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PUBLIC VERSION

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**Subject: State aid No SA.35697 (2012/N) – Greece – Skiathos Airport**

Sir,

**1 PROCEDURE**

- (1) By electronic notification dated 12 November 2012, the Greek authorities notified to the European Commission a measure concerning the development of the Skiathos Airport. The measure was registered under the state aid case number SA. 35697.
- (2) By letter dated 19 December 2012 the Commission requested further information on the notified measure. On 03 January 2013 the Greek authorities submitted additional information to their notification.

**2 DESCRIPTION OF THE MEASURE**

**2.1 Skiathos Airport**

- (3) Skiathos Airport is situated at the eastern tip of the island. The airport is, serving mainly the north Sporades, a group of islands located in the Aegean Sea. Skiathos Airport is owned and operated by the Hellenic Civil Aviation Authority (hereinafter “HCAA”).
- (4) The airport is currently handling approximately 20.000 domestic and 230.000 international passengers per annum. Over the last decade passenger volume has increased from around 194.000 passengers in 1990 to 250.000 in 2012, with average annual growth rates at around 1.3% for domestic passengers and 1.1% for foreign passengers. The development of traffic at the airport since 1992 and the expected development up to 2035 are as follows:

**Table 1: Passenger development at Skiathos Airport**

<b><u>Actual passengers:</u></b>						
<b>Year</b>	<b>1992</b>	<b>1996</b>	<b>2000</b>	<b>2004</b>	<b>2008</b>	<b>2012</b>
<b>Passengers</b>	239.450	205.291	276.217	254.426	245.106	250.475
<b><u>Expected passenger development:</u></b>						
<b>Year</b>	<b>2014</b>	<b>2019</b>	<b>2023</b>	<b>2027</b>	<b>2031</b>	<b>2035</b>
<b>Passengers</b>	255.207	270.139	282.729	295.922	309.748	324.236

- (5) Besides Skiathos Airport, north Sporades are not served by other airports nor are there any plans to build any. The closest airport to Skiathos is the Nea Anchialos airport mainly serving passengers from Thessaly and Pieria. Nea Anchialos airport is at a distance of 3 hours and 15 minutes from Skiathos port (via boat and road).

## **2.2 The investment project and its financing**

- (6) The envisaged investment project relates mainly to the extension of the main apron and the construction of a new taxiway, but includes also landside and airside operational upgrades.
- (7) The investment project at hand includes in particular the following measures:
- An extension of the apron to obtain five additional aircraft parking positions (seven aircraft parking positions in total);
  - The construction of a new taxiway to link the apron extension to the runway, and the reconstruction of the existing taxiway;
  - Enhancement of the runway to the north;
  - Construction of an internal service road and renewal of the affected local road network; and
  - Other accompanying infrastructure measures (such as water supply works, tanks, technical works, etc.), planning of the infrastructure project and supervision during the execution.
- (8) The work is planned to be undertaken until 2015 (including). The main objective of the measures is to improve efficiency and operational safety for aircraft handling at the airport that is currently restricted at peak times. With the projected enhancements Skiathos Airport's capacity will be increased to safely match traffic demand.
- (9) The total estimated investment costs amount to EUR 20.5 million and can be broken down as follows:

**Table 2: The investment project at Skiathos Airport.**

<b>Measure</b>	<b>Investment costs in 1,000 EUR</b>
Planning and supervision of the construction projects	776.31
Purchase of land linked to the construction projects	1,189.94
Construction costs of the taxiway, apron, runway extension and other accompanying infrastructure measures	18,500.00
<b>Total amount</b>	<b>20,466.25</b>

- (10) According to the Greek authorities investments amounting to EUR 20.5 million will be financed partially through public funding and partially through the aviation and non-aviation revenue of Skiathos Airport. The public funding will be granted in part under the framework of EU operational programmes (EUR 13.7 million) and directly from Greek budget (EUR 2.6 million). The aid intensity amounts to ~80%.
- (11) The aid amount is limited to the funding gap of the investment project, which is determined on the basis of an ex ante business plan of the airport as the difference between the total estimated investment costs (EUR 20.5 million) and the net present value (hereinafter: "NPV") of the expected operating profits of the investment. Without the aid the NPV of the investment project would be negative.
- (12) The Greek authorities stated that the construction works of the infrastructure project will be tendered out in an open and non-discriminatory procedure. In the event that the projected costs are lower, the funding and the aid intensity will not exceed the actual costs. The aid will only be granted as a compensation of costs upon evidence of the payment to contractors.

### **2.3 Legal basis**

- (13) The legal basis for the aid grant are Decisions A.II 14053 (27.03.08) and A.II 1079 (31.05.11) of the Greek authorities for the inclusion of Skiathos Airport as an EU operational programme project and Laws 3614/2007 and 3669/2008 which provide for the construction and financial assistance for airport facilities in Greece.

## **3 ASSESSMENT OF THE MEASURE**

### **3.1 Existence of aid**

- (14) By virtue of Article 107(1) of the 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."*
- (15) The criteria laid down in Article 107(1) of the TFEU are cumulative. Therefore, in order to determine whether the notified measures constitute State aid within the meaning of Article 107(1) of the TFEU all of the following conditions need to be fulfilled. Namely, the financial support:

- is granted by the State or through State resources,
- favours certain undertakings or the production of certain goods,
- distorts or threatens to distort competition, and
- affects trade between Member States.

### Economic activity and notion of undertaking

- (16) According to settled case law, the Commission must first establish whether HCAA is an undertaking within the meaning of Article 107(1) of the 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.<sup>1</sup> Any activity consisting in offering goods and services on a given market is an economic activity.<sup>2</sup>
- (17) In its "*Leipzig-Halle airport*" judgement the Court of Justice confirmed that the operation of an airport for commercial purpose and the construction of the airport infrastructure constitute an economic activity<sup>3</sup>. Once an airport operator engages in economic activities, regardless of its legal status or the way in which it is financed, it constitutes an undertaking within the meaning of Article 107(1) of the TFEU, and the Treaty rules on State aid therefore apply<sup>4</sup>.
- (18) In this regard the Commission notes that the infrastructure which is the subject of the present decision will be operated on a commercial basis by the airport manager HCAA. Since the airport operator will charge users for the use of this infrastructure the latter is commercially exploitable. It follows that the entity exploiting this infrastructure constitutes an undertaking for the purposes of Article 107(1) of the TFEU.

### State resources and imputability to the State

- (19) The grant of EUR 2.6 million in favour of HCAA, the operator of Skiathos airport, is financed out of the budget of the Greek government, hence it involves State resources, and it is also imputable to the State.
- (20) The public funding that is granted under the framework of EU operational programmes (EUR 13.7 million) is transferred to the relevant national authority and body designated for that purpose by the Member State before being paid to HCAA. Therefore, also this funding is considered to be at the disposal of the Greek authorities, and thus it involves State resources. As regards the imputability to the State, the Commission notes that the Greek authorities enjoy a high degree of decision-making

<sup>1</sup> Case C-35/96 *Commission v Italy* [1998] ECR I-3851, para 36; C-41/90 *Höfner and Elser* [1991] ECR I-1979, para 21; Case C-244/94 *Fédération Française des Sociétés d'Assurances v Ministère de l'Agriculture et de la Pêche* [1995] ECR I-4013, para 14; Case C-55/96 *Job Centre* [1997] ECR I-7119, para 21.

<sup>2</sup> Case 118/85 *Commission v Italy* [1987] ECR 2599, para 7; Case 35/96 *Commission v Italy* [1998] ECR I-3851, para 36.

<sup>3</sup> Joint Cases T-455/08 *Flughafen Leipzig-Halle GmbH and Mitteldeutsche Flughafen AG c/ Commission* and T-443/08 *Freistaat Sachsen and Land Sachsen-Anhalt c/ Commission*, (hereafter: "*Leipzig-Halle airport case*"), [2011] ECR II-01311, confirmed by the ECJ, Case C-288/11 P *Mitteldeutsche Flughafen and Flughafen Leipzig-Halle v Commission*, [2012], not yet published in the ECR, paragraph 42 and 43; see also Case T-128/89 *Aéroports de Paris v Commission* [2000] ECR II-3929, confirmed by the ECJ, Case C-82/01P, ECR 2002 Page I-9297, and Case T-196/04 *Ryanair v Commission* [2008], ECR II-3643, paragraph 88.

<sup>4</sup> Cases C-159/91 and C-160/91, *Poucet v AGV and Pistre v Cancave* [1993] ECR I-637.

powers in the selection of the subsidised projects at national level and the notified measure is directly chosen by the Greek authorities and thus imputable to the State.

### Economic advantage

- (21) The above-mentioned public financings from the State budget provided without any remuneration reduces the investment costs that the airport operator would normally have to bear, if it wanted to expand or improve its facility, and therefore it confers an economic advantage to the airport operator.

### Selectivity

- (22) Article 107(1) of the TFEU requires that a measure, in order to be defined as State aid, favours "*certain undertakings or the production of certain goods*". The Commission notes that the advantages in question were granted to HCAA only. Thus it is a selective measure within the meaning of Article 107(1) of the TFEU.

### Distortion of competition and effect on trade

- (23) When aid granted by a Member State strengthens the position of an undertaking compared with other undertakings competing in the internal market, the latter must be regarded as affected by that aid.<sup>5</sup> The economic advantage granted by the present measure to the airport operator strengthens its economic position, as the airport operator will be able to benefit from an upgraded and extended facility necessary to expand its activity without incurring the relative investment costs.
- (24) As previously explained, the operation of an airport is an economic activity<sup>6</sup>. Competition takes place on the one hand between airports to attract airlines and the correlative air traffic (passengers and goods) and on the other between airport operators which may compete between themselves to be entrusted with the management of a given airport.
- (25) As mentioned in paragraph 40 of the 2005 Aviation Guidelines, it is not possible to exclude even small airports with annual passenger traffic of around 250 thousand passengers per annum from the scope of application of Article 107(1) of the TFEU. The forecast in terms of traffic<sup>7</sup> of Skiathos Airport shows an increase in traffic over the coming years. In addition, the measures at stake will allow Skiathos Airport to attract additional airlines offering leisure type flights.
- (26) In view of the above, the measures at stake are capable of affecting competition between airports by strengthening the attractiveness of the Skiathos Airport for air carriers.
- (27) Moreover, the economic advantage which HCAA receives as grant to finance the infrastructure enhancement projects at Skiathos Airport will strengthen its position vis-à-vis its competitors on the European market of providers of airport services. Since the market for the provisions of airport services is not closed to competition at EU level,

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<sup>5</sup> Case T-214/95 *Het Vlaamse Gewest v Commission* [1998] ECR II-717.

<sup>6</sup> See above, paragraph (18).

<sup>7</sup> See above, tables 1.

the public funding under examination distorts or threatens to distort competition and affects trade between the Member States.

### Conclusion

- (28) For the reasons set out above the Commission concludes that the public financing of the infrastructure measures at Skiathos Airport involves State aid within the meaning of Article 107(1) of the TFEU. Insofar as the grant was subject to Commission's approval, Greece has respected the prohibition of Article 108(3) of the TFEU.

### **3.2 Compatibility of the aid**

- (29) The Commission has to assess if the aid can be found compatible with the internal market.

#### Compliance with the 2005 Aviation Guidelines

- (30) The measure in question should be assessed upon the basis of Article 107(3)(c) of the TFEU, which stipulates that: "*aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest*", may be considered to be compatible with the internal market. In this regard, the 2005 Aviation Guidelines provide a framework for assessing whether aid to airport infrastructures may be declared compatible pursuant to Article 107(3)(c) of the TFEU. They set out a number of criteria which the Commission takes into account in this regard in its decision making practice since the "*Aéroports de Paris*" case-law.<sup>8</sup>
- (31) According to point 61 of the 2005 Aviation Guidelines the Commission has to examine whether:
- the construction and operation of the infrastructure meets a clearly defined objective of general interest (accessibility, regional development, etc.);
  - the infrastructure is necessary and proportional to the objective which has been set;
  - the infrastructure has satisfactory medium-term prospects for use, in particular as regards the use of existing infrastructure;
  - all potential users of the infrastructure have access to it in an equal and non-discriminatory manner;
  - the development of trade is not affected to an extent contrary to the EU interest.

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See for example Commission decision of 13 March 2001 - State aid Case N 58/2000 – Italy - Promotion of the Piedmont airport system, OJ C 67, 17 March 2004; Commission decision of 19 January 2005 – State aid N 644i/2002 – Germany – Development of municipal economic infrastructure pursuant to Part II, Section 7 of the Framework plan under the joint Federal Government / Länder scheme for improving regional economic infrastructure: (i) Construction or development of regional airports, OJ C 126, 25 May 2005; Commission decision of 20 April 2005 – State aid case N 355/2004 – Belgium – Public-Private-Partnership for tunnelling the Krijgsbaan at Deurne and the development of industrial estates and the operation of Antwerp Airport (PPP – Project Antwerp Airport), OJ C 175, 16 July 2005; Commission decision of 23 July 2008 - State aid case C 48/2006 (ex N 227/2006) – Germany – DHL/Leipzig Halle, OJ L 346, 23 December 2008.

(i) Construction and operation of the infrastructure meets a clearly defined objective of common interest (regional development, accessibility, etc.)

- (32) The closest airport to Skiathos Airport is Nea Anchialos airport situated 3.2 hours travelling time by boat and car from the airport. There are no other means of transport, apart from the boat network. In this context, the service area of North Sporades (the group of three islands<sup>9</sup> in which Skiathos belongs) covers a total population of 20.000 residents annually attracting around 250.000 passengers, 92% of whom are foreign nationals, migrants and users of charter flights. The new investment will not constitute a duplication of existing non profitable infrastructure.
- (33) Without the construction project at stake, the airport manager cannot efficiently utilise the available capacity of the terminal as well as of the entire airport. Moreover, the airport cannot meet the actual demand of the air traffic, which was recorded in the last years. In light of the touristic demand and for reasons of accessibility to North Sporades for tourists and the local population, the investment project at stake is of particular importance as tourism plays a central role in Greece's economy and the general development of the country. In particular, the North Sporades have gradually turned into a popular destination for national and international tourists. The Commission observes that the development project at Skiathos Airport has a positive impact on the development of tourism and the creation of jobs in the concerned region.
- (34) The Commission can therefore conclude that the construction and operation of the infrastructure meets a clearly defined objective of common interest.

(ii) The infrastructure is necessary and proportional to the objective which has been set

- (35) According to the Greek authorities the existing facilities of the airport as they are currently laid out, in particular the apron and taxiway system, do not meet the requirements for unhindered aircraft handling and the demand from airlines and passengers. Thus, the airport suffers from congestion at peak times.
- (36) The cost/benefit analysis submitted by the Greek authorities provides that the infrastructure project will be undertaken only to the extent it is necessary to attain the goals set (i.e. to meet the actual and expected traffic demand) and that the project is not disproportionately large or elaborate.
- (37) The Commission can therefore conclude that the infrastructure in question is necessary and proportional to the objectives which have been set.

(iii) The infrastructure has satisfactory medium-term prospects for use, in particular as regards the use of existing infrastructure

- (38) According to the passenger forecast provided by the Greek authorities, the infrastructure project meets the medium-term demand of airlines and passengers. This is so in particular due to the absence of other airports that provide direct, scheduled access to Northern Sporades and the absence of alternative high speed boat connections and the expected growth in passenger numbers.

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9 The other two are Skopelos and Alonissos, none of which has an airport.

- (39) On the basis of the above mentioned forecasts for passenger numbers, in the medium-term, the development project for Skiathos Airport offers good perspectives for use, especially in relation to existing infrastructure at the airport, which the planned works will optimise.
- (iv) All potential users of the infrastructure have access to it in an equal and non-discriminatory manner
- (40) The Greek authorities confirm that the infrastructure will be operated by the HCAA (public authority) and will be open to all potential users without any commercially unjustified discrimination.
- (v) The development of trade is not affected to an extent contrary to the interest of the EU
- (41) As previously indicated, even after the development of the airport infrastructure it is expected that it will serve for approximately 255.000 passengers in 2014 and 295.000 passengers in 2027, which qualifies Skiathos Airport according to the 2005 Aviation Guidelines as a small regional airport with an annual passenger volume below 1 million (category D).
- (42) Skiathos Airport's catchment area is Northern Sporades and its nearest competitor, at least geographically, is Nea Anchialos airport, which is approximately 3.5 hours away by boat and road. The development of Skiathos Airport will only have very limited impact on Nea Anchialos airport. According to the Greek authorities the two airports serve different areas of Greece and the passenger markets for these two airports are definitely separated due to the different catchment areas served.
- (43) There is no alternative connection point to Skiathos airport in the service of Northern Sporades. Boat transportation does not meet the requirements of tourist traffic while the vast majority of visitors reach Northern Sporades using flights with a direct connection from their home airports. This is particularly important as tourism plays an important role for Greece's economy and the general development of the country.
- (44) In addition, the aid intensity of the project (see section on the necessity and proportionality of the aid further below) is limited to its funding gap. The airport operator itself will finance around 20% from its future aviation and non-aviation revenue.
- (45) On the basis of the above, the Commission can therefore conclude that the development of trade is not affected to an extent contrary to the common interest.

### Aid is necessary and proportional

- (46) State aid to airports, as any other State aid measure, should have an incentive effect and should be necessary and proportional in relation to the aimed legitimate objective in order to be cleared compatible<sup>10</sup>.
- (47) The Commission must establish, whether the State aid granted to HCAA has changed the behaviour of the beneficiary undertaking in such a way that it engages in an activity that contributes to the achievement of a public-interest objective that (i) it would not carry out without the aid, or (ii) it would carry out in a restricted or different manner. In addition, the aid is considered to be proportionate, only if the same result could not be reached with less aid and less distortion. This means that the amount and intensity of the aid must be limited to the minimum needed for the aided activity to take place.
- (48) Greek authorities provided a calculation of the funding gap of the investment project at stake showing that the funding gap corresponds to the public funding actually granted to the airport. The funding gap was determined on the basis of an ex ante business plan of the airport as the difference between total estimated investment costs (EUR 20.5 million) and the NPV of the expected operating profits steaming from the investment project. Without the aid the NPV of the investment project at stake would be negative. Consequently, the aid will enable the beneficiary to realise the investment and has an incentive effect.
- (49) As the 2005 Aviation Guidelines leave open the issue of aid intensities, the maximum permissible aid amount has to be limited to the funding gap calculated on the basis of a business plan of the airport. Moreover, the Commission notes that the investments concerned are similar to the investments at airports with comparable characteristics.<sup>11</sup> In addition, given the location of the airport and the accessibility requirements of Northern Sporades, which are only served by the airport on Skiathos, the aid intensity of ~80% can be justified.
- (50) The Commission further notes, that the use of competitive tender procedures for the implementation of the investment project will contribute to reduce the costs of the projects and thereby keeping the aid amount to the minimum necessary and ensure that there are no distortions of competition on other relevant markets (notably the market for construction services).
- (51) The Commission therefore considers that the aid is limited to the minimum necessary, has an incentive effect and is proportional.

### Conclusion

- (52) In view of the above assessment the Commission concludes that the measure is compatible with the internal market on the basis of Article 107(3)(c) of the TFEU.

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<sup>10</sup> It is constant case law that the Commission can declare an aid compatible only if it is necessary for achieving a legitimate objective (cf. case 730/79, Philipp Morris, paragraph 17; case C-390/06, Nuova Agricast, paragraph 68; case T-162/06, Kronoply, paragraph 65).

<sup>11</sup> See in particular See Commission decision of 25 July 2012, State aid case SA.34586 (2012/N) – Greece – Chania Airport Modernisation, OJ C 305 of 10 October 2012, p. 2; Commission decision of 12 February 2010, State aid case N 657/2009 – Italy – Falconara airport, OJ C 74 of 24 March 2010, p. 6.

#### 4 DECISION

The Commission has accordingly decided to consider that:

- The measure notified by Greece on 27 November 2012 constitutes State aid within the meaning of Article 107(1) of the TFEU, compatible with the internal market pursuant to Article 107(3)(c) of the TFEU.

If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site:

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Yours faithfully,  
For the Commission

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