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C(2013) 106 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: State aid SA.33983 (2013/C) (ex 2012/NN) (ex 2011/N) – Italy**  
**Compensation to Sardinian airports for Public Service Obligations (SGEI)**

Sir,

The Commission wishes to inform Italy that, having examined the information supplied by your authorities on the measure referred to above, it has decided to initiate the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union.

### **1. PROCEDURE**

- (1) On 30 November 2011 Italy notified via the electronic notification system a compensation scheme in favour of the Sardinian airports for Public Service Obligations (hereinafter *PSOs*).
- (2) The Commission requested the Italian authorities to provide additional information on the notification by letters dated 30 January 2012, 24 April 2012 and 12 July 2012. The Italian authorities replied to these requests by letters dated 24 February 2012, 30 May 2012, 9 August 2012, and 11 September 2012.
- (3) Following the information received from Italy and the evidence that Italy might have put into effect the measure before the Commission had taken a decision

authorising it, the case has been dealt with pursuant to the procedure laid down in chapter 3 of Council Regulation 659/1999 regarding unlawful State aid.

- (4) On 3 December 2012 Italian authorities asked the Commission to indicate the timing for the decision and procedural clarifications. The Commission replied with letter sent on 7 December 2012.

## **2. DESCRIPTION OF THE MEASURES**

- (5) The notified scheme aims to support the development and de-seasonality of air transport services between Sardinia and the European and Italian cities, pursuant to Article 3 of Regional law of Sardinia of 13 April 2010, no. 10 (hereinafter "law 10/2010") as further amended. For this purpose, Sardinian airports will benefit from public financing as public service compensation. The financing is subsequently transferred to the airlines operating air transport services at the airports in question.

### **2.1. Granting authority**

- (6) The Region of Sardinia is the granting authority.

### **2.2. Beneficiaries**

- (7) The direct beneficiaries of the notified measure are the airport operators of the Sardinian airports of Alghero, Cagliari, Olbia, namely SO.GE.A.AL S.p.A. ("*SOGEAAL*"), SOGAER S.p.A. ("*SOGAER*") and GEASAR S.p.A. ("*GEASAR*"). All these companies are limited liability companies. SOGEAAL and SOGAER are publicly held. GEASAR (Olbia) is controlled by the air carrier Meridiana.
- (8) In 2011 the traffic at these airports reached around 3,7 million passengers for Cagliari, 1,5 million for Alghero, and 1,8 million for Olbia.
- (9) 83% of the traffic of these airports is national, with main focus on the links to Rome and Milan. On average, 35% of the total traffic is operated by low cost carriers, with a peak at the airport of Alghero of around 58%<sup>1</sup>.
- (10) On the basis of the information available at this stage, it is not clear whether two other minor airports of the island, Oristano and Tortolì-Arbatax (less than 200 000 passengers), respectively operated by SOGEAOR S.p.A. (currently in liquidation) and Società Arbatax S.p.A.<sup>2</sup>, are also beneficiaries of the measure.
- (11) Given the transfers to the air carriers operating at the airports in question, airlines could also be considered as beneficiaries of the measure.

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<sup>1</sup> See National Plan of Airports (Piano Nazionale degli Aeroporti), delivered by ENAC and the Ministry of Infrastructure and Transport in February 2012, p. 75-76.

<sup>2</sup> The airport of Oristano, suspended in 2011, had around 7 thousand pax in 2010 and around 1,3 thousand in 2011. The airport of Tortolì-Arbatax had around 13,5 thousand pax in 2010 and around 2,8 thousand pax in 2011.

### 2.3. Form of the financing

- (12) Pursuant to Article 3(1) of law 10/2010 " the disbursement of EUR 19 700 000 for 2010 and EUR 24 500 000 for each of the years from 2011 to 2013 is authorised for the financing of Sardinian airports for the strengthening and development of air transport, as service of general economic interest, in particular by means of the de-seasonality of air connections, in compliance with the Aviation Guidelines 2005/C 312/01". The same article in paragraphs 2 and 3 requires implementing acts to define the criteria to be met by the airports when planning the activities to be compensated, taking into account the need for territorial continuity. It also recognizes that existing plans shall be financed provided they comply with the same criteria. Regional Decree no. 112 of 17 May 2010 has provided for amendments of technical documents related to the regional budget in order to integrate the above mentioned amount.
- (13) Accordingly, the Sardinian region adopted several implementing acts. Sardinia's Decision no. 29/36 of 27 July 2010 sets out the guidelines for the drafting and assessment of the airports' plans of activities. Sardinia's Decisions no. 43/37 of 6 December 2010 and no. 52/117 of 31 December 2011 established the amounts to be granted to the airport operators per year (see below table 2). The provisions of the implementing acts are detailed in what follows.

#### *The plans of activities and the routes of strategic interest*

- (14) Sardinian Decision no. 29/36 of 27 July 2010 (in the original language: "*Regione Autonoma della Sardegna - Deliberazione no. 29/36 del 29.7.2010*") laid down that airports submit to the Region a *plan of activities* prepared on the basis of the criteria laid down therein.
- (15) Such plans have to identify the *routes of strategic interests* and the targets per year concerning flights frequency, load factor, new routes, number of passengers, marketing activity, as well as the financial needs associated to these activities indicated per year (see below table 1).
- (16) The same regional decision no. 29/36 established that the routes of strategic interest cannot overlap the routes already operated under a PSO regime based on transport regulation. In case the total compensation requested by the airports is higher than the total amount authorised by the regional budget, preference is given to international connections *vis à vis* domestic routes. It finally prescribed that specific agreements are signed between the Region and the airport operators in question and that the compensation is paid in successive instalments throughout the year of reference.
- (17) The routes of strategic interest and the associated targets (passengers) would represent the SGEI imposed on the single airport operator eligible to receive compensation. The plan has to provide for an economic and financial analysis specifying the use of the compensation and the awaited return on the investments.

- (18) Sardinian decision no. 43/37 of 6 December 2010 (“*Regione Autonoma della Sardegna - Deliberazione n. 43/37 del 6.12.2010*”) approved the plans of activities for 2010 submitted by the airport operators of Cagliari, Olbia, Alghero and Oristano and the specific amounts to be granted to each of them (see below table 2)<sup>3</sup>.
- (19) Sardinian decision no. 52/117 of 23 December 2011 (“*Regione Autonoma della Sardegna - Deliberazione n. 52/117 del 23.12.2011*”) approved the plans of activities submitted by Cagliari, Olbia and Alghero for the period 2011 – 2013. The yearly passenger targets per airport and the breakdown of the compensation amongst the three airports are specified (see below table 2). It further clarified that the plans for 2011 have to be considered definitive since they concern activities already carried out, whilst the plans for the following two years 2012 and 2013 are subject to change.
- (20) The regional decision no. 52/117 authorised the financial branch of the Region to grant an advance payment of the contribution for 2011 according to conditions better detailed below (infra paragraphs 21 - 29). The same regional decision recalls the notification of the measure to the Commission under Article 108(3) TFUE and the standstill obligation. In spite of the standstill clause loans have been granted to the airports in anticipation of the compensation to be paid.

*The loans granted through the fund managed by SFIRS*

- (21) The Italian authorities contend that compensations for airports have been decided by the Region but not provided (“*disposti ma non erogati*”).
- (22) According to the information available, the Sardinian region transferred to the airport operators a total amount of about EUR 27,5 million in 2010 and 2011 granted as loans (details below) through a regional Fund put in place with this specific purpose pursuant to Article 4(32) and (33) of regional law 30 June 2011, no. 12.
- (23) Administrative decision (“*Atto di affidamento*”) of 9 August 2011 no. 15 entrusted the Società Finanziaria Industriale Regione Sardegna S.p.A. (“SFIRS”)<sup>4</sup>, financial branch of the Sardinia region, with the task of putting in place all actions and procedures for the setting up and management of the regional Fund aimed to anticipate the advance payment for the aims of article 3 of Law 10/2010.

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<sup>3</sup> As regards Tortolì-Arbatax, the act mentions that the airport operator submitted the plan *for the triennium* only (not for 2010).

<sup>4</sup> SFIRS is a financial broker under Articles 106 and 107 of Legislative Decree 1 September 1993 no. 385. In this role, it cooperates in the application of policies and plans set out by Sardinia for the economic and social development of the territory.

- (24) Administrative act (*“Determinazione del Direttore del Servizio della Pianificazione e Programmazione dei sistemi di trasporto”*) of 9 August 2011 no. 500 approved the implementing regulation of the Fund, establishing the possibility to grant the airport operators, upon request, the financing against remuneration as advance payment of the amount apportioned pursuant to Law no. 10/2010, aimed to cover the costs in 2010 and 2011.
- (25) This specific mechanism has been set by the Sardinian region to allow the airport operators to obtain loans for an amount corresponding to maximum 85% of the annual sums assigned to them for 2010 and 2011. A variable interest rate linked to the 6 month EURIBOR rate plus 2%<sup>5</sup> is paid by the beneficiaries.
- (26) Decision no. 52/117 specifies that the Region has not applied Regional Law no. 10/2010, except for the financial advances for 2010 (*“salvo le anticipazioni finanziarie 2010”*) – as financing by the shareholders against payment (*“a titolo di finanziamento soci oneroso”*) – laid down by Regional Law 30 June 2011, no. 2011, n. 12, article 4, paragraphs 32 and 33, for the aims set out by article 3 of Regional Law 13 April 2010, no. 10.
- (27) Decision no. 52/117 goes on stating that also the financial advances for 2011 can be implemented, pending the procedure to make the special “Airport Fund” (defined in the original language *“Fondo Aeroporti”*) adequate for 2011, by authorising SFIRS to proceed with the relative disbursement.
- (28) Accordingly, the operative part of the same Decision reports a table with the allocation out of the budget amongst the airports of Olbia, Alghero and Cagliari for 2011, as well as the authorisation, while pending the administrative procedure for crediting the resources to the Airport Fund for 2011, to proceed with the disbursement of the advance payments. Those advance payments shall be reimbursed as soon as the Fund will be provided with the needed financial resources (in the original text *“da rimborsare all’atto del perfezionamento dell’accredito delle risorse nel Fondo”*).
- (29) No further details on the functioning of the Fund, or on the agreements entered into by SFIRS and the beneficiary airport operators have been provided to the Commission.

#### *The calculation of compensations*

- (30) The criteria for the calculation of the compensation have not been detailed by the above-mentioned acts, but rather result from the information submitted by the Italian authorities in the correspondence with the Commission.
- (31) The compensation to the airport operators is calculated on the basis of the estimated costs borne by air carriers for flying the strategic routes, national or international, and meeting the passenger targets per year. The passenger targets are defined as follows:

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<sup>5</sup> The 6 month EURIBOR rate was 1,6% at the beginning of the year (2 January 2012), 0,9%, at 1 June 2012, and 0,3% at 3 December 2012.

N = number of flight (per route, per year)

C = capacity offered

W = load factor

T = total passengers:  $(N \times C \times W)$

(32) Once the passenger targets have been defined, the airport operators carry out tender procedures for the selection of the air carriers requested to operate the services in question. Eventually, selected carriers receive the compensation which covers the difference between the operating costs of air carriers and the actual or presumed revenues from passenger tickets.

(33) The formula applied for the calculation of the compensation to be granted to the airport operators is as follows:

A = cost per hour of the flight

B = duration of the flight (in minutes)

C = airport cost per route (airport rights, handling, etc.)

D = general costs

E = reasonable profit: 4%

F = cost of the routes:  $(A \times B) + C + D + E$

G: number of flights per year

H = estimate of annual cost for the air transport required:  $F \times G$

I = estimate average fare on the route

L = total revenue per route (average fare x number of passengers)

M = estimate compensation to air carrier:  $H - L$

N = compensation granted to airport operator for PSO

(34) Airports are required to monitoring performance and applying sanctions and penalties for non-fulfilment of targets, and to put in place arrangements in order to avoid overcompensation.

(35) Airports may directly carry out marketing activities in favour of Sardinia. In any event, the compensation for them for the discharge of public services stems mostly from the revenues generated by the increased traffic flows.

*The contributions to airports and to airlines for the plans of 2010 and 2011*

- (36) As already mentioned, Sardinia approved the plans of activities carried out in 2010 and 2011 by the three airport operators of Olbia, Alghero and Cagliari. In turn, the airport operators have paid out financial contributions to the air carriers.
- (37) According to the information submitted by Italy certain airlines, including Ryanair, Easyjet, Air Italy, Air Berlin, Meridiana, have received subsidies from the airport operators of Alghero, Cagliari, and Olbia over the period 2010 – 2012. The compensated routes include both domestic and international links. The table below provides for the entire list of domestic routes and some examples of international routes for which airlines received compensations.

**Table 1 – "Strategic routes" compensated by Sardinia in 2010 and 2011**

	<b>Alghero</b>	<b>Olbia</b>	<b>Cagliari</b>
<b>Domestic (to/from)</b>	- Ancona - Bergamo - Parma - Treviso (Ryanair)	- Naples - Catania - Bari - Genoa (Air Italy)	- Bergamo - Pisa - Cuneo - Genoa - Rome (Ciampino) - Trieste - Treviso - Bari (Ryanair)
<b>International (to/from) (examples)</b>	- Barcelona - Dublin - Frankfurt - London - Madrid - (Ryanair)	- Munich (Air Berlin)  - London (easyJet)	- Barcelona - Madrid - Beauvais - Charleroi - Frankfurt (Ryanair)

- (38) No tenders have been organized by airport operators for the selection of the air carriers. According to Italy, air carriers have been selected on the basis of the most attractive commercial offers submitted to airport operators upon publication of notices on their websites.
- (39) The Italian authorities have provided details on the contributions granted to airlines for services rendered in 2010 – 2012 at the three airports concerned. Details and figures are reported below in tables from 4 to 6.

## 2.4. Budget and duration

- (40) The total budget committed pursuant to law 10/1020 was EUR 80 654 887,33 for the period 2010 – 2013.
- (41) Originally, article 3 of law 10/2010 authorized the region to grant airport operators EUR 19 700 000 for 2010 and EUR 24 500 000 for each of the subsequent years 2011, 2012 and 2013.
- (42) Regional Law 19 January 2011 no. 1 reduced the amount originally committed for 2011 to EUR 21 100 000 and EUR 21 500 000 for each of the years 2012 and 2013.
- (43) Regional decisions no. 43/37 of 6 December 2010 and 52/117 of 23 December 2011 further reduced the total amount foreseen for 2010 and 2011 and approved the following public financing.

*Table 2 – Compensation committed in favour of Sardinian airports (EUR)*

	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>Tot.</b>
<b>Alghero</b>	9 960 000	10 559 913,00	9 094 919,77	8 029 737,87	37 644 570,64
<b>Cagliari</b>	5 000 000	4 777 320,33	8 405 080,23	9 261 925,37	27 444 325,93
<b>Olbia</b>	4 000 000	3 057 654,00	4 000 000,00	4 208 336,76	15 265 990,76
<b>Oristano</b>	300 000	-	-	-	300 000
<b>Tot.</b>	19 260 000	18 394 887,33	21 500 000	21 500 000	<b>80 654 887,33</b>

- (44) The airports of Cagliari, Alghero and Olbia have already received an advance of the payments normally due for the discharge of SGEIs in 2010 and 2011 through loans granted ad hoc by the Sardinian region. The total amount transferred reaches up around EUR 27,5 million split among airports as reported in the table below.

*Table 3 – Advance payments to airports (EUR)*

	<b>2010</b>	<b>2011</b>	<b>Tot.</b>
<b>Alghero</b>	8 446 000	8 975 926,05	17 421 926,05
<b>Cagliari</b>	-	4 060 722,28	4 060 722,28
<b>Olbia</b>	3 400 000	2 599 000	5 999 999
	11 866 000	15 635 648,33	<b>27 501 648,33</b>

### *Subsidies to airlines operating at the airports of Alghero, Cagliari, Olbia*

- (45) According to the information submitted by Italian authorities, the compensation received by airports has been passed on to airlines for air services scheduled in 2010, 2011, and 2012. The airline beneficiaries have been selected on the basis of the "most attractive commercial offer".



- (46) In particular, the airport of Alghero has transferred to airlines a total amount of EUR [12 – 14 million]<sup>†</sup>, the airport of Cagliari EUR [9 – 12 million] and the airport of Olbia EUR [5 – 7 million]. Pending requests by the airlines at the airport of Olbia amount to EUR [3 – 4 million] for services operated in 2012.
- (47) Details on the contributions to airlines from each of the airports concerned are provided in the tables below.

**Table 4 – Funds to airlines operating at the airport of Alghero**

	2010	2011	2012
<b>Ryanair</b>	[...]	[...]	0
<b>AMS</b>	[...]	[...]	0
<b>Alitalia</b>	[...]	-	-
<b>Meridiana</b>	[...]	-	-
<b>Tot.</b>	<b>[8,5 – 9,5 m]</b>	<b>[3,5 – 4,5 m]</b>	<b>0</b>

**Table 5 – Funds to airlines operating at the airport of Cagliari**

	2010	2011	2012
<b>Ryanair</b>	[...]	[...]	[...]
<b>AMS</b>	[...]	[...]	[...]
<b>Easyjet</b>	[...]	[...]	0
<b>Tot.</b>	<b>[4 – 5 m]</b>	<b>[4 – 5 m]</b>	<b>[1 – 2 m]</b>

**Table 6 – Funds to airlines operating at the airport of Olbia**

	2010	2011	2012*
<b>Air Berlin</b>	[...]	[...]	[...]
<b>Easyjet</b>	[...]	[...]	[...]
<b>Meridiana</b>	[...]	[...]	[...]
<b>Air Italy</b>	[...]	[...]	-
<b>Flyniki</b>	-	-	[...]
<b>Volotea</b>	-	-	[...]
<b>Norwegian</b>	[...]	[...]	[...]
<b>Jet2.com</b>	-	[...]	[...]
<b>Other carriers</b>	-	-	[...]
<b>Tot.</b>	<b>[3 – 4 m]</b>	<b>[2 – 3 m]</b>	<b>[3 – 4]</b>

\* These sums represent the amount asked by the carriers on the basis of accounts submitted to the Region.

## 2.5. Other on-going State aid proceedings

- (48) On 12 September 2007 the Commission opened formal investigation<sup>6</sup> as regards possible unlawful State aid granted by the Alghero airport operator to low cost carriers including Ryanair by means of agreements setting up favorable operating conditions at the airport, and some financial grants awarded to the airport by its public shareholders<sup>7</sup>.
- (49) The subject of the investigation was mainly: (i) Marketing support via different contracts providing marketing support to Ryanair for the operation of new routes to and from the Alghero airport; (ii) Reduced handling fees granted to Ryanair and to other low-cost airlines at Alghero airport; (iii) Potential State aid to airport by means of capital increase and other financial grants apparently connected with the agreements with Ryanair.
- (50) On the basis of the information acquired in the course of the investigation, on 27 June 2012 the Commission decided to extend the timeframe and the scope of the procedure<sup>8</sup>.
- (51) In particular, the procedure was extended to include all the contracts that the airport concluded with Ryanair and its wholly owned branch AMS (for the period as from 2000) and all the contracts concluded with other airlines using Alghero airport (including contracts expiring in 2013). In addition, on the basis of the Italian authorities' submission it has emerged that the airport is subsidized by the public authorities.
- (52) Therefore it is clarified that the scope of the 2012 extension decision covers possible State aid measures that have not been covered by the 2007 opening decision, i.e. aid measures: (i) To the airport operator of Alghero for the measures that were not subject of the 2007 decision (capital increases and compensation of losses, infrastructure subsidies); and (ii) To air carriers operating at the Alghero airport (including Ryanair) on the basis of the contracts with the airport operator implying marketing services and bonus fees for the overall period as from 2000 to the date of the decision.

## 2.6. Existing air transport public service obligations ("PSOs") on the routes to and from Sardinia

- (53) Since 2000 PSOs have been imposed on 16 domestic routes between Sardinian airports and airports on mainland Italy pursuant to EU air transport rules<sup>9</sup>.

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† The professional secrecy in the present version of the decision, under Commission Communication C(2003) 4582 of 1 December 2003 (OJ C 29, 9.12.2003, p. 6), has been replaced by brackets ([...]).

<sup>6</sup> Commission decision C37/2007 – Italy - Air One/Ryanair - Aéroport d'Alghero, OJ C 12 of 17.1.2008, p.7.

<sup>7</sup> The case was initially based on a complaint from Air One alleging that operators managing different Italian airports (Alghero, Pescara, Rome, Pisa, Treviso, Bergamo, Bari and Brindisi airports) had granted and were continuing to grant unlawful aid to Ryanair. Subsequently the complainant limited its objections to the presumed aids granted under the agreements signed by SOGEAAL (Alghero airport operator) with different airlines.

<sup>8</sup> The decision is not published yet. See press release on the decision at [http://europa.eu/rapid/press-release\\_IP-12-698\\_en.htm](http://europa.eu/rapid/press-release_IP-12-698_en.htm).

**Table 8 – PSO routes between Sardinia and mainland Italy**

	<b>Alghero</b>	<b>Olbia</b>	<b>Cagliari</b>
<b>Domestic routes (to/from)<sup>10</sup></b>	- Rome (Fiumicino) - Milan (Linate) - Turin - Bologna	- Rome (Fiumicino) - Milan (Linate) - Bologna - Verona	- Rome (Fiumicino) - Milan (Linate) - Palermo - Naples - Verona - Turin - Florence - Bologna

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- (54) The imposition of the PSOs has been subject to conditions set out in Commission Decision of 23 April 2007 (2007/332/EC)<sup>11</sup>.
- (55) The PSOs connecting the three Sardinian airports to Rome-Fiumicino and Milan-Linate did not grant nor exclusive rights neither financial contribution, but imposed minimum requirements in relation to frequencies, timetables, type and capacity of aircraft used, fares and continuity of service. These routes were reinstated in 2012<sup>12</sup> and offered in a tender<sup>13</sup>. According to the information available, the tender was not successful given that no bids were registered.
- (56) All the other PSO on routes connecting Sardinia with Italian cities different from Rome and Milan are still on-going, but subject to revision too<sup>14</sup>.
- (57) According to Italy, the aim of the existing air transport PSOs is distinct from the aim of SGEIs imposed on airports, whereby the first serve mostly the need of mobility and territorial continuity of Sardinian residents, while the second regard the strategic routes for touristic purposes in view of the economic and social cohesion and the development of the island.

### **3. ARGUMENTS OF THE ITALIAN AUTHORITIES**

- (58) The Italian authorities contend that the justification for SGEI lay primarily on the need to increase traffic flows, with associated social and economic benefits for the territory of Sardinia.
- (59) Italy further argues that the notified measures have to be considered in the light of lack of transport alternatives and the critical situation in the maritime transport sector<sup>15</sup>.

<sup>9</sup> Council Regulation (EEC) No. 2408/92 on access to UE air services and laying down conditions for public service obligations, later replaced by Regulation (EC) No 1008/2008.

<sup>10</sup> The routes in italic are subject to a different regime as compared with the others. Connection to and from Rome Fiumicino and Milan Linate are regulated by Ministerial Decrees no. 35/2005 and Ministerial Decree no. 108/2008 and are all without compensation. The other routes are regulated by Ministerial Decree no. 36/2005, some with, other without compensation.

<sup>11</sup> OJ L 125, 15.5.2007, p. 16.

<sup>12</sup> OJ C 10, 12.1.2012, p. 3.

<sup>13</sup> OJ C 38, 11.02.2012, p. 6.

<sup>14</sup> No other details have been provided by Italian authorities in this respect.

- (60) In the Italian authorities' view, airport operators are subject to the same rules (budgetary, on public procurements and so on) as any other public administrations body. Airport operators are presumably better placed to carry out the public mission, i.e. selecting air carriers called to develop the intra-EU air traffic.
- (61) Italy submits that, since the SGEI is well defined, the criteria for the compensation are set out *ex ante* and the services in question are tendered out, the measures meet the Altmark criteria and would therefore not constitute State aid under Article 107 TFEU. The notification is therefore done for legal certainty reasons.

#### **4. ASSESSMENT OF THE MEASURES**

- (62) On the basis of the foregoing, the Commission analyses whether the following measures may qualify as State aid and their compatibility with the internal market:
- (i) compensations to airport operators of Sardinia for alleged SGEI over the period 2010 – 2013 anticipated via a loan mechanism managed by SFIRS (in paragraphs (12) above(13) above – (44)(38)) (measure 1);
- (ii) subsidies to airlines operating in the same airports, among others to Ryanair, since 2010 (in paragraphs (45)(40) - (47)(42)) (measure 2).
- (63) Preliminarily, the Commission notes that airport operators received loans from the Sardinia region expressly as advance payments of the compensation due for the financing of air traffic development in the same airports (see above paragraphs (21) –(29)). Based on the information currently available, the Commission is of the preliminary opinion that by this mechanism the compensation to airports is anticipated in the form of loans and the loans are paid back when the airport receives the compensation. The Commission invites Italy to provide specific information on the Airport Fund provided for by Regional Law 30 June 2011, no. 12, and the loans granted to airports, including the contractual documentation, and comment on this point.
- (64) Moreover, the Commission considers that measure 2, subsidies to airlines, were made possible by such loans. Possible mismatch that can be observed at this stage between the figures regarding airlines and the advance payments received by the airports (compare between table 3 with tables 4, 5 and 6) might be explained by the longer period considered in the present decision for the subsidies to airlines (2010 – 2012) and the timing of the request for the advanced payments submitted by each airport. For example, the airport of Cagliari lodged the request in May and April 2012 for the advanced payments

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<sup>15</sup> Italy refers to the privatization of former Tirrenia group, still underway, and to the suspected cartel between companies offering maritime services on and from Sardinia currently investigated by Italian Competition Authority, see opening of proceedings by NCA in case I743 – Tariffe traghetti da/per la Sardegna of 11 May 2011.

referred to respectively 2010 and 2011; therefore it results that it received no compensation for 2010.

- (65) The Commission also intends to clarify that, given the on-going proceedings in case SA.23098 on Alghero airport and the content of it, special considerations shall be given, at the stage of the final assessment, to the position of this airport so as to avoid potential overlaps between the on-going proceedings and the present case. In this respect, the Commission invites Italian authorities to specify if some of the public funds or parts thereof identified in the previous procedure regarding Alghero airport coincide with the funds granted to the same airport through the present scheme, so that the Commission can avoid double counting.

#### **4.1. Compensation to Sardinian airport operators for SGEI (*measure 1*)**

##### 4.1.1. Existence of aid

- (66) According to Article 107(1) TFEU "*any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market*".
- (67) The criteria laid down in Article 107(1) are cumulative. Therefore, in order to determine whether the notified measures constitute State aid within the meaning of Article 107(1) TFEU, all the above mentioned conditions need to be fulfilled cumulatively. Namely, the financial support should:
- a. be granted by a Member State or through State resources,
  - b. favour certain undertakings or the production of certain goods,
  - c. distort or threaten to distort competition,
  - d. affect trade between Member States.

##### State resources and imputability to the State

- (68) The public financing is granted by the Sardinian Region. Therefore the measure is financed by public funds constituting State resources and it is imputable to the State. As regards the advance payments received by the airports through the loans managed by SFIRS, the Commission notes that SFIRS is entirely held by Sardinia whose statutory purpose includes inter alia the support to the region in the implementation of the economic initiatives undertaken by the latter.

##### Selective advantage

- (69) In order to conclude on whether or not the compensation for the operation of public services constitutes an advantage within the meaning of Article 107(1) TFEU, the Court set out the following criteria in its Altmark judgement<sup>16</sup>.

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<sup>16</sup> Case C-280/00, Altmark Trans / Nahverkehrsgesellschaft Altmark [2003] ECR I-07747

1. the recipient undertaking must actually have public service obligations to discharge and these obligations must be clearly defined (hereinafter *Altmark 1*);
  2. the parameters on the basis of which the compensation is calculated must be established in advance in an objective and transparent manner (hereinafter *Altmark 2*);
  3. the compensation cannot exceed what is necessary to cover all or part of the costs incurred in the discharge of public service obligations, taking into account the relevant receipts and a reasonable profit for discharging those obligations (hereinafter *Altmark 3*);
  4. where the undertaking which is to discharge public service obligations, in a specific case, is not chosen pursuant to a public procurement procedure which would allow for the selection of the tenderer capable of providing those services at the least cost to the community, the level of compensation needed must be determined on the basis of an analysis of the costs which a typical undertaking, well run and adequately provided with means of transport so as to be able to meet the necessary public service requirements, would have incurred in discharging those obligations, taking into account the relevant revenues and a reasonable profit for discharging the obligations (hereinafter *Altmark 4*).
- (70) Pursuant to point 34 and ff. of the 2005 Aviation Guidelines<sup>17</sup> (“2005 aviation Guidelines”), *“Certain economic activities carried out by airports can be considered by the public authority as constituting a service of general economic interest”* and in such a case Member States can impose *“on the airport operator certain public service obligations in order to ensure that the general public interest is appropriately served. In such circumstances, the airport operator may be compensated by the public authorities for the additional costs deriving from the public service obligation”*.
- (71) According to the same provision *“It is not impossible for the overall management of an airport, in exceptional cases, to be considered a service of general economic interest. In this case, the public authority might impose public service obligations on an airport, for example, an airport located in an isolated region, and might decide to pay compensation for these obligations. However, it should be noted that the overall management of an airport as a service of general economic interest should not cover activities which are not directly linked to its basic activities and listed in paragraph 53(iv)”*. The activities that cannot be included in the SGEIs relate to the pursuit of commercial aims not directly linked to the airport's core activities, including the construction, financing, use and renting of land and buildings, since those are not considered to be transport activities<sup>18</sup>.

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<sup>17</sup> Communication from the Commission — 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>18</sup> Article 53(iv) of the 2005 aviation Guidelines lists the airport activities considered as follows: “pursuit of commercial activities not directly linked to the airport's core activities, including the construction, financing, use and renting of land and buildings, not only for offices and storage but also

- (72) The Commission must interpret Altmark 1 in the light of its 2005 aviation Guidelines.
- (73) In this respect, the Commission recalls that it has already found “*that Sardinia may be considered a peripheral region due to its island location and lack of real alternative methods of transport. In addition, Sardinia’s development deficit compared to other Italian regions is well documented. Its isolation and low population, exacerbated by high emigration, explains why economically the island lags behind...*”<sup>19</sup>. At this stage the Commission does not dispose of information contradicting that finding. Rather the information submitted by the Italian authorities confirms it. Therefore, the Commission does not object in principle to the imposition of SGEIs obligations on Sardinian airports or to air connection with Sardinia.
- (74) However, the Commission takes the preliminary view that in the present case the SGEIs have not been clearly defined for the reason stated in the following.
- (75) Law 10/2010 does not refer to specific routes, but rather to general objective of the development of air transport, and does not impose an obligation on the airport to pass on a certain share of the compensation to air carriers.
- (76) On the other hand, the implementing acts: a) set out general policy objectives in the air transport sector; b) commit certain amounts for these aims; and c) lay down certain criteria for the definition of the programs by airport operators, the number of passengers expected, the breakdown of the budget for compensation between the airports concerned depending on the traffic level and certain priority criteria.
- (77) In this respect, it results that the targets to be observed, i.e. traffic flows on the routes of strategic interest and associated compensation, are to be defined on the basis of the programs submitted by airport operators and eventually to be endorsed by the Region. Although in line with paragraph 53 of the Communication of the Commission on the application of the European Union State aid rules to compensation granted for the provision of services of general economic interest as regards the definition of the public service obligation<sup>20</sup>, the Commission does not object to the involvement of the service provider in the definition of the SGEI, other factors have to be taken into account in the present case<sup>21</sup>.
- (78) The Commission notes that the legal acts establishing the measure refer the SGEI sometimes to the whole management of the airport, sometimes to certain

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for the hotels and industrial enterprises located within the airport, as well as shops, restaurants and car parks”.

<sup>19</sup> Decision 2007/332/EC paragraphs 29 and 30.

<sup>20</sup> OJ, C 008, 11.01.2012 P. p. 4.

<sup>21</sup> Paragraph 53 reads as follows: “The involvement of the service provider in the process by which it is entrusted with a public service task does not mean that that task does not derive from an act of public authority, even if the entrustment is issued at the request of the service provider [84]. In some Member States, it is not uncommon for authorities to finance services which were developed and proposed by the provider itself. However, the authority has to decide whether it approves the provider's proposal before it may grant any compensation. It is irrelevant whether the necessary elements of the entrustment act are inserted directly into the decision to accept the provider's proposal or whether a separate legal act, for example, a contract with the provider, is put in place”.

activities carried out therein (e.g. the Decision no. 43/37 of 6.12.2010<sup>22</sup>). Also in the documents submitted during the correspondence with the Commission, the Italian authorities state sometimes that the PSOs would concern certain economic activities of the airport<sup>23</sup>, whereas other times the whole management of the airports is referred to<sup>24</sup>.

- (79) Moreover, in other parts of the documentation the SG EI is clearly referred to the *air transport* as a whole: for example, in the document sent by Italy on 30 November 2011 (p. 4), the main objective of the measure is identified as follows: “*the air transport, and therefore the airport infrastructure to which it relies, represent for Sardinia, due to its insularity, ... a Service of General Economic Interest, to be subjected to public service obligation*”.
- (80) Consistently, in the document sent by Italy on 9 August 2012 it is stated: “*in the plans of activity ... the needed details as regards the object of the public service obligations (routes, frequencies, targets of traffic) have been identified*” (p. 5) and “*given the insularity and structural disadvantage of the region, air transport represent the only modality apt to guarantee the accessibility to the regional territory... Therefore, without public services obligation, the offer of transport services would be substantially reduced with serious consequences for the right of mobility of Sardinian residents. ... for the Region Sardinia the air transport represents a service of general economic interest and a satisfying level of connection can be ensures only provided the authorities offer a financial compensation to the supplier*” (p. 11).
- (81) In order to be qualified as SG EI, an activity has to be sufficiently specific. The Commission doubts that the definition contained in the legal basis of the measure and the implementing acts can be considered as sufficiently specific. In any event, the Italian authorities have not submitted to the Commission any document laying down a clear description of the obligations imposed on the airports. Finally the Commission notes that, in principle and in general terms, the very core activity of any average airport operator should be to maintain and to develop air traffic.

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<sup>22</sup> In this Decision statement considering certain activities such as: “As regards the activities of regional airports in their complex the management of the same will be subject to public service obligations consisting in carrying out actions for the increase or at least the maintenance of air traffic also by promotional activities” coexists with the different statement considering the whole airport: “The financing for 2010 ... will take into account the plan of activity sent by the airport operator and the role of Services of General Economic Interest imposed on the management of the airport in its complex”.

<sup>23</sup> For example, in the submission of 9 August 2012 (p. 7) Italy states: “On the basis of the frequency, the offer of the seats in the aircraft, and of the adequate load factor for each connection, it has been estimated the number of annual passenger which have to be transported and which represents the specific obligation of public service which the region imposes on the airport operator”. Also in the letter of 24 February 2012 (p. 5) the public service imposed on airports concerns all the activities for the selection of airlines, assess their capability and provide them with the needed financial resources to cover at least in part the costs.

<sup>24</sup> See for example letter of 30 November 2011 (p. 6): “the Autonomous Region of Sardinia, considering the management of the airports on its whole as a service of general economic interest...”.



- (82) Given all the above, at this stage the Commission has doubts whether the task of the concerned airports can be qualified as SGEI. Consequently, it is not possible to assess the necessity of SGEI compensations.
- (83) The Commission notes that in this case the compensations to the airport operators for the discharge of the alleged SGEI have not been tendered out, but rather directly granted to the airports operators in question.
- (84) Moreover, the Italian authorities have not provided to the Commission any indication that the level of compensation has been determined on the basis of an analysis of the costs which a typical undertaking, well run and adequately provided with means of transport so as to be able to meet the necessary public service requirements, would have incurred in discharging those obligations, taking into account the relevant revenues and a reasonable profit for discharging the obligations.
- (85) Consequently, at this stage the Commission has no evidence to support the argument that the beneficiaries in fact provide the services at stake at the least cost to the community. In the absence of any elements to the contrary, the compensation paid to the airport operators in this case for the provision of the SGEI cannot be found to have been determined on the basis of the costs of an efficient undertaking. The Commission therefore takes the preliminary view that the fourth Altmark condition has not been complied with in the present case.
- (86) Given that the four Altmark criteria are not cumulatively met in this case, the Commission takes the preliminary view that the measure provides the recipients with an economic advantage.
- (87) As regards the advance payments received by the airports through the loans managed by SFIRS, the information available at this stage to the Commission is not sufficient to allow it to conclude whether the loans in question have been concluded by the airport operators on market terms. The Commission invites the Italian authorities to provide the regulation governing the Airport Fund and other relevant administrative acts, all contracts related to such loans and to submit evidence that the loans were granted on market conditions. The Commission notes that, if such loans have been obtained by the airport operators at favourable terms, the beneficiaries would benefit from an economic advantage, amounting to the difference between the market rate and the interest rate effectively paid by the airport operators and the loans would constitute a separate aid measure.

*Distortion of competition and affectation of trade*

- (88) The Commission notes that when aid granted by a Member State strengthens the position of an undertaking compared with other undertakings competing in intra-Union trade, the latter must be regarded as affected by that aid.

- (89) In accordance with settled case law<sup>25</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.
- (90) The Commission considers that any undue economic advantage granted to Sardinian airport operators from public resources could strengthen the beneficiaries' position vis-à-vis their competitors on the market of providers of airport services. The Commission notes that many operators are in competition for the management of airport infrastructure in Europe, including local and regional airports (notably Infratil, Vinci, Veolia Transdev, etc.). Aid to SOGEAAL, SOGAER and GEASAR may therefore distort competition in the markets for airport infrastructure operation by reinforcing their economic position and by reducing business opportunities for competing airports, and by making the Sardinian airports more attractive for air carriers compared to other possible destinations. As the market of airport services is open to competition at EU level, any aid to the airport operator also risks affecting trade between Member States.
- (91) Therefore, the public funding under examination distorts or threatens to distort competition and affects trade between the Member States.

#### Legality of the measure

- (92) Pursuant to the standstill clause of Article 108(3) TFEU and to Article 3 of Council Regulation No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 (now Art.88) of the EC Treaty, new aids must not be put into effect before the Commission has taken a decision authorising such aids. In this context, aid can be considered to be put into effect when the legally binding act providing for the aid is adopted. In this respect, the Commission has recommended that Member States write a reserve clause into their legislation whereby the aid-granting body can make payments only after the Commission has cleared the aid<sup>26</sup>.
- (93) In the present case, the Regional Law adopted in 2010 does not contain any conditional clause. On the contrary the Regional authorities have also adopted the needed procedure to conform the budget to the measure. Moreover, it has been notified only at the end of 2011. Finally, the Region has adopted implementing acts, both in term of regulatory provisions (Decisions no. 29/36 of 27 July 2010, no. 43/37 of 6 December 2010, and no. 52/117 of 31 December 2011) and in term of concrete measure for the application of the scheme (with reference to the approval of the plans, the loans, etc.). Moreover, the Region has anticipated the effects of the aid scheme by granting loans to the airports (see above paras 21 – 29).
- (94) Therefore, the Commission is of the opinion that the compensation scheme has been granted in breach of the standstill clause and therefore is to be considered as illegal.

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<sup>25</sup> Case T-214/95 *Het Vlaamse Gewest v Commission* [1998] ECR II-717.

<sup>26</sup> See XXXIIIrd Report on Competition Policy 1993, p. 250

### Conclusion on the existence and legality of the aid

- (95) For the reasons set out above, the Commission concludes that the compensation granted to Sardinian airports of Cagliari, Alghero, Olbia and possibly Oristano and Tortoli-Arbatax constitutes State aid within the meaning of Article 107(1) TFEU.
- (96) Given that the measure at stake was not subject to the Commission's approval beforehand, Italy has not respected the standstill obligation of Article 108(3) TFEU.

#### 4.1.2. Compatibility assessment

- (97) Italian authorities contend that the compensations to the Sardinian airports are granted for the discharge of an SGEI consisting in the development of air transport and the de-seasonality of air connections and eventually for the increase of touristic activities in the Region. In particular, Sardinia assigned the resources in question to airport operators in order for the latter to then finance the development of air traffic over the period 2010 – 2013. For the period between 2010 and 2013 Sardinia committed in favour of the airports a total amount of EUR 80 654 887,33.
- (98) To the extent that the Commission accepts the qualification of the service as SGEI, its compatibility has to be assessed in the light of Article 106(2) TFEU. Article 106(2) provides that “*undertakings entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly shall be subject to the rules contained in the Treaties, in particular to the rules on competition, in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them. The development of trade must not be affected to such an extent as would be contrary to the interests of the Union*”.
- (99) On 31 January 2012 the European Union framework for State aid in the form of public service compensation (2011)<sup>27</sup> (hereinafter *the 2011 SGEI Framework*) and *the 2011 SGEI Decision* entered into force. Those legal instruments clarify how the Commission applies Article 106 (2) TFEU.

#### a) Applicability of 2005 and 2011 SGEI Decision

- (100) Art. 2(1)(e) of the 2011 *SGEI Decision* allows compensations for the provision of public services as regards airports which the average annual traffic during the 2 financial years preceding that in which the service of general economic interest was assigned does not exceed 200 000 passengers. Such compensation is considered compatible with the internal market and exempted from notification to the extent that the services in question constitute genuine SGEIs, which have been properly entrusted to the beneficiaries by means of an entrustment act clearly stating obligations imposed (Article 4), the compensation is based on the additional costs incurred in the discharge of PSOs (Article 5) and

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<sup>27</sup> OJ C 8, 11.1.2012.

no overcompensation occurs (Article 6). The 2011 Decision is not applicable to the present case since the traffic level in Alghero, Olbia and Cagliari has been above the ceiling of 200 000. Possibly it would be applicable to Tortolì-Arbatax and Oristano should these minor airports be interested by the measure.

(101) However, the aid scheme under assessment was implemented before the adoption of the 2011 SGEI Decision. According to Art. 10 (a) of the SGEI Decision any aid scheme put into effect before the entry into force of the Decision that was compatible with the internal market and exempted from the notification requirement in accordance with Decision 2005/842/EC shall continue to be compatible with the internal market and exempt from the notification requirement for a further period of 2 years.

(102) Art. 2(1)(d) of the Decision 2005/842/EC allowed compensations for the provision of public services as regards airports which the average annual traffic during the 2 financial years preceding that in which the service of general economic interest was assigned does not exceed 1 000 000 passengers. The three airports or Alghero, Olbia and Cagliari had a traffic level above 1 000 000 passengers at least as of 2008<sup>28</sup>. The same exception as seen above would apply to the airports of Tortolì-Arbatax and Oristano should they be concerned by the measure.

(103) The Commission takes the preliminary view that none of these conditions is observed in the case at stake, since the traffic level in Alghero, Cagliari and Olbia is above the ceilings laid down in the 2005 and 2011 decision, with the possible exception, if applicable, of Tortolì-Arbatax and Oristano. The Commission further notes that at no time the Italian authorities have argued that the compensation granted to the airports in question would be compatible and exempted from notification under the 2005 or 2011 SGEI Decision. They rather allege that the compensation is not aid since all Altmark requirements are fulfilled.

(104) By opening the formal investigation procedure, the Commission invites the Italian authorities to detail observance of the compatibility conditions laid down therein. It also invited interested parties to provide comments in this respect.

#### c) SGEI Framework

(105) As noted above, point 69 of the 2011 SGEI Framework clarifies that the Framework applies also to aid measures on which the Commission takes decision after 31 January 2012 even if the aid was granted before that date. The 2011 SGEI Framework lays down the compatibility criteria of measures subject to the notification requirement. The following compatibility conditions have been laid down therein:

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<sup>28</sup> Based on the website of the Italian association of airports, in 2008 passengers in Alghero were 1.380.762, in Cagliari 2.929.870, and in Olbia 1.803.324 (at [www.assaeroporti.it](http://www.assaeroporti.it)).

- a. the aid should be granted for a genuine and correctly defined service of general economic interest as referred to in Article 106(2) of the Treaty (paragraph 12);
- b. the responsibility for the operation of the SGEI must be entrusted to the undertaking concerned by way of one or more acts, the form of which may be determined by each Member State. Such act should clearly specify the content and duration of the public service obligations; the undertaking entrusted with these obligations and, where applicable, the territory concerned; the nature of any exclusive or special rights assigned to the undertaking; the description of the compensation mechanism and the parameters for calculating, monitoring and reviewing the compensation; and the arrangements for avoiding and recovering any overcompensation (paragraphs 15 and 16).
- c. the amount of compensation must not exceed what is necessary to cover the net cost of discharging the public service obligations, including a reasonable profit (paragraph 21).

(106) The Commission notes that in this case the Italian authorities established criteria designed to calculate the compensation due to the airport operators on the basis of the operational costs of airlines, rather than on the additional costs presumably incurred by the airports themselves in the discharge of public service obligations.

(107) On this basis, the Commission cannot at this stage conclude that the airport operators have actual public service obligations to discharge, which have been adequately entrusted to them by means of one or more legal acts.

(108) Given that the Commission cannot at this stage conclude on the SGEI qualification of the services in question, it cannot conclude whether the level of the compensation to the airport operators is proportionate.

(109) In the light of the above the Commission is not capable of assessing the compatibility of the compensation to Sardinian airport operators pursuant to the 2011 SGEI Framework. By opening the formal investigation procedure the Commission invites the Italian authorities to submit any relevant information in that respect.

(110) Therefore, at this stage the Commission takes the preliminary view that the measure cannot be considered compatible under Article 106 TFEU on the basis of the 2011 SGEI Framework.

#### *Conclusion on the compatibility assessment*

(111) On the basis of the foregoing, the Commission expresses doubts on the compatibility of the compensation scheme to the airport operators of Alghero, Cagliari and Olbia, and possibly Oristano and Tortoli-Arbatax, with the internal market and invites interested parties to comment.

- (112) In particular, the Commission takes the preliminary view that Italian authorities intend to entrust as an SGEI to the airports what in reality looks more like public service obligations on a plurality of air routes that should have been imposed, according to Regulation 1008/2008, on air carriers. In other terms, Italy seems to mix up SGEIs on the airports and PSOs on the airlines. The Commission invites Italy and third parties to comment in this respect.
- (113) The Commission also invites the Italian authorities to provide information as concern the compensation to the airport of Oristano or Tortolì-Arbatax, if any, to the date of the decision.
- (114) Finally, the Commission invites the Italian authorities to provide all information required to assess whether the loans to the airport operators have been granted by o SFIRS on market conditions.

#### **4.2. State aid to airlines operating in Alghero, Cagliari, Olbia (*measure 2*)**

- (115) According to the information in the possession of the Commission, it appears that air carriers have received financial contributions totalling EUR [26 – 33 million] over the period 2010 – 2012 from the Region of Sardinia, through the airport operators of Alghero, Olbia, Cagliari. An additional amount of EUR [3 – 4 million] could have been granted for 2012. It is not clear at this stage whether the airlines have benefitted from other forms of advantages (e.g. reduced airport fees) at the same airports.

##### 4.2.1. Existence of aid

###### *State resources and imputability to the State*

- (116) The concept of State aid applies to any advantage granted directly or indirectly, financed out of State resources, granted by the State itself or by any intermediary body acting by virtue of powers conferred on it<sup>29</sup>.
- (117) Given that at the material time the Sardinian Region exercised control over the resources under consideration, and that the resources in question had been clearly committed in the regional budget for the precise purpose, among others, of subsidising air routes to and from the airports, the Commission considers that the transfers from the airport operators to the airlines, are imputable to the State and are made of State resources.

###### *Selectivity advantage*

- (118) A measure constitutes state aid only if the beneficiary receives a selective advantage which it would not have received under normal market conditions<sup>30</sup>.
- (119) The Commission first notes that any advantage inherent in the measure would be selective in so far as it is directed only to certain air carriers. Second, the Commission notes that the subsidies reduce the costs that the air carriers would

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<sup>29</sup> See Case C-482/99 *France v Commission* (hereafter: "*Stardust Marine*") [2002] ECR I-4397.

<sup>30</sup> See case C-342/96, *Espagne v Commission* [1999] ECR I2459, paragraph 41.

otherwise have to bear from their own resources if they were to operate the same flight schedule.

*Distortion of competition and affectation of trade*

(120) The air transport sector is characterised by intense competition between operators from different Member States, in particular since the entry into force of the third stage of liberalisation of air transport ("third package") on 1 January 1990<sup>31</sup>. It follows that the financial support to the airlines operating at the airport of Alghero, Cagliari and Olbia is liable to affect trade between Member States and distort or threaten to distort competition in the air transport sector.

*Conclusion on the existence of State aid to airlines*

(121) In the light of the foregoing analysis, the Commission considers at this stage that the relevant measures may involve State aid within the meaning of Article 107(1) TFEU.

(122) Inasmuch as the measures constitute State aid within the meaning of Article 107(1) TFEU, they are considered illegal under Article 108(3) TFEU, given that they appear to have been granted to the beneficiaries in violation of the stand still obligation.

4.2.2. Compatibility assessment of the measures in favour of airlines

a) 2011 SGEI Decision in conjunction with Regulation 1008/2008

(123) Art. 2(1)(d) of the 2011 SGEI Decision applies to State aid in the form of public service compensation granted to undertakings entrusted with the operation of services of general economic interest as referred to in Article 106(2) of the Treaty, if the compensation for the provision of services of general economic interest as regards air links to islands on which the average annual traffic during the 2 financial years preceding that in which the service of general economic interest was assigned does not exceed 300 000 passengers.

(124) The scheme under assessment was implemented before the adoption of the 2011 SGEI Decision (see above paragraphs 12 – 35 and 92 - 92). Therefore it has to be assessed whether the implemented scheme was compatible with the internal market and exempted from the notification requirement in accordance with Art. 2(1)(c) of the Decision 2005/842/EC, which contains the same provision as Art. 2(3)(d) of the 2011 SGEI Decision.

(125) The 2011 SGEI Decision (like the Decision 2005/842/EC) apply to public service compensation in the air transport sector provided that, in addition to fulfilling the conditions set out in the Decision, the compensation also complies with the sectoral rules contained in Regulation 1008/2008.

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<sup>31</sup> See Council Regulations (EEC) No 2407/92, 2408/92, 2409/92 published in OJ L 240, 28.8.1992.

- (126) Regulation (EC) No 1008/2008<sup>32</sup> (Regulation 1008/2008”) lays down rules on the licensing of EU air carriers, the law applicable to them and the pricing of air services. According to the Regulation, Member States can impose PSO for a scheduled air route between an airport and a peripheral or development region in the EU or on a thin route to an airport in its territory, if this route is considered as being vital for the economic and social development of the region which the airport serves.
- (127) Regulation 1008/2008 limits the possibility to impose air transport PSO to specific and duly justified cases, such as connections with peripheral or development region in the EU. For this purpose, it lays down a two-step procedure for the entrustment, first without compensation and second, only in case an entrustment without compensation does not work, with compensation. Both cases are subject to publication of the notice and the Commission must be kept informed of all stages of the procedure.
- (128) Following the adoption of the SGEI Package, PSO imposed on airlines in line with Regulation 1008/2008 is, according to point 24 of the 2011 SGEI Decision exempted from the notification pursuant to Article 108(3) TFEU if it complies with the conditions of Regulation 1008/2008 and the 2011 SGEI Decision.
- (129) In the present case, Italian authorities have underlined the distinction between the aim of the present scheme and the aim of PSO on air transport.
- (130) Therefore, on the basis of the information so far available and based on the allegation of the Italian authorities, at this stage the Commission doubts that the measure complies with the requirements laid down in Regulation 1008/2008. This concerns both air services carried out in the past (since 2010) and planned for the future (until 2013).

b) 2011 SGEI Framework in conjunction with Regulation 1008/2008

- (131) The compensation paid to the airlines can be assessed under the 2011 SGEI Framework. As already clarified, the 2011 SGEI Framework applies to aid measures implemented before the Framework entered into force. In addition point 8 of the Framework clarifies that the principles set out in the Framework apply to public service compensation in the field of air transport without prejudice to stricter specific provisions contained in the sectoral legislation, i.e in the case under assessment to Regulation 1008/2008.
- (132) Since at this stage the Italian Authorities have not provided any information to allow the Commission to assess the compatibility of the measures with the 2011 SGEI Framework the Commission cannot find the aid compatible with the said Framework and invites the Italian Authorities to submit any relevant observation in that respect.

c) Aviation Guidelines

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<sup>32</sup> Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community (Recast), OJ L 293, 31.10.2008.



- (133) In what follows, the Commission will examine the compatibility of the aid to the airlines as possible start-up aid under the 2005 Guidelines<sup>33</sup>.
- (134) The 2005 Guidelines take into account that small airports often have not the critical mass of passengers to reach a break-even point and that as a consequence *"airlines are not always prepared, without appropriate incentives, to run the risk of opening routes from unknown and untested airports"*, states paragraph 74 of the 2005 Guidelines. For this reason the Commission accepts that under a set number of conditions public aid can be granted to create an incentive for *"new routes or new schedules from regional airports and to attract the passenger numbers which will enable them to break even within a limited period"*.
- (135) If the criteria as set out in the 2005 Guidelines are complied with the start-up aid is considered compatible with the internal market under Article 107 (3) (c) TFEU. The Commission invites the Italian authorities to submit all the information necessary to enable it to assess whether the measures in question can be considered as compatible with the 2005 Guidelines.
- (136) According to point 79 of the 2005 Guidelines:
- (a) *"... the aid is paid to air carriers with a valid operating licence issued by a Member State pursuant to Council Regulation (EEC) No 2407/92<sup>34</sup> on licensing of air carriers"*.
- (137) The Commission invites the Italian authorities to identify which airlines have effectively received aid and to clarify whether those are carriers with a valid operating licence pursuant to Regulation 1008/2008.
- (b) *"... the aid is paid for routes linking a regional airport in category C or D to another EU airport."*
- (138) All the airports concerned are C airports, apart from Oristano and Tortoli-Arbatax, which are D airports.
- (c) *"... aid will apply only to the opening of new routes or new schedules, (as defined in the 2005 Guidelines), which will lead to an increase in the net volume of passengers"*.
- (139) The Commission invites the Italian authorities to explain whether the compensated routes qualify as new routes or new schedules.

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<sup>33</sup> Communication from the Commission — 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>34</sup> Council Regulation (EEC) No 2407/92 of 23 July 1992 on licensing of air carriers (OJ L 240, 24.8.1992, p.8). Regulation 2407/92 is repealed and replaced by Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community (Recast), OJ L 293, 31.10.2008.

- (d) *"... the route receiving the aid must ultimately prove profitable, i.e. it must at least cover its costs, without public funding. For this reason start-up aid must be digressive and of limited duration."*
- (140) The aid has a duration of 4 years. It does not result from any legal document that the subsidies in question would be digressive in nature. The Commission has no information whether the airlines demonstrated, on the basis of a business plan or any other calculation, the viability of the routes during a considerable period of time after the contribution has ended.
- (e) *"...the amount of aid must be strictly linked to the additional start-up costs incurred in launching the new route or frequency and which the air operator will not have to bear once it is up and running ... Examples of such costs are the marketing and advertising costs incurred at the outset for publicising the new link; they may include the installation costs ... Conversely, aid cannot be granted in relation to standard operating costs such as hire or depreciation of aircraft, fuel, crew salaries, airport charges or catering costs. The remaining eligible costs must correspond to real costs obtained in normal market conditions"*.
- (141) The information received so far seem to show that the subsidies were granted for regular operating costs, such as for fuel and crew salaries. Indeed, the formula to calculate the contribution set out by the Region include the cost per hour of a typical standard flight and is not limited to start-up costs.
- (f) *"...digressive aid may be granted for a maximum period of three years. The amount of aid in any one year may not exceed 50% of total eligible costs for that year and total aid may not exceed an average of 30% of eligible costs"*.
- (142) The subsidies to air carriers are granted for a period of 4 years. The Commission has doubts whether the aid is digressive and whether the intensity of the aid is observed. Moreover, as stated above it appears that the grants are granted on regular operating costs.
- (g) *"...aid payments must be linked to the net development of the number of passengers transported"*.
- (143) Italian authorities have not detailed any specific obligation imposed on the airlines concerning passengers levels at the airports of Alghero, Cagliari and Olbia, and possibly Oristano and Tortoli-Arbatax.
- (h) *"... any public body which plans to grant start-up aid to an airline for a new route, whether or not via an airport, must make its plans public in good time and with adequate publicity to enable all interested airlines to offer their services"*.
- (144) The Commission notes that Italy did not published the aid granted to airlines at the airports of Alghero, Cagliari and Olbia, at least as concerns 2010, 2011 and 2012.

(145) As regards the further requirements set out in point 79 in the 2005 Guidelines the Commission further notes that the Italian authorities could not show any business plan or analysis prior to granting the aid (point 79 (i)) and that the publicity requirement was not fulfilled (point 79 (j)) at least as regards 2010, 2011 and 2012.

(146) At the current stage, the Commission has also doubts whether the Italian authorities have provided for appeal procedures to deal with possible complaints with regard to the compensation according to point 79 (k) and whether penalty mechanisms as set out in point 79 (l) of the 2005 Guidelines have been complied with.

(147) At the current stage the Commission has no information whether the aid was combined with other types of aid such as aid of a social nature and compensation for discharging public services imposed on airlines. In this respect, Italian authorities have explained that the routes connecting Sardinia with the Italian mainland with existing PSOs under transport regulation do not overlap with the routes considered in the present case. The Commission invites Italy to clarify this point.

#### Conclusion on the compatibility

(148) In view of the above, the Commission has doubts whether the State aid paid to the air carriers operating at the airports of Alghero, Cagliari and Olbia as of 2010 can be considered compatible with the internal market pursuant to Article 107 (3) (c) TFEU.

## **5. DECISION**

In the light of the foregoing considerations, the Commission, acting under the procedure laid down in Article 108(2) TFEU, requests the Italian Republic to submit its comments and provide all such information as may help to assess the following measures, within one month of receipt of this letter. It requests your authorities to forward a copy of this letter to the potential recipients of the aid immediately.

The measures under scrutiny include: (i) compensations to the operators of Alghero, Cagliari, Olbia and possibly Oristano and Tortolì-Arbatax airports for alleged SGEI over the period as of 2010 to 2013 (or to the later date of application to the scheme) anticipated via a loan mechanism; (ii) subsidies to airlines operating in the same airports as of 2010. The scope of the formal investigation initiated by this decision is intended to cover aid measures that are not covered by the Commission decision of 12 September 2007 (2007 opening) and the Commission decision of 27 June 2012 (2012 extension of opening) in case SA.23098, subject to further information to be provided by Italy in this respect.

The Commission warns the Italian Republic that it will inform interested parties by publishing this letter and a meaningful summary of it in the *Official Journal of the European Union*. It will also inform interested parties in the EFTA countries which are signatories of the EEA Agreement, by publication of a notice in the EEA Supplement to the *Official Journal of the European Union* and will inform the EFTA

Surveillance Authority by sending a copy of this letter. All such interested parties will be invited to submit their comments within one month of the date of such publication.

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. In this context and for the purpose of the protection of confidentiality Italy is invited to consult the undertakings mentioned in the present decision with the aim to ensure that it does not contain information covered by professional secrecy under the above said Commission Communication.

If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to publication of the full text of this letter. Your request specifying the relevant information should be sent by registered letter or fax to:

European Commission  
Directorate-General for Competition  
1049 Brussels  
Belgium

Fax No: 0032 (0) 2 296 12 42.

Yours faithfully,  
For the Commission

Joaquín ALMUNIA  
Vice-President