COMMISSION DECISION

of 31 October 2011

State aid SA. 30931 (C/11) — Romania

Aid scheme for the development of air transport infrastructure

(notified under document C(2011) 7863)

(Only the Romanian text is authentic)

(Text with EEA relevance)

(2012/63/EU)

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)(a) thereof,

Whereas:

1. PROCEDURE

(1) By electronic notification dated 17 May 2010, the Romanian authorities notified to the Commission, in accordance with Article 108(3) of the Treaty on the Functioning of the European Union (hereinafter 'TFEU'), an aid scheme providing for public support in favour of regional airports. The notification has been registered under case number N 185/10.

(2) The Commission requested additional information on the proposed measure on 23 June 2010, 7 October 2010, 3 December 2010 and 17 March 2011. The Romanian authorities provided the information requested on 22 July 2010, 27 October 2010, 20 January 2011 and 5 April 2011.

(3) On 15 September 2010 the Romanian authorities informed the Commission of certain changes to the notified scheme, in particular as regards the number of beneficiaries.

(4) By letter of 24 May 2011 the Commission informed the Romanian authorities that it had decided to initiate the formal investigation procedure provided for by Article 108(2) TFEU in respect of the notified aid and other measures in favour of airports (hereinafter 'the opening decision') [1]. The Commission subsequently adopted a corrigendum to that decision on 23 June 2011.

(5) The opening decision was published in the *Official Journal of the European Union* [2]. The Commission called on interested parties to submit their comments.

(6) By letters of 27 June 2011, 5 July 2011, and 19 August 2011, Romania submitted its comments on the opening decision.

(7) The Commission received comments from three interested parties, namely Carpatair (an airline operating at Timişoara airport), Cluj-Napoca airport and the Romanian Association of Airports. The comments of the interested parties concerned both the notified scheme and the additional public funding granted to the airports as of Romania's accession to the EU in order to cover operating losses.

(8) By letters dated 16 September 2011, the Commission forwarded the comments of the interested parties to Romania.

2. DESCRIPTION OF THE NOTIFIED MEASURE

(9) The notified measure concerns the public financing of infrastructure investments at small regional airports.

(10) The notified measure aims to support the observance of aviation safety standards at Romanian regional airports, the development of safe and viable air transport infrastructure, and improved accessibility and regional development.

(11) During the preliminary assessment phase, the Romanian authorities have clarified that regional airports in Romania are generally loss-making and that their operating losses are covered every year by the State. The Romanian authorities have provided the Commission with a comprehensive list of the public financing made available to airports in category D as of Romania's accession to the EU.

(12) The Romanian authorities have indicated that the subsidies granted annually to the airports reached, for the most part, the level of aid exempted from the notification requirement on the basis of 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 [3] (hereinafter 'the SGEI Decision').

[1] The formal investigation procedure concerns both the notified scheme for public funding to support the development of airport infrastructure at small regional airports, as well as the public financing to cover operating losses granted to certain airports.

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

[3] OJ L 312, 29.11.2005, p. 67.

(13) The only exception would be the public financing granted to Timișoara airport, which, according to the Romanian authorities, does not constitute aid in so far as the measure complies with the market economy investor test. The public financing granted to Timișoara airport is the object of a separate assessment by the Commission.

3. WITHDRAWAL OF THE NOTIFICATION

(14) By letter dated 25 July 2011, the Romanian authorities withdrew their notification under SA. 30931 concerning the financing scheme for infrastructure investments in Romanian small regional airports. The Romanian authorities have announced their intention to finance such airports in compliance with the provisions of the Community Guidelines on financing of airports and start-up aid to airlines departing from regional airports [1] (hereinafter 'the Aviation Guidelines') and the SGEI Decision.

(15) The Aviation Guidelines recognise that certain activities carried out by airports, and in exceptional cases even the overall management of an airport, can constitute services of general economic interest (hereinafter 'SGEI'). In such a case, the public authority imposes on the airport operator certain public service obligations and the latter may be compensated for the additional costs deriving from the discharge of those obligations.

(16) The SGEI Decision applies to public service compensations granted to undertakings with an average annual turnover before tax, all activities included, of less than EUR 100 million in the two financial years preceding that in which the service of general economic interest was assigned, which receive annual compensation, for the service in question, of less than EUR 30 million, as well as to public service compensations for airports with average annual flows not exceeding one million passengers in the two financial years preceding that in which the service of general economic interest was assigned. Where the conditions set out in the SGEI Decision are met, public service compensations are compatible with the internal market and exempted from the requirement of notification provided for by Article 108(3) TFEU.

(17) According to Article 8 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 (now Article 88) of the EC Treaty [2], the Member State concerned may withdraw the notification in due time before the Commission has taken a decision on the aid. According to Article 8(2) of the abovementioned regulation, in cases where the Commission has opened the formal investigation procedure, the Commission shall close the procedure.

(18) Due to the fact that Romania has withdrawn its notification and will finance regional airports in full compliance with the provisions of the Aviation Guidelines and the SGEI Decision, the Commission has decided to close the formal investigation procedure under Article 108(2) TFEU in respect of the notified measure.

(19) This decision is without prejudice to the other measures which form the object of the opening decision. Therefore, the formal investigation concerning those measures is still underway,

HAS ADOPTED THIS DECISION:

Article 1

The Commission has decided to partially close the formal investigation procedure under Article 108(2) TFEU in respect of the notified scheme providing for public financing to support infrastructure improvements at small regional airports, as Romania has withdrawn its notification concerning the project in question.

Article 2

This Decision is addressed to Romania.

Done at Brussels, 31 October 2011.

For the Commission
Joaquín ALMUNIA
Vice-President

[1] OJ C 312, 9.12.2005 p. 1.

[2] OJ L 83, 27.3.1999, p. 1.