



EUROPEAN COMMISSION

Brussels,
C(2013)

<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>
--	---

Subject: State aid SA.35956 (2013/C) (ex 2013/NN) (ex 2012/N) – Estonia
Rescue aid to Estonian Air

Sir,

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

1. PROCEDURE

- (1) On 3 December 2012, in the context of pre-notification contacts, Estonia submitted to the Commission information on its plans to provide rescue aid in favour of AS Estonian Air (hereinafter "Estonian Air" or "the airline") as well as on several capital injections carried out in the past. A meeting with representatives of the Estonian authorities took place on 4 December 2012.
- (2) Following these pre-notification contacts, by SANI notification number 7853 of 20 December 2012, Estonia notified to the Commission the planned provision of rescue aid to the airline in the form of a loan amounting to EUR 8.3 million.

T.E. hr. Urmas PAET
Välisminister
Islandi väljak 1
15049 Tallinn
Estonia

- (3) On the basis of the information provided by the Estonian authorities, it appeared that the first tranche of the rescue loan was disbursed to Estonian Air on 20 December 2012. For this reason, the Commission registered the case as non-notified aid (2013/NN) and informed Estonia by letter of 10 January 2013. Furthermore, the Commission requested additional information by letter of 10 January 2013, to which the Estonian authorities replied by letter of 21 January 2013.

T.E. hr. Urmas PAET
Välisminister
Islandi väljak 1
15049 Tallinn
Estonia

- (4) On 20 February 2013, the Commission initiated the formal investigation procedure in relation to the notified rescue aid amounting to EUR 8.3 million and several measures granted in the past.
- (5) By letter dated 4 March 2013, the Estonian authorities informed the Commission of the decision of the Estonian Government of 28 February 2013 to increase the rescue loan granted to Estonian Air by EUR 28.7 million (hereinafter, "the new measure").

2. THE BENEFICIARY

- (6) Estonian Air, a stock company under Estonian law, is the flag carrier airline of Estonia, based in Tallinn Airport. Currently, the airline has more than 300 employees and operates a fleet of 10 aircraft.
- (7) Estonian Air has a 100%-owned subsidiary, AS Estonian Air Regional, which operates commercial flights to neighbouring destinations in cooperation with Estonian Air. It also participates in two joint ventures: Eesti Aviokütuse Teenuste AS (51% share), which provides refuelling service to aircrafts at Tallinn Airport, and AS Amadeus Eesti (60% share), which provides Estonian travel agencies with booking systems and support.¹
- (8) Estonian Air was formed as a State-owned company after the independence of Estonia in 1991 from a division of the Russian airline Aeroflot. After privatisation efforts and subsequent changes in the company's shareholding structure, Estonian Air is currently owned by Estonia (97.34%) and the SAS Group (2.66%).

3. DESCRIPTION OF THE NEW MEASURE

- (9) The Commission decided on 20 February 2013 to initiate the formal investigation procedure (hereinafter "the opening decision") in relation to several measures granted by Estonia to Estonian Air in the past, namely three capital injections carried out in 2009, 2010 and 2011/2012 and the sale of Estonian Air's groundhandling section to the State-owned Tallinn Airport in 2009. In addition, the opening decision covers the EUR 8.3 million loan notified to the Commission as rescue aid.
- (10) The rescue measure as notified by Estonia on 20 December 2012 consisted of a loan amounting to EUR 8.3 million provided by the Ministry of Finance of Estonia. Estonia has clarified that the loan was disbursed in three instalments: EUR 0.793 million on 20 December 2012, EUR 3 million on 18 January 2013 and EUR 4.507 million on 11 February 2013. The loan has to be reimbursed at the latest by 20 June 2013. An annual interest of 15% will be charged for the loan.

¹ See <http://estonian-air.com/en/about-us/>.

- (11) On 4 March 2013, the Estonian authorities informed the Commission that, on the basis of a request of Estonian Air setting out its liquidity needs, the Estonian Government had decided on 28 February 2013 to increase the rescue loan granted to Estonian Air by EUR 28.7 million. Of this amount, EUR 16.6 million was granted to the airline on 5 March 2013 after signing an amendment to the previous loan agreement, while the remaining EUR 12.1 million will be provided to Estonian Air at a later stage.
- (12) It appears that the terms of the new measure are the same as those of the initially notified loan, i.e. the loan has to be reimbursed at the latest by 20 June 2013 and an interest of 15% p.a. will be charged.

4. COMMENTS OF THE ESTONIAN AUTHORITIES

- (13) The Estonian authorities consider that the amount of the rescue loan notified on 20 December 2012 was initially set to keep Estonian Air running through 31 March 2013. The loan was sized only to provide funding for the airline to survive and reach its cash covenant with [...] at the end of March 2013. The Government's reasoning for restricting the initial amount of the loan was to limit the aid granted. At that time it had become clear that the on-going restructuring of Estonian Air had to change significantly, but the details of the new restructuring plan still had to be worked out.
- (14) Estonia also explains that the total needs of Estonian Air at the rescue phase have been set at EUR 37 million, that is, the sum of the initially notified EUR 8.3 million loan plus the increase of EUR 28.7 million. The Estonian authorities consider that the totality of this amount is to be considered as rescue aid.
- (15) Estonia further argues that most of the additional rescue loan, i.e. EUR 23.8 million out of EUR 28.7 million, is supposed to enable Estonian Air to implement certain aspects of the proposed restructuring to downsize the business and minimise losses immediately. In this context, the management of Estonian Air has apparently obtained the agreement of its creditors to settlements in which they waive part of their claims. A condition of these settlements is that the remaining part of the claims is paid immediately.
- (16) From a memorandum prepared by Estonian Air on 4 March 2013 and joined to the submission of the Estonian authorities, it appears that the settlements mentioned above relate to the early termination of aircraft leases with [...] and [...] – for an amount estimated at EUR [...] million – plus the early payment of EUR [...] million to [...] from an outstanding loan. In addition, Estonian Air notes that it will incur costs of EUR [...] million as a result of redundancy payments, rebooking charges and the move to smaller headquarters. Estonian Air considers that all these measures – which amount to a total of EUR 23.8 million – are structural ones.

* Covered by the obligation of professional secrecy.

- (17) The Estonian authorities agree with Estonian Air that the measures referred to above should be seen as urgent structural measures which may be considered as part of the rescue aid under point 25(d) of the Community guidelines on State aid for rescuing and restructuring firms in difficulty² (hereinafter "the R&R Guidelines"). Estonia considers that the airline cannot postpone the implementation of these measures until a plan for the revised restructuring has been finalised and approved. Otherwise, the opportunity for Estonian Air to enter into settlements and to cut the losses would be lost.
- (18) Furthermore, the Estonian authorities consider that the new measure is not expected to have any significant effect on distorting competition within the internal market. Relative to total European air traffic, the Estonian market is considered as extraordinarily small. In addition, on a number of routes served by Estonian Air, the airline is the only carrier offering a direct connection. On these routes the aid will not affect the competitors of the airline. Therefore, Estonia concludes that there will be no appreciable distortion of competition at the level of the internal market.

5. ASSESSMENT

Difficulties of Estonian Air

- (19) As explained in the opening decision, the Estonian authorities consider that Estonian Air showed the usual signs of a firm being in difficulty at least as of June 2012 and therefore met the criteria of point 11 of the R&R Guidelines. In addition, Estonian Air would also fulfil the requirements of points 10(a) and 10(c) of the R&R Guidelines by having lost half of the registered capital and having reached a state of technical bankruptcy under Estonian law since at least July 2012.
- (20) The Commission concluded in recital 46 of the opening decision that Estonian Air would qualify as a firm in difficulty on the basis of point 11 of the R&R Guidelines as of 2009 and that Estonian Air would also fulfil the requirements of points 10(a) and 10(c) of the R&R Guidelines at later points in time.
- (21) The EUR 28.7 million increase of the rescue loan was decided by the Estonian Government on 28 February 2013, i.e. two months after the first part of the rescue loan of EUR 8.3 million was disbursed to the airline. During this time, the situation of Estonian Air seems to have further deteriorated, among other reasons due to the speculation in the media about the airline's future and a pilot

² OJ C 244, 1.10.2004, p. 2. The validity of the R&R Guidelines was initially set until 9 October 2009. However, the Commission decided to extend their validity first until 9 October 2012 (Commission Communication concerning the prolongation of the Community Guidelines on State aid for Rescuing and Restructuring Firms in Difficulty, OJ C 156, 9.7.2009, p. 3) and then, in the context of the State aid modernisation (SAM) initiative, until such time as the R&R Guidelines are replaced by new rules on State aid for rescuing and restructuring firms in difficulty (Commission communication concerning the prolongation of the application of the Community guidelines on State aid for rescuing and restructuring firms in difficulty of 1 October 2004, OJ C 296, 2.10.2012, p. 3).

strike threat in January 2013.³ Moreover, the Estonian authorities acknowledge that the airline's liquidity shortfall continued aggravating since the first part of the rescue loan was provided.

- (22) On the basis of the above, the Commission considers that the preliminary conclusion reached in the opening decision about Estonian Air being a firm in difficulty in the sense of the R&R Guidelines is also valid as of 28 February 2013, i.e. at the time when the new measure of EUR 28.7 million was decided by the Estonian Government.

Presence of State aid

- (23) By virtue of 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. The concept of State aid thus 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. Finally, the measures in question must distort or threaten to distort competition and be liable to affect trade between Member States.
- (24) In the opening decision, the initially notified rescue loan of EUR 8.3 million was considered to constitute State aid within the meaning of Article 107(1) TFEU since the loan, stemming from State resources, entails a selective advantage for Estonian Air. The Commission furthermore observed that the measure affects trade and threatens to distort competition between Member States as Estonian Air is in competition with other airlines of the European Union, in particular since the entry into force of the third stage of liberalisation of air transport ("third package") on 1 January 1993.⁴ The measure in question thus enabled Estonian Air to continue operating so that it would not have to face, as other competitors, the consequences normally deriving from its poor financial results. Estonia did not contest the State aid nature of this measure.
- (25) In relation to the EUR 28.7 million increase in the rescue loan, the Commission considers that the same considerations laid down in the opening decision apply, given that the new measure also stems from State resources and entails a selective advantage for Estonian Air. Moreover, this new measure affects trade and threatens to distort competition between Member States as Estonian Air is in competition with other airlines of the European Union.

³ See for instance the following press release, in which the Estonian Minister of Economic Affairs and Communications is quoted as having stated that Estonian Air lost EUR 4 million because of a pilot strike warning: <http://balticbusinessnews.com/article/2013/1/10/parts-strike-threat-cost-estonian-air-eur-4m>.

⁴ The "third package" included three legislative measures: (i) Council Regulation (EEC) No 2407/92 of 23 July 1992 on licensing of air carriers (OJ L 240, 24.8.1992, p. 1); (ii) Council Regulation (EEC) No 2408/92 of 23 July 1992 on access for Community air carriers to intra-Community air routes (OJ L 240, 24.8.1992, p. 8); and (iii) Council Regulation (EEC) No 2409/92 of 23 July 1992 on fares and rates for air services (OJ L 240, 24.8.1992, p. 15).

- (26) Therefore, the Commission considers that the increase of the rescue loan by EUR 28.7 million involves State aid. Estonia does not contest the State aid nature of this new measure.

Compatibility with the internal market

- (27) The compatibility of the increased rescue loan must be assessed in the light of the exceptions laid down in paragraphs 2 and 3 of Article 107 TFEU. In view of the difficulties of Estonian Air at the time the new measure was granted – recital (22) above – it appears that the new measure can only be assessed under Article 107(3)(c) TFEU, and in particular in the light of the R&R Guidelines and the 1994 Aviation guidelines.⁵
- (28) Although it appears that the new measure would fulfil most of the criteria laid down in section 3.1 of the R&R Guidelines concerning rescue aid, the Commission has doubts about the compliance of this new measure with the so-called 'one time, last time' principle of points 25(e) and 73 of the R&R Guidelines. Point 73 of the R&R Guidelines states that a company that has received rescue or restructuring aid in the past ten years is not eligible for further rescue or restructuring aid.
- (29) The Commission recalls that in the opening decision doubts were raised as regards the compatibility of several aid measures granted by Estonia to Estonian Air between 2009 and 2012, namely three capital injections in 2009, 2010 and 2011/2012 and the sale of Estonian Air's ground handling section to the State-owned Tallinn Airport in 2009.
- (30) As explained in sections 5.2 to 5.5 of the opening decision in detail, the Commission cannot exclude that the measures granted to Estonian Air between 2009 and 2012 constitute unlawful and incompatible rescue and/or restructuring aid. Therefore, it cannot be excluded either that the new rescue aid measure breaches the legal requirement of the 'one time, last time' principle.
- (31) The Estonian authorities did not provide any justification which would allow for an exception to the 'one time, last time' principle in the sense of point 73 of the R&R Guidelines. The Commission notes that Estonia's concern on the impact on the national economy of the closure of Estonian Air as well other general considerations such as the lack of connectivity due to Estonia's peripheral geographical situation, are in principle not apt, on their own, to justify a derogation from the 'one time, last time' principle.
- (32) Furthermore, the Commission has doubts whether the abovementioned settlements and rest of the measures to be implemented by Estonian Air – recitals (15) to (17) above – can be regarded as urgent structural measures in the sense of points 16 and 25(d) of the R&R Guidelines. The Commission highlights that the information provided by Estonia in this regard is not sufficient to allow the Commission to conclude whether these measures are

⁵ Guidelines on the application of Articles 92 and 93 of the EC Treaty and Article 61 of the EEA Agreement to State aids in the aviation sector, OJ C 350, 10.12.1994, p. 5.

indeed structural and, if so, the reasons why these measures must be undertaken immediately.

- (33) Regarding the early termination of aircraft leases with [...] and [...] for an amount estimated at EUR [...] million, the Commission notes that at least the figure concerning the settlement with [...] is still under discussion. Also, Estonia has not justified the negative impact of postponing the implementation of these measures for an eventual restructuring phase. Finally, as regards the early payment of EUR [...] million to [...] from an outstanding loan, the Commission notes that on the basis of point 16 of the R&R Guidelines, rescue aid cannot normally be granted for financial restructuring.
- (34) The Commission thus invites the Estonian authorities to justify the structural character of the measures mentioned above in more detail, to quantify their impact on Estonian Air's restructuring and provide arguments as to their urgent character, in line with points 16 and 25(d) of the R&R Guidelines.
- (35) In conclusion, and bearing all the above in mind, the Commission has significant doubts whether the new measure of EUR 28.7 million can be regarded as compatible with the internal market.

Unlawful aid

- (36) The Commission notes that EUR 16.6 million (out of the total EUR 28.7 million constituting the new measure) were already disbursed to Estonian Air on 5 March 2013, before obtaining authorisation from the Commission. Since the Commission concluded above that the new measure constitutes state aid, the amount of EUR 16.6 million has been granted to Estonian Air in breach of the stand-still obligations laid down in Article 108(3) TFEU. Thus, the Commission considers at this stage that the EUR 16.6 million part of the new measure qualifies as unlawful State aid.
- (37) For the remaining part of the new measure (i.e. EUR 12.1 million), the Commission wishes to remind Estonia that Article 108(3) TFEU has suspensory effect. Estonia should not provide this part of the new measure to Estonian Air until the Commission has reached a final decision.
- (38) In the light of the above considerations, the Commission has decided to extend the formal investigation procedure provided for in Article 108(2) TFEU to the new measure of EUR 28.7 million, including the amount of EUR 16.6 million provided to Estonian Air on 5 March 2013 as well as the commitment of the Estonian Government to grant the remaining EUR 12.1 million to the airline at a later stage.

In the light of the foregoing considerations, the Commission, acting under the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union, requests Estonia to submit its comments and to provide all such information as may help to assess the measures, within one month of the date of receipt of this letter. It requests your authorities to forward a copy of this letter to the potential recipient of the aid immediately.

The Commission wishes to remind Estonia that Article 108(3) of the Treaty on the Functioning of the European Union has suspensory effect, and would draw your attention to Article 14 of Council Regulation (EC) No 659/1999, which provides that all unlawful aid may be recovered from the recipient.

The Commission warns Estonia 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 to 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 published, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to 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
State Aid Greffe
1049 Brussels
Belgium

Fax No: +32-2-296-1242

Yours faithfully,
For the Commission

Joaquín ALMUNIA
Vice-president