

# International **Comparative** Legal Guides



## Aviation Law **2021**

A practical cross-border insight into aviation law

**Ninth Edition**

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# Romania

Furtună și Asociații



Mihai Furtună



Ioana Anghel

## 1 General

**1.1 Please list and briefly describe the principal legislation and regulatory bodies which apply to and/or regulate aviation in your jurisdiction.**

In Romania, the general legal framework regulating aviation law is structured on three levels: national; European; and international.

Romanian aviation law is in compliance with the EU/EUROCONTROL/EASA Regulation.

The Romanian Civil Air Code (Law no. 21/2020) represents the main regulation at the national level, setting forth general rules which are applicable in the field of civil aviation.

The state authority in the aviation field is the Ministry of Transportation, which has delegated some of its duties to the Romanian Civil Aviation Authority. The Romanian Civil Aviation Authority (RCAA)'s main duties include the application of national aviation regulations and monitoring compliance therewith by aeronautical operators, as well as the implementation of international covenants and agreements to which Romania must adhere.

The RCAA, together with the Defence Ministry, coordinates the use of Romanian air space by civil and military aviation.

**1.2 What are the steps which air carriers need to take in order to obtain an operating licence?**

At the European level, the required conditions for obtaining an operating licence are provided under (EC) Regulation no. 1008/2008 governing mutual rules for the operation of community air services. Order no. 808/2011, issued by the Ministry of Transportation, sets forth the procedures to award, discontinue or withdraw the operating licence at the national level. The application to obtain an operating licence shall be submitted to the Ministry of Transportation and Infrastructure – General Directorate of Civil Aviation, and the conditions that shall be met by the company with a view to obtaining such a licence are enumerated hereunder:

- its main headquarters are located in Romania;
- it owns an available Air Operator's Certificate (AOC);
- it owns one or several aircraft, either in virtue of a property title or under a dry lease agreement;
- its main object of activity is either the exclusive operation of air services or it may be combined with any other commercial use of the aircraft or aircraft repair and maintenance activities;
- the structure of the company shall allow the state authority to enforce the provisions of (EC) Regulation no. 1008/2008 in respect of the operating licence;

- EU Member States and/or residents thereof shall own over 50% of the share capital in the company and shall exercise direct or indirect control thereon, except in the case of the existence of an agreement entered into with a third country, to which the EU is a party;
- compliance with the financial conditions set forth in Article 5 of the Regulation;
- compliance with the requirements provided in Article 11 of (EC) Regulation no. 785/2004; and
- compliance with the requirements on goodwill set forth in Article 7 of the Regulation.

An operating licence is available as long as the air carrier meets all of the above-mentioned conditions.

The General Directorate of Civil Aviation is entitled at all times to assess the financial outcomes of an air carrier to whom it granted the licence, under which the authority may discontinue or cancel the operating licence in the event that it is doubtful whether such an air carrier may comply with its existing or prospective obligations over a 12-month term. Nevertheless, the competent authority may issue a temporary licence for a maximum of 12 months until the financial restructuring of the community air carrier has been completed.

**1.3 What are the principal pieces of legislation in your jurisdiction which govern air safety, and who administers air safety?**

Air safety is governed by the European regulation related to air safety (in particular, Regulation (EU) 2018/1139, Regulations (EU) no. 965/2012, (EU) no. 748/2012, (EU) no. 1321/2014, etc.) and also by the national legislation, namely the Romanian Civil Air Code and secondary legislation implementing the European rules.

The European Aviation Safety Agency (EASA), founded in 2002 by the EU, is responsible for the proper functioning and development of civil aviation safety and cooperates with the national authorities in air safety matters.

In Romania, the body responsible for flight safety oversight is the Romanian Civil Aviation Authority, having the following main duties:

- drafting air safety regulations and overseeing the implementation of such regulations;
- air operator certification, aviation personnel licensing and aeronautical product, part and appliance certification;
- aerodrome certification;
- flight safety inspection; and
- civil aircraft registration.

#### 1.4 Is air safety regulated separately for commercial, cargo and private carriers?

No. Our domestic law does not distinguish between commercial, cargo and private flights when it comes to flight safety; therefore, all air transport operators are subject to ongoing certification and supervision by the Romanian Civil Aviation Authority, pursuant to the provisions of the Civil Air Code.

#### 1.5 Are air charters regulated separately for commercial, cargo and private carriers?

No, they are not.

#### 1.6 As regards international air carriers operating in your jurisdiction, are there any particular limitations to be aware of, in particular when compared with 'domestic' or local operators? By way of example only, restrictions and taxes which apply to international but not domestic carriers.

According to the Romanian Civil Air Code, all aircraft operating in the national air space or in other air spaces that have been allocated or delegated to Romania, based on regional agreements or international treaties, are obliged to pay a fee in order to use air navigation services.

All such fees are non-discriminatory for the same categories of civil flight, irrespective of the nationality of the air operators or of the state where the aircraft was registered.

The Ministry of Transportation has the right to temporarily deny access to the national air space for aircraft operators who have failed to pay the fees to use air navigation services.

#### 1.7 Are airports state or privately owned?

Airports are both state and privately owned. Most airports in Romania operate under the authority of the Ministry of Transportation or local county councils. Bucharest Baneasa International Airport – 'Aurel Vlaicu' and Bucharest 'Henri Coanda' International Airport are administered by the Bucharest National Airport Company, in which the Romanian state owns 80% of the shares. Other airports are administered by state-owned companies, for example Sibiu International Airport or Cluj 'Avram Iancu' International Airport.

Alexandru Podgoreanu Tuzla Airport is the only private airport in the country.

#### 1.8 Do the airports impose requirements on carriers flying to and from the airports in your jurisdiction?

Yes, they do. In Romania, according to the Civil Air Code, airport administrators set certain charges for the use of facilities and services provided by airports. Nevertheless, there are certain aircraft which are exempt from the payment of such fees, for example: Romanian military aircraft; foreign military aircraft which operate under bilateral agreements (exemptions are applicable only to airports where a legal entity in which the Romanian state or an administrative-territorial unit is the majority shareholder or which operates under the local or county public authority); and aircraft that carry out humanitarian and emergency aid operations.

If a civil aircraft fails to comply with these pecuniary obligations, airfield administrators have the right to confine such an

aircraft to the ground until the debts are written off or until a satisfying security interest is given.

Moreover, the Government, by a government decision, at the initiative of the Ministry of Transportation, has the right to restrict the operation of civil aircraft on Romanian airports or in the Romanian air space, with a view to protecting the environment.

#### 1.9 What legislative and/or regulatory regime applies to air accidents? For example, are there any particular rules, regulations, systems and procedures in place which need to be adhered to?

From a European standpoint, Regulation (EU) no. 996/2010 of the European Parliament and the Council of 20 October 2010 on the investigation and prevention of accidents in civil aviation stipulates that each Member State has the obligation to set up a national safety investigation authority.

In the light of the Regulation (EU) no. 376/2014 of the European Parliament and the Council of 3 April 2014 on reporting, analysis and follow-up of occurrences in civil aviation, for air accidents and incidents within the meaning of Regulation (EU) no. 996/2010, there is a reporting obligation towards the authorities responsible for aviation investigations.

The national legislation regulates air accidents under different acts, among which the most relevant are the Romanian Civil Air Code and G.D. no. 741/2008 for the approval of the Regulation of 9 July 2008 on emergency management generated by civil aviation accidents.

The Romanian Civil Air Code states that the Civil Aviation Safety Investigation and Analysis Authority is the sole authority in the field of civil aviation safety investigations and analyses at national level with responsibilities in organising, conducting, coordinating, controlling and performing civil aviation safety investigations, in accordance with the law and Regulation (EU) no. 996/2010.

It should be noted that the above-mentioned investigation is independent from criminal, administrative or disciplinary investigation.

The Regulation of 9 July 2008 on the management of emergency situations caused by the occurrence of a civil aviation accident is a special regulation setting forth the procedure that must be complied with, as well as the main institutions with duties in the management of air accidents, namely:

- the structures that provide alerting services (the Romanian Administration of Air Traffic Services – ROMATSA; the National Company of Maritime Radio Communications – RADIONAV S.A.; and the Special Communications Service); and
- the units responsible for coordinating rescue operations depend on the place where the accident occurred.

#### 1.10 Have there been any recent cases of note or other notable developments in your jurisdiction involving air operators and/or airports?

The following are among the most notable developments to have taken place in Romania in the last years:

- The Romanian Government project for launching a public-private partnership to build Bucharest South Airport, both for passengers and cargo – the airport could become a transit point for passengers travelling onwards to the Asia-Pacific and Europe-America routes. The size of Bucharest South Airport is projected for traffic of approximately 30 million passengers and will have a surface area of 600 hectares.

- The construction of Brasov Airport – the airport’s investment amounts to 57 million EUR and it is envisaged to be completed in 2021. It is estimated that the passenger flow will exceed 1 million people.
- The Romanian Civil Air Code (Law no. 21/2020) came into force at 19 June 2020, stipulating some significant changes comparing to the previous one.

## 2 Aircraft Trading, Finance and Leasing

### 2.1 Does registration of ownership in the aircraft register constitute proof of ownership?

No, it does not. According to the national legislation, civil aircraft registration does not entail the emergence of rights, and its sole effect lies in the fact that the registered rights may be opposed to third parties.

Furthermore, Civil Romanian Air Regulation no. RACR-IA, “Registering civil aircraft”, edition 1/2016, sets forth that the civil aircraft registration and the registration certificate does not constitute proof of legal title or ownership of a civil aircraft in the case of litigation whose cause-at-issue is ownership of title in that particular aircraft.

Proof of ownership of the aircraft may only be made by the actual or legal owner thereof, and it may range from a title of property, a sales agreement, a final court decision or any other legal document whereby ownership is transferred, to a title of ownership – whereby possession and a usage right in the aircraft are transferred.

### 2.2 Is there a register of aircraft mortgages and charges? Broadly speaking, what are the rules around the operation of this register?

Yes, according to the Civil Romanian Air Regulation no. RACR-IA, “Registering civil aircraft”, edition 1/2016, the register of aircraft mortgages and charges is operated by the Romanian Civil Aviation Authority.

The mortgages and charges are registered in the above-mentioned register based on the documentation submitted by the applicant to the Romanian Civil Aviation Authority, which includes (i) the registration request, (ii) the mortgage/charge title, and (iii) the proof of payment of the fee for the registration service (180 EUR + VAT per aircraft).

Unless otherwise stated, the first mortgage/charge registration, as well as the following modifications, are available for a five-year period, with the possibility of renewing the registration, based on supporting documents.

The register of aircraft mortgages and charges is a public register, and, upon request, the authority may release information regarding mortgages and charges to the person concerned.

### 2.3 Are there any particular regulatory requirements which a lessor or a financier needs to be aware of as regards aircraft operation?

Romanian legislation does not provide any particular regulatory requirements which a lessor/financier needs to be aware of regarding aircraft operation.

Nevertheless, it is worth mentioning that, according to Romanian law, the lessor can enforce its rights directly with the enforcement body, but only under the following conditions: (i) the lease is authenticated; and (ii) the breach of contract lies in the failure to pay the rent in full for at least two consecutive

months or when, at the termination of the agreement, the lessor does not gain repossession of the asset.

### 2.4 As a matter of local law, is there any concept of title annexation, whereby ownership or security interests in a single engine are at risk of automatic transfer or other prejudice when installed ‘on-wing’ on an aircraft owned by another party? If so, what are the conditions to such title annexation and can owners and financiers of engines take pre-emptive steps to mitigate the risks?

The Romanian legislation does not provide the concept of title annexation, whereby ownership or security interests in a single engine are at risk of automatic transfer or other prejudice when installed ‘on-wing’ on an aircraft owned by another party.

In such a situation, in practice, the legal status of the ownership/security interests is conventionally regulated by the parties’ agreement, in compliance with the common law.

However, the ratification of Romania to the Convention on International Interests in Mobile Equipment (Cape Town Convention) affords the opportunity for engine owners, lessors and financiers to register an ‘international interest’ in the asset with the International Registry of Mobile Assets. Following the registration of the international interest against certain aircraft objects (engines, airframes and helicopters), the holder is then entitled to exercise certain remedies in case the debtor defaults.

### 2.5 What (if any) are the tax implications in your jurisdiction for aircraft trading as regards a) value-added tax (VAT) and/or goods and services tax (GST), and b) documentary taxes such as stamp duty; and (to the extent applicable) do exemptions exist as regards non-domestic purchasers and sellers of aircraft and/or particular aircraft types or operations?

In Romania, the GST is assimilated to value-added tax (VAT) and according to the national tax law, VAT is not applicable for all aircraft purchased and used by airlines primarily engaged in international passenger and/or freight transport, namely: (i) aircraft delivery, modification, repair, lease, rent as well as aircraft equipment delivery, modification, repair, lease, rent; and (ii) fuel delivery. For any other aircraft transaction, the VAT is 19%.

The national legislation does not regulate documentary taxes such as stamp duty for aircraft trading.

### 2.6 Is your jurisdiction a signatory to the main international Conventions (Montreal, Geneva and Cape Town)?

Romania is a signatory to:

- The Geneva Convention of 19 July 1948, to which it adhered following the enactment of Act no. 64 of 13 July 1994.
- The Montreal Convention of 28 May 1999, ratified by GO no. 107/2000, which was approved by Act no. 14/2000.
- The Convention on International Civil Aviation Organisation (ICAO), to which Romania adhered in 1965.
- The International EUROCONTROL Convention on air safety cooperation and the “Multilateral agreement regarding air fees” (concluded in Brussels on 12 February 1981), to which Romania adhered in 1995.
- Cape Town Convention of 16 November 2001, ratified by Romania by Law no. 252 of 13 December 2017, endorsing both the Convention and the Protocol to the Convention on international interests in mobile equipment on matters specific to aircraft equipment.

**2.7 How are the Conventions applied in your jurisdiction?**

Acceding to the Romanian Constitution, the treaties ratified by the Parliament become part of the domestic legislation. Therefore, the provisions of the conventions to which Romania is a party are directly applicable in the Romanian legislation on condition of being ratified by the Parliament. Compliance with and enforcement of the treaties and conventions are provided through the court of jurisdiction.

**2.8 Does your jurisdiction make use of any taxation benefits which enhance aircraft trading and leasing (either in-bound or out-bound leasing), for example access to an extensive network of Double Tax Treaties or similar, or favourable tax treatment on the disposal of aircraft?**

Over time, Romania has concluded over 82 bilateral conventions with a view to avoiding Double Taxation applicable also to aircraft trading and leasing. These treaties are public on the website of the national tax administration agency. As mentioned above, with respect to taxation benefits, VAT is not applicable for all aircraft purchased and used by airlines primarily engaged in international passenger and/or freight transport, namely: (i) aircraft delivery, modification, repair, lease, rent as well as aircraft equipment delivery, modification, repair, lease, rent; and (ii) fuel delivery. For any other aircraft transaction, the VAT is 19%.

### 3 Litigation and Dispute Resolution

**3.1 What rights of detention are available in relation to aircraft and unpaid debts?**

A creditor is entitled to commence the detention proceeding against an aircraft. Romanian legislation provides several types of detention depending on the nature of the title on whose grounds such detention relies:

- Seizing the assets, as part of the enforcement proceeding, entails the existence of an execution writ (court decision, arbitration decision or an agreement). The seizure is commenced by the bailiff in the absence of a court order. When under seizure, the aircraft is grounded, and it is temporarily taken out of the civil circuit. In the event that the aircraft is mortgaged in favour of a third party, it may still be put under seizure as long as the rights of the mortgagor are complied with.
- Attachment is a proceeding which entails freezing the moveable assets of the debtor with a view to realising them once the creditor obtains an execution writ. Depending on the nature of the debt, a bail may be needed whose value is consistent with the reason for which a writ of attachment is sought.
- A writ of judgment may be ordered against an aircraft in the event that the cause-at-issue of the litigation between the parties is represented by an alleged claim thereupon. In certain situations, a writ of judgment may be sought in the absence of litigation, provided that an application to court is filed in less than 20 days. Finally, in the event that the court admits the issuance of a judgment writ, the beneficiary may be obliged to set a bail.

**3.2 Is there a regime of self-help available to a lessor or a financier of an aircraft if it needs to reacquire possession of the aircraft or enforce any of its rights under the lease/finance agreement?**

Romanian legislation does not provide a specific self-help regime for lessors and financiers.

Even so, with regard to the lease agreement, if it is authenticated and governed by Romanian law, the lessor can take physical possession of an aircraft without the lessee's consent, but only by starting the enforcement procedure. In such a case, the authenticated lease agreement represents a writ of execution regarding the repossession of a leased asset, if any such obligations arise out of the termination of the agreement. In all other situations, a court order is required.

In respect of the financiers, according to GO no. 51/1997, lease agreements, as well as personal and real securities agreements entered into in order to pledge the assumed obligations, are considered writs of execution. As a result, unless otherwise provided for under the agreement, if the lessee/user does not comply with the obligation to pay in full the rent for two consecutive months, the lessor/financier is entitled to rescind the lease agreement while the lessee/user is obliged to return the asset and pay the due amounts. In the event that the lessee fails to return the aircraft, the financier is entitled to commence enforcement proceedings against the lessee without resorting to court.

In addition, as Romania has ratified the Cape Town Convention on international interests in mobile equipment on matters specific to aircraft equipment, it is worth mentioning the declaration of reserve affirming that: "all the creditor's rights according to the Convention must be exercised only with Romanian courts' approval. Any proceedings outside the courts are excluded."

**3.3 Which courts are appropriate for aviation disputes? Does this depend on the value of the dispute? For example, is there a distinction in your jurisdiction regarding the courts in which civil and criminal cases are brought?**

Pursuant to the enforceable legislation, there are no specialised courts to deal with civil aviation disputes. National courts have the competence to adjudicate both civil and criminal cases in accordance with rules of general, material and territorial competence as provided by the Civil and Criminal Proceedings Codes.

In civil matters regarding pecuniary claims, the district courts have the competence to settle litigation claims that include a maximum value of 200,000 RON inclusive, whereas claims over a higher amount are adjudicated in the first instance by tribunals.

**3.4 What service requirements apply for the service of court proceedings, and do these differ for domestic airlines/parties and non-domestic airlines/parties?**

As regards natural or legal entities residing in Romania, the summons and further procedural documents are served *ex officio* through procedural court agents. Parties who are abroad, but whose domicile or residence is known, are summoned, or procedural documents are served upon them by means of a recommended letter with declared contents and receipt confirmation. In the event that the domicile or the residence of the persons living abroad is not known, these are served by means of advertisement (the summons is displayed on the door of the court, on the court's portal or at the last known domicile of the summoned person). Also, a curator is appointed by the court to act as a lawyer who will represent the interests of the summoned person.

The above-mentioned service is identical to that used for both companies registered in the UK and those registered in other states.

### 3.5 What types of remedy are available from the courts or arbitral tribunals in your jurisdiction, both on i) an interim basis, and ii) a final basis?

In Romania, both courts and arbitration tribunals pass provisional and final decisions.

The decisions held by the courts entail the examination on the merits of the alleged right, and they become final following the adjudication of incidental challenges (appeal and, in some cases, second appeal) or as a result of failure by the interested party to challenge such decisions.

Litigation commences once the complaint is filed with the court, on the condition that it complies with the admissibility conditions. In the event that such conditions are met, the defendant is served with the complaint in order to file a statement of defence. In cases where the complaint has certain flaws, these are communicated to the plaintiff who has the obligation to remedy them; otherwise, the complaint is annulled. Provided that the defendant submits a statement of defence (which is compulsory; non-compliance with this obligation shall lead to an interdiction on the part of the defendant to submit evidence and raise exceptions), this is served upon the plaintiff so that he/she could file an answer to the statement of defence. This proceeding is solely carried out in writing and, subsequent to the setting up of the first hearing and the summoning of the parties, the lawsuit itself is initiated and becomes final once the court passes a ruling. Challenges to court rulings are subject to the same proceedings as the complaint. The duration for a final settlement of litigation differs depending on its complexity and may range from one-and-a-half years to several years.

The provisional decisions passed by the court are mainly aimed at ordering preservation measures. As a rule, these are ordered as a result of a motion and they are enforceable until the merits of the case are settled.

In the event that the parties choose arbitration, the arbitration award is passed after the parties have exposed their claims and namely their defences. The award is final and it has the same applicability with a view to enforcement proceedings as the decision passed by the court. Dispute resolution before an arbitration tribunal is a flexible proceeding and the parties have the possibility to choose the procedural rules by means of an arbitration convention. The claims are settled faster, usually within six months.

The arbitration court may also order provisional or attachment measures before or during arbitration and may ascertain certain factual circumstances.

### 3.6 Are there any rights of appeal to the courts from the decision of a court or arbitral tribunal and, if so, in what circumstances do these rights arise?

In respect of decisions of the court of jurisdiction, according to the procedural Romanian rules, the decisions passed by the court are subject to different challenges. Depending on the nature of the litigation, the appeal may be the only challenge, or an appeal may be followed by a second appeal which exclusively envisages reasons related to the illegality of the appealed decision.

Regarding arbitration, the Romanian lawmaker has excluded both ordinary and extraordinary challenges in cases of arbitration. Nevertheless, the Civil Procedure Code stipulates the procedure according to which an arbitral award may be annulled. The action

of the annulment may constitute files only on certain limited grounds, and the competence to rule on such grounds is vested in the Appeals Court located where the arbitration took place.

### 3.7 What rights exist generally in law in relation to unforeseen events which might enable a party to an agreement to suspend or even terminate contractual obligations (in particular payment) to its contract counterparties due to *force majeure* or frustration or any similar doctrine or concept?

The Romanian legislation provides the concept of *force majeure* as an external, unpredictable, absolutely invincible and inevitable event.

In such cases, unless the law or the parties state otherwise, neither party shall be liable for delayed or inadequate performance, in whole or in part, of its obligations, if such delayed or inadequate performance was caused by an event of *force majeure* which could not have been foreseen on the date the contract came into force.

The party that shall invoke the *force majeure* shall immediately and in detail notify the other party of the occurrence of such an event and shall take all available measures in order to limit its consequences.

The parties are allowed to stipulate the legal termination of the contract in such case the *force majeure* event will not end, without any repairs or other damages to the other party.

It is worth mentioning the hardship clause ("*impreviziunea*"), also regulated by the Romanian legislation. The rule is that the parties must perform their contractual obligations even if the execution of these obligations have become more onerous, either due to the increase of the costs of execution of their own obligation, or due to the decrease of the value of the consideration.

However, if the performance of the contract has become excessively onerous due to an exceptional change in circumstances which arose after the contract was concluded, a change which could not reasonably have been predicted at the moment the contract was concluded, the debtor can ask the court either to adapt the contract, in order to distribute equitably the losses and benefits resulting from the change of circumstances, or the termination of the contract, but in both cases only if he did not assume the risk of changing circumstances and could not reasonably be considered to have assumed that risk and if he had tried to negotiate the reasonable and equitable adaptation of the contract within a reasonable time and in good faith.

## 4 Commercial and Regulatory

### 4.1 How does your jurisdiction approach and regulate joint ventures between airline competitors?

Our national legislation does not set forth special regulations for joint ventures between air operators. Joint ventures are regulated by the national and European provisions, namely the Romanian Competition Act no. 21/1996, the Treaty on the Operation of the European Union and Council Regulation (EC) no. 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Article 101 (ex. Article 81 TEC) and Article 102 (ex. Article 82 TEC) of the Treaty.

### 4.2 How do the competition authorities in your jurisdiction determine the 'relevant market' for the purposes of mergers and acquisitions?

The competent authority to receive a merger notification is the Competition Council. In order to determine the relevant market,

both the Competition Council and the courts of jurisdiction take into account the market of the product or service on the one hand and the geographical location on the other. The determination criteria are specific to the aviation industry and are applied depending on each particular situation. For example, in the case of airports, the service market is represented by the main operations performed in an airport, namely those connected to its exploitation, and they comprise both infrastructure services (runway facilities, runways, etc.) and services envisaging passenger and merchandise management.

**4.3 Does your jurisdiction have a notification system whereby parties to an agreement can obtain regulatory clearance/anti-trust immunity from regulatory agencies?**

Yes, it does. Takeovers performed through the merger of two or several undertakings must be notified by each of the involved parties. In all the other cases, the notification must be submitted by the party who gains the control over the undertaking. The transaction must be notified before it takes effect and after the conclusion of the agreement.

Following the examination of the transaction, the Competition Council may render one of the following decisions:

- a resolution of non-objection when it is found that the merger does not fall under the scope of the Competition Law; or
- a resolution to start an investigation because of doubts concerning compatibility with a normal competitive environment, in which case the authority can: (i) declare the merger incompatible with a normal competitive environment; (ii) render an authorisation decision if the merger does not raise significant obstacles for effective competition on the Romanian market; or (iii) render a conditional authorisation decision establishing the obligations and/or conditions which must be fulfilled so that the merger can be compatible with a normal competitive environment.

**4.4 How does your jurisdiction approach mergers, acquisition mergers and full-function joint ventures?**

There is no distinction in our domestic legislation between takeovers (mergers, acquisition mergers or full-function joint ventures).

A merger takes effect when the long-term change of control results from the merging of two or more previously independent undertakings or parts of undertakings, or one or more persons, who, already holding control over at least one undertaking, or one or more undertakings directly or indirectly, or by purchase of securities or assets, either by contract or other means, acquire control directly or indirectly over one or several undertakings or parts thereof. The setting up of a joint venture company which operates like an autonomous economic entity also represents a merger.

The obligation to notify the Competition Council applies to mergers where the aggregate turnover of the undertakings concerned exceeds the equivalent in RON of 10 million EUR and at least two undertakings involved in the merger have an individual turnover of the equivalent in RON of more than 4 million EUR.

For the analysis of any other kind of merger, the Competition Council decides, based upon the following criteria: a) if two or more holding companies keep running (to a significant degree more than 20% or 30%, as applicable), their operations on the same market as the joint venture, or on a market upstream or

downstream from the market of the joint venture, or on a market in close relation with this market; or b) if, by setting up the joint venture, the undertakings in question can eliminate competition for a significant part of the products or services in question.

**4.5 Please provide details of the procedure, including time frames for clearance and any costs of notifications.**

The notification procedure starts with Phase I and lasts: (i) 30 days from receiving a complete notification of a merger case, if the Competition Council concludes that the merger does not fall under the scope of the Competition Law; or (ii) 45 days from receiving a complete notification of a merger case, if the Competition Council will issue a decision of non-objection when it is found that the merger does fall under the scope of the Competition Law; and: a) there are no serious doubts concerning compatibility with a normal competitive environment; or b) serious doubts concerning compatibility with a normal competitive environment have been removed through the commitments proposed by the undertakings and accepted by the Competition Council.

Phase II has a maximum time schedule of five months from receiving a complete notification of a merger case, for which the Competition Council subsequently decides to start an investigation because of doubts concerning compatibility with a normal competitive environment.

The notification fee is 978 EUR for each notification.

The national legislation also stipulates an authorisation fee for mergers. The fee is set between 10,000 and 50,000 EUR and the final amount of the fee is determined by the Competition Council in relation to the authorisation decision issued by the authority.

**4.6 Are there any sector-specific rules which govern the aviation sector in relation to financial support for air operators and airports, including (without limitation) state aid?**

Although there are no national provisions in respect of financial support for airports and air companies, the European regulations are applied, namely the European Commission Guidelines on state aid to airports and airlines. The guidelines establish rules for state aid for airports and airlines, by three categories of state aid: investment in airport infrastructure; operating aid to regional airports; and start-up aid to airlines to launch new air routes.

For investment in airport infrastructure, the Guidelines set percentages for the maximum amount of state aid going into airport infrastructure. The percentages depend on the size of an airport (for an airport with passenger traffic of 3–5 million, up to 25% of the investment costs; for an airport with passenger traffic of 1–3 million, up to 50%; and for an airport with passenger traffic of less than 1 million, up to 75%), in order to ensure the right balance between public and private investment.

Operating aid to regional airports (with fewer than 3 million passengers a year) is allowed only for 50% of the initial average operating funding gap calculated as an average of five years preceding the transitional period of 10 years. To receive operating aid, airports need to work out a business plan paving the way towards full coverage of operating costs at the end of the transitional period.

Essentially, the new guidelines are intended to initially reduce, and then eliminate, as soon and as much as possible, the public funding of airports and airlines.

#### 4.7 Are state subsidies available in respect of particular routes? What criteria apply to obtaining these subsidies?

State subsidies may be granted for services of general economic interest (SGEI), but also in the case contemplated by Article 16 of (EC) Regulation no. 1008/2008 regarding common norms for the operation of air services in the community.

As a result, the public authorities may consider in some cases that certain economic activities performed by airports or air operators fall into the category of services of general economic interest and thus grant compensation for their performance. The subsidies are in the form of compensation for public service obligation and will be assessed in accordance with Decision 2012/21/EU of the Commission. Additionally, state subsidies for certain routes may be granted under the provisions of Article 16 of (EC) Regulation no. 1008/2008 in the case of air routes between a community airport and an airport situated on a peripheral or under-developed area on its territory, or for low-traffic routes to any airport on its territory, if such a route is essential to the social and economic development of the area where such an airport is located.

#### 4.8 What are the main regulatory instruments governing the acquisition, retention and use of passenger data, and what rights do passengers have in respect of their data which is held by airlines and airports?

Romanian airlines and airports shall process passengers' data in accordance with EU regulation (Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data – GDPR) and also in accordance with national regulation (Law no. 190/2018 on implementing measures for Regulation (EU) 2016/679).

A passenger, as a data subject, can exercise his right of access, right to data portability, right to object, right to rectification, right to erasure or right to restrict the processing of data processed by Romanian airlines and airports. All the aforementioned rights can be exercised only under the conditions provided by the GDPR.

According to Romanian law, the supervisory authority is the National Supervisory Authority for Personal Data Processing (ANSPDCP). Data subjects may submit questions or complaints about their rights and about national and European data protection legislation by submitting applications to the ANSPDCP Assistance Office Desk or by email at [anspdcp@dataprotection.ro](mailto:anspdcp@dataprotection.ro).

#### 4.9 In the event of a data loss by a carrier, what obligations are there on the airline which has lost the data and are there any applicable sanctions?

Regardless of its position as a controller or a processor, the carrier must have a strong procedure ready to be applied in case of a data loss.

It is essential to determine whether the carrier is the controller or the processor in connection to lost data.

As a controller, the carrier should notify the supervisory authority no later than 72 hours after having become aware of the data breach, and any notification after the 72-hour deadline should be fundamentally justified.

As a processor, the carrier shall notify the controller without undue delay after becoming aware of a personal data breach, remaining available to provide the necessary information to the controller and the authority.

Depending on the nature of the lost data (potential high risk to the rights and freedoms of the data subject) and excluding the exceptions provided for by the GDPR, the carrier shall also notify the personal data breach to the data subject without undue delay.

In the case of such data loss, the carrier may be subject to a sanction applied by the National Authority if the loss is caused by violation of the applicable regulations.

Also, when establishing the sanction, the National Authority will assess the security measures taken, how the situation was managed to reduce the effects caused, and the availability of the carrier to cooperate with the National Authority.

#### 4.10 What are the mechanisms available for the protection of intellectual property (e.g. trademarks) and other assets and data of a proprietary nature?

The institutional and legal framework which acts as a safeguard is mainly provided by two specialised institutions: the State Office for Patents and Trademarks, which is the authority that grants protection for industrial property; and the Romanian Copyright Office, which is the authority with duties in respect of tracking, observance and investigation into the application of legislation on copyright and affiliated rights.

The protection of industrial property rights is mainly regulated by Act no. 64/1991 regarding patents, Act no. 84/1998 regarding trademarks and geographical indications and Act no. 129/1992 regarding the protection of industrial design and models. Moreover, Romania has transposed an important part of the European legislation in respect of intellectual property.

Finally, in respect of legal remedies awarded by courts, there are specialised panels adjudicating intellectual property cases, thus ensuring qualified platforms for the protection of such rights.

#### 4.11 Is there any legislation governing the denial of boarding rights and/or cancelled flights?

The applicable legislation consists of the Convention to unify provisions regulating international air transportation, signed in Montreal in 1999, and (EC) Regulation no. 261/2004, which set out joint provisions as regards compensation and passenger assistance in the event of boarding denial, cancellation or prolonged delays.

In the event that the air operator denies the boarding of a passenger due to reasons other than poor health, safety and security requirements or inappropriate travel documents, the passenger is entitled to damages of a fixed amount (consistent with the flight distance), assistance (refunding the cost of the ticket, transportation to his/her final destination by another airplane or means of transportation) and accommodating services (meals, accommodation, transfer, two free-of-charge phone calls and fax or email messages).

In case of flight cancellation for circumstances other than exceptional ones that could not have been avoided despite the adoption of all possible measures, the passenger is entitled to damages (calculated based on flight distance), assistance (refunding the cost of the ticket, transportation to his/her final destination by another airplane or means of transportation) and accommodating services (meals, accommodation, transfer, two free-of-charge phone calls and fax or email messages). In respect of the national authorities which have competence in this area, please see the answer to question 4.12 below.

**4.12 What powers do the relevant authorities have in relation to the late arrival and departure of flights?**

In Romania, the National Authority for Consumer Protection is responsible for monitoring compliance with passengers' rights as set out in (EC) Regulation no. 261/2004.

In the event that the parties fail to settle amicably, the passenger is entitled to seek redress from the National Authority for Consumer Protection (if the incident occurred on the territory of Romania) or from the competent national authority in the country where the incident took place. The complaint shall be made according to the standard form issued by the European Commission and it must be solved within the 30-day legal term. The National Authority for Consumer Protection shall impose a fine on the air operator, provided that it finds, upon investigation, that it failed to inform passengers or did not grant the due compensation/damages.

In the event that the above-mentioned endeavours do not result in a solution to the problem, the passenger may start legal proceedings against the air operator within two years as of the date of arrival at the destination, or as of the date on which the aircraft was supposed to have arrived, or as of the date on which the transportation terminated.

**4.13 Are the airport authorities governed by particular legislation? If so, what obligations, broadly speaking, are imposed on the airport authorities?**

The obligations of airport administrators are provided under both national and European legislation. Hence, at the national level, such obligations are regulated by the Order of the Ministry of Transportation no. 161/2016 which approved the Romanian Civil Aviation Regulation with reference to the authorisation of civil aerodromes, RACR-AD-AADC. The airport administrator, namely the natural or legal person who runs and manages an airport in public or private property, has the following main duties:

- to obtain and maintain proper conditions in terms of safety, regularity and efficiency of the air operations performed on the aerodrome under the provisions of air legislation;
- to maintain the organisational structure, the facilities and aerodrome equipment, the operational framework and safety management systems at the minimum level initially declared, acknowledged and approved by the Romanian Civil Aviation Authority; and
- to perform only the activities/services which have received authorisation, and only under the specified conditions, abiding by the restrictions set forth in the Annex attached to the authorisation certificate.

**4.14 To what extent does general consumer protection legislation apply to the relationship between the airport operator and the passenger?**

The relationship between the passenger and the airport operator is governed by (EC) Regulation no. 261/2004 and by common law regarding consumer protection, Act no. 296/2004 on Consumer Protection, Ordinance no. 21/1992 regarding consumer protection – in case they do not contain provisions contrary to the Regulation. In this respect, please see also the answer to question 4.12 above.

**4.15 What global distribution suppliers (GDSs) operate in your jurisdiction?**

Amadeus, Sabre and Travelport operate in Romania.

**4.16 Are there any ownership requirements pertaining to GDSs operating in your jurisdiction?**

There are no express provisions in the national legislation with reference to ownership rights pertaining to GDSs. Nonetheless, we apply the provisions of (EC) Regulation no. 80/2009 regarding a behaviour code for IT systems to reserve and abolish (EEC) Regulation no. 2298/89 of the Council. We must emphasise the fact that this Regulation sets forth specific guidelines to ensure real competition between the participating carriers and the associated carriers, as well as ensuring compliance with non-discriminatory principles among air carriers, irrespective of whether these are or are not party to a computerised reservation system.

**4.17 Is vertical integration permitted between air operators and airports (and, if so, under what conditions)?**

Vertical integration is not expressly forbidden. Nevertheless, it must abide by the conditions imposed by legislation in order to ensure legal competition dynamics.

**4.18 Are there any nationality requirements for entities applying for an Air Operator's Certificate in your jurisdiction or operators of aircraft generally into and out of your jurisdiction?**

The national provisions regulating the conditions for obtaining an AOC do not expressly state any requirements of nationality for the entities applying for an AOC.

Nevertheless, pursuant to the Regulation (EC) no. 965/2012, the application for an AOC shall be submitted before the competent authority and the same regulation states that the competent authority exercising oversight over operators subject to a certification obligation shall be, for operators having their principal place of business in a Member State, the authority designated by that Member State.

Therefore, the Romanian Civil Aviation Authority shall issue an AOC only for entities that have their principal place of business in Romania.

Moreover, in order for an entity to obtain an operating licence it must, among others, have its main headquarters in Romania and own an available AOC. Please see question 2.1 above.

## 5 In Future

**5.1 In your opinion, which pending legislative or regulatory changes (if any), or potential developments affecting the aviation industry more generally in your jurisdiction, are likely to feature or be worthy of attention in the next two years or so?**

With the entry into force of Regulation (EU) no. 1139/2018, the new common EU rules establishing and maintaining a high uniform level of civil aviation safety in the Union created a common framework for drone operations. Therefore, in the next couple of years we are expecting the emergence of new national legislation for the operation of unmanned aircraft in accordance with Regulation (EU) no. 1139/2018.

Also, it is worth mentioning that the New Air Code was adopted by the Romanian Parliament on 19 June 2020, stipulating the following main changes: the applicability of the Air Code to military air operations as well as to civil air operations;

the articulation of provisions concerning the competence of the aerodrome administrator to set airport fees, as well as concerning the principles for the imposition of such fees, namely transparency and non-discrimination; withdrawing the competence of the Ministry of Transportation to grant exemption from payment of airport fees and granting such power to the aerodrome administrator; provisions regarding the right of the civil aerodrome administrator and air navigation service provider to retain on the ground aircraft whose operator failed to pay the fees entitling him/her to use the aerodrome infrastructure or the fees for air navigation services, as well as the modality that such retention right operates; and new rules for drone operations which set out different drone categories (depending on the drone weight) and specific operation rules in relation to these categories.

Additionally, it is worth mentioning the focus on airport infrastructure development, especially for regional airports, given in the General Transport Master Plan of Romania (adopted by the Romanian Government in September 2016), which sets out the strategy for investment in airport infrastructure; namely, which airports will benefit from public funds for investment, and what kinds of investment will be carried out. One of the main investments in airport infrastructure is a new terminal for Bucharest 'Henri Coanda' International Airport (the largest airport in Romania), with estimated building costs of 1 billion EUR.



**Mihai Furtună** is the managing partner of Furtună și Asociații, coordinating the firm's aviation practice. An experienced litigator and seasoned consultant in domestic and international assignments, Mihai employs his expertise across many areas of aviation law, ranging from regulatory issues to the procurement of suppliers, to the drafting and negotiating of various commercial agreements, to advising clients on all related aspects of financing, leasing, selling and buying of aircraft, as well as litigation following aircraft accidents. He and the members of the firm's aviation practice currently provide counselling to private airports, airport service providers, associations of private aircraft operators, labour unions, as well as private individuals.

Mihai Furtună is a sought-after speaker at industry-specific events organised by public authorities, chambers of commerce and professional associations in Romania.

In addition, he is responsible for the ongoing professional training of the young lawyers of the firm and participates as a speaker at professional events organised by the top law schools in Romania.

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Furtună și Asociații is a dynamic Romanian law firm, founded by trend-setter professionals in aviation and airport infrastructure. The team consists of experienced litigators and consultants united by the desire to creatively tackle complex legal issues, with an emphasis on technical law areas.

The aviation practice is best known for two things: firstly, the scope of aviation projects covered, i.e. investigation of aviation accidents (assistance and representation in civil and criminal proceedings), assistance with the financing, construction and authorisation of international airports, assistance with matters related to the manufacturing of aviation equipment, such as flight simulators, advisory services on buying, selling and registration of aircraft, legal clearance for aviation shows, as well as regulatory drafting; and secondly, the ability of the lead partner Mihai Furtună to assemble and coordinate multidisciplinary teams of lawyers and technical experts (in metallurgy, aviation, physics, etc.) in order to handle highly complex cases in civil and criminal proceedings successfully.

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