



Brussels, 20.02.2014

C(2014) 827 final

<p>In the published version of this decision, some information has been omitted, pursuant to articles 24 and 25 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty, concerning non-disclosure of information covered by professional secrecy. The omissions are shown thus [...].</p>		<p style="text-align: center;">PUBLIC VERSION</p> <p>This document is made available for information purposes only.</p>
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**Subject: SA.35847 (2012/N) – Czech Republic –Ostrava airport**

Sir,

## **1 PROCEDURE**

- (1) By electronic notification dated 2 December 2012, the Czech Republic notified to the European Commission a measure concerning paving of surfaces and installation of airfield lighting at the Leoš Janáček Airport Ostrava (hereinafter "Ostrava airport"). The measure was registered under the state aid case number SA.35847.
- (2) By letters of 12 December 2012, 15 May 2013 and 10 October 2012 the Commission requested additional clarifications from the Czech authorities. These were provided on 17 January, 16 May, 12 August and 6 November 2013.

## **2 DESCRIPTION OF THE MEASURE**

### **2.1 Ostrava Airport**

- (3) The airport is located in the north east of the Czech Republic, 22 kilometres south west from the city of Ostrava. It is owned by the Moravian-Silesian Region and operated by Airport Ostrava, a.s., which is owned by 100% by the Moravian-Silesian Region. It is an international public airport. With 3500 metres, its runway is longer than that of any other airport in its proximity.
- (4) Distances to other airports:

Katowice (PL)	153 km	1 hour 36 mins
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Krakov (PL)	193 km	1 hour 57 mins
Brno (CZ)	150 km	1 hour 23 mins
Přerov (CZ)	78.3 km	58 mins

Přerov airport was transferred on 1 October 2013 from the army to a private operator. So far no commercial activities have been developed.

- (5) The following tables summarise Ostrava airport's past and projected numbers of passengers:

	Past performance								
	2004	2005	2006	2007	2008	2009	2010	2011	2012
PAX	216,259	265,862	300,879	332,266	353,737	307,130	279,973	273,563	288,393
Cargo (t)	1527	1873	2041	2010	1653	1785	1949	2063	2585

	Expected performance												
	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025
PAX	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*
Cargo (t)	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*

- (6) There are regular lines, charter, training and cargo flights as well as general aviation. The airport is on the branch VI.B of the trans-European network TEN-T, it is connected to a motorway (road priority project TEN-T no. 25) and to a railway (railway priority project TEN-T no. 23).

## 2.2 The investment project and its financing

- (7) The Czech Republic notified aid for the construction of ground lighting (upgrade of taxiway centreline lights and illuminated signs at check points) at Ostrava airport. The purpose of this measure is to allow aircraft movements by low visibility (for example during the night or by fog). The investment project will enable Ostrava airport to serve as a back-up airport in case of closure of neighbouring airports due to for example bad weather conditions.
- (8) The airport expects to be able to attract more regular traffic [...]\*. It expects to increase its current revenues [...]\*. The eligible investment costs amount to CZK 81 533 302.48 (EUR 3.23 million)<sup>1</sup>.
- (9) When applying a discount rate of 11% the Czech Republic calculated a funding gap of CZK 67 236 860.51 (EUR 2.66 million). The Czech Republic committed to limit the aid to CZK 57 151 331.43 (EUR 2.26 million), which corresponds to 70% of the eligible investment costs.

<sup>1</sup> ECB exchange rate 25.262 CZK/EUR on 2.12.2012, <http://www.ecb.europa.eu/stats/exchange/eurofxref/html/czk.xml> .

\* The information is covered by professional secrecy.

- (10) The aid will be granted in the form of a direct grant. It will be financed by the Regional Council of the Cohesion Region Moravia-Silesia and co-financed from the structural funds of the European Union.

### 3 ASSESSMENT OF THE MEASURE

- (11) The Czech Republic notified the aid and undertook not to put the measure into effect before it receives a final positive decision from the Commission. Thereby it fulfilled its obligation under Article 108(3) of the TFEU.

#### 3.1 Existence of aid

- (12) 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."*
- (13) 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

- (14) The Commission must first establish whether Ostrava airport 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>2</sup>. Any activity consisting in offering goods and services on a given market is an economic activity.<sup>3</sup>
- (15) In its "Leipzig-Halle airport" judgment 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>4</sup>. Once an airport operator engages in economic activities, regardless of its legal status or the way in which it is financed, it

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<sup>2</sup> Case C-35/96 *Commission v Italy* [1998] ECR I-3851; C-41/90 *Höfner and Elser* [1991] ECR I-1979; Case C-244/94 *Fédération Française des Sociétés d'Assurances v Ministère de l'Agriculture et de la Pêche* [1995] ECR I-4013; Case C-55/96 *Job Centre* [1997] ECR I-7119.

<sup>3</sup> Case 118/85 *Commission v Italy* [1987] ECR 2599; Case 35/96 *Commission v Italy* [1998] ECR I-3851.

<sup>4</sup> Joint Cases T-455/08 *Flughafen Leipzig-Halle GmbH and Mitteldeutsche Flughafen AG v Commission* and T-443/08 *Freistaat Sachsen and Land Sachsen-Anhalt v 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; see also Case T-128/98 *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.

constitutes an undertaking within the meaning of Article 107(1) of the TFEU, and the Treaty rules on State aid therefore apply<sup>5</sup>.

- (16) 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 Airport Ostrava, a.s. Since the airport operator will charge users for the use of this infrastructure, the latter is commercially exploitable. Furthermore, the envisaged investment into the construction of ground lighting at Ostrava airport will allow the airport to offer airport services by low visibility and improve the safety the airport operation. Consequently, it will allow the airport to diversify its airport services and increase its profits. Moreover, the Commission observes that the improvement of the safety of the airport operation corresponds to normal costs of an economic activity that cannot be considered to fall within the public policy remit.
- (17) In view of the above, it follows that the entity exploiting this infrastructure constitutes an undertaking for the purposes of Article 107 (1) of the TFEU. Thus, the Commission considers that the construction of ground lighting is part of an economic activity.

#### State resources and imputability to the State

- (18) The grant of CZK 57 151 331.43 (EUR 2.26 million) in favour of Ostrava airport is financed out of the budget of the Regional Council of the Cohesion Region Moravia-Silesia. Hence it involves State resources and can be imputed to the State.
- (19) The Regional Council may finance this amount partly or entirely from the EU structural funds. The public funding that is granted under the framework programme of the EU structural funds is transferred to the relevant national authority, a body designated for that purpose by the Member State before being paid to the operator of Ostrava Airport. Therefore, this funding is considered to be at the disposal of the Czech Republic, and thus it involves State resources. As regards the imputability to the State, the Commission notes that the Czech Republic enjoys a high degree of decision-making powers in the selection of the subsidised projects at national level. The notified measure has been directly chosen by the Czech Republic and is thus imputable to the State.

#### Economic advantage

- (20) The above-mentioned public financing provided without any remuneration reduces the costs that the airport would normally have to bear, if it wanted to expand and/or to diversify its activities, and therefore it confers an economic advantage to the airport.

#### Selectivity

- (21) 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 Ostrava airport only. Thus it is a selective measure within the meaning of Article 107 (1) of the TFEU.

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<sup>5</sup> Cases C-159/91 and C-160/91, *Poucet v AGV* and *Pistre v Cancave* [1993] ECR I-637.

### Distortion of competition and effect on trade

- (22) 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. In accordance with settled case law<sup>6</sup>, for a measure to distort competition it is sufficient that the recipient of the aid competes with other undertakings on markets open to competition.
- (23) As previously explained, the operation of an airport is an economic activity<sup>7</sup>. Competition takes place between airports and between airport operators, which may compete between themselves to be entrusted with the management of a given airport.
- (24) Also relatively small airports compete to attract airlines. As mentioned in paragraph 40 of the 2005 Aviation Guidelines, it is not possible to exclude even smaller airports from the scope of application of Article 107 (1) of the TFEU. The forecast in terms of passenger traffic<sup>8</sup> at Ostrava airport shows an increase in traffic over the coming years. In addition, the measures will allow the airport to attract new clients and regular traffic.
- (25) In view of the above, the measures at stake are capable of affecting competition between airports by strengthening the attractiveness of Ostrava airport for air transport operators.
- (26) Moreover, the economic advantage, which Ostrava airport receives as grant to finance the infrastructure enhancement project, will strengthen its position vis-à-vis its competitors on the European market of airport services, in particular the neighbouring airports in Brno, Katowice and Krakow. Since the market for airport services is not closed to competition at EU level, the public funding under examination distorts or threatens to distort competition and affects trade between the Member States.

### Conclusion

- (27) For the reasons set out above the Commission concludes that the public financing of the ground lighting (upgrade of taxiway centreline lights and illuminated signs at check points) at Ostrava airport involves State aid within the meaning of Article 107 (1) of the TFEU. As the grant at stake is subject to Commission's approval, the Czech Republic has respected the prohibition of Article 108 (3) of the TFEU.

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

- (28) The Commission has to assess if the aid can be found compatible with the internal market.
- (29) Article 107 (3) (c) TFEU 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

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<sup>6</sup> Case T-214/95 *Het Vlaamse Gewest v Commission* [1998] ECR II-717.

<sup>7</sup> See above, paragraph 14 and following.

<sup>8</sup> See above, paragraph 5.

Guidelines<sup>9</sup> provide a framework for assessing whether aid to airports may be declared compatible pursuant to Article 107 (3) (c) 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>10</sup>

- (30) 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 (regional development, accessibility, 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.
- (31) In addition to the requirement to satisfy specific compatibility criteria specified in the 2005 Aviation Guidelines, 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 as compatible aid<sup>11</sup>.
- (i) *Construction and operation of the infrastructure meets a clearly defined objective of common interest (regional development, accessibility, etc.)*
- (32) According to the Czech Republic, the main aim of the financing of the infrastructure project at stake is to improve the air transport accessibility of the region, and thus to stimulate the regional development.
- (33) The airport is at the intersection of branch VI.B of the trans-European network TEN-T air corridor, a motorway (road priority project TEN-T no. 25) and a railway (railway priority project TEN-T no. 23). The airport will be part of a transport nod connecting road, rail and air traffic. Moreover, the investment project will enable Ostrava airport

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<sup>9</sup> Community guidelines on financing of airports and start-up aid to airlines departing from regional airports OJ C 312, 9.12.2005, p. 1–14.

<sup>10</sup> 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 644/2002 – 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 176, 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.

<sup>11</sup> It is constant case law that the Commission can declare an aid compatible only if it is necessary for achieving a legitimate objective (see for example case 730/79, *Philipp Morris*; case C-390/06, *Nuova Agricast*; case T-162/06, *Kronoply*).

to serve better as a back-up airport in case of closure of neighbouring airports due to for example bad weather conditions.

- (34) The new investment will not constitute a duplication of existing non-profitable infrastructure. The three closest airports located in the area are Brno, Katowice (Poland), and Krakow (Poland). These airports are located, respectively, 150 km, 153 km, and 193 km from Ostrava, at around 1.5 to 2 hours travelling time. Therefore, according to Czech Republic, they do not share the catchment area with Ostrava airport. At Přerov airport (distance 78 km and about 1 hour travelling time), no similar commercial activity has been developed so far.
- (35) Moreover, according to the Czech Republic, the strategic orientation of Ostrava airport is different from those of the neighbouring airports. While the other airports embraced the low cost carrier market, due to Ostrava's long runway, this airport is particularly suitable for long-haul cargo traffic and large airplanes (such as Ruslan or Boeing 747). The measure is a part of an investment strategy of the airport that aims at the diversification of the activities of the airport operator and attracting more regular airlines. Moreover, the investment project at stake will not create overcapacity, but rather enable the airport operator to provide continuous efficient airport services by low visibility and at night.
- (36) The Commission can therefore conclude that the upgrade of taxiway centreline lights and illuminated signs at check points at Ostrava airport meets a clearly defined objective of common interest.

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

- (37) According to the Czech Republic the upgrade of taxiway centreline lights and illuminated signs at check points is necessary to ensure continuous and efficient airport operation by low visibility and at night. This in turn is a requirement for airlines for using the airport more regularly as, first, it can ensure the minimum rolling and waiting times at the airport<sup>12</sup> and, secondly, avoid the risk of traffic deviation by low visibility and at night. Without the upgrading of signalisation it would be difficult to attract new and regular air traffic. Moreover, the investment will improve the operational safety at Ostrava airport.
- (38) The current situation limits the use of the runway at peak times by low visibility, as only one aircraft can roll on the airport and thus it is e.g. not possible that departing aircrafts follow each other to the beginning of the. Moreover, as currently only one taxiway can be used to access the runway at low visibility, aircrafts must roll on the runway and turn there, which is a time and fuel consuming manoeuvre. An investment into the signalling and lighting at the taxiways is the least costly way to improve the efficiency of the airport and its overall capacity. The present infrastructure project will be undertaken only to the extent it is necessary to attain the goals set and that the project is not disproportionately large or elaborate.

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<sup>12</sup> More aircrafts will be able to roll at the same time at different parts of the airport and will no more be obligatory to roll back or forth on the runway.

- (39) 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
- (40) The investment project will lead to more efficient aircraft movements at the airport. In particular, it will permit a simultaneous movement of more than one aircraft by lower visibility and avoid rolling on the runway before taking off and after landing. The aircrafts will no more have to perform U turn at the runway at low visibility, a riskier manoeuvre than rolling on a taxiway. It will have immediate benefits for the safety and efficiency of the aircraft movements at the airport. Moreover, as it contributes to avoid congestion at some time spots of the day in the future, when the airport is expected to attract more regular traffic.
- (41) On the basis of the above mentioned forecasts for passenger numbers, in the medium-term as well as short-term, the project 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
- (42) According to the Czech Republic the infrastructure will be operated by Airport Ostrava a.s. 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
- (43) Ostrava airport currently serves less than 1 million passengers per annum, which qualifies it according to the point 15 of the 2005 Aviation Guidelines as a small regional airport (category D). As previously indicated, after the development of the airport infrastructure, Ostrava airport is expected to serve around half a million passengers in 2024. The aid intensity of the project (see section on the necessity and proportionality of the aid further below) is limited to its funding gap.
- (44) The three closest airports located in the area, are at around 1.5 to 2 hours travelling time away, and do not share the catchment area with Ostrava airport to an extent that would affect the development of trade and competition contrary to the interest of the EU.
- (vi) Aid is necessary and proportional
- (45) The Commission must establish, whether the State aid granted to Ostrava airport has changed the behaviour of the beneficiary undertaking in such a way that it engages in 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.



- (46) According to the financial analysis provided by the Czech Republic, without the aid the investment could not be realised. The project costs have been considered too expensive in relation to the project at hand. Moreover, the investment costs exceed the NPV of the expected operating profits of the investment.
- (47) In view of the above, it can be concluded that the aid measure at stake has an incentive effect, as it will enable the beneficiary to realise the notified investment.
- (48) With regard to the assessment of the proportionality of the aid, the Czech Republic provided a calculation of the funding gap of the investment project showing that the aid will not exceed the funding gap (CZK 67 236 860.51; EUR 2.66 million). As described in section 2.2, the funding gap was determined on the basis of an ex ante business plan as the difference between the total eligible investment costs (CZK 81 533 302.48; EUR 3.23 million) and the NPV of the expected operating profits of the investment (CZK 14 296 441.97; EUR 0.57 million) over the life time of the investment (i.e. ten years). The discount rate of 11% reflects the riskiness of the airport development and operation business. Without the aid the NPV of the investment project would be negative.
- (49) The public funding granted (i.e. CZK 57 151 331.43; EUR 2.26 million) is below the funding gap calculated for this investment project. The aid intensity is limited to 70%. This financing will not be cumulated with any other state aid granted with regard to the same eligible costs. 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 an ex ante business plan of the airport. Moreover, the Commission notes that the investments concerned are similar to the investments at airports with comparable characteristics.<sup>13</sup> Therefore, the aid intensity of 70% is justified in the case at stake.

### Conclusion

- (50) 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.

## **4 DECISION**

The Commission has accordingly decided:

- to consider the financing of the construction of ground lighting at Ostrava airport notified by the Czech Republic amounting to CZK 57.15 million to constitute aid compatible with the internal market on the basis of Article 107 (3) (c) of the TFEU and not to raise objection against it.

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

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<sup>13</sup> See Commission decision of 11 February 2009 in State aid case N 472/2008 – Poland – Investment aid for airports under the infrastructure and environment operational programme, OJ C 79, 2 April 2009 and Commission decision of 13 July 2009 in State aid case N 196/2008 – Poland – Investment aid for the airports under Regional Operational Programmes, OJ C 204, 29 August 2009, and Commission decision of 19 December 2012 in State aid case No SA.35220 (2012/N) – Greece – Makedonia Airport Modernisation, OJ C 36, 8 February 2013.

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:

<http://ec.europa.eu/competition/elojade/isef/ndex.cfm>

Your request should be sent by registered letter or fax to:

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Yours faithfully,  
For the Commission

*Joaquín ALMUNIA*  
Vice-President