated or transformed from an airfield into a passenger airport; the airport infrastructure has existed and operated on the same site since 1967.

(210) The aid shall not be granted to airports with average annual freight traffic of more than 200 000 tonnes during the two financial years preceding the year in which aid is actually granted. The aid shall not be expected to result in the airport increasing its average annual freight traffic to above 200 000 tonnes within two financial years following the granting of the aid ([99]). During the periods 2009-2010 and 2012-2013, no cargo flights were operated at TMA and any freight traffic did not exceed 200 000 tonnes (recital 37). Therefore, this condition is fulfilled.

(211) The investment concerned shall not exceed what is necessary to accommodate the medium-term expected traffic on the basis of reasonable traffic forecasts: ([100]) The Romanian authorities have clarified that the investment was intended to meet the necessary safety standards to enable flights to operate under optimum safety conditions (recital 55). This requirement is therefore satisfied by the present measure.

(212) The investment aid shall not be granted to an airport located within 100 kilometres or 60 minutes travelling time by car, bus, train or high-speed train from an existing airport from which scheduled air services, within the meaning of Article 2(16) of Regulation (EC) No 1008/2008, are operated ([101]). As explained in recital 29, the closest airport to TMA is CNIA, which is more than 100 km away and 1hour 30 minutes by car and the Sibiu International Airport, which is ca 120 km, 1 hour 50 minutes by car. All other major airports are more than 2 hours away by car. This condition is therefore satisfied in the present case.

([94]) Article 7 of the GBER.
([95]) Article 8 of the GBER.
([96]) Article 9 of the GBER.
([97]) Article 56a(3) of the GBER.
([98]) Article 56a(4) of the GBER.
([99]) Article 56a(10) of the GBER.
([100]) Article 56a(5) of the GBER.
([101]) Article 56a(6) of the GBER.

(213) Paragraphs 5 and 6 shall not apply to airports with average annual passenger traffic of up to 200 000 passengers during the two financial years preceding the year in which aid is actually granted if the investment aid is not expected to result in the airport increasing its average annual passenger traffic to above 200 000 passengers within two financial years following the granting of the aid. Investment aid granted to such airports shall comply either with paragraph 11 or with paragraphs 13 and 14 ([102]). As presented in Table 1, the passenger traffic 2009-2010 was less than 200 000 passengers. Although the traffic was higher than 200 000 passengers in 2012 and 2013, as mentioned above in recital 203, the type of equipment which was financed by Measure 2 was neither intended nor liable to increase the volume of traffic at the airport, but only allowed the airport to operate under safe conditions. The Commission therefore considers that this requirement would be satisfied in this case. As TMA meets the conditions required by this recital, the Commission should now only have to demonstrate that recital 11 of this Article is fulfilled in the present case. Therefore, the Commission does not need to demonstrate that recitals 13 and 14 are fulfilled in the present case.

(214) The investment aid shall not be granted to airports with average annual passenger traffic of more than three million passengers during the two financial years preceding the year in which aid is actually granted. The investment aid shall not be expected to result in the airport increasing its average annual traffic to above three million passengers within two financial years following the granting of the aid ([103]). As can be seen in Table 1, TMA's historical passenger volume is well below three million passengers during the entire period under assessment. Therefore, this condition is satisfied in the present case.

(215) The aid shall not be granted to airports with average annual freight traffic of more than 200 000 tonnes during the two financial years preceding the year in which aid is actually granted. The aid shall not be expected to result in the airport increasing its average annual freight traffic to above 200 000 tonnes within two financial years following the granting of the aid ([104]). During 2009-2010 and in the following two years 2012-2013, no cargo flights were operated at TMA and any freight traffic did not exceed 200 000 tonnes (recital 37). Therefore, this condition is fulfilled.

(216) The investment aid amount shall not exceed the difference between the eligible costs and the operating profit of the investment. The operating profit shall be deducted from the eligible costs *ex ante*, on the basis of reasonable projections, or through a claw-back mechanism ([105]). Article 2(39) of the GBER defines operating profit as 'the difference between the discounted revenues and the discounted operating costs over the economic lifetime of the investment, where this difference is positive. The operating costs include costs such as personnel costs, materials, contracted services, communications, energy, maintenance, rent, administration, but exclude depreciation charges and the costs of financing if these have been covered by investment aid. Discounting revenues and operating costs using an appropriate discount rate allows a reasonable profit to be made.'.

(217) TMA is an airport that has been loss-making throughout the assessment period. As explained in Table 9, the Romanian authorities' projections only expected TMA to become profitable in 2023 at the earliest. Therefore, in 2011, when the investment was made, it was made without any expectation that the investment could be recovered in the short to medium term. Thus, there is no prospect of an operating profit in the short to medium term after the investment was made and, therefore, the Commission considers that this recital is not applicable in the present case.

(218) *The eligible costs shall be the costs relating to the investments in airport infrastructure, including planning costs* ([106]). As this is an investment in equipment within the meaning of Article 2(144) of the GBER, the eligible costs correspond to the total amount disbursed by the Romanian authorities and shown in Table 3. The Commission considers that this requirement is fulfilled in the present case.

([102]) Article 56a(7) of the GBER.
([103]) Article 56a(9) of the GBER.
([104]) Article 56a(10) of the GBER.
([105]) Article 56a(11) of the GBER.
([106]) Article 56a(12) of the GBER.

9.3.2.3. Conclusion of the compatibility with the GBER conditions

(219) In the light of the above, Measure 2 complies with the conditions of the GBER.

9.3.3. *Conclusion on the compatibility of Measure 2*

(220) For the reasons set out in recitals 198 to 218 above, the Commission considers that the investment aid granted to TMA in 2011 is compatible with the internal market on the basis of Article 107(3), point (c). TFEU.

10. ASSESSMENT OF MEASURE 3 -FINANCING OF TMA UNDER THE 2011 SGEI ENTRUSTMENT FROM AUGUST 2011 TO OCTOBER 2014

10.1. Existence of aid

(221) The principles of Article 107(1) TFEU as set out in recitals 126 to 133, 137, 140, 143 and 148 are applicable also for the assessment of Measure 3.

10.1.1. *Economic activity and notion of undertaking*

(222) As set out in recital 41 the Airport Manager was engaged in an economic activity in the period under assessment and, thus, constitutes an undertaking within the meaning of Article 107(1) TFEU.

(223) The Romanian authorities argued that the activities related to safety and security of aircraft as well as the servicing of aircraft exempt from the airport charges listed under points d) to h) of Article 1(2) of the 2011 SGEI Entrustment (recital 58) were not of an economic nature and were in the scope of the powers of a public authority.

(224) Regarding the activities listed in Article 1(2) of the 2011 SGEI Entrustment (recital 58) under points (d), (e) and (h), the Commission recalls that air traffic control, police, customs, firefighting, activities necessary to safeguard civil aviation against acts of unlawful interference and the investments in infrastructure and equipment necessary to perform those activities are considered in general to be of a non-economic nature (recital 132). The Commission therefore considers the provision of air traffic control services, fire extinguishing service, emergency services, ensuring safety as well as space and utilities necessary for public authorities performing specific control activities at the airport and the protection of the airport infrastructure as listed in Article 1(2) of the 2011 SGEI Entrustment points (d), (e) and (h) to be non-economic in nature. As previously stated in recital 39), the regulatory framework governing the operations of airport managers in Romania was consistent across all airports.

(225) The Commission considers the financing of activities listed in Article 1(2) of the 2011 SGEI Entrustment points (d), (e) and (h) falls into the public policy remit and therefore does not constitute State aid.

(226) Regarding the financing of activities listed in Article 1(2), points (f) and (g), of the 2011 SGEI Entrustment (see recital 58), Romania submitted that the infrastructure and equipment was acquired in order to process the flights of aircrafts legally exempted from the payment of airport charges as per Article 31(2) of Government Order No 29/1997 on the Aviation Code. By way of example, Romania submitted that, at the time of the financing, TMA used the walk-on/ walk-off method of embarking and disembarking passengers. The purchase of a bus was necessary in order to meet the requirements of transportation of passengers in case of emergency or aircraft in distress (such as due to terrorism).

(227) However, neither the processing of flights exempted from airport charges listed under Article 1(2), point (f), of the 2011 SGEI Entrustment, nor the purchase and maintenance of the necessary equipment to process such flights listed under point (g) are functions generally reserved to the State.

(228) Furthermore, the Commission recalls that if infrastructure is used for both economic and non-economic activities, public funding will fall under State aid rules insofar as it covers the costs linked to the economic activities ([107]).

([107]) Point 34 and 35 of the 2014 Aviation Guidelines and jurisprudence cited therein.

(229) Romania confirmed in the course of the formal investigation in the case at hand that the underlying infrastructure was used for the economic activities of the airport as well.

10.1.2. *State resources and imputability to the State*

(230) The compensation granted to TMA under the 2011 SGEI was authorised by the Regional Decision of August 2011 (recital 58) and paid from the budget of the Mureș County Council. This decision was taken directly by Mureș County Council, a local county in Romania, which is a part of the Romanian State.

(231) Thus, the Commission considers that such financing amounts to State resources and is also imputable to the State.

10.1.3. *Selectivity*

(232) In the case at hand, the financial support was proposed and given by the State to a single undertaking, the Airport Manager. This is an individual measure. Measure 3 is thus selective by definition within the meaning of Article 107(1) TFEU.

10.1.4. *Economic advantage*

(233) The public financing granted to the Airport Manager aimed at offsetting the losses incurred when carrying out their ordinary activity or cover investment costs. Nothing in the factual evidence available to the Commission or in the comments received from Romania or third parties suggest that the granting authority could have expected any financial return as a result of those funding measures when they decided to grant them.

(234) The Commission also notes that Romania did not argue that the financing complied with the MEOP. As shown in Table 4, TMA was loss making during all the period under investigation, with no prospect to become profitable in the medium term (Table 5). The Commission therefore concludes that the financing under assessment did not comply with the MEOP.

(235) In the course of the investigation, Romania also argued that the disputed public financing represented compensation for the provision of an SGEI which complied with the Altmark conditions.

(236) In the present case, the fourth Altmark condition was not complied with since the beneficiary has not been chosen following a tender procedure. There is also no evidence showing that that the level of compensation has been determined on the basis of an analysis of the costs which a typical undertaking, well run and adequately provided with the means required to be able to meet the necessary public service requirements, would have incurred in discharging those obligations, taking into account the relevant revenues and a reasonable profit for discharging these obligations. The Commission therefore considers that the public financing in question cannot be found to have been determined on the basis of the costs of an efficient undertaking. As the fourth Altmark condition was not complied with, the Commission finds that the four Altmark conditions were not cumulatively met in the present case.

(237) In light of the above, the Commission concludes that Measure 3 under assessment conferred an economic advantage on the Airport Manager.

10.1.5. *Distortion of competition and effect on trade between Member States*

(238) The assessment stated in recital 152 is also applicable to the public financing provided to the Airport Manager under the 2011 SGEI Entrustment and therefore the financing must be considered liable to distort competition and affect trade between Member States.

10.1.6. *Conclusion on existence of State aid*

(239) On the basis of the above, the Commission concludes that public financing provided to the Airport Manager on the basis of the 2011 SGEI Entrustment constitutes State aid to the Airport Manager within the meaning of Article 107(1) TFEU, with the exception of financing of activities falling within the public remit as listed in recital 225.

10.2. **Lawfulness of the aid**

(240) Measure 3 was put into effect before a formal approval by the Commission. Therefore, it constitutes unlawful aid, unless it fulfilled at the time the relevant conditions of a Union act providing for an exemption from the notification obligation laid down in Article 108 TFEU for certain categories of aid.

(241) In the case at hand, Romania claimed that Measure 2 complied with the conditions of the 2005 SGEI Decision.

10.2.1. *Compliance of the 2011 SGEI Entrustment with the 2005 SGEI Decision*

(242) The 2005 SGEI Decision requires firstly the existence of a genuine SGEI. In this respect, the Commission recalls that Member States enjoy a wide margin of discretion in defining SGEIs. The Commission's scrutiny is limited to assessing whether a manifest error was committed in the definition of the scope of the PSOs. ([108])

(243) With regard to whether the overall management of an airport constitutes an SGEI, as was argued in the present case by the Romanian authorities, the Commission typically assesses whether, without the airport, the area potentially served by the airport would be isolated from the rest of the Union to an extent that would prejudice its social and economic development. This analysis should be performed on a case-by-case basis ([109]).

(244) In the case at hand, the Commission takes into account the following points:

(a) TMA is located at a distance of 103 km from CNIA. The Romanian authorities have explained that, at the time of the publication of the Regional Decision of August 2011, due to the circumstances explained in recitals 23 to 26, the travelling time between the two airports was more than two hours due to the poor condition of the road, which allowed a maximum average speed of 65 km/h, and the heavy traffic. This travel time would increase in the case of bus transport, with the minimum journey time being 3 hours and 10 minutes (including the journey from the bus station in Cluj Napoca to CNIA).

(b) In addition, the Romanian authorities have clarified that, at the time of the adoption of the Regional Decision of August 2011, without TMA, the counties to the north, east and south of Târgu Mureş county (i.e. the counties Harghita, Covasna, part of Bistrita, Sibiu, Neamt and Brasov) would have been isolated from the rest of the Union, as there was no motorway linking Mureş, Harghita, Covasna, Bistrita, Neamt, Brasov, Sibiu and CNIA counties (see recitals 23 to 26).

(c) Furthermore, the Romanian authorities have explained that, due to the Carpathian Mountains surrounding the county of Harghita (around 300 000 inhabitants), the only easy road access is to the west (towards the county of Mureş) and that TMA is the only air gateway through which the inhabitants of this county have access to other regions of Europe. During the investigation, the Romanian authorities also raised the influence of weather conditions on the duration of road traffic between Mureş County and the neighbouring counties. The annual snowfall interval in Târgu Mureş can reach 190 days/year. The most frequent days with snow cover (days on which road traffic is hindered) occur in December (14,4 days), January (23,2 days) and February (17,5 days), with a total of 55,1 days/year. In some cases, the snow cover can last for the whole month during the winter months, i.e. 31 days in December and January and 28-29 days in February. Frost is another cause of road congestion. The first autumn frost in Târgu Mureş occurs on average on 13 October, while the last spring frost is recorded on 21 April. This means that the average annual frost-free period is 174 days.

(d) In addition, rail transport was underdeveloped at the time, with no high-speed connections.

([108]) Judgment of the General Court of 1 March 2017, SNCM v Commission, Case T-454/13, paragraph 111, Judgments of 15 June 2005, Olsen v Commission, T-17/02, ECLI:EU:T:2005:218, paragraph 216 and the case-law cited, and of 22 October 2008, TV2/Danmark and Others v Commission, T-309/04, T-317/04, T-329/04 and T-336/04, ECLI:EU:T:2008:457, paragraph 101 and the case-law cited.

([109]) Point 72 of the 2014 Aviation Guidelines.

(e) During the investigation the Romanian authorities have referred to the General Transport Master Plan of Romania of 2015 ([110]) to prove that in the medium term neither CNIA nor Sibiu would be able to cope with their own traffic without additional significant investments (CNIA would need to build an additional 23 265 square meters on aircraft aprons and 29 066 of passenger terminals and Sibiu 460 square meters of passenger terminals just to meet their own needs). Therefore, those two airports would not be in a position to take TMA's traffic should the latter no longer exist.

(f) As outlined in recital 21, Mureș County has experienced a significant population decline in the last decades, a trend expected to continue in the coming years. Moreover, as mentioned in recital 22 Mureș County has benefited less from EU enlargement than its neighbouring counties, let alone the Bucharest metropolitan area. Recognising the importance of infrastructure for regional development, the Romanian authorities have identified the airport as a key asset. As a result, its renovation was included in the Operational Programme for Large Infrastructure 2014-2020. As part of Mureș County's development strategy, the County Council planned the establishment of an industrial park near the airport, known as Mureș Industrial Park ([111]). The Romanian authorities have confirmed that the park has successfully attracted manufacturing companies and foreign investment, contributing to regional economic growth. Ultimately, the objective is to develop an intermodal transport hub to further support the area's connectivity and development.

(g) The Romanian authorities have emphasised the importance of tourism as an economic activity for the dynamization of the county. Tourism in the county increased significantly in the period 2010-2015, placing Mureș County in 4th place in Romania in terms of the number of tourists, with a total number of visitors of 492 181 ([112]). The most visited tourist attractions by foreign tourists in 2015 were Sighișoara, Târgu Mureș and the spa resort of Sovata. Foreign tourists come mainly from EU countries but also from outside the European Union (e.g. Israel). The Romanian authorities have indicated that the airport of Târgu Mureș, with its direct connections to several major EU cities, has played a decisive role in the increase in the number of tourists.

(h) At last, the Romanian authorities have indicated that Târgu Mureș is a leading centre for cardiac transplantation and emergency medicine. The rapid transport of organs between national centres is a crucial aspect of organ transplantation. The objective of the Mureș County Emergency Clinical Hospital is to enlarge its leadership from heart transplantation to heart-lung transplantation, kidney transplantation, or any other organ and tissue transplantation. This is in line with the Romanian Ministry of Health strategy, which includes the establishment of a Tissue Bank in Târgu Mureș. The hospital has highlighted that the helicopter transfer of patients from another airport, situated at a greater distance, to the hospital cannot be conducted on a permanent basis due to meteorological or technical constraints, which frequently preclude the transfer, with attendant implications for the patient.

(245) Given the above considerations, the Commission considers that Romania did not commit a manifest error of appreciation in finding that, without TMA, some areas of the Central Region of Romania would be isolated from the rest of the Union to an extent that would prejudice its social and economic development.

(246) In these circumstances, the Commission considers the elements communicated by the Romanian authorities sufficient to suppport their decision to entrust TMA with an SGEI, and that Romania has not commited a manifest error.

(247) The 2005 SGEI Decision (Article 2(1), point (d)) also only applies to airports with less than 1 000 000 passengers during the two financial years preceding that in which the SGEI was assigned.

(248) TMA had less than 1 000 000 passengers per year in 2009 and 2010 i.e. the years preceding the entrustment of the 2011 SGEI (see Table 1). Therefore, the 2005 SGEI Decision applied to Measure 2.

([110]) master-planul-general-de-transport_iulie_2015_vol-i.pdf.
([111]) Mureș County Development Plan 2014-2020.
Available at: anexa_hot107_2014.pdf.
([112]) https://mures.insse.ro/wp-content/uploads/2023/03/Mures_Anuar_statistic_2015.pdf.

(249) Finally, the 2005 SGEI Decision sets a number of compatibility conditions for SGEI compensation to regional airports as set out in the following.

(250) *Entrustment*. For the 2005 SGEI Decision to apply, the responsibility for operating the SGEI shall be entrusted to an undertaking by means of one or more official acts ([113]). In the case at hand, the SGEI was entrusted by means of the Regional Decision of August 2011.

(251) Article 4 of the 2005 SGEI Decision further displays a number of features that the entrustment act should comply with, notably:

(1) *The nature and duration of the PSO*. The nature of the PSO is specified in Article 1(2) of the Regional Act of August 2011. The provision of the PSO activities is limited until 1st of January of the year following the year in which TMA exceeds the threshold of 1 000 000 passengers and no later than 31st December 2016 ([114]). Furthermore, the Regional Decision of August 2011 stipulates that, after that date, the SGEI entrustment shall be revised ([115]).

(2) *The undertaking and territory concerned*. The SGEI was entrusted to the Airport Manager and the territory of the entrustment is defined as a geographical area of 24 000 km^2, with an approximate population of 1,5 million inhabitants, comprising four counties: Mureș, Bistrita, Harghita, Covasna ([116]).

(3) *The nature of any exclusive or special rights assigned to the undertaking*. The Airport Manager is granted the exclusive right to provide the SGEI. ([117])

(4) The parameters for calculating, controlling, and reviewing the compensation.

(i) Calculation of the compensation. The costs to be taken into account when determining the level of compensation shall comprise all the fixed and variable, current and capital costs incurred in providing the activities relating to the SGEI and the share of these activities in the common costs of the Airport Manager. Investment costs will be taken into account if they are strictly linked to the provision of activities relating to the SGEI ([118]). The revenue to be taken into account for the purpose of determining the compensation shall include all the revenue obtained from the activities covered by the SGEI and any profit from the other activities carried out by the operator other than those relating to the SGEI ([119]).

(ii) *Control of the compensation*. The Airport Manager shall substantiate the amount of compensation requested and prepare a report on the substantiation and justification received from the local budget. The Economic Department of Mureș County Council is then responsible for verifying the information contained in such report as well as the financial statements submitted by the Airport Manager. These controls are carried out at least once a year, and more often if deemed necessary ([120]).

(iii) Review of the compensation and arrangements for avoiding and repaying overcompensation. Based on its regular checks, the Economic Department of Mureș County Council shall request the reimbursement of any overcompensation from the Airport Manager and, if appropriate, make a justified proposal for the revision of the activities related to the SGEI ([121]).

(252) The Commission therefore concludes that the conditions set out in Article 4 of the 2005 SGEI Decision are fulfilled by the Regional Decision of August 2011.

([113]) Article 4 of the 2005 SGEI Decision.
([114]) Article 2(2) of the Regional Decision of August 2011.
([115]) Article 2(3) of the Regional Decision of August 2011.
([116]) Article 1(1) of the Regional Decision of August 2011.
([117]) Article 3 of the Regional Decision of August 2011.
([118]) Article 4(4) of the Regional Decision of August 2011.
([119]) Article 4(5) of the Regional Decision of August 2011.
([120]) Article 5 of the Regional Decision of August 2011.
([121]) Article 5(4) of the Regional Decision of August 2011.

(253) *Compensation* ([122]). Article 5 of the 2005 SGEI Decision sets the parameters that the compensation must fulfilled to be considered compatible with the Decision.

(254) The amount of compensation shall not exceed what is necessary to cover the cost incurred in discharging the PSO and a reasonable profit of any own capital necessary for discharging those obligations. As illustrated in Table 3, the airport incurred losses throughout the entrustment period (2011-2014). The compensation received by the Airport Manager was not sufficient to cover the costs of running its SGEI obligations. In the light of the above, it must be understood that the present condition is fulfilled in the present case.

(255) The costs and revenue to be taken into consideration shall comprise all costs incurred in the operation of the SGEI and calculated on the basis of generally accepted cost accounting principles. The Commission understands that, for the reasons explained in recital 251, costs and revenues calculations were set in compliance with Article 4(4) and (5) of the Regional Decision of August 2011 and therefore this criterion is fulfilled.

(256) *Separation of accounts of the costs and receipts associated with the SGEI from the other services*. As explained in recital 62, the 2011 entrustment imposes a clear separation of accounts. Such separation was implemented over the duration of the entrustment.

(257) The Commission therefore concludes that the conditions set out in Article 5 of the 2005 SGEI Decision are fulfilled in the present case.

(258) *Control of overcompensation*. Article 6 of the 2005 SGEI Decision sets out several mechanisms to ensure that the Airport Manager was not overcompensated, namely, the existence of regular checks, and the existence of mechanisms in place to ensure the repayment of any overcompensation and provisions to avoid future overcompensation.

(259) As explained in recital 251(4)(ii) and (iii), the Mureș County Council put mechanisms in place to avoid overcompensation. Furthermore, the Mureș Country Council stipulated in a set of rules that future compensation would be calculated in accordance with the results of the previous years. In other words, if the Airport Manager was overcompensated in 2012, the excess would be carried over to cover the compensation in 2013. ([123])

(260) The Commission therefore concludes that the conditions set out in Article 6 of the 2005 SGEI Decision are fulfilled in the present case.

10.2.2. *Conclusion*

(261) The Commission concludes that the aid granted on the basis of the 2011 SGEI Entrustment is compatible with the internal market on the basis of Article 106(2) of the TFEU and was exempted from the obligation of prior notification provided for in Article 108(3) of the TFEU.

11. **ASSESSMENT OF MEASURE 4 – FINANCING OF TMA UNDER THE 2014 SGEI ENTRUSTMENT FROM 30 OCTOBER 2014 TO 9 MAY 2019**

11.1. **Existence of aid**

(262) The principles of Article 107(1) TFEU as set out in recitals 126 to 133, 137, 140, 143, 148 and 149 are applicable also for the assessment of Measure 4.

([122]) The Airport Manager was compensated during the assessed period by an amount lower than its actual costs (Table 4). The Commission therefore will not analyse the provisions on Article 6 of the SGEI Decision regarding the reasonable profit.

([123]) See for example Regional Decision of Mureș County Council No. 158 of 20 December 2012 states that the estimation of the compensation for 2013 and 2014 in the draft budget are based on the 2012 results.

11.1.1. *Economic activity and notion of undertaking*

(263) As set out in recital 41, the Airport Manager was engaged in an economic activity in the period under assessment and, thus, constitutes an undertaking within the meaning of Article 107(1) TFEU.

(264) The Romanian authorities argued that the Airport Manager carried out certain activities within the scope of the 2014 SGEI which fall within the public policy remit. In particular, Romania submitted that the costs incurred by the airport manager on behalf of State entities operating on airport premises, as well as costs incurred in the servicing of flights exempted from the payment of airport charges are to be considered as falling within the public policy remit.

(265) The Commission recalls that if infrastructure is used for both economic and non-economic activities, public funding will only fall under State aid rules insofar as it covers the costs linked to the economic activities.

(266) Regarding the public support used for the activities under Article 1(2), points (d to (g), of the 2014 SGEI Entrustment (recital 66), the Commission recalls that activities concerning police, customs, firefighting, activities necessary to safeguard civil aviation against acts of unlawful interference and the investments and maintenance relating to the infrastructure and equipment necessary to perform those activities are considered in general to be of a non-economic nature.

(267) The Commission therefore considers the protection of the airport infrastructure listed in Article 1(2), point (d), of the 2014 SGEI Entrustment; the search and rescue operations at the airport's premises under point e) thereof; guarding and security facilities for emergencies and fire prevention and control under point f) thereof; and the provision of the necessary areas, facilities and infrastructure required by the customs administration, border police, air transport police, the Ministry of Internal Affairs and the Romanian Intelligence Service for performing their specific activities under point g) thereof to be measures falling within the normal exercise of State functions, insofar as they fall within the categories listed in recital 132 ([124]). As previously stated in recital 39, the regulatory framework governing the operations of airport managers in Romania was consistent across all airports.

(268) Therefore, public support for those activities within Article 1(2) points (d) to (g) the 2014 SGEI Entrustment fall within the public policy remit and does not constitute aid within the meaning of Article 107(1) TFEU.

(269) However, neither providing free of charge operation for state flights, military service flights within certain ministries and government services, emergency flights and in other legally regulated situations listed under Article 1(2), point (h), of the 2014 SGEI Entrustment, nor the ground handling services provided to state-owned aircraft, including the procurement of related equipment listed under point (c) are functions generally reserved to the State.

11.1.2. *State resources and imputability to the State*

(270) The compensation granted to TMA under the 2014 SGEI was authorised by Regional Decision of October 2014 (recital 43) and paid from the budget of the Mureș County Council. This is a decision taken directly by Mureș County Council, a local county in Romania, which is a part of the Romanian State.

(271) Thus, the Commission considers that the financing provided on the basis of Regional Decision of October 2014 amounts to State resources and is also imputable to the State.

([124]) Commission Decision (EU) 2015/1226 of 23 July 2014 on State aid SA.33963 (2012/C) (ex 2012/NN) implemented by France in favour of Angoulême Chamber of Commerce and Industry, SNC-Lavalin, Ryanair and Airport Marketing Services (OJ L 201, 30.7.2015, p. 48, ELI: http://data.europa.eu/eli/dec/2015/1226/oj).

11.1.3. *Selectivity*

(272) In the case at hand, the financial support was proposed and given by the State to a single undertaking, the Airport Manager. This is an individual measure. Measure 4 is thus selective by definition within the meaning of Article 107(1) TFEU.

11.1.4. *Economic advantage*

(273) The public financing granted to the Airport Manager aimed at offsetting the losses incurred when carrying out their ordinary activity or cover investment costs. Nothing in the factual evidence available to the Commission or in the comments received from Romania or third parties suggest that the granting authority could have expected any financial return as a result of those funding measures when they decided to grant them.

(274) The Commission also notes that Romania did not argue that the financing complied with the MEOP. As shown in Table 6, TMA was loss making during all the period under investigation, with no prospect to become profitable in the medium term (Table 5). The Commission therefore concludes that the financing under assessment did not comply with the MEOP.

(275) In the course of the investigation, Romania also argued that Measure 4 represented compensation for the provision of an SGEI which complied with the Altmark conditions.

(276) In the present case, the fourth Altmark condition was not complied with, as the beneficiary has not been chosen following a tender procedure. There is also no evidence showing that that the level of compensation has been determined on the basis of an analysis of the costs which a typical undertaking, well run and adequately provided with the means required to be able to meet the necessary public service requirements, would have incurred in discharging those obligations, taking into account the relevant revenues and a reasonable profit for discharging these obligations. The Commission therefore considers that the public financing in question cannot be found to have been determined on the basis of the costs of an efficient undertaking. As the Altmark 4 condition was not complied with, the Commission finds that the four Altmark conditions were not cumulatively met in the present case.

(277) In light of the above, the Commission concludes that Measure 4 conferred an economic advantage on the Airport Manager.

11.1.5. *Distortion of competition and effect on trade between Member States*

(278) The assessment stated in recital 152 is also applicable to the public financing provided to the Airport Manager under the 2014 SGEI Entrustment and therefore the financing must be considered liable to distort competition and affect trade between Member States.

11.1.6. *Conclusion on existence of State aid*

(279) On the basis of the above, the Commission concludes that public financing provided to the Airport Manager on the basis of the 2014 SGEI Entrustment constitutes State aid to the Airport Manager within the meaning of Article 107(1) TFEU, with the exception of financing of activities falling within the public remit as listed in recital (268).

11.2. **Lawfulness of the aid**

(280) Measure 4 was put into effect before formal approval by the Commission. Therefore, it constitutes unlawful aid, unless it fulfilled at the time the relevant conditions of a Union act providing for an exemption from the notification obligation laid down in Article 108 TFEU for certain categories of aid.

(281) Romania claimed that Measure 4 complied with the conditions of the 2012 SGEI Decision.

(282) The 2012 SGEI Decision applies to compensation for the provision of services of general economic interest as regards airports for which the average annual traffic during the two financial years preceding that in which the SGEI was assigned does not exceed 200 000 passengers. As mentioned in the 2015 Opening Decision, TMA had more than 200 000 passengers per year in 2012 and 2013 i.e. the years preceding the entrustment of the 2014 SGEI (see Table 1). Therefore, the 2012 SGEI Decision did not apply to Measure 4.

(283) Accordingly, Measure 4 was implemented in breach of Article 108(3) of the TFEU.

11.3. **Compatibility with the internal market**

(284) In accordance with the 2014 Aviation Guidelines, the compensation of the operation of an airport as SGEI can be considered compatible under Article 106(2) TFEU if the criteria laid out in section 4 of the 2014 Aviation Guidelines are fulfilled, in particular if the operation qualifies as genuine SGEI within the meaning of points 69 and 72 of the 2014 Aviation Guidelines, and if it fulfils the compatibility criteria as laid out in section 4.2 of the 2014 Aviation Guidelines in conjunction with the relevant rules of the 2012 SGEI Framework.

(285) Point 75(a) of the 2014 Aviation Guidelines specifies that the 2012 SGEI Framework applies for the compatibility assessment for aid to airports with an average annual traffic exceeding 200 000 passengers over the duration of the SGEI entrustment, which was the case for TMA (Table 1). The Commission will therefore assess the compatibility of Measure 4 on the basis of the criteria laid down in the 2012 SGEI Framework and the 2014 Aviation Guidelines.

(286) The 2012 SGEI Framework sets a number of compatibility conditions for SGEIs, including concerning airports, including notably, the existence of an entrustment act, the calculation of the compensation and the existence of mechanisms to control overcompensation.

11.3.1. *Genuine SGEI as referred to in Article 106 TFEU*

(287) As a first condition for the compensation of airport management services to be compatible with State aid rules, the service provider must be entrusted with a genuine and correctly defined SGEI. This requirement is laid down in point 69 of the 2014 Aviation Guidelines in conjunction with Section 2.2. of the 2012 SGEI Framework.

(288) According to point 69 of the 2014 Aviation Guidelines, an SGEI 'should exhibit special characteristics as compared with ordinary economic activities' and 'the general interest objective pursued by the public authorities cannot simply be that of the development of certain economic areas or economic activities provided for in Article 107(3)(c) of the Treaty'.

(289) In point 72 of the 2014 Aviation Guidelines, the Commission specifies that the overall management of an airport constitutes an SGEI in well-justified cases, if part of the area potentially served by the airport would, without the airport, be isolated from the rest of the Union to an extent that would prejudice its social and economic development. That assessment should take due account of other modes of transport, and in particular of high-speed rail services or maritime links served by ferries. In such cases, public authorities may impose a PSO on an airport to ensure that the airport remains open to commercial traffic.

(290) The same reasoning mentioned in recitals 243 to 245, for the 2011 SGEI, apply *mutatis mutandis* also to the 2014 SGEI given that the situation in terms of transportation means of the area had not evolved significantly since 2011. Therefore, the Commission considers that TMA is also entrusted with a genuine SGEI under the 2014 SGEI Entrustment.

(291) For all the reasons detailed above, the Commission considers that the aid granted under the 2014 SGEI Entrustment is to be granted for a genuine and correctly defined SGEI, in line with Section 2.2 of the 2012 SGEI Framework and points 69 and 72 of the 2014 Aviation Guidelines.

11.3.2. *Need for an entrustment act specifying the public service obligations and the methods for calculating compensation*

(292) Pursuant to points 15 and 16 of the 2012 SGEI Framework, responsibility for the operation of the SGEI must be entrusted by way of one or several acts, the form of which may be determined by the Member State. The act or series of acts must include: (a) the content and duration of the PSOs; (b) the undertaking and, where applicable, the territory concerned; (c) the nature of any exclusive or special rights assigned to the undertaking by the granting authority; (d) the description of the compensation mechanism and the parameters for calculating, monitoring and reviewing the compensation; and (e) the arrangements for avoiding and recovering any overcompensation.

(293) In the same vein, according to point 69 of the 2014 Aviation Guidelines, SGEIs in the airport sector should be clearly defined and be entrusted by an act of a public authority.

(294) The 2014 SGEI was entrusted by Regional Decision of October 2014 which was drawn up in accordance with the provisions of the 2012 SGEI Framework and the 2014 Aviation Guidelines. As mentioned in recital 66, Article 1(2) of Regional Decision of October 2014 specifies the activities that constitute an SGEI at TMA. As mentioned in recital 268 some activities fall within the public policy remit and thus outside State aid control. The remaining primarily economic activities are clearly specified in Article 1(2), points (a), (b), (c) and (h) of Regional Decision of October 2014 and identified as SGEI activities. Furthermore, as mentioned in recital 68, the duration of the PSO was clearly stated. In addition, as mentioned in recital 43, the 2014 SGEI Entrustment also specified the undertaking concerned, namely the Airport Manager. Finally, the Airport Manager was granted the exclusive right to provide the SGEI ([125]). In light of the above, the Commission considers that the 2014 SGEI complied with points 16(a) and (b) of the 2012 SGEI Framework and point 69 of the 2014 Aviation Guidelines.

(295) Furthermore, as mentioned in recital 67, Article 4(2) to (11) of Regional Decision of October 2014 sets out in detail the calculation of the compensation for the 2014 SGEI. These provisions establish: the limits of the eligible SGEI-related operating and investment costs to be covered by the compensation; the inclusion of only SGEI-related costs and a proportionate amount of common costs; the limit that the compensation cannot exceed the costs necessary to discharge the PSO. Importantly, these provisions also provide that the compensation cannot exceed the difference between these costs, on the one hand, and the SGEI-related revenues and non-SGEI-related profits of the airport, on the other. In other words, SGEI revenues and even profits from non-SGEI activities reduce the amount of compensation granted under the 2014 SGEI in order to avoid any possible overcompensation. Furthermore, as mentioned in recital 62, separate accounts have been kept for SGEI and non SGEI activities of the TMA. In light of the above, the Commission considers that the 2014 SGEI complies with points 16(d) and (e) of the 2012 SGEI Framework.

11.3.3. *Duration of the period of entrustment*

(296) Point 17 of the 2012 SGEI Framework requires that the duration of the period of the PSO entrustment to be justified by objective criteria such as amortisation and depreciation. The Commission notes that the amortisation and depreciation periods for the most significant fixed assets such as buildings and equipment for airport operations related to the specified SGEI activities typically exceed a duration of ten years ([126]). In any event, as mentioned, the 2014 SGEI ceased in 2019 much earlier than intended.

(297) For the above reasons, the Commission considers that point 17 of the 2012 SGEI Framework is complied with.

([125]) Article 2 of Regional Decision of October 2014.

([126]) See for reference recital 73 of Commission Decision of 24 November 2023 in case SA.106193 (2023/N) – Sweden Skellefteå Airport - Entrustment of a Service of General Economic Interest.

11.3.4. *Compliance with Directive 2006/111/EC*

(298) Point 18 of the 2012 SGEI Framework requires that the undertaking in question complies, where applicable, with the Commission Directive 2006/111/EC. ([127]) However, under Article 5 of that Directive the respective transparency requirements of its Article 1 do not apply to public undertakings whose total annual net turnover is less than EUR 40 million over the period of the two financial years preceding any public funds or SGEI entrustment. In light of the very limited annual revenue of TMA during 2012 and 2013 as shown in Table 4, Directive 2006/111/EC is not applicable to this case and hence the assessment of point 18 of the 2012 SGEI Framework is not pertinent in this case.

11.3.5. *Compliance with Union public procurement rules*

(299) Point 19 of the 2012 SGEI Framework requires that the undertaking complies with applicable Union rules in the area of public procurement, including requirements of transparency, equal treatment and non-discrimination resulting directly from the Treaty and, where applicable, secondary legislation.

(300) Under Article 32(2), point (b), of Directive 2014/24/EU of the European Parliament and of the Council ([128]), the use of the negotiated procedure without prior publication is allowed for services that can be supplied by a particular economic operator in which there is no competition for technical reasons.

(301) The Commission observes that TMA is the only economic operator which can provide the SGEI covered by the act of entrustment. As mentioned above (recitals 244(a) to 245), there is no other airport which could provide any valid alternative to TMA when it comes to accessing Târgu Mureș and its neighbouring counties. As there is no airport besides TMA that could perform the SGEI entrusted by means of the service concession, in this case, the publication of the concession notice is not necessary to ensure competition between airports.

(302) Given the above, the Commission considers that point 19 of the 2012 SGEI Framework is satisfied in this case.

11.3.6. *Absence of discrimination*

(303) Point 20 of the 2012 SGEI Framework requires that where an authority assigns the provision of the same SGEI to several undertakings, the compensation should be calculated on the basis of the same method in respect of each undertaking.

(304) Since the airport's overall management was entrusted to a single undertaking, point 20 of the 2012 SGEI Framework is not applicable in this case.

11.3.7. *Amount of compensation*

(305) Points 21 to 50 of the 2012 SGEI Framework refer to the amount of the compensation.

(306) Pursuant to point 24 of the 2012 SGEI Framework the net cost of discharging the PSOs should be calculated using the net avoided cost methodology ([129]). In point 27 of the 2012 SGEI Framework, the Commission allows to apply alternative methods for calculating the net cost necessary to discharge the PSO in cases where the use of the net avoided cost methodology is not feasible or appropriate.

([127]) 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, ELI: http://data.europa.eu/eli/dir/2006/111/oj).

([128]) Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.3.2014, p. 65, ELI: http://data.europa.eu/eli/dir/2014/24/oj).

([129]) Net avoided cost methodology is summarized in points 25 and 26 of the 2012 SGEI Framework.

(307) The net avoided cost methodology requires the establishment of the company's costs and revenues in a hypothetical scenario in which there is no SGEI. In the case at hand, all services not covered by the act of entrustment are dependent on the existence of the SGEI. Therefore, no relevant hypothetical scenario can be applied in which only the other activities are conducted, which means that the net avoided cost method cannot be used.

(308) For that reason, the act of entrustment requires TMA to report its net cost for the PSO obligation using the cost allocation methodology – an alternative methodology, defined in points 28-31 of the 2012 SGEI Framework. This is reflected in the 2014 SGEI Entrustment, that requires compliance with the methodology based on cost allocation as defined in the 2012 SGEI Framework. The absence of overcompensation requested by point 21 of the 2012 SGEI Framework is verified below.

(309) The amount of compensation can be established on the basis of either the expected costs and revenues, or the costs and revenues actually incurred, or a combination of the two ([130]). The costs to be taken into account shall comprise all the costs incurred in providing the SGEI, which shall be calculated on the basis of generally accepted cost accounting principles. The Airport Manager shall only take into account costs linked to the SGEI, which may include all the direct costs incurred in performing the SGEI and a proportionate contribution to the costs, common to both the SGEI and other activities. Investment costs will be taken into account if they are strictly linked to the provision of the activities related to the SGEI ([131]). Costs relating to activities which do not fall within the scope of the SGEI will not be eligible for compensation covering all direct costs, an appropriate contribution to common costs and an appropriate return on equity ([132]). In view of the above, it can be concluded that point 22 of the 2012 SGEI Framework is respected.

(310) The revenue to be taken into account must include at least the entire revenue earned from the SGEI, as specified in the entrustment act, and the excessive profits generated from special or exclusive rights even if linked to other activities as provided in paragraph 45, regardless of whether those excessive profits are classified as State aid within the meaning of Article 107(1) of the Treaty ([133]). The revenue to be taken into account for the purpose of determining the compensation shall comprise all the revenue earned from the activities covered by the SGEI, regardless of whether that revenue is classified as State aid within the meaning of Article 107 of the Treaty, and any profit from the other activities of the Airport Manager other than those relating to the SGEI ([134]). This requirements is fulfilled.

(311) *Reasonable profit* ([135]). The Regional Decision of October 2014 does not allow the Airport Manager to receive a reasonable profit. Furthermore, according to the Economic Forecast Document referred to in recital 77, the airport was not expected to be profitable in the medium term, let alone in the period from 2014 to 2019. Therefore, points 33 to 38 of the 2012 SGEI Framework are fulfilled.

(312) *Efficiency incentives* ([136]). Regional Decision of October 2014 contains provisions aimed at ensuring a reduction of the public funding needed by TMA in the medium run. In this sense, it is mentioned that TMA must submit a multiannual business plan, which should lead to a gradual decrease in compensation ([137]). As evidenced in Table 5, the business plan anticipated a reduction in compensation over time. Furthermore, Regional Decision of October 2014 stipulates a reduction in the financing provided to the airport. This requirement is then fulfilled.

([130]) Point 22 of the 2012 SGEI Framework.
([131]) Article 4(9) of the Regional Decision of October 2014.
([132]) Article 4(11) of the Regional Decision of October 2014.
([133]) Point 32 of the 2012 SGEI Framework.
([134]) Article 4(10) of the Regional Decision of October 2014.
([135]) Points 33 to 38 of the 2012 SGEI Framework.
([136]) Points 39 to 43 of the 2012 SGEI Framework.
([137]) Article 5(14) of the Regional Decision of October 2014.

11.3.8. *Account separation*

(313) Pursuant to point 44 of the 2012 SGEI Framework, the Airport Manager should have separate accounts for the costs and revenues associated with the SGEI and those of other services. The Regional Decision of October 2014 states that the Airport Manager shall keep separate accounts for the activities in the field of SGEI ([138]). The effective account separation was confirmed by the Romanian authorities during the investigation. Therefore, this requirement is fulfilled.

11.3.9. *Overcompensation*

(314) Paragraphs 47 to 50 of the 2012 SGEI Framework set out the provisions to avoid overcompensation. In accordance with Article 6 of Regional Decision of October 2014, the Airport Manager is obliged to substantiate the amount of compensation requested and to prepare an explanatory note. Furthermore, the Economic Directorate of the Mureș County Council is responsible for periodically checking the compensation. In the event of overcompensation, the Council may request reimbursement or a revision of the activities relating to the SGEI ([139]). It should be recalled that, in addition to meeting the formal conditions, the airport was loss-making throughout the period under analysis, so that no de facto overcompensation was possible. Therefore, the overcompensation requirements of the 2012 SGEI Framework are met.

11.3.10. *Transparency*

(315) Pursuant to point 60 of the 2012 SGEI Framework, the Member State concerned must publish on the internet or by other appropriate means information on: the results of the public consultation or other appropriate instruments referred to in point 14 of the 2012 SGEI Framework, the content and duration of the PSOs, the undertaking and the territory concerned, the amounts of aid granted to the undertaking on a yearly basis.

(316) Both the Regional Decision of October 2014 ([140]) and the decisions approving TMA's annual budget are acts of the Târgu Mureș Council and are publicly available on its website. Articles 1, 2 and 3 of Regional Decision of October 2014 delineates the scope and duration of the PSOs, the entities involved, and the geographic area affected. Similarly, the Regional Decisions outlining the airport's budget for the years 2014 ([141]), 2015 ([142]), 2016 ([143]), 2017 ([144]), 2018 ([145]) and 2019 ([146]), which specify the amounts of aid granted, are also publicly available.

(317) Therefore, the Commission considers that the transparency requirements of the 2012 SGEI Framework are met.

11.3.11. *Conclusion on the compatibility of Measure 4*

(318) For the reasons set out in recitals 286 to 298 11.3.4 above, the Commission considers that the aid to TMA based on the 2014 SGEI Entrustment is compatible with the internal market on the basis of Article 106(2) TFEU.

12. ASSESSMENT OF MEASURE 5 - AIRPORT CHARGES FOR AIRLINES OPERATING AT TMA FROM 21 MARCH 2013 TO 16 FEBRUARY 2019

12.1. Existence of aid

(319) The principles of Article 107(1) TFEU as set out in recitals 126 to 133, 137, 140, 143, 148 and 149 are applicable also for the assessment of Measure 5.

([138]) Article 4(11) of the Regional Decision of October 2014.
([139]) Article 6 of Regional Decision of October 2014.
([140]) Available at: PROIECT (cjmures.ro).
([141]) Available at: hot016_2014.pdf (cjmures.ro).
([142]) Available at: PROIECT (cjmures.ro).
([143]) Available at: HOTĂRÂREA NR (cjmures.ro).
([144]) Available at: cjmures.ro/Hotariri/Hot2017/hot033_2017.pdf.
([145]) Available at: HOTĂRÂREA NR (cjmures.ro).
([146]) Available at: cjmures.ro/Hotariri/Hot2019/hot049_2019.pdf.

12.2. **Selectivity**

(320) To fall within the scope of Article 107(1) TFEU, a State measure must favour '*certain undertakings or the production of certain goods*'. Hence, only those measures favouring undertakings which grant an advantage in a selective way fall under the notion of State aid.

(321) It is settled case-law that the assessment of the selectivity condition requires it to be determined whether, under a particular legal regime, a national measure is such as to favour certain undertakings or the production of certain goods over others which, in the light of the objective pursued by that regime, are in a comparable factual and legal situation. The examination of selectivity requires prior definition of the reference framework within which the measure concerned fits ([147]). A measure is selective '*only if, within the context of a particular legal regime, it has the effect of conferring an advantage on certain undertakings over others, in a different sector or the same sector, which are in the light of the objective pursued by that regime, in a comparable factual and legal situation*.' ([148]). The concept of State aid does not refer to State measures which differentiate between undertakings if such differentiation arises from the nature or the overall structure of the system of which they form part. ([149])

(322) A measure by which a public undertaking lays down the conditions for the use of its goods or services is not necessarily always a selective measure for the purposes of Article 107(1) TFEU. ([150]) Article 107(1) TFEU does not distinguish between measures of State intervention by reference to their causes or their aims but defines them in relation to their effects, and thus independently of the techniques used ([151]).

(323) The Regional Decision of July 2012 provided for a system of base rates for airport charges at TMA (Table 7). It also included discounts on the charges depending on the number of landings per a given time period (Table 8).

(324) The airport charges and discounts in Regional Decision of July 2012 were proposed, assessed and established by the executives of the Airport Manager of the TMA and were approved by its Board of Directors (recital 73). The charges and discounts were then approved by the Mureș County Council.

(325) Given the above, the Commission considers the schedule of airport fees at stake was drawn up by the operator of the TMA, exercising a power of its own, and was only applicable at TMA alone ([152]). The relevant reference framework for assessing whether airlines were granted a selective advantage, in the sense of being favoured over other airlines in a comparable legal and factual situation, was, therefore, the airport schedule laying down charges and discounts applicable at TMA set by the Regional Decision of July 2012.

(326) The system of airport charges was open to all airlines using, or likely to use TMA and meeting the conditions described in the Regional Decision of July 2012. This system therefore does not appear to be selective neither *de jure* nor *de facto*.

(327) Similarly, the discounts were open to all airlines using, or likely to use TMA, and meeting the conditions described in the Regional Decision of July 2012. Therefore the discounts do not appear to be *de jure* selective.

(328) The Commission further analysed whether the discounts provided for by the Regional Decision of July 2012 were *de facto* selective by favouring, from an ex-ante viewpoint, certain airlines using TMA to the detriment of other airlines using it.

(329) The Romanian authorities have assessed the impact of the level of airport charges and the discounts on the revenues of TMA in the framework of the Economic Forecast which was drawn up for the period 2011-2015 (see recital 77).

([147]) Judgment of the Court (Grand Chamber) of 21 December 2016, *Commission v Hansestadt Lübeck ('Lübeck')*, C-524/14 P, ECLI:EU:C:2016:971, paragraphs 40-67.
([148]) Lübeck, paragraph 58.
([149]) Lübeck, paragraphs 40-67 and the case-law cited therein.
([150]) Ibid.
([151]) Ibid. Judgment of 15 November 2011, *Commission and Spain v Government of Gibraltar and United* Kingdom, C-106/09 P and C-107/09 P, ECLI:EU:C:2011:732, paragraph 87 and the case-law cited therein.
([152]) Lübeck, paragraph 62.

(330) This assessment made before the adoption of the Regional Decision of July 2012 took into account the fact that three airlines had expressed their willingness to operate scheduled services from TMA. The traffic estimate envisaged by the market analysis from scheduled air services resulted then as follows):

Table 10

Expected number of rotations per month 2013-2016

	WizzAir	Ryanair	Air Patriot
2013	94	20	72
2014	132	48	72
2015	180	64	72
2016	220	100	72

Source: Romanian authorities.

(331) The Commission notes that at the time the Regional Decision of July 2012 was adopted, all airlines that were expected to use TMA were able to benefit significantly from the discounts which were put in place (the lower benefit was a 25 % discount) and, two out of the three airlines could even benefit from the maximum discount of 45 %. The fact that the discounts are progressive in a linear way and starting at a low level (5 %) as from only a few landings (3) also ensures that there are no substantial threshold effects: the structure of the measure is not such that its effects significantly favour a particular group of undertakings. Also the criterion on which the discounts rely (number of landings) cannot as such lead to exclude some airlines from the benefit (by comparison to other criteria such as aircraft size).

(332) The Commission also notes that the criterion allowing to get a certain level of discount are general and applicable on an *erga omnes* basis, since it refers only to the number of rotations per month and not to criteria which could potentially favour certain companies (e.g. sufficient frequency, measured by reaching a certain number of passengers per month or having a fleet aircraft of relevant size measured by operating flights with aircrafts above a certain weight).

(333) On that basis, the Commission considers that the system of airport charges and the discounts were applied in a non-selective manner also from a *de facto* viewpoint.

12.2.1. *Conclusion on selectivity*

(334) The Commission considers that there is no *de jure* selectivity, since the Regional Decision of July 2012 does not impose any restrictions on the application of the discounts, neither in terms of the size of the aircraft to be used, nor in terms of the minimum number of passengers.

(335) Moreover, the measure is not *de facto* selective either, since, as explained in recital 331, up to three airlines in total, i.e. all airlines that would be operating regular services at the Airport in the forthcoming years could benefit to a significant extent from the discount and the single criterion for benefiting from a certain level of discount does not favour any particular company.

(336) It follows from the above that Measure 5 does not meet the selectivity condition of Article 107(1) TFEU.

12.2.2. *Conclusion on the existence of State aid*

(337) The conditions of Article 107(1) TFEU are cumulative. If one of them is not met by a measure under assessment, such measure does not constitute State aid.

(338) The Commission, therefore, concludes that Measure 5 did not constitute State aid within the meaning of Article 107(1) TFEU.

HAS ADOPTED THIS DECISION:

Article 1

(1) The public financing granted by Romania to the Airport Manager of Târgu Mureș Airport for the periods 2007-2009, 2011-2014 and 2014-2019 constitutes State aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union.

(a) The public financing in the period 2007-2009 aid was unlawfully granted by Romania in breach of Article 108(3) of the Treaty on the Functioning of the European Union. The aid is compatible with the internal market on the basis of Article 107(3), point (c), of the Treaty on the Functioning of the European Union.

(b) The public financing in the period 2011-2014 on the basis of the 2011 SGEI Entrustment is compatible with the internal market on the basis of Article 106(2) of the Treaty on the Functioning of the European Union and was exempted from the obligation of prior notification provided for in Article 108(3) of the Treaty of the Functioning of the European Union.

(c) The public financing in the period 2014-2019 on the basis of the 2014 SGEI Entrustment was unlawfully granted by Romania in breach of Article 108(3) of the Treaty on the Functioning of the European Union. The aid is compatible with the internal market on the basis of Article 106(2) of the Treaty on the Functioning of the European Union.

(2) The public financing implemented by Romania for ground handling infrastructure at Târgu Mureș Airport in 2011 constitutes State aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union and was unlawfully granted by Romania in breach of Article 108(3) of the Treaty on the Functioning of the European Union. The aid 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.

(3) The airport charges applicable at Târgu Mureș Airport from 21 March 2013 to 16 February 2019 do not constitute State aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union.

Article 2

This Decision is addressed to Romania.

Done at Brussels, 21 February 2025.

For the Commission
Teresa RIBERA
Executive Vice-President