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Subject: SA.32163 – 2010/N - Slovenia – Rectification of consequences of the damage caused to air carriers and airports by earthquake activity in Iceland and the resulting volcano ash in April 2010

Dear Sir,

1. PROCEDURE

- (1) By electronic notification dated 24 December 2010 Slovenia notified a scheme named *Programme for making good the damage caused to airlines and airports owing the seismic activity in Iceland and consequently volcanic ash in April 2010* (hereinafter the "Programme").
- (2) By letter of 21 February 2011, the Commission requested additional information. The Slovenian authorities replied by letters of 18 March 2011 and of 6 April 2011. On 6 May 2011, a conference call was held between the Commission services and the Slovenian authorities. The Commission requested additional information by letter dated 20 May 2011, to which the Slovenian authorities replied by letter dated 9 June 2011.

2. DESCRIPTION OF THE MEASURE

2.1. Objective

- (3) The objective of the scheme is to compensate for damages caused by closure of airspace that followed after eruption of volcano Eyjafjallajokull (hereinafter the "volcano") in Iceland in April 2010 and consequent seismic activity and volcanic ash.

Samuel Žbogar
Minister za zunanje zadeve Republike Slovenije
Prešernova cesta 25
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2.2. Background information

2.2.1. *Brief overview of the seismic activity*

- (4) According to the seismological report submitted by the Slovenian authorities, the seismic activity began back at the end of 2009 and gradually increased in intensity up to 20 March 2010. On 14 April 2010 the eruption moved into its second phase and produced a dust cloud that led to the closure of most of European airspace between 15 and 20 April 2010. On 14 April 2010 about 250 million cubic metres of lava were released in the eruption. The dust rose about 9 kilometres into the sky. The lava stopped flowing by 21 May 2010.

2.2.2. *Impact on the air transport industry*

- (5) The volcano eruption created a cloud of volcanic ash which threatened to cover most of Europe, except the Mediterranean region. In accordance with the relevant procedures developed at international level, the national authorities decided to close off all affected airspace.
- (6) The full closure of the main part of the European airspace has had a significant immediate economic impact on the air travel industry. The direct impact of the closure on EU traffic has been greater than the impact of the closure of the American airspace after 9/11 terrorist attacks in 2001 as it affected a wider airspace and many more flights. At its height on 17/18 April 2010, 17 EU Member States had a full airspace closure and 2 partially (simultaneously 6 non EU-States were fully closed). The estimates by Eurocontrol made after the event show that the closure of airspace for the period 15 April to 21 April drove to the cancellation of more than 100,000 flights (within the EU, to/from the EU and overflying the EU) and around 10 millions of passengers were unable to travel¹.

2.2.3. *Situation in Slovenia*

- (7) According to the Slovenian authorities, the Slovenian airspace was partially closed from 23:00 on 16 April 2010 to 03:30 on 17 April 2010 local time, specifically north of the 46th parallel (46° 00') from ground level up to an altitude of 35 500 feet. From 03:30 local time on 17 April 2010 onwards, Slovenian airspace was partially closed over the entire territory of the country from ground level up to an altitude of 35 500 feet. Initially the closure of airspace was planned to last until 14:00 local time on 18 April 2010, but it remained in force until 08:00 local time on 21 April 2010, when Slovenian airspace was opened without any restrictions. During the period of closure, the airspace was opened for a short time, but only for south-bound flights.
- (8) Slovenian Air Traffic Control cancelled all restrictions with effect from 21 April 2010.

¹ Information note of M.Kallas (OJ 1915 Conséquences du nuage de cendre généré par l'éruption volcanique survenue en Islande sur le trafic aérien – état de la situation, http://ec.europa.eu/commission_2010-2014/kallas/headlines/news/2010/04/doc/information_note_volcano_crisis.pdf).

2.3. Legal basis

- (9) The scheme is implemented in accordance with the Removal of Consequence of Natural Disaster Act (ZOPNN)² that authorises the use of the State budget as a source of funds for the removal of consequence of natural disaster (Article 11(3)), and the Decree on the Methodology for Assessing Damage³.

2.4. Beneficiaries

- (10) The Slovenian authorities state that the beneficiaries of the scheme are all air carriers holding a public transport licence issued by Slovenia and all airport operators registered in Slovenia. According to the Slovenian authorities the scheme is designed in an open and non discriminatory way and the beneficiaries are all the companies that suffered direct damage resulting from the airspace closure.
- (11) The following companies will be subject to compensation:

Airports

- *Aerodrom Ljubljana d.d.*
- *Aerodrom Portorož d.o.o.*
- *Aerodrom Maribor d.o.o.*

Air carriers

- *Adria Airways d.d.*
- *GIO – poslovna aviacija d.o.o.*
- *LinXair d.o.o.*
- *Janez Let d.o.o.*

- (12) According to the Slovenian authorities, none of the above listed companies was at the time of the volcano eruption a company in difficulties in the sense of the Community guidelines on State aid for rescuing and restructuring firms in difficulty⁴.

2.5. Conditions of the scheme

2.5.1. Assessment of damage

- (13) In conformity with the legal procedures in Slovenia, the responsible services (in the present case Administration of the Republic of Slovenia for Civil Protection and Disaster Relief), in cooperation with the Ministry of Economy, produced a final report on the estimated amount of damage. This report assesses the damage suffered by the eligible companies. The report and the scheme budget were approved by the Slovenian Government on 13 December 2010.

² Official Gazette of the Republic of Slovenia, No 75/2003, 98/2005, 90/2007, 102/2007 (in original language: *Zakon o odpravi posledic naravnih nesreč - Uradni list RS, št. 114/05, uradno prečiščeno besedilo, 90/07 in 102/07*).

³ Official Gazette of the Republic of Slovenia, Nos 67/03, 79/04, 81/06 and 68/08.

⁴ Official Journal C 156 of 9.7.2009, p.3.

2.5.2. *Eligible expenses*

- (14) The Slovenian legislation defines eligible expenses as the loss of value-added compared to what the undertaking could have made in the period following the disaster if the disaster had not occurred and the undertaking had been able to operate normally. No compensation for damage to equipment or for any other type of costs is provided.
- (15) The absent the disaster value-added is calculated on the basis of the average monthly value-added for the year before, multiplied by the number of months (pro rata to the number of days) during which the undertaking was not able to fully resume its activity. Value-added is defined as revenues less costs of production. It does not take into account depreciation and labour costs⁵.
- (16) Value-added figures can be derived from the profit and loss statement for the 12 months prior to the disaster. If the undertaking has been in operation for less than 12 months before the disaster, the average monthly value-added is calculated on the basis of figures from the income statement or the application form, or other proof for the period of operation of the undertaking.
- (17) According to the Slovenian authorities, this method includes in a realistic way all aspects of the financial loss suffered by companies due to the natural disaster. The method allows at the same time for an easy and reliable verification. All the data derive from financial statements.
- (18) The reference period will be the period during which the undertakings could not operate normally. This period cannot exceed one month. The beneficiaries will submit an official statement on the reference period together with substantiating documentation.
- (19) The Slovenian authorities consider that the method of calculation of the damage allows for compensating only the direct damage linked to the closure of airspace and it excludes any overcompensation. The method of calculating value added is used by the Statistical Office of the Republic of Slovenia and it is harmonised with that of Eurostat⁶.

2.5.3. *Form of the compensation*

- (20) Compensation is awarded in the form of direct grants.

2.5.4. *Duration of the scheme*

- (21) The compensation will be granted after approval of the Scheme by the Commission.
- (22) The Slovenian authorities assessed the total amount of the damage to amount up to €3 308 711 (see Table 1 below). The affected companies will be compensated to a maximum of 60% of the claimed damage.

⁵ VA = GOR – COS – OE (VA = value added, GOR = gross operating revenues, COS = costs of goods, materials and services, OE = other business expenditure).

⁶ http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/Glossary:Value_added

(23) The total budget of the scheme is €1 985 227.

Table 1 – Calculation of damages

Aviation company	Damage
Aerodrom Portorož d.o.o.	EUR 23,212
Aerodrom Maribor d.o.o.	EUR 118,661
GIO – poslovna aviacija d.o.o.	EUR 48,000
LinXair d.o.o.	EUR 304,400
Janez Let d.o.o.	EUR 8,300
Aerodrom Ljubljana d.d. ⁷	EUR 6,725
Adria Airways d.d.	EUR 2,799,413
TOTAL	EUR 3,308,711

2.5.5. *Reimbursement method*

- (24) After the approval of the scheme by the Commission the Ministry of Economy will invite all beneficiaries mentioned in the programme to submit an application and substantiating documentation for the damage within 30 days. The funds will be reimbursed to beneficiaries within no more than 90 days after the Commission approval. Decisions on the granting of funds are issued by the Ministry of Economy and sent to the Ministry of Finance for payment.

2.5.6. *Cumulation*

- (25) The aid cannot be cumulated with other types of State aid.

3. ASSESSMENT OF THE AID

3.1. Existence of State aid within the meaning of Article 107(1) TFEU

- (26) Article 107 (1) TFEU states: "*Save as otherwise provided in this Treaty, 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 common market.*"
- (27) Therefore, in order to determine whether the measures at stake do contain state aid elements within the meaning of Article 107 (1) TFEU, it must be established 1) whether the measures confer an economic advantage to the undertakings concerned by the reform, 2) whether this advantage has been financed through State resources, 3) whether this advantage distorts or threatens to distort competition and, finally, 4) whether the measures affect trade between Member State.
- (28) The Commission considers that the notified scheme allows the beneficiaries (air carriers and airport operators) to be relieved, by means of State resources, from part of the costs which they would normally have to bear themselves. Consequently, the financial aid from the State strengthens the position of the beneficiaries in relation to

⁷ According to the Slovenian authorities, the Ljubljana airport was in the phase of runway reconstruction at the time and thus, the loss of earnings was minimal.

their competitors in the Union and therefore has potentially distorting effects on competition. Products of benefiting enterprises are or might be subject to intra-Union trade and therefore the aid is likely to affect trade between Member States.

- (29) The Commission therefore comes to the conclusion that the notified scheme constitutes State aid within the meaning of Article 107 (1) TFEU.

3.2. Compatibility assessment

3.2.1. Ascertainment of a 'natural disaster' and 'exceptional event'

- (30) Article 107(2)(b) TFEU states that "*shall be compatible with the internal market (...) aid to make good the damage caused by natural disasters or exceptional circumstances*".
- (31) Given its unpredictable character and its economic impact, the Commission considers that the volcanic eruption at stake can be qualified as a "natural disaster" in the sense of Article 107(2)(b) TFEU. The closure of the European airspace is a direct consequence of the volcanic eruption and given its unpredictability, its scale and its economic impact, the Commission considers the closure of the airspace as an exceptional circumstance in the sense of Article 107(2)(b) TFEU⁸.
- (32) The Commission considers thus that the provisions of Article 107(2)(b) TFEU constitute the suitable legal base for support measures in response to the problems caused by volcano eruption and the subsequent closure of the airspace and therefore, the losses incurred by the actors of the air transport sector may give rise to compensation by Member States in accordance with Article 107(2)(b) TFEU in the absence of availability of insurance cover.
- (33) In that respect, it has to be recalled that since this is an exception to the general principle as stated in Article 107(1) TFEU, Article 107(2)(b) TFEU must be interpreted narrowly.
- (34) Therefore, only damage caused by natural disasters or exceptional occurrences may be compensated for under that provision. There must be a direct link between the damage caused by the exceptional occurrence and the State aid. Moreover, the assessment of the damage suffered must be as precise as possible⁹.
- (35) The Commission further considers that the compensation have to be calculated accurately and objectively by comparing the income recorded by each undertaking during the reference period with that recorded by the same undertaking prior to the event. Moreover, any aid granted must be non-discriminatory and it should neither result in over-compensation of the damage suffered nor be used as a circumvention of the Commission's policy on rescue and restructuring aid. It should in no way be used to remedy undertakings' problems unrelated to the relevant events.

⁸ See as well the Information note of M.Kallas (OJ 1915 Conséquences du nuage de cendre généré par l'éruption volcanique survenue en Islande sur le trafic aérien – état de la situation, http://ec.europa.eu/commission_2010-2014/kallas/headlines/news/2010/04/doc/information_note_volcano_crisis.pdf).

⁹ See Joined Cases C-346/03 and C-529/03 *Atzeni and Others* [2006] ECR I-1875, paragraph 79 and the case-law cited, see also Case T-268/02 *Olympiaki Aeroporia Ypiresies v Commission* [2008] ECR p. II-1091, paragraph 52).

3.2.2. *Reference period*

- (36) The scheme provides for compensation for the period for which the companies could not operate normally. According to the conditions of the scheme, this period will not exceed one month and all the claims will be supported by statements on the reference period and accompanied by substantiating documentation.
- (37) In the case at hand the airspace of any individual Member States was not closed at the same time in all Member States. The airspace closure affected the companies in different way depending not only on the origin of the company but also on the repartition of their operation. In Slovenia, the airspace was partially or fully closed from 16 to 21 April 2010 (see point 2.2.3 above).
- (38) In this context, the Commission considers that given the scale of the event (impact on intra-EU flights and not just transatlantic flights) and the relative speed of recovery of the flight operations after the event only the immediate aftermath of the closure period of European airspace should be taken into account.
- (39) However, the Commission considers, in line with the findings of the Court¹⁰, that compensation for accurately evaluated costs which occurred beyond the days of the closure of the airspace and that were directly caused by this exceptional occurrence could be held to be compatible with the internal market. The compensation can thus indeed take account of possible catching-up traffic after the reopening of the airspace (e.g. postponed travel) and of possible additional costs linked to the restart of the operations (e.g. repositioning of fleets).
- (40) Consequently, the Commission comes to the conclusion that the affected companies can be compensated for the period starting from the closure of the airspace until the time when the companies were able to operate normally. Thus, in line with the scheme conditions, the damage incurred during this period may be compensated, provided that there is a direct causal connection between the event and the damage.

3.2.3. *Mechanism to rule out overcompensation*

- (41) The Commission notes that the objective of the present scheme is to bring the situation of the affected entities to the situation as from before the disaster. The present scheme provides for a method of calculation of the damage based on the national legislation. This method (already approved by the Commission in 2008 and 2011 in case of compensations for natural disasters¹¹) proposes to calculate the damage to the companies based on companies' monthly value-added (see section 2.5.2 above). In other words, the proposed method relies on the calculation of a counterfactual value-added (based on the average value-added of the previous year) which corresponds to what the company would have accrued if the disaster would not have happened.
- (42) Thus the Commission considers, based on the information provided by the Slovenian authorities and in line with its past decisions that the method provides for an accurate and objective calculation of the damage suffered. It takes sufficiently into account the foregone revenues due to the closure of European airspace, additional costs directly attributable to the closure of the European airspace or/and volcanic ash cloud and the

¹⁰ See case *Olympiaki Aeroporia Ypiresies v Commission*, cited above.

¹¹ The Commission decision of 8 August 2008 (OJ C110 of 14 May 2011) and the Commission decision of 11 May 2011 (OJ C170 of 10 June 2011).

operational costs avoided during the closure of the European airspace and does not lead to overcompensation.

- (43) The actual damage suffered by a company as a consequence of the volcano eruption should be the difference in turnover and costs between what actually occurred and what should have happened (the counterfactual scenario). To produce an accurate evaluation of the damage caused, the indicator retained must (i) include the revenue and cost items likely to be affected by the air traffic interruption; and (ii) if it includes cost items unlikely to be affected then these should not vary under the counterfactual scenario compared to the actual one (and should not thus be considered for compensation).
- (44) On the revenue side, value-added includes all revenues so the only issue is whether the averaging over the previous 12 months provides a correct proxy for the counterfactual. This is examined below.
- (45) On the cost side, value-added includes all costs of production which essentially consist of variable costs, i.e. costs that may be affected by the interruption. To the extent that other variable costs are not included in the value-added this omission leads to an under estimate of the damage. To the extent that the value-added includes fixed costs, it seems a reasonable assumption that those fixed costs did not vary over the preceding year.
- (46) In any event upon request of the Commission the Slovenian authorities compared outcomes to that obtained with a direct method and found that the retained method leads to lower results. In addition, the 60% cap prevents that variation in fixed costs would be such that it would lead to over compensation as well as a possible negative trend in financial development of the companies in question.
- (47) The Commission further notes that in the present case the data provided by the Slovenian authorities show that the value added varies from month to month. They can be influenced by various factors like for instance starting or ending of new routes. Thus, the proposed annual average value is less susceptible to seasonal differences than by comparing only the respective periods in 2010 and in 2009. Consequently, the Commission considers that in this particular case an average of companies' value added throughout the preceding year represents an appropriate way to prevent overcompensation. In addition, in the present case the possible higher traffic around the 2010 Easter and school holidays has not been taken into account, which would have resulted in higher compensation amounts. Thus, the proposed method leads to lesser compensation. The Commission therefore considers that in this particular case, the annual average value-added of the company can be considered as a reasonable counterfactual, which prevents overcompensation and limits compensation to the minimum necessary.
- (48) To conclude, the Commission considers that the compensation only concerns costs and revenue losses directly attributable to the closing of the European airspace. In particular, compensation will only to be granted for net losses directly linked to the exceptional occurrences at the exclusion of the costs avoided as a result of the cancellation of flights.
- (49) The Commission further considers that the schemes contains sufficient safeguards in order to avoid any misuses in the amounts paid to beneficiaries: the aid applications

are verified at several levels by competent and/or specially appointed bodies and will be accompanied by the relevant documentary evidence; false or incorrect declarations are liable to prosecution and recovery with interests.

- (50) The scheme beneficiaries are all air carriers with a valid operating licence granted by the competent licensing authority in Slovenia in accordance with Regulation (EC) No 1008/2008¹² and airport operators. They are, based on the information provided by the Slovenian authorities, the only companies that suffered a direct damage resulting from the closure of the airspace. The measure is therefore non-discriminatory.
- (51) The aid under the present scheme and compensation from other sources, including insurance payments, may not exceed the value of the damage to the individual beneficiary.
- (52) Furthermore, the Commission takes note of the fact that no aid will be granted to a company that was in difficulty at the time of the disaster¹³.
- (53) In view of the above, the Commission considers that the notified aid scheme is compatible with the internal market in accordance with Article 107(2)(b) TFEU.

4. DECISION

The Commission has accordingly decided to consider the aid to be compatible with the Treaty on the Functioning of the European Union.

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

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

European Commission
Directorate-General for Competition
B-1049 Brussels

Fax No: +0032 (0) 2 2961242

Yours faithfully,
For the Commission

¹² 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, OJ L293, 31.10.2008, p.3

¹³ Community guidelines on State aid for rescuing and restructuring firms in difficulty, Official Journal C 156 of 9.7.2009, p.3.

Joaquín ALMUNIA
Vice-President